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THE  
BOMBAY  
Co-operative Societies Act  
WITH RULES.

BY

K. S. GUPTA, B. A., LL. B.

WITH A FOREWORD

BY

V. S. BHIDE, Esq., B. A., LL. B. (Cantab.), I. C. S. Bar-at-law  
Registrar, Co-operative Societies, Bombay Presidency.

(1) An introduction dealing with the origin and development  
of Co-operative Societies in this country and particularly in the  
Bombay Presidency.

(2) Under  
Section or Rule  
& the principle

(3) The first  
Act II of 1904

10017  
Bombay Land  
Revenue Code

found below each  
sections and Rules  
are fully explained.  
Act X of 1904 and  
the 'Friendly Societies'  
Act, are constantly  
revised, and the gradual  
understand the gradual  
necessity for the  
Co-operative Societies Act  
B.

1904 upto 1932, of the  
Sind and the other  
incorporated.

Co-operative Societies, Supervising Unions,  
Special and Central Banks  
Regulation, Audit and Manage-  
ment. Government Reso-  
lutions from time to time by Govern-  
ment are referred to wherever

Co-operative Societies Rules made in  
the past notifications of propos-  
itions from time to time and full text and  
in Appendix A.

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and the Judicial Commissioner's Court of Sind are dealt with.

The Registration of documents of agriculturists by Sub-Registrars under the D. A. R. Act is described with upto-date High Court Rulings. Rules (recently overhauled) regulating the special procedure to be followed by Sub-Registrars (i.e. the Village Registration Rules) under the provisions of the D. A. R. Act are given.

Execution of decrees against immoveable property of agriculturists in districts in Bom. Presidency and in Sind, and the Rules regulating them are given in Appendix A.

Rules for management by Collector of immoveable property taken possession of by him are given in Appendix B.



THE  
**BOMBAY LAND REVENUE CODE**  
**WITH RULES**

( Bom. Act V of 1879 )

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WITH  
Explanatory and Critical notes, exhaustive Commentary,  
the Bombay Land Revenue Rules and Orders and  
Cases up-to-date.

BY  
**K. S. Gupte, B. A. LL. B.**  
PLEADER, POONA

[ *Author of the Dekkhan Agriculturists' Relief Act, the Bom.  
Co-operative Societies Act, the Mamlukdars' Courts Act,  
the Bom. Pleaders Act and the Bar Councils Act  
with Rules for Bombay and Sind, etc, etc.* ]

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## PREFACE.

Intimately connected on the one hand with the past history and later development of land tenures the subject of land revenue appeals to the jurist ; not less connected on the other hand with questions of taxations, land valuation, rent and agricultural conditions in general, its administration invites the notice of the economist.

This subject is of vital importance to this Presidency on account of its close bearing on the economic condition of the agricultural class which pays this revenue and which represents about 80 per cent of the total population.

In order to be able to understand the land revenue system of the Bombay Presidency and Sind it is necessary to get intimate knowledge of the law on this subject namely the Bombay Land Revenue Code which "regulates the assessment and recovery of land revenue and other matters connected with the land revenue administration." Now, the Bombay Land Revenue Code has been described by the High Court of Bombay as a 'technical and difficult Act', and again as 'particularly difficult one to construe.' The High Court has further remarked : "It is extremely embarrassing for the ordinary practitioner to try and find his way through the various Acts and Amending Acts that have taken place since 1879."

All these observations will show that the task of an annotator or commentator of this Code is really a difficult and a responsible one.

The study of this complicated subject of the law of Land Revenue is rendered still more difficult owing to the fact that resolutions passed by Government from time to time to explain the various points of difficulty are not available in any single publication for reference. One has to gather them from various compilations such as Standing Orders of Government in Revenue Department, the Revenue Accounts Manual, the Survey and Settlement Manuals and so on. I have attempted in this book to explain the principles in the light of Government Resolutions which are invaluable being based on precedents and known for the accuracy of reasoning contained in them.

When in 1879 the present Bombay Land Revenue Code came into being, provisions as to procedure which were fundamental in their character were kept within the body of the Code and the details of the working of such provisions, which must necessarily vary according to circumstances were relegated to Rules. The Rules called the Bom. L. R. Rules which Government are empowered to frame "for

**II. Exhaustive treatment of subjects such as:**

(1) Agriculture and Agricultural purposes; lands or premises used for agriculture or grazing; distinction between agriculturalist and a middleman, agricultural and non-agricultural use; (2) Rights of parties to trees, crops, etc. and Mamlatdar's powers to give immediate possession, etc; (3) Rights of fishery; (4) Law of water-courses; (5) Rights of riparian proprietors; easement rights over 'artificial land' natural water-courses; (5) Restoring the use of water from wells, tanks, canals, etc., for agricultural purposes, etc., (6) Roads and customary ways leading to agricultural lands, etc, is a speciality of this Commentary.

**III. (1) The modern theory of possession and its importance;**

(2) The nature of possession which the Mamlatdar is empowered to protect; (3) The evidence of possession required according to the nature of property; (4) Relief in cases of disturbance or obstruction to possession or attempt to cause disturbance or obstruction;

these topics will be found of particular use to Mamlatdars, etc.

**IV. (1) The Law of Landlord and Tenant; (2) The relations between a landlord and tenant; mortgagor and mortgagee; (3) Determination of tenancy; (4) Principles and nature of leases; (5) Difference between agricultural and other leases; (6) Permanent leases; (7) Sub-leases; (8) Notice to quit and the requisites of a valid notice;**

these are some of the subjects which are calculated to enhance the utility of this Book.

**V. Principles that should guide the Collectors and the High Court in the exercise of their powers of transfer and revision are exhaustively given.**

**VI. In giving case law which is brought upto-date, facts are stated in brief while extracts from judgments are quoted whenever necessary. Resolutions of Govt. and Notifications issued from time to time are also included.**

**VII. Particular attention is given to Rulings of the Court of Judicature in Sind (i.e. Chief Court of Sind).**

## THE BOMBAY LAND REVENUE CODE, 1879.

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THE  
BOMBAY  
LAND REVENUE CODE, 1879

BOMBAY ACT No. V of 1879. [a]

*(First published, after having received the assent of the  
Governor General, in the "Bombay Government  
Gazette" on the 17th July 1879.)*

**An Act to consolidate and amend the law relating to Revenue officers,  
and the Land Revenue in the Presidency of Bombay.**

WHEREAS it is expedient to consolidate and amend the  
law relating to Revenue officers, and to the  
assessment and recovery of Land Revenue,  
and to other matters connected with the Land Revenue  
Administration ; it is hereby enacted as follows :

**Commentary**

The preamble forms no part of an Act, and it is only when the Act is read clause by clause and is finally passed that the preamble is brought

[a] For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1874, Pt. V, page 62, and *ibid* 1879, Pt. V, page 81 ; for Reports of the Select Committee, see *ibid* 1876, Pt. V, page 166, and *ibid* 1877, Pt. V, page 74 ; and for Proceedings in Council, see *ibid* 1875, Pt. V, page 67, *ibid* 1877, Pt. V, pages 198, 210, 234, 252, 417, 418, *ibid* 1878, Pt. V, page 40, *ibid* 1879, Pt. V, pages 112 and 124. Bom. V of 1879 has been declared in force in the whole of Sind by Government Notification in the Revenue Department, No. 4956-B, dated the 3rd June 1904.

The proceeds of all fees levied under Bom. V of 1879 for permission to remove sand or to quarry are to be credited to the Local Fund constituted by Bom. VI of 1923—see s. 75 (i) of the latter Act.

S. 85 and the last 15 words of s. 58 are not in force in the Panch Mahals—see Act VII of 1895, s. 2.

Ss. 62, 72, 73, 74, 99, cl. (b), 104, para. 2, 109, 110, 112, 150, cl. (b), and 153 of Bom. V of 1879 do not apply to any village in the district of Ratnagiri or the district of Kolaba to which the Khoti Settlement Act, 1880, extends ; and ss. 103, 118, 119, 123, 136, 150 and 162 of the Act are subject to modification when applied to any such village—see Bom. I of 1880, ss. 1 and 39.

Ss. 34 to 40, 44, 60 to 67, 76, 82, 85, 109, 110, 116, 127, to 136, 163, 216 and 217 (all inclusive) of Bom. V of 1879 do not apply to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1898, extends ; and ss. 3, 46, 54, 79A, 88, 89, 94, 111, 113, 147, 150, 169, 182, 214 of the Act and the words "occupant", "registered occupant" and "occupancy" throughout the Act, are subject to modification when applied to any such estate—see Bom. VI of 1898, ss. 1 and 33.

up for discussion before the Legislature and passed. It, however, indicates in general terms the objects of the Legislature in passing it. Generally speaking the preamble of a Statute is a very good guide for the better understanding of the Statute itself and is as it were "a key to it." See the remarks in *Janki Singh v. Jagannath*, 3 Pat. L. J. 1: 44 Indian Cases, Page 94 (F. B.). It may be consulted as an aid in determining the reason of the law and thus arriving at the true construction of the terms employed where the language of the body of the Act is obscure or ambiguous.—*Gopi Krishna v. Raja Krishna*, 12 Cr. L. J. p. 8. It cannot either restrict or extend the enacting part when the language, object and the scope of the Act are not open to doubt. It is not unusual to find that the enacted part is not exactly co-extensive with the preamble. More often the preamble is nothing but a recital of some of the inconveniences, to be met and does not, therefore, exclude others for which a specific remedy is provided by the Statute.—*R. v. Athos*, 8 Mod. 144.

"Consolidate and amend."—It will be seen from the preamble that the present Act not only defines and amends but also consolidates the law relating to land revenue. The object of consolidation is to collect the statutory law bearing upon a particular subject and to bring it upto-date in order that it may form a useful code applicable to the circumstances existing at the time when the Consolidation Act is passed.

The essence of a Code is to be exhaustive on the matter in respect of which it declares the law, and it is not the province of a Judge to disregard or go outside the nature of the enactment according to its true construction.—*Gokul Mander v. Pudmanund*, (1902) 29 I. A. 196, 202; 29 Cal. 707. In cases, however, where there is no specific provision the Court has the power, and, it would seem, it is its duty, to act according to justice, equity and good conscience.—*Hukumchand v. Kamalanund*, 33 Cal. 927; *Abdul Rahman v. Shahana*, (1920) 1 Lab. 339; 51 Indian C. 748.

Proceedings of the Legislature which include Statement of Objects and Reasons attached to Bills, Reports of Select Committees and Debates of the Legislatures (*Queen Empress v. Tilak*, 22 Bom. 112) are to be excluded from consideration in the judicial construction of the Act.—*Administrator General v. Premalal*, 22 Cal. 788; *Queen Empress v. Sri Churan*, 22 Cal. 1017.

**Marginal notes** to the sections of an Act are not to be referred to for the purpose of construing an Act.—*Thakurain Balraj v. Jagatpal*, (1904) 8 C. W. N. 699; 31 I. A. 132.

The **headings to a group of sections** in a Statute ought not to be passed into constructive limitation upon the exercise of the powers given by the express words of the Act.—*Narana v. Bombay Municipal Commissioner*, 42 Bom. 462; see also *Dwarkanath v. Tafuzar Rahman*, 44 Cal. 267 where it was held that the Court should look at the heading of the Chapter of the Act for the purpose of construing the section.

**Retrospective operation**.—Alterations in the procedure are always retrospective, unless there be some reason against it.—*Maxwell on the Interpretation of Statutes, Chap. VIII, Sec. IV*.

**Land Revenue Code is a taxing enactment** and must be construed strictly in favour of the subject.—*Secretary of State v. Laldas*, 12 Bom. L. R. 20.

**Land Revenue Code is a technical and difficult Act**.—In *Datto v. Dinkar*, 20 Bom. L. R. 887 at p. 895 Martin J. observed: "It is extremely embarrassing for the ordinary practitioner to try and find his way through the various Acts and Amending Acts that have taken place since 1879. This Act is a particularly difficult one to construe at least as regards some of its provisions." Again in *Sir Dolatsinghji v. Oghad Vira*, 25 Bom. L. R. at p. 740 the High Court remarked as follows: "Land Revenue Code is a technical and difficult Act and the definitions have to be carefully looked before giving any meaning to an apparently ordinary expression."

**Previous state of the law** may be resorted to for the purpose of aiding in the construction of the provisions of the Act only when the meaning is doubtful.—*Bank of England v. Vagliano*, (1891) I. C. 107, 144, 145; *Krishna Ayyangar v. Nallaferumal Pillai*, 47 I. A. 33, 42; 43 Mad. 550.

**Old law**—The Land Revenue Law of the Bombay Presidency, as enacted in the Regulations of 1827 had during the period of half a century which had elapsed since it was passed, undergone many changes.

Act XI of 1852 and Bombay Acts II and VII of 1863 on the one subject of claims to exemptions from land revenue, in themselves formed a very considerable and most important, addition to the original law.

The Assessment of lands to the land revenue, according to a fixed uniform system was a subject almost unprovided for in the law of 1827, which nevertheless engaged the attention of Government and of some of its best officers from a very early period. The operations of Revenue Survey carried on under the Departmental Orders of Government for many years had at length to be legalised by an express Act, and difficulties which arose in the application of that Act to lands in cities and towns led to a supplementary enactment. Both these Acts (Bombay Acts I of 1865 and IV of 1868) were in the nature of amendments or additions to the old law of 1827 and some difficulty had been found in practice in fitting the provisions of the one into the other.

Several minor Acts had also been passed from time to time to meet special needs as they had arisen ; and the result in 1875 was that a Revenue Officer or a Landholder who would ascertain how the law really stood on any point had to gather it from the remnants of the partially repealed Regulations of 1827 and from the numerous Acts which had succeeded them in the course of 50 years, some of which had in their turn again been more or less repealed while the latter enactments passed during the period of ten or twelve years previous to 1875 were not unfrequently found to be in many respects irreconcilable with the provisions of the older laws.

The first object of the Bill was, therefore, to consolidate all the then existing Acts and Regulations connected with the administration of the land revenue, and to codify them in such a form as to present a law patent and intelligible to all.

The second and not less important was to amend and improve the then existing law in the very numerous details in which experience had shown it to be faulty or deficient.

This object had been sought to obtain (1) by defining clearly the powers of Revenue Officers of the various grades ; (2) by providing rules for regulating their procedure ; (3) by laying down the conditions under which their decisions and orders may be subject to appeal or revision ; (4) by defining distinctly the respective rights of the State and of landholders of all classes in respect of the land ; (5) by determining more precisely than did the law then existing the relations of the various landholders and their tenants *inter se* ; and (6) by showing clearly the sources from which, and the circumstances



and rules under which, the land revenue was recoverable, and the authorities by whom, and the rules under which, the assessment to the land revenue was to be fixed. And, whilst the importance in a fiscal measure like that of asserting in unmistakable language the authority, power and privileges of Government, and of its officers, had not been overlooked, every endeavour had been made on the other hand to secure the holders of land, or of any interest therein, in the uninterrupted enjoyment of their legitimate rights, and to provide for full inquiry into all disputed claims.—See *Statement of Objects and Reasons, B. G. G. for 1875, Pt. V. pp. 62-63.*

As to the scope and character of the Land Revenue Code, Bachelor A. C. J. in *Dadoo v. Dinker*, 20 Bom. L. R. at p. 822 thought that it may be fairly stated that whatever may have been its original intention the Code is not now confined to a scheme for regulating the rights of Government as against the agricultural payers of assessment. He observed: "There are many sections of the Code which indicate a somewhat larger object, and among them I may notice s. 83, 86 and 88."

Can the Bombay Legislature pass an Act that Dom. High Court should not decide disputes relating to land and that they should be decided by the Collector and be binding on all parties?—This point was raised in *Kanhailal v. Ismail Bhai*, 28 Bom. L. R. p. 1500, where it was argued that the questions of boundaries are solely a matter for the Collector or his surveyor under the L. R. Code to decide. In this connection Martin C. J. observed:—

"Now this raises, to my mind, a most important and far-reaching question of jurisdiction and principle, because it must be remembered that the Bom. L. R. Code and the Revenue Jurisdiction Act are not Acts of the English Parliament, nor are they Acts passed by the Legislative Council of the Empire of India. They are Acts passed by the Local Legislature, and moreover, they are Acts not passed under the jurisdiction at present given to them by the recent Act of 1920 (the Government of India Act) but under the jurisdiction of past days when the Legislative Bodies were of a very different character from what they are today. I accordingly put it whether it can be contended that it was within the jurisdiction of Bombay Legislature to pass an Act saying that the High Court should have no jurisdiction to decide any case relating to the land and that all disputes relating to land should be decided by the Collector and be binding on all parties. It must be admitted that it will be going too far but it was urged that the local Government can legislate regarding boundaries. But that is a compendious phrase. A boundary does not merely mean a line on the map, or through a field or along

a fence. In disputed case it involves a question whether certain lands belong to A or belong to B.

It is unfortunate, I think, that in the decisions which have been hitherto given in this Court, the broad question as to whether these particular Acts were not, in this respect *ultra vires* of the Bombay Legislature, has never been expressly raised. But if the contention raised as above is correct, then why should our Courts in the past have determined boundary disputes between the parties, when the whole of their labours were liable to be upset at some future date by an Executive Officer, who in no sense represents a Law Court. I may say that I do not propose to determine that point today. I only mention it to show that the point has not been overlooked by us, and that if a similar argument to that advanced in this case is raised in others then the question of *ultra vires* will have to be seriously considered. To my mind it is not sufficient to deal with this class of case piecemeal, as has been done in some of the cases cited to us. If really at the bottom there is a question of principle involving a direct challenge to the jurisdiction of this Court, then I say that the matter should be grasped—and grasped firmly—and that the point should not be evaded and left to puzzle the practitioners to find distinctions between this case and that. I would, therefore, much prefer to thrash this point out once for all.”

## CHAPTER I.

### PRELIMINARY.

Short title. 1. [a] (1) This Act may be cited as  
“The Bombay Land Revenue Code, 1879.”

[b] (2) Save as otherwise provided by Chapter XA, this  
Act extends to the whole of the Presidency  
Local extent. of Bombay, except the City of Bombay,  
Aden, and the Scheduled District of the Mehwassi Chiefs’  
villages as defined in the Scheduled Districts Act, 1874.

[c] (3) Provided that Chapter III also extends to the  
City of Bombay, subject to the modification that the expres-  
sion “Revenue officer” means every officer of any rank

[a] Sub-section (1) of section 1 was originally the first paragraph of section 1. It was numbered sub-section (1) of section 1 by Bom. IV of 1913, s. 4 (1).

[b] This sub-section was substituted for paragraph 2 of section 1, by Bom. IV of 1913, s. 4 (2).

NOTE.—All sub-titles, printed over sections or groups of sections in this Act, were repealed by Bom. IV of 1913, s. 84.

[c] This sub-section was substituted by Bom. IV of 1913, s. 4 (3), for the paragraph 3, added by Bom. I of 1910, First Schedule, Part II, Serial No. 2.

whatsoever appointed under section 5 or 6 of the Bombay City Land Revenue Act, 1876, and employed in or about the business of the land revenue in the City of Bombay, or of the surveys, assessment, accounts or records connected therewith, instead of as defined in clause (1) of section 3 of this Act.

#### Commentary.

The title of an Act may be resorted to explain an enacting part when doubtful.—*Herrochunder Roy v. Shooro Ghonce*, 9 W.R. 402 (F.B.).

**Scheduled District of the Mehwassi chiefs' villages** is comprised of the villages belonging to the following Mehwassi Chiefs : (1) The Parvi of Kathi, (2) The Parvi of Nal, (3) The Parvi of Singhpur, (4) Walvi of Gaohalli, (5) The Wassawa of Chikhli, (6) The Parvi of Nawalpur.—*See Schedule I to the Scheduled District Act (IVX of 1874)*.

"**City of Bombay**" shall mean the area within the local limits for the time being of the ordinary original civil jurisdiction of the Bombay High Court of Judicature.—S. 3 (11) *Bombay General Clauses Act (1904)*.

**Bombay City and Island has a Land Revenue Act of its own.**—The Bombay Land Revenue Code as originally drafted included a Chapter applicable to the City of Bombay alone. But it was found more satisfactory to embody the necessary provisions in a separate enactment namely the Bombay City Land Revenue Act, 1876 as the land revenue administration of the Presidency town (Bombay City) differed so very widely from that of the mofussil.

"**Bombay Presidency**" or "**Presidency of Bombay**" shall mean the territories within British India for the time being under the Governor of Bombay in Council.—S. 3 (7) *Bombay General Clauses Act, 1904*.

**Extension of Code to Native States.**—The provisions of the Code are made applicable to (1) **Akalkot State.**—*G. N. No. 5728 (P. D.) of 9-12-1879, B. G. G. Pt. 1 for 1879 p. 966.*

(2) **Jat State.**—*G. N. No. 5730, (P. D.) 9-12-1879, B. G. G. Pt. 1 for 1879 p. 966.*

**Sind.**—The Bom. L. R. Code has been declared in force in the whole of Sind by *G. N. in R. D. No. 4956-B of 30-6-1904.*

*The Land Revenue Rules, 1921.*

**The extent of application.**—Rules 7 to 10 inclusive, 21 clause (2), 23, 25 to 27 inclusive, 38 and 70 shall not apply to Sind.—*Rule 1 of the Bom. L. R. Rules, 1921 (See Appendix A for Rules).*

**The Khoti Settlement Act, 1880** applies to the Khoti lands in Ratnagiri. Of the Land Revenue Rules, 1921 those which are not applicable are 15-16; 20-23; 30-38; 41-53; 73-74; 84; 92-98; 103-117; 119-27; 134-45. All the rest of the Rules are applied. Rules 72 (b) and 133 apply with certain modifications. Rules 37-57 apply to Government lands which do not include *Gawthan* in which *pardi* lands are to be assessed within the Khoti village limits.

In **Kolaba and Thana** under the Kabulayat and Lease-hold systems all the rules and orders are applicable except when the rights of Khot clearly bar the operation of the Rule. The terms of the tenure differ in different talukas and villages, so that no compendious statement of their applicability is possible. Perhaps we may say that in *Khoti Khaagi* and *Dhara* land the Rules and Orders apply as though the Khot and Dharekari were ordinary occupants, except that the Khot cannot relinquish single survey numbers; while in Khot Nisbat land the Rules apply as though the Khot were a superior holder. Certain rights of occupants to trees are safeguarded, while the Khot also has certain rights more fully described in the Revenue Account Manual (1931 Ed.). In unassessed land the Rules fully apply. (*See Appendix A for Rules.*)

*Talukdari villages.*

Under ss. 1 and 33 of the Gujarat Talukdars Act (VI of 1888) certain sections of the Code do not apply to Talukdari villages. Consequently the Rules arising from those sections can have no application. These Chapters of the Rules are :—

Those relating to City Survey (in chap. III-19); alluvion (X); the disposal of land (VII) and assignments for public purposes (XI); grazing (IX); fines for unauthorised uses and occupations (XIV); rights to trees (VIII); the Record of Rights (XV); permissions and altered assessments for non-agricultural uses (XIII and XIV); and all the special leases, agreements and sanada, which are in use where land is disposed of by Government; the new inalienable tenure and the law as to collections through village officers are also inapplicable.

But Talukdari Wantas (chiefly in Broach and Kaira) summarily settled as Personal Inams under Act VII of 1863 are no longer treated as Talukdari estates at all.—G. R. 3180 (411 Conf.) of 1920. (*See Appendix A for Bom. L. R. Rules, 1921.*)

**Opinion of Legal Remembrancer** embodied in a Government Resolution cannot be regarded as binding or as having any authority or force beyond what may be due to the accuracy of the reasoning contained in it.—*per Bally J. in Balvant Ramchandra v. Secretary of State for India, 29 Bom. at p. 501.*

**Government Resolutions.**—In a case where the Mamlatdar rejected an application under the Mamlatdars' Courts Act and

referred for authority to a certain circular of the Executive Government the High Court remarked that 'in the exercise of his judicial functions the Mamlatdar is bound to be governed by the law as he understood it or as it had been expounded by superior judicial authority not as it was understood or expounded by unjudicial persons.'—*Nana Boyaji v. Pandurang*, 9 Bom. at p. 99 (1884). This case was referred to in *Gvinda v. Naiku*, 10 Bom. 80 where the High Court observed: "It was irregular for the Mamlatdar to refer to a Resolution of Government for the purpose of determining the effect to be given to his former decree under the Mamlatdars' Courts Act. In *Emperor v. Moreshwar*, 30 Bom. L. R. 1255 (1928) where reliance was placed by the appellant on a Government Resolution and a note in Anderson's Manual, Patkar J. rejected the plea and observed that these were departmental orders and had not the force of a legislative enactment or statutory rules.

## 2. Repealed by Bom. IV of 1913, s. 5.

### Commentary.

The old Section 2 stated that certain Regulations and Acts were repealed some of them totally and the rest partially as no longer necessary.

Interpretation [a]\*3. In this Act, unless there be something repugnant in the subject or context:

### Commentary.

The Definitions have to be carefully looked at before giving any meaning to an apparently ordinary expression as the Bom. L. R. Code is a technical and difficult Act.—*Sir Daulatsingji v. Oghed Vira*, 25 Bom. L. R. at p. 740.

Interpretation of the word 'includes'.—It is a recognised principle of judicial interpretation that the inclusive meaning is not to be necessarily and indiscriminately applied to the word. Where a term is interpreted in a Statute as 'including' etc. the comprehensive sense is not to be taken as strictly defining what the meaning of the word must be under all circumstances but merely as declaring what things may be comprehended within the term where the circumstances require that they should.—*Emperor v. DeSouza*, 13 Bom. L. R. 494.

[a] As to the local modification of a. 3, see para. 5 of foot-note [a] on p. 1. *supra*.

\*NOTE.—The clauses in s. 3 of the Act were renumbered consecutively by Bom. IV of 1913, s. 6 (1).

(1) "revenue officer" means every officer of any rank "revenue officer"; whatsoever appointed under any of the provisions of this Act, and employed in or about the business of the land revenue or of the surveys, assessment, accounts, or records connected therewith [a] and for the purposes of sections 25 and 26 includes a village-officer appointed or officiating under any of the provisions of the Bombay Hereditary Offices Act or the Matadars Act, 1887 [a];

#### Commentary

**Change in law.**—The words '*and for the purpose of ss. 25 and 26 includes a village-officer appointed or officiating under any of the provisions of the Bombay Hereditary Offices Act or the Matadars Act, 1887*' were added by Bom. Act IV of 1905, Sch. I to facilitate the recovery of the money from village-officers in case of defalcation.

**Hereditary village-officers.**—Hereditary Patels and Kulkarnies are not revenue officers (except for the purposes of ss. 25 & 26) within the definition of s. 3 (1) of the Code as they are not appointed under this Act. The provisions relating to revenue officers in this Code do not, therefore, apply to hereditary village-officers. Certain of the provisions of the Code as for instance, some of those of Chapters IV (*Relating to certain Acts prohibited to Revenue Officers and to their Punishment for misconduct*) and XIII (*Appeals and Revision*) would be inconsistent with the provisions of the Hereditary Offices Act (*G. R. 2033 of 21-4-1880*). If a Watan lapses then Government succeed to the watan and the officer appointed by them would be a watandar for the purposes of ss. 85 and 94-A of the Code. But when a watan is commuted, it has not yet been decided that that analogy holds. Talaties are executive and not ministerial officers for the purpose of Civil Service Regulations 459 (a).—*G. R. 7268 of 1918*.

**Survey Mamlatdars** are appointed by the Commissioner of Survey now termed Settlement Commissioner (*G. R. 113 of 1916*); but their powers are those of Revenue officers under Chapter 10-A (*Record of Rights*), and not of survey officers under s. 18.

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[a-a] These words were added by Bom. IV of 1905, First Schedule.

District Inspectors of Land Records should be considered Revenue Officers (*G. R. No. 1327 of 25-2-1902*) they can, therefore, issue summonses for documents.

Forest Officer is not a revenue officer and does not become one by being merely placed under a revenue officer for purposes of control.—*Narayan v. Secretary of State*, 20 Bom. 803.

Officer employed in ascertaining forest rights in a village and to inquire whether they belong to the Government or to the Inamdar is not a revenue officer so that he cannot exercise the power to summon persons for the purposes of such inquiry under s. 189 of the Bom. L. R. Code.—*G. R. 4964 of 20-6-1884*.

(2) "survey officer" means an officer appointed under, "survey officer"; or in the manner provided by section 18 [a];

#### Commentary

The Collector hears appeals from Survey Officers below grade of Superintendent of Survey under s. 32 (2).—*G. R. 6884 of 1915*.

(3) [*Definition of "Collector"*].—*Repealed by Bom. IV of 1913, s. 6 (a)*;

#### Commentary

(3) 'Collector' repealed by Bom. Act IV of 1913, s. 6 (a) as superfluous in view of s. 3 (11) of the Bom. General Clauses Act, 1904. For the definition of "Collector" see notes to s. 8 under the head 'Collector' *infra*.

(4) "land" includes benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth, and also shares in, or charges on, the revenue or rent of villages, or other defined portions of territory ;

#### Commentary.

Land—In England, in ancient times, the expression 'land' was understood to mean arable land (land which could be ploughed) and *terra* was the word used for it. Since the time of Lord Coke, the word "land" comprehends any ground, soil or earth whatsoever ; *terra est nomen generalissimum et comprehendit omnes species terrae.*

[a] Words repealed by Bom. III of 1886 are omitted.

The word "land" not only means the surface of the ground, but also everything on or over or under it. Land in its ordinary normal condition means entire land *a centro usque ad coelum*. The expression cannot be restricted to vegetable mould or to cultivated clay: it naturally includes and must be held to include, the upper soil including the sub-soil whether it be clay, sand or gravel.—*12 App. Ca. 657 at 679 (1881)*. The same idea is expressed by two legal maxims of general application, namely:—

1. *Cujus est solum ejus est usque ad caelum*—he who possesses land possesses also that which is above it.

2. *Quicquid plantatur solo solo cedit*—whatever is affixed to the soil belongs thereto.

"Land" (*terra*) in the legal signification comprehends any ground, soil or earth whatsoever; as meadows, pastures, woods, moors, waters, marshes. It legally includes also all castles, houses and buildings: for, castles, houses etc., consist of two things *viz.*, land or ground, as the foundation and the structure thereupon; so that passing the land or ground, the structure or building thereupon passes therewith.—*Coke upon Littleton 4 (a)*. The expression "land" includes also benefits to arise out of land.

In India the expression "land" has in its ordinary sense the same meaning which ordinarily it has under the English Law. S. 3, cl. 4 of the Bom. L. R. Code declares "land" to include benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth. [*See also s. 3 of the Bom. Revenue Jurisdiction Act (X of 1876)*].

Besides its ordinary meaning the expression "land" has, in this part of the country, acquired some other meanings, either extended or limited. In its limited sense it means merely the public revenue on land. That is the sense which is *prima facie* attributed to the word "land" as used in grants from the State.—*Krishnarav v. Rangrav, 4 Bom. H. C. R. 1. (A. C. J.)*. In its extended sense it includes villages, portions of villages, shares in, or charges on the revenue or rent of villages, and landed estate of every description.—*Bom. Act II of 1863, s. 16 (B)*; *Bom. Act VII of 1863, s. 35 (B)*; *Act I of 1894 s. 3 cl. (a)* and *Government of Bombay v. Esufalli, 34 Bom. 618 (1910)*.



Thus it will be seen that the expression "land" as used in this country is ambiguous, and has got at least two meanings, viz., the soil itself and the public revenue on land.

**Land does not mean tree apart from land itself.**

A tree in itself is not land though it may be included in the word land. At the best it forms part of the land.

It is true that land as defined in the Code includes things attached to the earth, but wherever we have an inclusive definition of that sort, great care is required in applying it in interpreting the word wherever it occurs. It is also a recognised principle of judicial interpretation that the inclusive meaning is not to be necessarily and indiscriminately applied to the word. "Where a term is interpreted in a Statute as 'including' etc. the comprehensive sense is not to be taken as strictly defining what the meaning of the word must be under all circumstances but merely as declaring what things may be comprehended within the term where the circumstances require that they should."—*Emp. v. DeSouza*, 13 Bom. L. R. 494 (1911).

The principle is based on the undermentioned English case and is well-settled.—*The Queen v. The Justices of Cambridgeshire*, 7 Ad. & E 480 (1834); etc.

The definition of 'land' as given in the Code includes trees, but it does not say that 'land' means trees apart from the land itself, and a sale of trees in essence is a sale of something which is enjoyed apart from the land though for the time being is attached to the earth.

In a transaction of the sale of trees the parties do not have in mind any question relating to the transfer of any land in the physical sense and the transaction, therefore, is essentially one relating to the sale of the produce of the trees so long as they are alive and the timber thereafter when they are dead. In this view although the trees may continue to stand on or be attached to the land, what is sold is not the tree as part of the land but the tree as something that is capable of being severed from the land and appropriated and enjoyed as such.—per Nanavati J. in *Bapu Vilhal v. The Secretary of State for India*, 34 Bom. L. R. 780 (1931).

**What is Land Revenue.**—There is no definition of the term 'Land Revenue' in the Bom. L. R. Code, although in s. 3 of the Bom. City L. R. Act, 1876 (II of 1876) the term 'land revenue' is found explained in the interpretation clause as 'signifying any sum of money legally claimable by Government from any person on account of any land, or

interest in or right exercisable over, land held by or vested in him, under whatever designation such sum may be payable'. So also in s. 3 of the Bombay Revenue Jurisdiction Act, 1876 (X of 1876) which was passed three years before the Bom. L. R. Code the term 'land revenue' is defined as meaning 'all sums and payments, in money or in kind, received or claimable by or on behalf of Government from any person on account of any land held by or vested in him, and any cess or rate authorized by Government under the provisions of any law for the time being in force. Taking it in its plain meaning land revenue must be taken to mean "money payable to Government in respect of land" observed the High Court in *Secretary of State v. Govardhandas*, A. I. R. 1931 Bom. 464. In this connection the question was whether a Talukdari Settlement Officer exercising certain powers under s. 33 (2) (c) by Gujarat Talukdars' Act of the Collector under the Bom. L. R. Code could impose penalty upto 25 p.c. in default of rent due to the Talukdari Settlement Officer. The High Court held in the negative. In *Jinabhai Nathabhai v. The Collector and the T. S. Officer*, 28 Bom. L. R. at p. 418 Macleod C. J. remarked that "the meaning of the term 'land revenue' in s. 150 of the Code could not be restricted to one particular kind of the land revenue, that is to say assessment, so that, if any other kind of revenue from land is payable to Government by any person on account of any land held by or vested in him, and he falls into arrears in the payment of such revenue, it cannot be recovered from him under s. 150".

But for the purposes of s. 153 of the Code local fund cess is not considered as land revenue proper.

(5) "estate" means any interest in lands and the aggregate of such interests vested in a person or aggregate of persons capable of holding the same ;

(6) "survey number" means a portion of land of which the area and assessment [a] are separately entered, under an indicative number in the [b] land records [b] [c] ;

[a] This word was substituted by Bom. IV of 1913, s. 6 (b), for the words "other particulars".

[b-b] These words were substituted by Bom. IV of 1913, s. 6 (b), for the words "survey records".

[c] Words repealed by Bom. IV of 1913, s. 6 (b), are omitted.

**History of the Survey Number.**—The main object of the surveys as stated in the Joint Report of 1847 by the three Superintendents of Survey who were asked by the Government to find out the means for bringing the somewhat diversified operations of the several Revenue Surveys of this Presidency into conformity, as far as practicable and also for ensuring the results of the Surveys being turned to the best account, and maintained in their original integrity in the future management of the districts, is the imposition of a field assessment. They write in their Report: “In trying to find out the most suitable means for accomplishing that object the first question which presents itself for consideration is the definition of the field. In every village there are recognised sub-divisions of the village lands which for the most part have distinctive appellations, and have existed from time immemorial. Many of those, however known as *Thuls*, *Tickas*, *Daghs* and by other denominations, are of large size, and in the possession of several individuals. Their external boundaries may be considered permanent, but the limits of their interior portions, in the possession of distinct parties, are subject to change, through the operation of sales, transfers, annexations, partitions, and so forth. Occasionally also an old sub-division, though of large size, may be held by a single individual of larger means than usual; another, again, though not beyond, and even within the average size, may be partitioned very minutely amongst a numerous coparcenary, especially in the case of *Meeras* lands, which are inherited by the Hindu common law of equal partition among the male descendants, on the death of common ancestor. Such minor sub-divisions are continually subject to change from the causes just mentioned and others; and finally, large tracts of waste, and even cultivated lands, in which all trace of the original sub-divisions has been lost, are not uncommon.”

“To secure the advantages of the field assessment described in our preceding observations, it is obviously requisite that the fields upon which the assessment is distributed should be of a size suitable to the circumstances of the cultivators, so as to admit of their being readily cultivated by ryots of limited means. This could not be accomplished by constituting the ancient *Thuls* and *Daghs* into fields, as these would be generally too large for our purpose; while on the other hand, to make a field of every one of their interior sub-divisions, as they exist at the time of survey, would greatly increase the labour and expense of the operation without an adequate object; for such holdings are subject to frequent change, as already explained, and no advantage is to be gained by making permanent a state of things which, though representing at the time of survey the distribution of the village lands amongst the members of the community, would not continue to do so after the lapse of a very few years.

In the division of the village lands into fields the chief points to be kept in view appear to be:—

*1st.*—That the fields, or at least a majority of them, should not be larger than may be cultivated by ryots of limited means.

*2nd.*—That they should not be made smaller than is necessary for the above object without an adequate reason.

“The former of these points may readily be determined by the extent of land capable of being cultivated by a pair of bullocks, as farming cannot be prosecuted at all with a less number than this. When a ryot has only a single bullock he must enter into partnership with a neighbour, or obtain a second by some means or other, in order to be able to cultivate at all.

“The extent of land capable of being cultivated with a pair of bullocks will vary according to climate, soil, description of cultivation, and methods of husbandry. In very dry climates, as the Deccan, where the soil is kept free of grass and weeds with comparative ease, the extent of the land will be greater than in moister districts, where vegetation is more vigorous, other circumstances connected with the cultivation being the same. A larger breadth of light, friable soils may of course be kept in tillage with the same labour than of heavier descriptions. In districts where manure is generally applied to the soils, the area capable of being cultivated will be much less than when no manure is applied. The difference between dry crop and irrigated lands will be still greater.

The actual extent of the several descriptions of land capable of being cultivated as above may, however, be easily ascertained in the case of any district about to be surveyed. Let us suppose, for the sake of illustration, the following to be the number of acres cultivable by a pair of bullocks in a particular district :—

20	acres	of	light	dry	crop	soil
15	”		medium	”	”	”
12	”		heavy	”	”	”
4	”		rice	land	”	”

These areas would form the most convenient size of fields as a general rule ; but other circumstances require consideration.”

The Land Revenue Rule 3 (1) states that every holding not less in area than the minimum fixed under s. 98 shall be separately measured, classified, assessed and defined by boundary marks and entered in the Land Records as a Survey number. Rule 11 permits the amalgamation of contiguous survey number when held by one person under the same title. This is subject to Collector's permission which he would not give if some road, stream, bank, or other natural feature or obstacle so separated the survey number that they could not form an unbroken stretch of crops, and amalgamation would therefore be profitless. (*See Appendix A for the Land Revenue Rules, 1921*).

**Notes.**—Each new survey number made by non-agricultural plot or carved out of a ‘gat’ number should be described separately for instance if out of survey number 26 a new survey number is made it should be called survey number 26-B, the remaining part being called 26-A.

(7) [a] "sub-division of a survey number" means a "sub-division of a portion of a survey number of which the survey number"; area and assessment are separately entered in the land records under an indicative number subordinate to that of the survey number of which it is a portion [a];

**Sub-division of a survey number.**—It will be seen from the discussion under the heading 'History of survey number' in s. 3 (6) above that with regard to the general principles on which survey operations were conducted, the unit adopted at the outset at any rate was the survey number or a field capable of being cultivated by one pair of oxen. When the survey was first started, no attempt was made to indicate holdings belonging to different persons but after a time a practice arose of demarcating sub-divisions of survey numbers in accordance with the rights of private persons in the land and clubbing two or more of these sub-divisions (Pot No.) together so as to form one survey number. In the rules attached to the Joint Report, mention was made of 'shares' of a survey number. By that expression was meant holding which being below the area necessary to constitute a number of the standard size, was included with other holdings in a standard number in accordance with the principles enunciated in the Joint Report. In the Deccan these shares were not measured or assessed but were shown in the accounts against the names of their holders as constituting so many annas in the rupee of the whole number; e. g. a 2 or 4 annas share. In Gujarat, however, such subordinate holdings were measured though very roughly after the regular survey had been completed and the assessment calculated by a rule of three (see the discussion in Chapter VIII where the questions dealing with surveys, assessments and settlements of land revenue are discussed). No measurement record proper was kept of these areas and the survey numbers remained the unit both of survey classification and assessment. Such sub-divisions were called 'recognised shares' and were given legal recognition as 'subordinate share of a survey number' in the Survey Act of 1865. (See definitions of field or number' and 'recognised share of a field' in s. 2 of Bombay Act I of 1865).

**Pot Number.**—The evolution of pot-number took place in the Konkan. Like the 'recognised share' the pot-number was a 'subordinate share within the survey number' but it was also something more than this. The pot-number unlike the recognised share was separately measured, classed and assessed and later on demarcated by boundary marks. The survey number in fact became an aggregate of *pot numbers*, though it was still separately measured and mapped; it was also in one way the unit of holding since, by the Survey Act of 1865 if a holder of a pot number resigned his share for any reason the holders of remaining *pot numbers* had either to take it up or pay the assessment.

[a-a] This definition was substituted for the definition of "recognised share of a survey number" by Bom. IV of 1913, s. 6 (c).

The practice of demarcating sub-division of survey numbers in accordance with the rights of private persons in the land and clubbing two or more of these subdivisions (which in survey parlance were known as pot numbers) together so as to form one survey number. This practice, however, led to the entry in the revenue accounts of a large number of minute holdings and for the convenience of the Revenue Administration it was found necessary to check it. Accordingly in 1868 orders were issued by Government directing that sub-divisions below a certain limit (which varied in different tracts and different classes of land should not be recognised, except with the special sanction of the Survey Commissioner. The result was that the survey number was a unit for mapping and account purposes only and there existed many rights in the land included in a survey number which it was not attempted to show on the map or in the village accounts. In fact registration in village accounts was evidence of liability of assessment but not necessarily of proprietary or other rights in the land.

That difficulty was tried to be met by the introduction of the Record of Rights in this Presidency by Bom. Act IV of 1903. As has been mentioned above the record prepared by the Survey Department was necessarily a fiscal record the object of which was to show from whom the assessment was due and what that assessment was. It was not a Record of Rights or title. In course of time it was found that a Record of Rights based on possession, if not on title, was indispensable for the needs of the administration; especially because the occupants in this Presidency, had an unrestricted right of transfer. The necessity of having such a record was pressed upon this Government. It was resolved in 1901 to prepare an initial record designed to show in detail how the land was held, because the revenue records gave only partial and in some respects misleading information on the point. The record was intended to show every right from that of a registered occupant to an annual tenant at will. The experiment so started in selected talukas was found to be useful and had to be continued. With a view to give a legal character to the record etc. Act IV of 1903 was passed.—*Character of Land Tenures and System of Survey and Settlement in the Bombay Presidency, [Selections from the Records of the Bombay Govt. No. DXXIV.—New Series (as revised in 1914)]*

The framing of the Record of Rights made more and more manifest the divergence between the registered occupants and the actual holders of land; that is to say, between the register showing the persons primarily responsible for the payment of the land revenue, the register of demands on the one side, and on the other the register of titles—the register of persons really in possession and of course in fact paying the land revenue. As has been indicated above experimental measures were taken in order to ascertain the best means of removing this divergence; and as the work of preparing the register of titles—the record of right progressed, and this register became more and more reliable, the experiments were extended, the experience gained in the earlier experiments being used for improving the forms of the register of title, of the ledger of demands and receipts and of the receipts given to the revenue-payer. Concomitantly the necessity of measuring and

recording the sub-divisions of survey numbers became more and more apparent. The amending Act of 1913 did not have the effect of sub-dividing the survey number as the unit of assessment. What in fact was done was to recognise the facts and put them on paper. Sub-divisions of actual possession were by that Act put down on paper and brought on the revenue records and were also made use of as the basis for the demand of the payment of land revenue.

The Hon. Mr. G. K. Parekh, Sir P. M. Mehta and several other Indian members objected to the Land Revenue Amendment Bill No. 14 of 1912 on the ground that it affected the policy hitherto followed for the progress and improvement of agriculture in the Presidency. In recognising existing changes and by giving legislative sanction to the existing facts Govt. was giving an impetus and leading the people to regard small divisions of land as something which has been sanctioned by law and approved by Govt. Such a tendency, if created, would be most unfortunate to the agricultural progress and improvement of the country. In the course of the debate the Hon. Mr. Parekh said that from the time of the Joint Survey it has been a proposition clearly laid down and had been accepted even upto then that there was always a particular irreducible area and if it was reduced beyond that the agriculture could not be carried on economically in such a way as to pay and therefore s. 98 of the Code provided that in every district according to the character of the cultivation and to the fields there should be a list giving the irreducible area of particular class of land. It was altogether against public interest that people should be induced to stick to very small numbers and so far as these small numbers were concerned it would be a very desirable thing that there should be no recognition of anything less than the irreducible minimum. The amendment as framed will destroy the irreducible minimum and will cause the people to regard their small sub-divisions as unobjectionable.—*Debates in the Bombay Legislative Council B. G. G. II. VII p. 70, 23-2-1913.*

**Procedure to be followed as laid down in Land Revenue Rules, 1921.**—Rule 3 (2) provides " Every holding of which the area is less than the minimum shall be separately measured, classified, and assessed and entered in the land records as a sub-division of that survey number in which it is directed to be comprised it may also be separately demarcated if the Commissioner of Survey so directs, provided that the said Commissioner may require the persons interested in such holding to repay the costs, or such portion of the costs as he thinks fit, of so defining the holding."

Notices are to be issued by the Mamlatdar under Rule 20 when the sub-divisions of survey number in a village are to be measured. The procedure for laying down boundaries of sub-divisions is described in Rule 21. The fees for making sub-divisions in cases where s. 13-G (b) applies are to be assessed by the Collector (Rule 22). The proportionate assessment of sub-divisions to the land revenue settled upon the survey number is to be calculated as laid down in Rule 23. [Rule 23 does not apply to Sind. In Sind each sub-division is treated as a survey number and as there is no classification

as understood in the Presidency proper but only classes according to crop and methods of irrigation the assessment of each *hissa* is (possibly) recalculated each year upon its recorded area].

Sub-divisions massed into a survey number acquire a joint liability for land revenue (*s. 117 B*) and the right of pre-emption (*s. 180*) not attached to a separate survey number.

**Rule 11 (2)** permits the amalgamation of a sub-division without prior sanction with any co terminuous sub-division of the same survey number held by the same holder upon the same tenure. (*See Appendix A for the Land Revenue Rules, 1921 as amended upto 1932*).

[a] (8) "chavdi" means, in any village in which there is no chavdi, such place as the Collector may direct shall be deemed to be the chavdi for the purposes of this Act ;

#### Commentary

"Chavdi" in Sind includes *Tapadar's Dera*.—*Rule 2 (d), Land Revenue Rules (1921)*.

(9) "building site" means a portion of land held for building purposes, whether any building be actually erected thereupon or not, and includes the open ground or court-yard enclosed by, or adjacent to any building erected thereupon ;

#### Commentary

The word 'adjacent' is extremely vague and must be construed within reasonable limitations. Where penalty or fine is to be imposed it should be strictly construed in favour of the subject.—See the remarks of Crump C. J. in the *Secretary of State for India v. Abdul Husen*, 29 Bom. L. R. at p. 1352 (1927).

Land Revenue Rules provide for conditions for grant of land for building sites. (*See Rule 43*). Unoccupied building sites within Municipal limits are declared to be reserved by Government within the meaning of s. 50 of the Bombay District Municipal Act, 1901 by Rule 53.

(10) "boundary-mark" means any erection, whether of earth, stone, or other material, and also any hedge, [b] unploughed ridge, or [b]

[a] This definition was added by Bom. IV of 1913, s. 6 (d).

[b-b] These words were substituted for the original word by Bom. VI of 1901, s. 2.



strip of ground, or other object whether natural or artificial, set up, employed, or specified by a survey officer, or other revenue officer having authority in that behalf, in order to designate the boundary of any division of land ;

### Commentary

**Boundary marks.**—These are essential as in their absence the continual changes due to encroachment, divisions, etc. would in short time result in a complete failure in correspondence between the survey measurements and the facts as found in the fields. At first an attempt was made to secure this object by inspection at the ploughing season and a system of fines for the obliteration of the original boundaries by the rayats but the impossibility of carrying out the enormous amount of inspection involved soon rendered this system of no effect and led to the evolution of an official mark easily recognisable and easily preserved. This was at first a narrow mound of earth circling the whole field. This was no doubt the best boundary but it was soon found to be both too troublesome and too expensive. Hence in 1840 the narrow mound enclosing the field was reduced to the large broad earthen mound pointing the boundary of the field at the corner and supplemented on long boundaries by similar mounds at interval.

Soon after the institution of the Revenue Survey System a rule was prescribed and was embodied in the Joint Report to the effect that the intervening strips between boundary marks were constituted the boundary of the fields and should not be ploughed over, and in a Rule under Bom. Act I of 1865 it was directed that the width of the strips should be fixed according to the convenience for each district. The maintenance of the strips was long recognised as one of the duties of occupants.

**Unploughed ridge.**—The word 'vacant' as used in the Act in 1879 was interpreted as 'having no possessor' so that vacant strips would be a kind of no man's land. But it was never intended that the occupant should be divested of property in these strips, which are very useful for the growth of trees and grass and often for turning cattle employed in ploughing. The result of the interpretation was that there was apparently no legal authority for enforcing the long established practice of maintaining such visible boundary, and in some places the strips were being ploughed up and even the boundary marks were so pared that there was risk of their disappearing altogether. For these reasons the words 'unploughed ridge' were substituted for the original word 'vacant' by Bom. Act VI of 1901, s. 2. They removed the difficulty noticed in *G. R. 4009 of 31-5-1892* and now a strip of assessed occupied land may be specified or employed by the Survey Department as a boundary mark and the occupant may be restrained from ploughing such strip.—*Proceedings of the Bombay Legislative Council, Vol. XXXIX (1890)*.

Survey Numbers and their boundaries should be shown on village maps prepared under the orders of the Commissioner of Survey. (*Rule 8*). Rule 24 states that details of boundary marks should be furnished by the Survey

Department to the Collector. Rule 25 describes continuous and discontinuous boundary marks which are authorised. (*Note.*—This rule does not apply to Sind.) Rule 26 provides for the maintenance of boundary strips. Rule 27 states what boundary marks should be considered out of repair and gives the procedure of repairing them. The responsibility for maintenance of boundary marks should be determined as provided by Rule 28. Boundary marks placed between amalgamated holdings are to be removed and the village maps to be corrected as laid down in Rule 11. Rewards to village officers for good works in repair of boundary marks may be given. (*G. R. 309 of 1889.*)

[a] (11) “to hold land,” or to be a  
 “to hold land”, “landholder” or “holder” of land means to  
 “landholder”, be lawfully in possession of land, whether  
 “holder”; such possession is actual or not ;

#### Commentary

**Old law.**—Before the amending Act of 1913 the group of definitions in s. 3 relating to possession of land began with the phrase ‘to hold land’. ‘To hold land’ meant to be legally invested with a right to the possession and enjoyment or disposal of such land, either immediate or at the termination of tenancies legally subsisting.” This definition was very wide and as any person having a right to the disposal of land, whether he were in possession (constructive or actual) or not, would be said to hold the land, and as ‘disposal’ is a word of vague and comprehensive extent the expression ‘to hold land’ apparently meant nothing more than ‘to have a right to land.’

Again ‘holder’ signified the person in whom a right to hold was vested, whether solely on his own account, or wholly or partly in trust for another person, or for a class of persons or for the public; it included a mortgagee vested with a right to possession.

This was a bad definition for it used the phrase ‘to hold land’ which had already been defined and it did not fit in with the foregoing definition. ‘Holder’ on a strict construction of wording used, meant a person having a right to have a right to land.

**Object of change in the law.**—In the amending Act of 1913 provision is made for definition of ‘to hold land,’ to be a ‘landholder’ or ‘holder’, so as to mean to be lawfully in possession of land, whether such possession be actual or not. This definition is more limited than the previous one but it includes constructive as well as actual possession and (in connection with the definition of ‘occupant’ and with s. 136) effectually bases liability for Govt. dues upon possession. This, in fact, achieves the main object of the Land Revenue Code to combine the two principles of possession and record in fixing the liability for revenue.

*Note.*—For further discussion see notes under s. 3 (16) *infra*.

[a] These definitions were substituted for the original definitions of “holder” or “landholder” and “holding” by Bom. IV of 1913, s. 6 (e).

**Possession.**—As a holder is defined to mean a person lawfully in possession either actual or constructive of land, it is necessary to consider the meaning of the word 'possession'. It is explained as clearly as is possible in Lightwood's *Treatise on the Possession of Land* (1894): "Possession is a matter of greater difficulty (than ownership), and it has sometimes been doubted whether it is fact or a right. Primarily possession is a fact but mere possession frequently secures for the possessor a certain measure of legal protection, and hence it becomes the source of a right known as the right of possession (*ius possessionis*) (p. 1).....Possession which is recognised by law.....is known as civil possession and although ordinarily the actual and civil possession coincide yet the civil possession, and with it the advantages of possession, may be ascribed to a person who has no actual possession. This happens in two classes of cases. The actual possession may be held by another on behalf of the civil possessor—by his servant or tenant, for example—and here the civil possession is still based on actual possession. Or there may be no connection at all between the civil and the actual possession, as where the actual possession is vacant, or is in dispute, or even where it is held adversely by another. Thus, a civil possession, founded in the first instance on actual possession, may continue after the actual possession has come to an end, whether by mere loss of control over the thing or by the intrusion of a stranger. And so, too, before any actual possession has been acquired civil possession may be recognised as existing where, for example, the actual possession being in dispute between two persons, the civil possession is ascribed to the one who has the better title; or whereupon the death of the possessor the civil possession is ascribed to his heir." "Civil Possession" is otherwise termed "constructive possession" and is practically identical with the right of possession and all these terms are distinguished from "actual possession". The term "constructive possession" is used in s. 3 of the Transfer of Property Act, 1882, as contrasted with "actual possession" (in the definition of "actionable claim"). But the term is not very generally used and it was perhaps thought advisable to avoid the use of the word. In the definition of 'holder' therefore, a periphrasis is used.

The definition of 'holder' in s. 3 (11) is not a satisfactory one, for it includes 'superior holders' and 'inferior holders' as defined in s. 3 (13) and 3 (14) of that Act. Therefore, where the word "holder" of alienated land is used it is necessary to look at the context to see whether it refers to a superior holder or an inferior holder. For instance, in s. 217 the word "holders" evidently refers to inferior holders. In s. 88 the word "holder" refers to superior holders, and it is further clear that in s. 76 the word "holders" of alienated land also refers to superior holders.—Per Macleod C. J. in *Shidharaj v. Darr*, 25, Bom. p. 903. *Note.*—In the Code, however, it is used with reference to alienated land.

An alienee of Government rights is a holder of land as he is entitled to the disposal and enjoyment of it whenever the tenure of the tenants terminates.—*Surshangji v. Narayan*, 2 Bom. L. R. 855.

The term 'holder' is wide enough to include even a tenant who has entered into possession under an occupant.—*Nanabhai v. Collector of Kaira*, 32 Bom. 686; 12 Bom. L. R. 707.

Not a holder.—Mere user by rice lands tenants of adjoining waste land with the leave and permission of the Inamdar does not make them holders of lands.—*Vasudeo v. Govind*, 30 Bom. 315.

"holding"; [a] (12) "holding" means a portion of land held by a holder ;

Commentary.

Old Law—Before the L. R. Code was amended by Bom. Act IV of 1913 "holding" signified land over which such [see notes under the head 'Old law' at p. 22 in s. 3 (11) *Supra*] right extended.

*Note.*—For the necessity of amendment see notes under s. 3 (16).

A Holding may be of any size; it is not in its ordinary sense restricted to any particular area, except where it is so expressly stated as in ss. 47 and 64 (*G. R. 4567 of 30-6-1899*).

The old meaning of holding *Khata* or aggregate of all the plots of land held by the same person has now disappeared from the Code and the Rules made thereunder. It may be a single plot of land in separate occupancy. This is clear from Rule 120 which empowers a Collector to restore or grant the holding of a defaulter on inalienable tenure. (See *Appendix A for the Land Revenue Rules, 1921 as amended upto-date*).

Provision for a Holding Sheet (Village Form VIII-A) is made in the Manual of Revenue Accounts (1931 Ed.) at pp. 115-124. For a certified copy of a Holding Sheet see Rule 142. (*Appendix A*).

[b](13) "superior holder" means a landholder entitled to receive rent or land revenue from other landholders (hereinafter called "inferior holders") whether he is accountable or not for such rent or land revenue, or any part thereof, to Government: provided that where land has been granted free of rent or land revenue, subject to the right of resumption in certain specified contingencies, by a Jagirdar, Inamdar or other such holder of alienated land whose name is authorizedly

[a] This definition was substituted for the original definitions of "holder" or "landholder" and "holding" by Bom. IV of 1913, s. 6 (e).

[b] This was substituted for the original definitions of 'superior holder' and 'inferior holder' by Bom. Act IV of 1913, s. 6 (f).

entered as such in the land records, such Jagirdar, Inamdar or holder shall, with reference to the grantee, be deemed to be the superior holder of land so granted by him and the grantee shall, with reference to the grantor, be deemed to be the inferior holder of such land and for the purposes of section 8 of the Bombay Local Funds Act, 1869, shall, notwithstanding anything hereinafter contained in the definition of the word, "tenant," be deemed to be the tenant of such grantor.

### Commentary

**Old Law.**—Before the Bom. L. R. Code was amended by Bom. Act IV of 1913 there were two separate definitions of 'superior holder' and 'inferior holder'. 'Superior holder' then signified a holder entitled to receive from other holders rent or land revenue on account of lands held by them, whether he was accountable or not for the same, or any part thereof to the Govt. Similarly previous to the above amendment 'inferior holder' signified a holder liable to pay the rent or land revenue to a superior holder, whether on account of such superior holder or Government.

**Change in Law.**—The present definition of 'superior holder' was substituted for the original definitions of 'superior holder' and 'inferior holder' by Bom. Act IV of 1913 s. 6 (f).

**Notes.**—See also discussion under s. 3 (16) *infra*.

The proviso was added by the Select Committee who had under consideration the case of Inamdars, Jagirdars and other holders from Govt. of alienated lands, who had themselves made grants of portions of their lands for the maintenance of cadets and other similar purposes. These grants were made subject to resumption in certain contingencies, such as failure of lineal male heirs and if they were made free of liability to pay rent or land revenue, the grantors had been held not to be the superior holders of such lands (vide *Gordhanlal v. Darbar Shri-Surajmalji*, 26 Bom. 502). As the grantors had a reversionary interest in the land, it was desirable that the grantors should be included within the definition of superior holders—(*Report of the Select Committee*). *B. G. G. Pt. VII p. 29 of 20-2-1913*.

**S. 8 of the Bom. Local Funds Act, 1869**—The Bom. Local Funds Act, 1869 is repealed by the Bom. Local Boards Act, 1923, therefore, in view of s. 9 of the Bom. General Clauses Act, 1904 the reference to s. 8 of the Bom. Local Funds Act, 1869 should be construed as reference to s. 98 of the Bom. Local Boards Act, 1923.

The Bombay Local Boards Act, 1923 provides for assistance to superior holders. S. 98 of that Act runs thus :

"The provisions of law relative to the assistance to be given to superior holders and owners of water courses for the recovery of their dues from their tenants and occupants under them, or from persons authorised to use their water courses, shall be applicable to all superior holders, whether of alienated or unalienated land, and to all owners of water-courses in respect of the recovery of the said cesses from their tenants, occupants, or persons authorised to use their water courses and shall be applicable also to occupants of land under the Bom. L. R. Code, 1879 for the recovery of the said cesses from their tenants or joint occupants."

"For the purpose of.....tenant of such grantor."—By the amendment proposed by the Select Committee Jahagirdars and Inamdars would have been placed in an anomalous position. They would have been liable to pay Local Fund Cess for lands in the possession of their grantees but would not have got the right to recover the cess from the grantee. This defect was remedied by providing that the expression 'tenant' should include an inferior holder who is a grantee.—*Discussion in the Bombay Legislative Council, B. G. G. Pt. VII p. 154 of 20-5-1913.*

**Notes.**—An Inamdar receiving rent or land revenue from cultivators in his Inam village is a superior holder not accountable to Govt. for the same. A khot receiving assessment from a *dharekari* is a superior holder accountable to Govt. for the same. A village accountant receiving assessment from a cultivator is accountable to Govt. for the same but cannot be said to be a superior holder, because he is not a holder and has no interest in the land of which he collects the assessment.—*Dandekar's Law of Land Tenures, Vol. I pp. 42-43. (1912 Ed.)*

The term 'rent' is used in the Code only with reference to those Superior and Inferior holders between whom the relationship of landlord and tenant subsists, and not with reference to those superior and inferior holders between whom that relationship does not exist.

'Superior holder' and 'inferior holder' how far differ from 'landlord' and 'tenant'.—The expression "superior holder" is wide enough to include the expression 'landlord'. The terms 'superior holder' and 'inferior holder' have reference only to payment of rent or land revenue, whereas the terms 'landlord' and 'tenant' have reference only to the origin of the right to hold. A 'tenant' has to pay to his 'landlord' and is thus an inferior holder. In addition to this fact he derives his right to hold from the man whom he pays or from his predecessor. Every 'tenant' is an 'inferior holder', but every 'inferior holder' is not necessarily a 'tenant'.—*Dandekar's Law of Land Tenures, Vol. I p. 43. (1912 Ed.)*

**When is an inferior holder a tenant.**—Where it appeared that defendants were liable to pay the assessment and local fund to the plaintiff, who held a Sanad under the Summary Settlement Act, 1863, the lower Court came to the conclusion that the relationship of landlord and tenant was not created between the parties. The High Court held that the plaintiff was a superior holder within the meaning of this sub-clause and that the defendants were in law the tenants of the plaintiff, whatever the nature of their holding might have been.—*Sarsingji v. Naras, 2 Bom. I. R. 855.*

*Superior holders and inferior holders.*—The relations between these two are attempted to be defined in Ch. VII of the Act [See notes under s. 3 (14) under the head 'Landlord and Tenant' at p. 29 *infra*.]

No. 123 (d). Land Revenue Rule enables the Collector to transfer the holding to a superior holder where an inferior holding is forfeited on account of an arrear of rent or land revenue due to a superior holder and for the recovery of which assistance is being rendered under ss. 86 and 87 of the Code.

Administrative Order XXXVI states that suspensions may be granted to superior holders (including mewaadars) in accordance with the orders and the provisions of a 84A of the Code; such grant entails the suspension 2nd remission of rent (other than crop share) payable by the inferior holders or tenants to the extent provided by that section. Under that section the Collector must also record his orders. (See Appendix A for Rules and Orders).

[<sup>a</sup>](14) "tenant" means a lessee, whether holding under an instrument or under an oral agreement "tenant"; and includes a mortgagee of a tenant's rights with possession; but does not include a lessee holding directly under Government;

#### Commentary

The Survey Act I of 1865 by s. 2 (1) defined a tenant as 'the person holding under an occupant or superior holder, or by a right derived from him and otherwise than by ownership or inheritance.'

Old law.—Before the L. R. Code was amended by Bom. Act IV of 1913 "tenant" signified a person who held by a right derived from a superior holder called his "landlord" or from his landlord's predecessor in title.

History.—One of the objects of the Land Revenue Code Bill (I of 1875) as mentioned in the Statement of Objects and Reasons was to amend and improve the then existing law by determining more precisely than the law then did the relations of the various landlords and their tenants *inter se*. The Hon. Mr. Chapman in introducing the Bill observed that a Code of that character would be incomplete without a broad general recognition of the difference between the ancient cultivators of the soil, known as Wuttunee Kools in the Konkan and Kadeem ryots into Deccan; and ordinary tenants in the modern acceptation of the term. The principle which it was attempted to inunciate was that when either an inferior holder or tenant had been in occupation of the land before, for example the grant of a village in Inam, his status in respect to proprietary rights only was not to be affected by the fact that the village had passed from the hands of Govt. into those of the

[a] This definition was substituted for the original definition of "tenant" by Bom. IV of 1913, s. 6 (g).

alienees and further that when owing to lapse of years there was no evidence to show how an ordinary tenant first obtained possession then the period of duration of the tenancy might be presumed to be co-extensive with the duration of the tenure of the landlord. However, this presumption was not to override a contract or usage at variance with it. Regarding the position of landlords and tenants the Hon. Col. Anderson observed that there were two very different classes of them; first, landlords holding land directly under Govt. and subletting those lands to other persons. Those tenants frequently held under written agreements, but often by some kind of understanding with their landlords. The second class of landlords and tenants were the Inamdars of whole villages and the people cultivating the lands of those villages. A clear definition of the rights of each party was considered to be of immense benefit to a large portion of the ryot population, for, on the average it might be said that at least one tenth of the villages of the Deccan and Southern Maratha Country were held by Inamdars.—*Proceedings of the Bombay Legislative Council for the year 1875.*

**Notes.**—For the necessity of amendment see notes under s. 3 (16). *infra.*

**Object.**—Under the Code before amendment of 1913 a tenant was defined but the definition was too wide to suit the facts; it could include all persons whose land had been granted on any tenure whatever by Government or by any one else, if only they paid rent or land revenue to the grantor. That is it could cover (a) lessees under Government (b) proprietors of land whose land had been granted by Government and who paid land revenue (as most proprietors did) (c) a mortgagee with possession holding under a mortgage from a registered occupant (for the registered occupant would be responsible for the land revenue and mortgagee should properly pay through him). For these reasons the old definition was discarded and a tenant is now defined as a lessee. In the first place this word is well-known and it is defined in the Transfer of Property Act, 1882, which Act generally speaking governs land tenures in the Bombay Presidency. In order to show that no written lease is necessary the words "an oral agreement" are inserted. The amended section read in connection with the third paragraph of s. 93 of the Bom. L. R. Code is calculated to cover all cases of customary tenancy and will not include tenures, which are not tenancies as the previous definition did. Further, the new definition includes mortgagees of a tenant's rights with possession. Such mortgagees are in the same category as tenants. They, moreover, find a place in the Transfer of Property Act which makes express provision for the mortgage by a lessee of his interest [s. 108 (j)]. Lastly, the new definition expressly excludes tenants holding directly under Government; such tenants obviously come under the definition of 'occupant'.

**Perpetual tenancies and other tenancies** of such classes etc. as are notified by the Governor in the Bombay Government Gazette are to be entered in the Record of Rights as laid down in s. 135B of the Code. Record of tenancies as are not perpetual or notified under s. 135B (2) is to be kept and disputes regarding them are to be decided in the manner laid down in rule 113. (See Appendix A for Bom. L. R. Rules, 1921). The tenancy registered (Village Form No. VII-A.) at present kept is at once a register of leases



and also a part of the mutation register in which only mutations relating to tenancies are shown [s. 135D (7)]. In this register when there is a tenancy it is noted whether the lease is oral or written. If it is registered then the date is given. (See also discussion under ss. 83, 84 and 135B *infra*.)

**Landlord and Tenant.**—Matters such as amount of rent payable by tenant; the duration of tenancy; presumption as to tenures; right of enhancement of rent and of eviction are regulated by s. 83. In the absence of special agreement in writing three months' notice in writing is required by s. 84 for the termination of annual tenancy. The same section states that annual tenancy should be taken to terminate on 31st of March.

The right of superior holders to assistance from Revenue Officers in recovery of their dues (rent or land revenue) from inferior holders etc. provided they apply in writing within the revenue year or within the year of tenancy in which it becomes payable is recognised by s. 86. The procedure to be followed by the Collector (or Mamlatdar etc.) on receipt of such application is laid down in s. 87. S. 88 enables the Commissioner of a Division to issue a Commission to a holder of alienated land conferring upon him certain powers.

**Privileges to tenants in suspensions or remissions.**—S. 84A (this section does not apply to Sind) states that if suspension or remission of land revenue is granted to superior holder by Govt. the Collector may order suspension or remission of certain amount of rent or land revenue to be paid to superior holders by inferior holders; that such order of Collector is not to be questioned in any Court; that in respect of that amount no assistance suit under ss. 86 and 87 should be entertained and no suit for their recovery should lie in a Civil Court etc. Exception is made in the case of crop share fixed by custom or agreement.

In alienated villages where there are hereditary patels and village accountants recovery of dues is to be made by superior holders through such village-officers only. For breach of this condition s. 85 provides penalty.

“landlord”; [a] (15) “landlord” means a lessor ;

#### Commentary.

**Old Law.**—Before the amending Act of 1913 a landlord was indirectly defined. It was then stated that a tenant signified a person who held by a right derived from a superior holder called his landlord etc.

**Change in Law.**—The present clause defines a ‘landlord’ as a ‘lessor’. It is therefore, necessary to find out the meaning of the word ‘lessor’. It is defined in s. 105 of the Transfer of Property Act, 1882 as a transferor. But this leads us to the definition of lease of immoveable property which is described in the Transfer of Property Act, 1882 as 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

[a] This definition was substituted for the original definition of “tenant” by Bom. IV of 1913, s. 6 (g).

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.

“occupant”; [a] (16) “occupant” means a holder in actual possession of unalienated land, other than a tenant: provided that where the holder in actual possession is a tenant, the landlord or superior landlord, as the case may be, shall be deemed to be the occupant;

#### Commentary.

**Early History.**—The Hon. Mount Stuart Elphinstone in his Report on the territories conquered from the Peshwa says: “As I was particularly directed to attend to the tenures of land I have called on the Collectors to furnish the requisite information. The result of those reports and of my own inquiries is that a large portion of the ryots are the proprietors of their estates subject to the payment of a fixed land-tax to Govt. and that their property is hereditary and saleable, and they are never dispossessed while they pay their tax, and even then they have for a long period (at least 30 years) the right of reclaiming their estate, on paying the dues of Govt. Their land tax is fixed, The Mirasidars are more numerous than the Ooprees all over the Maratha Country. An opinion prevails throughout the Maratha Country that under the old Hindu Government all the land was held by the Mirasees, and the Ooprees were introduced as the old proprietors sunk under the tyranny of the Mahomedans. This opinion is supported by the fact that the greater part of the fields now cultivated by the Ooprees, are recorded in the Village Books, as belonging to absent proprietors; and affords when combined with circumstances observed in other parts of Peninsula, and with the light land-tax authorised by Manu; a strong presumption that the revenue system under the Hindus (if they had an uniform system) was founded on private property in the soil.”

“All the land which does not belong to the Mirasees belongs to Government or those to whom Government has assigned it.”

“The cultivated land belonging to Govt. except some parts which it keeps in its own hands, to be managed by the Mamlatdars was always let out to Ooprees, who had a lease, with the expiration of which their claim and duties expired. The Govt. lands were divided into Shairee (cultivated fields), Coorums (Grass lands), Baugh (gardens) and Ambræe, (Orchards).”

“Regulation XVII of 1827 which among other things defined the relative rights in the land and its produce of the Govt. and the subjects in s. 3 cl. 1 provided for the definition of occupant in an indirect way. It was to this

[a] This definition was substituted for clauses (16), (17) and (18) by Bom. IV of 1913, s. 6 (b).

effect. "The settlement of the assessment shall be made with occupant of land: the cultivator, when the land is held direct by him from Govt., is to be considered the occupant; and when it is not so held, the person having the highest right or holding recognised by the custom of the country or resting on specific grant, which intervenes between the Govt. and the cultivator is to be so considered.

When the Survey Act I of 1865 was passed the provisions of Reg. XVII of 1827 were fully discussed, and 'occupant' was defined to mean the person whose name was entered authorisedly in the Survey papers, or other public accounts as responsible to Govt. for payment of the assessment due upon any field, or recognised share of a field.

It was subsequently found that the definition of 'occupant' in Act I of 1865 was not sufficiently broad to include all persons who ought to be affected by the Act.

A definition was, therefore, drafted for the purposes of Act V of 1879 to extend the operation of the Act to others than those who might be recorded as registered occupants *viz.*, to co-sharers and co-occupants. It ran thus: "occupant" signifies a holder of unalienated land, or where there are more holders than one, the holder having the highest right in respect of any such land, or where such highest right vests equally in more holders than one, any one of such holders.

An objection was raised to this on the ground that this definition created a good deal of doubt and uncertainty by mixing the terms 'alienated' and 'unalienated' (in matters where there was no necessity that they should be mixed); it unnecessarily created a doubt where there had been none upto that time.

It was pointed out by the Hon. Mr. Mandlik when the Bill came up for discussion in the Council that a number of sections introduced by the Code were entirely new and positive law, which would regulate rights as between Govt. and its Subjects. Both the direct and indirect effect of several provisions of the Land Revenue Bill would be in derogation of private rights. In various sections of the Code the term 'occupant' was used. As an instance he referred to s. 69 where the term occupant was used reserving the right of Govt. to mines and minerals etc. He said: "This section is imported from the Land Revenue Code of British Burma of 1876 but the rights of occupants under the Burma Act are very much limited. In India and in this Presidency particularly the ryots have definite rights in land and it has been so decided by the High Courts (see the Kanara Land Assessment Case of *Yakunta Dapuji v. the Govt. of Bombay*, 12 *Bom. H. C. R. (Appellate)*), and by their Lordships of the Privy Council on various occasions. It is therefore highly improper to introduce a law derived from an entirely different Code framed under different circumstances, into the Bombay Presidency." He further observed that the ryots, proprietary interest in occupied land should be expressly recognised and the definition of the term 'Occupant' should be so defined as to mean a person whose name is entered authorisedly in the survey papers, or other public documents, as

responsible to Govt. for payment of the assessment due upon any field or recognised share of a field. He said that after the passing of the Reg. XVII of 1827 'Occupant' was known pretty much as he was defined by the Survey Act of 1865 and the Survey Act had been worked throughout with that definition.—*Debates in the Bom. Leg. Council, Vol. XVI, 1877.*

**Object of amending definition of 'occupant' by Bom. Act IV of 1913.**—The apparent intention of the framers of the Code in 1879 was to combine the two principles of possession and record in fixing the liability of revenue. However actual experience of about 25 years in the working of the Code showed that there was great divergence between the two. The main object of the Amending Act of 1913 was to shape the law so that the person in beneficial possession of the land should be held to be primarily responsible for the revenue due on the land. The principal amendments connected with this main object of the Amending Act of 1913 have been noticed under the definitions of various terms such as 'holding', 'sub-division of a survey number', 'to hold land', 'holder' or 'land holder', 'tenant' etc. Passing to 'occupant', the term previous to the amendment of 1913 as we have noticed in the previous paragraph signified a holder of unalienated land, etc. It has been pointed under s. 3 (11) that formerly 'to hold land' meant to have a right. Holder must therefore have meant 'a person having a right to land'. Where then there was only one holder, 'occupant' meant a person having a right to unalienated land. It was where there were more holders than one that difficulty arose. In such a case the definition stated that the person having the highest right was the occupant and the occupant would therefore have been 'the person having the highest right' to unalienated land. This in fact was the actual sense of the word in the Code. Now, there is no criterion for the estimation of the relative importance of rights. For instance, has a mortgagee a higher right than a mortgagor or a perpetual tenant than the lessor? In order to make the meaning plain the term 'occupant' has been so amended by Act IV of 1913 as to signify a person in (lawful and) actual possession (of unalienated land) unless the person in actual possession is a tenant. Under the new definition if the actual possessor is a tenant, then the landlord who is not in actual but in constructive possession is the occupant (or, if the landlord is himself a tenant then the superior landlord is occupant). Now it is well known that a large number of actual occupants are tenants that is actual lessees, holding under written leases from Government. These are specifically excluded from the amended definition of 'tenant' so that they may come under the definition of 'occupant' and be held liable for the payment of land revenue. Thus taking the definitions of 'holder' and 'occupant' with the provisions of s. 136 as amended, it will be clear that under the Amending Act of 1913 the land revenue is based primarily upon the actual possession of land.

In order to achieve the above object namely to combine the two principles of possession and record in fixing the liability of revenue it was also found necessary to delete the term 'registered occupant' which was introduced in 1879 for reasons detailed in the following paragraph.

**History of the term 'Registered occupant'.—**In the first draft of the Land Revenue Bill in 1873 the terms 'occupant' and 'survey occupant' were used but as it was found necessary to register some other persons than those who were on the Govt. books, a wider and more general definition was found essential and the Select Committee invented 'registered occupant' to take the place of 'survey occupant'. 'Registered occupant' was defined to signify a sole occupant or the eldest or principal of several joint occupants whose name was authorisedly entered in the Govt. records as holding unalienated land whether in person or by his co-occupant, tenant, agent, servant, or other legal representative. The Hon. Mr. Mandlik and other Indian members objected to this on the ground that the use of the term 'unalienated land' simply ignored what the survey had done in regard to a large number of alienated villages. Scores of those villages had been surveyed and assessed throughout the different districts of the Presidency and all those people who had been noted down in the Survey Record by the Survey Officers as occupants of lands in those surveyed villages were known as occupants. The new definition was likely to make their tenure different from what it had been up to that time. They thought that a great deal of unnecessary confusion would be created by the use of the new definition, and also there would be a division between alienated and unalienated lands, which was not known in the Survey, as conducted under Bom. Act I of 1867, except in regard to the defining of village boundaries which was done in the case of alienated villages in a particular manner. It was further pointed out that Government by Resolution of 1874 themselves had come to the conclusion that the word 'occupant' meant a person whose name had been authorisedly entered in a Village Register or public document as the holder of land from Govt.; in spite of that the term 'Registered occupant' has been introduced to mean co-owner, and various other things.—*Debates in the Bombay Legislative Council for 1877, Vol. XVI p. 127-28.*

**Why was the term registered occupant abolished.—**It was subsequently found that there were a large number of registered occupants (who under a. 136 were responsible for the land revenue) without any 'interest in the land. This divergence between liability and title was generally known and had been brought into prominence since the preparation of Record of Rights. It had been brought about in various ways. For instance, a landholder might sell, lease, mortgage or otherwise transfer his land to another person without restriction, except in the few rare instances where a non-transferrable tenure had been created. The transfer might be made at any time; any portion of land, whatever its size and position, might be transferred; and transfer might be effected without any reference to the revenue authorities. But it should be remembered that the person responsible for the payment of land revenue was the person whose name was entered in the Government records as registered occupant. Therefore, if the liability for land revenue was to coincide with the ownership of land, it was obvious that whenever a transfer of ownership occurred it should have been accompanied by a simultaneous alteration in the name

of the registered occupant. But L. R. Code failed to make adequate provision for the recognition of transfers of right and that in the natural order of things the divergence between liability and title occurred very rapidly and became very wide. The preservation of a nominal occupant's name upon the records was of no advantage legal or practical to such registered occupant. Legally of course the proposition was absurd; the records evidently were maintained for the purposes of revenue demand. They did not affect rights in land. The revenue records even if absolutely correct could never have anything but somewhat remote bearing as evidence of title, and that in the circumstances the statement that a *khata* constituted a title-deed was in the highest degree erroneous. It was therefore, thought necessary to alter the provisions of the Code so that primary liability could be imposed on the occupant and that the registered occupant should be abolished.

**Rights of an Occupant.**—(1) An occupant is entitled to possession and enjoyment of his land on payment of land revenue if any fixed and on fulfilment of conditions if any imposed. [ss. 3 (16) and 68]; (2) He has right to adjacent alluvial land to a certain extent under s. 64; (3) He has right of pre-emption to adjacent Govt. alluvial land under certain conditions for a limited price (s. 63); (4) Every holder of land has a right to a decrease of assessment if a certain portion of his land above a certain area is lost by diluvion (s. 47); (5) An occupant has a right to trees growing on the land with certain exceptions and under certain conditions laid down by ss. 40 and 41; (6) An occupant has a right to erect farm-buildings, construct wells or tanks and to make other improvements on his land for the better cultivation etc. under s. 65. S. 107 states that in revising assessment the increase in the value of land or in the profit of cultivating the same if due to improvement effected by or at the cost of the holder should not be taken into account; (7) An occupant has a right of inheritance and is also allowed to transfer his occupancy unless otherwise provided (s. 73); or as laid down by s. 73A. Any person acquiring such rights save by virtue of a registered document is bound by s. 135C to report the acquisition to the village accountant within three months under penalty under s. 135F of fine except under certain circumstances; (8) An occupant has a right to relinquish his land under certain conditions (s. 74); (9) An occupant has a right to fixity of assessment *i. e.* when an amount of assessment is fixed under a settlement for a number of years the occupant has a right to hold the land at the fixed assessment till the expiry of the period of guarantee. (s. 102).

**Obligations of Occupants and Occupancies.**—(1) Liability for land revenue if any fixed (s. 65). S. 45 states that all land is liable to pay land revenue unless specially exempted, and an occupant's use and occupation of his land is subject to the payment of the land revenue if there be any fixed there on; (2) He is liable to pay cesses which may be imposed in addition to assessment fixed under s. 102, for local improvements such as roads, wells, etc. and for water rates fixed under s. 55 or under Bom. Irrigation Act, of 1879 (s. 105); (3) An occupant is primarily liable to

Government for payment of land revenue (a. 136). The crop of the land is held liable for land revenue in preference to all other claims if not otherwise discharged (a. 138); (4) The occupant is primarily (it amounts to even personal liability) liable for the land revenue due on the occupancy (a. 136) until such time as the occupancy is lawfully relinquished or transferred to the name of some other person (a. 74). *Note.*—In order to prevent forfeiture of occupancy certain other persons may pay the land revenue (a. 80); (5) The Collector may take precautionary measures to secure the payment of land revenue under a. 141 by preventing the reaping of crop on the land or the removal thereof or by placing watchmen over it (a. 141). The precautionary measures should be relinquished if costs are paid and security is furnished; (6) Arrears of land revenue shall be a paramount charge on the holding and every part thereof, failure in payment of which shall make the occupancy with all rights of the occupant over trees, crops etc. liable to forfeiture (a. 56). [*Note.*—For arrears of Local Fund cess land cannot be forfeited—*G. R. 5673/28 of 28-8-1930.*] Arrears of land revenue may be recovered (a) by serving a notice of demand (a. 152), (b) by forfeiture of the occupancy etc. (a. 153), (c) by distraint and sale of defaulter's moveable property (a. 154), (d) by sale of defaulter's immovable property (a. 155), (e) by arrest and imprisonment of defaulter (a. 157-58), (f) by attachment of alienated villages or their shares (a. 159 to 163). Statement of account certified by competent Revenue authority is conclusive evidence of existence of arrears of amount of Land revenue due and of the person who is defaulter (a. 149). Collector of one district to recover demands of Collector of another district (a. 49). [*Note.*—See also the Revenue Recovery Act (I of 1890)] (7) By a. 122 landholders are required to construct such boundary marks for their survey numbers or sub-divisions as may be required by a survey officer and by a. 123 are made responsible for the maintenance of such marks and for charges incurred for alteration, removal or disrepair (a. 123). Such charges are leviable under a. 187 and may be recovered under Ch. XI of the Code so far as it may be applicable (a. 187). (8) He (land holder) is under obligation to attend and give information in his possession to survey officers on the publication of a general or special notice (a. 96); (9) Landholders are bound to furnish flag-holders for measurement and classification work and, in the event of a necessity for employing hired labour, the cost may be assessed on the lands surveyed (a. 97). By a. 137G (a) the powers conferred by ss. 96-97 may be exercised by village accountants in connection with the preparation of maps or other records for the Record of Rights except the power of assessing cost of hired labour under a. 97. Such power is conferred by a. 137G (b) in revenue officers not lower than Assistant or Deputy Collector; (10) Acquisition of rights as holder, occupant, owner etc. by a person by succession, inheritance, survivorship, partition etc. are to be reported to village accountant under a. 137C under penalty of fine provided by a. 137F. Further, by a. 137E persons acquiring rights in land are bound on requisition to give all necessary information to a Revenue Officer within one month under penalty of fine upto Rs. 25 (a. 137F).

**What an Occupant is not entitled to—**(1) An occupant is not ordinarily entitled to mines and mineral products in unalienated land (s. 69). (2) An occupant (of agricultural land) is prohibited by Rules 77 to excavate or remove earth, stones other than loose surface stones, kankar, sand, murum or any other material of the soil thereof if injurious to cultivation or if to be used for purposes of trade or profit etc. Similarly holder of land assessed or held as building site etc. is prohibited to excavate or remove for whatever purpose any material of the soil other than loose surface stones etc. except on certain conditions (*Rule 78 of the Bom. L. R. Rules, 1921*).

Unalienated land within site of any city, town or village is not to be excavated except for laying of foundations for buildings etc. without permission (*Rule 79; see Appendix A for Rules*).

(3) Government has reserved rights to certain trees in occupancies and occupants are prohibited to dispose of such trees except under certain conditions (ss. 40 and 41). Disposal of trees on occupied lands is to be made as laid down in Rule 60.

(4) Occupants under certain circumstances and in certain tracts or villages are not to transfer their occupancies without sanction. So also occupants of lands holding under restricted tenure from Government cannot transfer them without sanction (s. 70 and Rules 120 to 124).

(5) Cultivation of unarable land which is not assessed because it is reserved or assigned for public purposes; or because it is occupied by a road or recognised footpath or by tank or stream used by persons other than the holder for irrigation or for drinking or domestic purposes etc. is prohibited by Rule 75 under s. 48 (4). (6) Occupant of unalienated land is prohibited from using his land for manufacture of salt except under certain conditions (Rule 76). (7) An occupant of land assessed for use for any purpose (there are three different purposes *viz.* for agriculture, building and other than agriculture or building), is not to use it for any other purpose. If he so uses it the assessment will be liable to be altered and fixed at a different rate as provided by the Rules (s. 48). (8) An occupant of land assessed or held for purpose of agriculture is not entitled to appropriate the land to any other purpose without the permission of the Collector, who may require the payment of fine in addition to any new assessment which he may levy under s. 48 (s. 65). If any such agricultural land be so used without the Collector's permission etc. the occupant and tenants or other persons holding under him will be liable to be summarily evicted from the land so used and from the entire field or survey number of which it may form a part and the occupant shall also be liable to pay in addition to new assessment under s. 48 some fine (s. 66). *Note.*—It appears that the occupant is liable if his tenant or any other person holding through him uses such land for any such purpose even without the occupant's consent, (s. 66).

**Succession to occupancies.**—S. 73 recognises the right of occupancy as an heritable property. That was the law also under Bom. Act I of 1867. S. 135C provides that any person acquiring by succession, survivorship, inheritance etc. any right as holder, occupant etc. shall report his acquisition



of such right to the village accountant whose duty it shall be under s. 135B to enter in a Register of Mutations every such report. It shall also be his duty to make an entry in such register of the acquisition of any right referred to above which though not reported to him under s. 135C has come to his knowledge.

[a](17) "occupancy" means a portion of land held by "occupancy"; an occupant;

#### Commentary

*History of occupancy.*—One of the important questions connected with any system of land settlement is that of the person upon whom rests the primary liability for the payment of land revenue, for it is upon the answer to this question that the form of the whole system really depends. For instance, in Bengal this responsibility rests upon the landlord and the unit of assessment is the estate: in the Punjab upon the co-parcenary body of village proprietors and the unit of assessment is the village.

The assignment of responsibility in either case is due to the particular local and historical circumstances of the tracts in question. In the Bombay Presidency, though isolated cases of landlord and village estates do exist, e. g. the *talukdari* and *sarwadari* tenures respectively yet owing to the general dissolution of the village communities the village lands in majority of cases were held in small parcels by individuals without any existing connection of interest, whatever their past history might have been. For these reasons and also on account of the influence of the administrative ideas of the time the system of settlement adopted in Bombay was the *rayadari*, the main principle of which is that the assessment is placed, not upon the large estate or the village as a whole, but upon the separate small holdings of individuals. This principle is laid down in the earlier legislation dealing with the subject of land revenue.—Bom. Reg. XVII of 1827 s. 3 which is described under notes to s. 3 (16). By this Regulation the person made responsible for the payment of the land revenue was the occupant. In the Deccan the occupants of what would now be called "unalienated" land were, as previously explained in notes to s. 3 (16) under the head 'Early history', divided into two classes, viz., the Mirasdar and Upris. Of these the first class held their land by tenure under which these lands were heritable and therefore divisible according to the ordinary Hindu law of succession and transferable, while they also possessed a practically indefeasible right to recovery even after long abandonment. The Upris on the other hand, were mere tenants-at-will, taking up their lands by special agreement, without rights of succession or transfer, and thus without hereditary attachment to them. The Regulation noted above made no change in the respective rights of these two classes. It merely laid the responsibility for the land revenue upon the occupant, whether Mirasdar or Upris, leaving the incidents of the tenures to be regulated by custom. It was not, in fact, until

[a] This definition was substituted for clauses (16), (17) and (18) by Bom. IV of 1913, s. 6 (A).

the time of Mr. Pringle ( who was placed on special duty in 1827 to devise a system of survey and settlement for the Poona and surrounding districts ) that any change occurred, and then of an indirect nature, for though Mr. Pringle's settlement, by basing the assessment solely upon the value of the land and not upon the status of the cultivator, did something to smooth down the lines of difference, it did not make any change in the relative conditions of the two tenures.

**With Joint Report of 1847**, however came the fundamental changes in the conditions of occupancy. These changes are embodied in the Rules attached to the Report. (*Selections from the Records of the Bom. Govt. No. DXXXII-New Series, 1917 Ed.*). It is important however to point out the fact that these changes were meant to apply to *upri* lands only, and not to *miras* as is clear not only from the Rules themselves but also from many references in the course of Wingate's letters. The reason of this was of course, that while *miras* was considered to be a fixed form of tenure the conditions of which were sanctioned by long custom, the *upri* tenure being one of a mere tenancy-at-will could be modified according to the pleasure of Government who in letting out such lands, could lay what conditions they liked upon the tenants. It is upon this assumption that Wingate's whole scheme was based. The object of that scheme was to modify and improve the conditions of tenure in the case of the *upri* lands. Now, the main disadvantage of that tenure at the time was its insecurity, since the *upri*, being merely a tenant-at-will, could be turned out at any time.

**The basis of the new system, therefore, was security of tenure.**—This was assured, as Capt. Wingate has pointed out in his letter [ *No. 239 of 1848 to the Revenue Commissioner, S. D. referred to at p. 35 in Selections from Records of Bom. Govt. No. DXXXII-New Series, 1917 Ed.* ] by Rule 5 according to which "so long as the cultivator shall continue to pay the survey assessment due on it, he cannot be ejected or deprived of his right by any revenue authority."

**Another principle of the new tenure was freedom from responsibility.**—This was secured by Rule 20 which by allowing the cultivator to resign any field or fields at his option gave him the opportunity of contracting or extending the area held by him in accordance with the state of his resources.

**Excessive sub-division of land guarded against.**—At the same time it was thought necessary to introduce provisions designed to ward off certain dangers which would arise through an increase of population and which if not guarded against would form "the greatest obstacle to the permanent success of the survey settlement." (*Capt. Wingate's letter, No. 239 of 1849, para. 12; see Selections from the Records of the Bom. Govt. No. DXXXII-New Series, page 37*). In the view of Government also 'if fields were to be split up without limit, and the occupant of every fractional share recognised as holding direct from Government the inevitable results will be the ultimate sub-division of the whole land into very minute occupancies accompanied by the impoverishment of the whole agricultural class. Farms will become

so small as barely to provide subsistence for those occupied in their tillage, and the surplus from which the assessment is to be paid, so trifling, that the slightest deficiency in the ordinary crop will suffice to annihilate it."— [para. 36 of Govt. letter No. 6583 of 1848, *ibid.*] It was, therefore, laid down as one of the fundamental principles of the new tenure that the survey field must be taken as the ultimate sub-division of the land, beyond which further sub-division must not be allowed to proceed. The preservation of the integrity of the survey fields appeared to Capt. Wingate an object of such paramount importance as far to outweigh the hardship of saddling a cultivator with a little more land than he wanted, or even compelling him to relinquish some fractional portion of his paternal inheritance. If his means, Capt. Wingate thought, were so small as only to enable him to cultivate a fraction of a survey field, it would be a public benefit to get the land out of his hands and thus admit of the whole field in which his fractional share was included being transferred to some more substantial cultivator.

This important object Capt. Wingate thought could be secured in the case of Government lands by recognising that the first and basic principle should be that the title for the possession of land must be made to depend upon entry as occupant in the Government records, for 'if any other title to the possession of land than that of being entered in the public accounts as the party responsible for its assessment be recognised, the most important eventual benefits to be anticipated from the survey will never be realised.' (*Capt. Wingate's letter, para. 20, ibid.*) The landholders as they existed at the time of the original survey were therefore, to be entered as 'occupants' in the Government records; either of the whole survey numbers or in cases where holdings below the minimum area had been combined to form a standard number then of 'recognised shares'. (*Rule 5*).

In the case of numbers unoccupied at that time, not more than one person was to be permitted to take up any number as "occupant", except in the case of numbers assessed at over Rs 20 which might be entered in the names of two holders.

Further sub-division of these original occupancies was to be prevented by regulating their inheritance, transfer and resignation as under :

(1) *Inheritance*.—In the event of death of any occupant the survey numbers or shares standing in his name were to be entered in the name of his eldest son or next heir (*Rule 6*). (2) *Transfer*.—Transfer was to be made only by 'occupants', and then only of whole survey numbers or recognised shares (*Rule 9*). (3) *Resignation*.—In the case of 'recognised shares' if one share of a field was given up, either by resignation or decease of the shareholder without heirs, then it was to be offered to the other shareholders, and if they or any one else refused to take it up the whole survey number was to be relinquished. (*Rules 7 and 8*). This system was meant to be applied to the *sprī* lands as stated above, because these were held on mere tenancies-at-will.

Theoretically this system was actually introduced and officially, therefore, sub-division being unrecognised, did not exist. What actually happened,

However, was that the people, not having seen the Joint Rules and, so far as can be discovered, never having been informed of the limitations imposed upon them, proceeded to sub-divide their lands either on inheritance or for purposes of transfer as though no limitations existed. But unfortunately no practical steps were taken to prevent their doing so, and there being made no other legal provision the Courts when moved, had to enforce partitions so made without regard to the Joint Rules, which were not law and so had no binding effect whatsoever upon their decisions. Yet, while not intervening to prevent such partitions and indeed being compelled by the law as it stood to carry them into effect, the Collector was not allowed by the Joint Rules to recognise them, and consequently, while he might, by the order of the Court, partition a field among, say, three sons of a deceased cultivator and put them into possession of their several plots, he was compelled by the Joint Rules to enter the name of the eldest son only as heir in the Govt. records who alone was technically regarded as 'occupant'.

The result of this divergence was to establish two kinds of titles to lands—one founded upon possession recognised by the Courts; the other upon Registration recognised by the Revenue authorities. And the history of the next sixty years is the history of the struggle, first to reconcile and next to combine the two into one system. Now regarding Miras it being an old and established tenure could not be interfered with and therefore sub-divisions in such lands could not be stopped. At the same time the Joint Rules regarding succession, transfer etc., were applied to Miras no less than to the Ooparee land, the result being to establish the same kind of dual title to land in the one case as in the other. Theoretically the two tenures still differed, in that the sub-division was allowed in the case of the one and not in the case of the other. In practice, however, this divergence soon ceased to exist and the holders of Ooparee land, as already explained, assumed the right of sub-divisions exactly as the Mirasdars. When this occurred the sole difference between the tenures lay in the right of recovery which the Mirasdars claimed to exercise even after failing to pay the assessment to which Capt. Wingate refers when he remarks that 'until very lately ejectment for non-payment of the Government assessment was nearly unknown and paupers were allowed to linger on year after year in the possession of land they had no means of cultivating, the Revenue officers contenting themselves with screwing out of them what they could and remitting the remainder. This was particularly the case with the Miras lands in the Deccan.' (*Para 13 of Capt. Wingate's letter, ibid*). He recommended however that the Rule, making occupation dependent upon the payment of the assessment should be applied to Miras lands also and this was done. With this change the last real difference between the two forms of tenure practically ceased to exist, though the nominal distinction was retained until a considerably later period.

With the passing of the Survey and Settlement Act in 1865 we enter into the next stage of the history of occupancy. Up to that year the operations

of the survey had been carried on as a purely administrative measure under the authority of Government. As time went on, however, it was found desirable to regulate these proceedings and give them definite legislative sanction which was accordingly done by Act I of 1865. The passing of the Act involved the supersession of the Joint Rules and their incorporation, with such changes as were thought necessary, in its provisions, and among the Rules so incorporated were, of course, those relating to occupancies. Considerable changes, however, were made, so that the conception of occupancy in the new Act differed appreciably from that of the Joint Rules. From the definition of occupant [ for definition see notes to s. 3 (16) at p. 31 ] it will be clear that he was not, in virtue of his position under the definition, by any means necessarily the sole holder of the survey number or share, since by Rule 27 of Rules made under the Act any co-owners of the occupancy could make application and have their names entered as joint occupants. However, the joint occupants merely had a right to have their names entered and their shares shown in fractional parts of a rupee and were responsible for their share of the assessment to the occupant, while the occupant proper was held responsible for the assessment of the whole number. Further, however, by Rule 32 made under the Survey Act the occupant could be ejected by any person producing the decree of a competent Court proving that he was entitled to be registered as co-occupant in place of the incumbent. As regards succession again, failing a claim from other heirs, the rule of primogeniture still held ( Rule 27 ), but according to Rule 28 if there were more heirs than one they could, if they chose make an application and be registered as joint occupants on the terms aforesaid, while by Rule 32 a person producing a certificate of heirship from a Court was also entitled to entry as occupant.

The difference between such a conception of the occupant's position and that of the Joint Rules is this. The Joint Rules were framed with the idea of improving the condition of agriculturists by means of providing them with economic holdings. In the new law this aim was abandoned and the fact of sub-division was recognised. The occupant is not considered as the absolute holder but became a sort of a middle man between Government and his co-sharers. In doing this Government looked to its convenience as it saved the trouble, firstly of keeping a large number of individual accounts and secondly of sub-dividing the survey numbers into smaller divisions.

As already explained under the head 'sub-division of a survey number at p. 17 the Survey Act of 1865 while recognising the fact of sub-divisions refused to allow the original survey numbers and recognised shares to be divided into smaller numbers or shares. No one having taken any steps to improve matters by introducing legislation in other directions an anomalous position arose and steps were taken by Act IV of 1868 to allow sub-division of survey numbers and recognised shares of survey number for certain purposes, subject only to the limit of a minimum of area ( s. 17, Rule 2 of Act IV of 1868 ); similarly permission was granted to survey

officers at revision survey to sub-divide any survey number, or share, subject to the limitations of Area imposed. The effect of all this unfortunately was to break down the corner-stone of the Joint Report system, *viz.*, the indivisibility of original survey numbers to split up which would, Capt. Wingate not unreasonably predicted, result in the ruin of the whole fabric, the chief design of which according to the Joint Report was 'the regulation of the customary land tax so that it shall at once secure an adequate revenue to Government, the progressive development of the agricultural resources of the country, and the preservation of an proprietary and other rights connected with the soil.' [*Joint Report para 4, Selections from the Records of the Bom. Government, No. DXXXII-New Series (1917 Ed.)*].

With the passing of the Bom. L. R. Code, 1879 with which was incorporated with modification the Survey Act of 1865 the third stage in the history of occupancy is reached; for it is in this Act that recognition was for the first time accorded in the revenue law to the double system of title to land and of the existence of rights other than those derived from entry in the Government records. (*See also notes to s. 3 (16) at p. 31 supra.*) In the Code this recognition was accorded by the separation of the two classes of rights under the two heads of 'occupancy' and 'registered occupancy.' [*For definition of these terms see pp. 31 and 33 supra*].

The 'registered occupant' or *khatedar* to all intents and purposes was the 'occupant' of the Survey Act—(*For definition see p. 31, supra*). By ss. 136 and 79 he was primarily responsible for assessment of the number or share entered in his name; by ss. 65-66 he alone might apply for permission to appropriate the number for non-agricultural purposes; by s. 71 succession to the 'registered occupancy' was regulated in the same terms as those applied to that of the 'occupant' of the Survey Act; lastly, by s. 74 he alone could pass a formal *rajinama*, either absolutely or in favour of another person.

The term *occupant* broadly speaking, was meant to apply to those persons who had possessory rights in the land but whose names were not 'registered' in the Government records, *e. g.*, a mortgagee with possession of part of a number, or a part heir to the previous 'registered occupant' who was not the eldest son or principal heir. (*See also notes under the head 'Object of amending definition of occupant by Bom. Act II' of 1913' at p. 32*). Such persons were still, by Rule 96 (of the Rules framed under L. R. Code, 1879 and published by G. N. 7368 of 6-12-1881, B. G. G. pt. I pp. 792-4 for 1881) granted the privilege of being registered on application as 'co-occupants' on the same terms as the 'joint occupant' of the Survey Act but those who did not trouble to apply and so remained unregistered were all included under the definition of 'occupant.' Such persons were for the first time given a status in the revenue law. So far as the use of the land was concerned the occupant was granted all the general rights and subjected to all the general obligations laid down in the Code, *e. g.*, with respect to the guarantee of the assessment, the

right to construct farm buildings, the upkeep of boundary marks (vide ss. 65, 64 and 123), etc. But in all formal relations he was made subordinate to the registered occupant. Thus, it was the registered occupant who was directly responsible for the payment of the assessment and the occupant only in his default (s. 136); again, the latter could not relinquish a number or effect a transfer (s. 74), while an application for permission to use lands for non-agricultural purposes had to pass through the registered occupant (s. 65).

The 'registered occupant' of the Code was in fact the middleman on account of the survey number or share for which his name was registered; the occupant was the unregistered man in possession. While explaining the 'object of amending definition of 'occupant' by Bom. Act IV of 1913' it has been mentioned in page 32 (*supra*) that the double system of occupancy lasted for over 25 years. It had its own advantages even from point of Government. It saved Government from the trouble of inquiring into the minute details of land possession, which tended to become more and more complicated with the increasing sub-division of land. Moreover the system of paying assessment through the registered occupant relieved Government from the necessity of, keeping up and further keeping up to-date an enormous number of small accounts.

Of the defects of the system the important one was pointed out to be the obscurity into which the whole agricultural situation was cast by the absence of statistical data which was quite indispensable in these days. Several important questions such as those relating to the sub-division of the land and the size of the holdings; the amount of agricultural indebtedness; the transfer of lands from agriculturists to non-agriculturists, etc. and their solutions depended entirely upon the fullest information as to the way in which land was held. This fact was noted by the Famine Commission which expressed the view that such an inquiry into the conditions of land holding by the preparation of a 'Record-of-Rights, was essential to proper administration. But it has also to be borne in mind that the preparation of such a record does not necessarily involve the abolition of the *Khatedar* system of occupancy, since the record of rights might have been maintained purely as a statistical register (such registers are maintained even now, for instance there is the Register of Births and Deaths; Vaccination Register, Cholera Register, Infectious diseases Register, Quinquennial Statement of Cattle and Resources etc.) the revenue system remaining unchanged. But revenue officers found that *Khatedar* system to be a nuisance. They had to issue notices of dues and to persons who had no interest in land before a claim could be made (under para. 2 of s. 137) upon the person in actual possession. In other ways also, unconnected with the collection of revenue the Revenue Officers found that *Khatedar* system had great disadvantages, e. g. in the issue of *takari*, for which a record of actual possession was essential; the circumlocution involved by the provisions of s. 65 which compelled the consent of *Khatedar* before land could be converted to a non-agricultural purpose; and others of a like

nature. The Famine Commission also in 1901 urged that the maintenance of the old owner's name on the record had inconvenient results. The first of these was that the demand for land revenue was made upon a person who was not actually responsible for the payment of it; that an opportunity was thus given for the exercise by untrustworthy subordinate officials of powers which were susceptible of great abuse; again great confusion occurred when the nominal *khatedar* disposed of his interest that he might have had in the land standing in his name. In the former case neither the occupant nor the village officer cared to have the necessary change made as there was no penalty imposed by law for failure to keep the record upto-date. In the latter so long as the *khatedar* did not effect a formal transfer by *rajinama* and *kabulayat* in favour of the successor the law had no power to compel him to do so and the *khatas* continued in their name.

The necessity of the Record of Rights was pressed by the Famine Commission in 1901 and subsequently the Record of Rights Act was passed in 1903. [See notes under s. 3 (16) at p. 18 *supra*; see also Ch. XA—(of the Record of Rights) for a detailed discussion]. Subsequently the Record of Rights Act was repealed and amalgamated with the Bom. L. R. Code by Bom. Act IV of 1913 as Chapter XA, and the sole register containing the record of holdings became *ipso facto* the Record of Liability also. It may, however, be pointed out that although the Record of Rights is also the Record of Liability, actual liability for the payment of the land revenue does not depend upon entry in this or any register. Such liability is imposed on the 'occupant' and 'occupancy' depends upon 'possession', not 'registration' as was the case under the former system. [This is partly based on certain chapters from the Bom. Survey and Settlement Manual by Mr. Gordon (1917 Ed.)].

Previous to the Amending Act of 1913 'occupancy' signified the sum of the rights vested in an occupant as such. Now under s. 3 (16) we have seen that 'occupant' merely meant 'a person having a right to unalienated land'. Therefore 'occupancy' in the old definition meant the aggregate of any rights which an occupant might have got in unalienated land. It will thus be seen that its meaning varied considerably as used in the Code before 1913 and it was thought necessary to assign some specific meaning to that word. The sense given in the old definition was not required because there was no specific tenure implied in the word 'occupancy' or in the status of an 'occupant'. Therefore, the most suitable meaning to assign to the word seemed to be "a portion of land held by an occupant". This is analogous to the meaning given to 'hold' and is quite easy to understand.

**Creation of Occupancy.**—It has been pointed out elsewhere that s. 3 of Bom. Reg. XVII of 1827 declared that cultivators of lands when their lands were held direct from Government would be considered as occupants thereof. Now revenue surveys had been in operation since 1836-37. The design of those surveys was the regulation of assessment on land so as to secure an adequate revenue to Government, and the preservation of proprietary and other rights connected with the soil. The settlement in



1865 were confirmed by Bom. Act I of 1865. That Act secured to occupants of land the right of occupancy upon the sole condition of payment of the fixed assessment continuable without question, after the expiration of each guaranteed term on the same sole condition of payment of the fixed assessment. In the Statement of Objects and Reasons to the Survey Act it was pointed out that a simple and secure title was given to each occupant of Government land. The Act of 1865 with the exception of two sections was repealed by the Bom. L. R. Code of 1879 but the Settlements created or confirmed under the former Act were not affected by the latter (s. 112). Thus, it is clear that old occupancies, that is, the lands of the hereditary cultivators have been continued. It is in respect of lands which were unoccupied the term creation of occupancy could in any sense be applied.

“to occupy land” ;      [a] (18) “to occupy land” means to possess or take possession of land ;

“occupation” ;      [a] (19) “occupation” means possession ;

(20) “alienated” means transferred in so far as the rights of Government to payment of the rent or land revenue are concerned, wholly or partially, to the ownership of any person ;

#### Commentary.

*Previous history.*—The Survey Act I of 1865 did not define the word ‘alienated’ alone. But it defined an ‘alienated village’ to mean a village, held and managed by private individuals exempt from payment of land revenue, or under Bom. Acts II, or VII of 1863, or under a grant of lease fixing the Government demand in perpetuity. When the Land Revenue Bill was brought on the Legislative avil the Hon. Mr. Mandlik observed : “The term ‘alienated’ should not be defined singly inasmuch as its use in conjunction with other words will be of great significance. No single word by itself could mean anything ; but the signification of the word becomes important in its tendency to affect rights in different parts of the Code. Alienation means primarily alienation of Government revenue ; that is laid down by Elphinstone and Chaplin, and all the authorities and is acknowledged by the Courts, when any question of law has come up in reference to the Alienation Department, as it is called it has been a question whether the revenue is alienated ; and in the celebrated Thana Case [ *Vaman Jumar-dan v. The Collector of Thana and the Conservator of Forests*, 6 Bom. H. C. R. (A. C. J.) 191 ] the Courts have decided that the alienation is merely an alienation of the Government revenue even if words like *kul bab kul karnun* are used and it does not touch the soil, when alienations are spoken of, they

[a] These definitions were substituted for clauses (16), (17) and (18) by Bom. IV of 1913, s. 6 (b).

are ordinarily simple alienations of the revenue and the distinction between the Government land and private land is a distinction well-known even under the Bom. Survey Act of 1867; but this distinction is sought to be swept away and there is no definition in the Bill of owner of land as distinguished from occupant of Government land though that is a distinction clearly known up to the present time, and which ought to be preserved. Therefore, when the term 'alienated' is applied to lands, as it is throughout the Code it should be so defined as not to create any ambiguity in regard to lands of other kinds, to which the tenure of alienated lands does not extend." He therefore, suggested that alienated land should be defined as such in order to meet the desire to make the definition more extensive, so as to signify all alienated lands as contra-distinguished from those the revenues of which are not alienated. He said: "If the expression 'alienated lands' were used and defined, as it ought to be used and defined, it would not have such a mischievous tendency as the use of the word 'alienated' by itself in the definitions will have, when the word is used, as it is throughout the Code, admittedly, in conjunction with other words. As defined the word 'alienated' in the Code will be applicable to land as well as villages. The idea created at once by this definition is, that if all land that is not alienated comes under the description of 'unalienated' the man who has unalienated land has little or nothing at all, save what he may have under the survey tenure. It may be that there is no denial of the existence of 'owners' and 'proprietary rights' in the Bill but it has to be remembered that a negative Act is much stronger than a positive one, because it presupposes a large sphere of observation. There may be no negation of private rights in the Code; but the use of the term 'alienated' in different portions of the Code derogates from private rights. Hon. Mr. Mandlik was supported by the Indian members but the official members voting against the amendment it was lost.—See *Proceedings of the Council of the Governor of Bombay for 1875 and 1877*.

**Alienation** means transfer of right of Government to cash payment or to rent or revenue of land (either inclusive or exclusive of the ownership of lands themselves) wholly or partially to the ownership of another person either with or without some service in return. A register of alienated lands is maintained by the Collector under s. 53. The remark 'alienated' in the Village Forms, etc. means that the whole of the agricultural assessment (or non-agricultural assessment as the case may be) or a certain portion is granted to an ainee or Inamdar for certain reasons and is not levied. The amount so transferred or granted to an Inamdar is called *Naksuni* or balance remaining with the ainee. If any amount he pays to Government it is called *Judi* or *Salani* or quit rent. [*Revenue Accounts Manual, p. 34 (1931 Ed.)*].

The words "transferred wholly or partially" include the cases of transfers of a definite share of land revenue on land and also the cases of transfers where Government agrees not to assess any land for land revenue beyond a certain limit. In the latter class of cases

the right of Government to enhance assessment beyond the particular limit is transferred or parted with. These cases were expressly included in the expression "alienated village" defined under Bom. Act I of 1865.

*Note.*—For the definition of 'alienated village' see notes under the head 'previous history' at p. 45 *supra*.

"Transferred to the ownership".—Transfer may be either by way of ownership in which case the transaction amounts to sale, an out and out assignment, or by way of gift in which case also it may be by way of ownership. But there are transfers of a more limited character such as transfer by way of mortgage, or lease or charge (and it cannot be said that they are by way of ownership)—See the remarks of Chandavarkar J. in *Haji Abdulla v. Secretary of State*, 35 Bom. 462; 13 Bom. L. R. at p. 888.

*Note.*—Words in brackets are our own.

'Transferred in so far as the rights of Government to payment of the rent or land revenue are concerned'.—"These words in the definition of alienated prescribe a certain minimum requirement and where that minimum requirement is satisfied the definition of alienated is also satisfied notwithstanding that the transfer may cover certain other interests over and above those contained in the minimum." These were the observations of the High Court in *Dadoo v. Dinkar*, 20 Bom. L. R. 887. In this case by the grant of village there were transferred to the Inamdar not merely the Government rights to receive land revenue, but the entire property in the soil and the High Court held that the village was an alienated village for the purposes of s. 217 of the Code.

*N. B.*—Particulars of this case and of the other overruled case *Paulu v. Ramchandra*, 20 Bom. L. R. 16 will be found under s. 217 *infra*.

The term 'rent' as well as the term 'land revenue' in the definition of "alienated" is used for the reason that though a vast majority of alienations are alienations of land revenue, there is nothing to prevent Government from being a landlord or from alienating land of which it is the landlord.

*Per Ramulo J.*: A perusal of the several sections from 83 to 86 and 58 of the Code satisfies one that whenever the Code refers to alienated villages, it always describes the payment made by inferior holders as being either rent or land revenue, while in the case of Government villages it always speaks of the payment as land revenue only. This alternative form of expression is obviously used, because the superior holder in an alienated village may have both tenants and inferior holders under him. It does not

seem therefore, that the term "rent and land revenue" are used indiscriminately."—*Sa lashiv v. Ra nkrishna*, 25 Bom. 556.

**Notes.**—The expressions 'rent' or 'land-revenue' denote two kinds of payments. Assessment refers to the payment by ancient hereditary proprietors as the equivalent of the customary royal share of the produce; whereas the term rent refers to the premium paid by cultivators of unoccupied Government lands, such as Government sheri lands in some villages. In the latter case the right to possess and cultivate the land is derived from Government.

**Not an alienated village.**—A *Kowl* (lease) granted certain lands to the grantee for 99 years on conditions of paying assessment on land already under cultivation and within fifty years to bring under cultivation the remainder. Subsequently some occupants in the village having built houses on land comprised in the *Kowl* Government imposed enhanced assessment. The grantee under the *Kowl* having himself claimed the right to recover the enhanced assessment or at least a portion of it on the ground that the village was alienated and exempt from the provisions of the Bom. L. R. Code the High Court held: "The land was not an 'alienated village' for which it was not necessary that ownership of Government with respect of land revenue should have been transferred. In this particular case the *Kowl* was only a lease and its object was only agriculture and as the grantee was to consider himself a farmer, the village came under the operation of the Code."—*Haji Abdullah v. Secretary of State*, 35 Bom. 462; 13 Bom. L. R. 883 (1911).

**Inam**—The word ordinarily means an alienation without any service in return,

**Watan**—This word means an Inam for service. But generally speaking the word Inam (*Barkhati in Gujarat*) is used in a wider sense to denote any alienation in cash or land with or without service. In Village Form No. III alienated lands are entered.

There are seven principal classes of Inama. They are as follows: (i) (a) Treaty Saranjams; (b) Non-Treaty Saranjams; (c) Other political tenures. (ii) Personal. (iii) Dewasthan. (iv) Non-service Watans of District and Village officers in Broach, Kaira, Panch Mahals and Surat. (v) Non-Service watans of Village officers and servants. (vi) Village servants: (a) useful to Government; (b) useful to the community. (vii) Revenue free sites for the construction at the cost of Local, Municipal or other funds of (a) Schools or Colleges, (b) Hospitals, (c) Dispensaries, (d) other public works (including religious or charitable institutions) from which no profit is expected to be derived.

**Note.**—In each class there are one or more of the following sub-divisions:—(1) Lands, (2) Villages, (3) Cash allowances.

**Inams and Watans in general** are regulated in general by the Bom. Revenue Jurisdiction Act (X of 1876) and the Crown Grants Act (XV of 1895). However in particular classes of Inams particular enactments apply. They are the following:

**Class I** is governed by the all-India Act called the Pensions Act, 1871. Besides this there are Saranjam Rules framed by Govt. under Rule 10 of Sch. B to the Bom. Rent-free Estates Act (XI of 1852).

**Classes II and III** are regulated by (a) the Bom. Rent-free Estates Act (XI of 1852); (b) the Religious Endowments Act (XX of 1863); (c) The Pensions Act (XXIII of 1871); (d) the Exemptions from Land Revenue (No. 1) Act, (II of 1863); (e) the Exemptions from Land Revenue (No. 2) Act (VII of 1863); (f) the Toda Giras Allowances Act, (Bom. Act VII of 1877).

**Classes IV, V and VI** are governed by (a) the Bom. Hereditary Offices Act (III of 1874); (b) s. 2 of the Act to Amend the Bom. Hereditary Offices Act (Bom. Act V of 1886); (c) the Matadars Act (VI of 1887).

**Class VII** is regulated by the Bom. L. B. Code, 1879 and Bom. Land Revenue Rules, 1921 as amended upto-date. (*See Appendix A*).

**Notes.**—See the discussion under s. 217 *infra*.

[a] (21) "village" includes a town or city and all the "village"; land belonging to a village, town or city ;  
 (22) the words "revenue year" or "year" mean the period from, and exclusive of, the thirty-first July of one calendar year until, and inclusive of, the thirty-first July in the next calendar year ;

"revenue year";  
 "year";

#### Commentary

**Annual Tenancy year.**—1st April to 31st March. (s. 84).

**Calendar year.**—1st January to 31st December.

**Financial year** shall mean the year commencing on the 1st day of April.—S. 3 (19), *Bom. General Clauses Act, 1904*.

(23) [Definition of "section"]—*Repealed by Bom. III of 1886.*

(24) [Definition of "this chapter"]—*Repealed by Bom. III of 1886.*

[b] (25) the term "joint holders" or "joint occupants," means holders or occupants who hold land as co-sharers, whether as co-sharers in a family undivided according to Hindu law

"joint holders";  
 "joint occupants";

[a] This definition was substituted for the original clause (20) by Bom. IV of 1913, s. 6 (i).

[b] This definition was added by Bom. IV of 1913, s. 6 (j).

or otherwise, and whose shares are not divided by metes and bounds ; and where land is held by joint holders or joint occupants, "holder" or "occupant", as the case may be, means all of the joint holders or joint occupants ;

#### Commentary.

'Joint holders' or 'Joint occupants'.—The term 'registered occupant' as used previous to the amendment of 1913 did not define the difference between 'joint occupants' and 'co-occupants'. Joint occupant implies some unity of interest. But very frequently there were several occupants holding, on a perfectly independent tenure, parts of a survey number or group of survey numbers of which there was only one registered occupant. The appropriate term for independent occupants of a given area entered in the name of one registered occupant would have appeared to be 'co-occupants'; but previous to the amendment of 1913 neither co-occupants nor joint 'occupants' were defined. Again in the case of co-occupants there was another difficulty, for instance (in the proper sense) who could be said to be the principal and what was the sense of entering the eldest. Owing to the ambiguity arising from the use of the word 'co-occupant' it seemed advisable to lay down clearly what was meant by 'joint occupant' and to avoid the use of the word 'co-occupant'. Again, when a piece of land, for the assessment of which one registered occupant was responsible, was actually held by several persons with independent titles, each of those persons might appropriately be termed 'co-occupants'. But when all several occupants are separately recognised there will be no co-occupants. There will on the other hand be 'joint occupants'. To hold land jointly means that the interests of the holders are indistinguishable; a group of joint holders is one person. The actual terms of the present definition were taken from s. 9 (1) and (2) of the Bombay Court of Wards Act, 1905, of which the wording was settled after exhaustive discussion.

[a](26) "land records" means records maintained under "land records"; the provisions of, or for the purposes of, this Act ;

#### Commentary.

**Land Records.**—As used in this section the term includes survey records, revenue records, the record of rights, village records and in short all records maintained under the provisions of, or for the purposes of, the L. R. Code (which itself includes a chapter embodying the provisions of the Record of Rights Act). The survey department no longer exists and survey operations are carried out by the same agency as the general revenue administration, while the maintenance

[a] This definition was added by Bom. IV of 1913, s. 6 (j).

of the record of rights has taken an important position in the revenue system. There is no reason for any legal distinction between the various kinds of records kept for the purposes of the revenue department and hence this term has been adopted by the Amending Act IV of 1913. (See also notes to s. 18 *infra*).

[a] (27) “certified copy” or “certified extract” means “certified copy”; a copy or extract, as the case may be, certified in the manner prescribed by section 76 of the Indian Evidence Act, 1872 ;

#### Commentary

**Certified copy.**—Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorised by law to make use of a seal, and such copies so certified shall be called certified copies.—S. 76 of the Indian Evidence Act, 1872.

It is the wish of Government that no needless restrictions should be placed on the right of inspection of public documents, which are applied for by parties to suits.—*G. R. 6487 of 3-10-1873*. It is the desire of Govt. to further ends of justice.—*G. R. 865 of 1846; 6400 of 1850*. The only restriction is when such grant of copies would be prejudicial to the public interest (*Rule 139*). It is only in cases (which would be very rare) in which for reasons of State or policy it is inexpedient to give copies of documents that they should be refused. It is never intended that copies should be refused merely because they contain facts which might be used to support claims against Govt. or used in civil or criminal proceedings; since the Courts can always require production of documents and disclosure of evidence nothing will be gained by attempted concealment.

Public documents are defined to have the same meaning as in s. 74 of the Indian Evidence Act, 1872.

Documents, maps, registers, accounts and records the rights of inspection of which is provided for in s. 91 of the Indian Registration Act, 1908 and in s. 213 of the L. R. Code and of public documents which could be legally inspected by any person will be open for inspection (*Rule 135*) and certified copies of the same could be obtained. (*Rule 136, see Appendix A for L. R. Rules*).

All maps and land records are open to public inspection and certified extracts or certified copies thereof should be given to person applied for them. (*S. 213*).

[a] This definition was added by Bom. IV of 1913, s. 6 (j).

**Survey records** are open to inspection and copies are available under s. 213.—*Alludomal v. Ali*, 5 S. L. R. 49. See also *G. R. 7065 of 1890*.

**Vaccination records** also fall in the same category (*G. R. 1706 of 1905*).

**Uncertified copies** of public documents of which inspection is obtained may be made under Rule 136 of the L. R. Rules, 1921. (*See Appendix A*).

**Local Boards** are supplied free of charge with copies from public documents (*G. R. 1715/28 of 21-9-1929*).

**Village Accountants and City Surveyors** are to grant certified copies of certain records as laid down in Rule 137.

**Mamlatdars** should generally grant certified copies of public documents in charge of village accountants (*Rule 138*).

**The officer in charge of a public document** should give a certified copy under conditions laid down in Rule 139.

**The public have a right to inspect** and claim copies from Village Form VI and VII (see notes under Ch. XA *infra*) at any time, and also from the heirship and dispute registers. Certified copies of the Record of Rights are required to be attached to every plaint regarding land (s. 135H) and the village accountant must promptly give copies for these and other purposes. (*Revenue Accounts Manual, 1931 Ed.*)

*N. B.*—For further discussion see notes under s. 213 *infra*.

**No copy of official correspondence**, or of opinion of Govt. officer or of any Order or Resolution embodying any such opinion should be given by any officer subordinate to Collector or to the Survey Commissioner without permission.—*Administrative Order No. XLVIII (see Appendix A for Rules and Orders)*.

**Notes.**—*G. R. 2644 of 16-3-1906* directs that in giving a copy of a Resolution or Order of Govt. the preamble should be omitted and that generally only an extract should be furnished. These directions appear to be of doubtful utility. If Govt. has no objection to giving a copy of a Resolution or Order etc. there should certainly be no objection to giving the preamble, which is always considered as a very good guide for the better understanding of the *G. R.* itself. On the one hand Govt. want the people to follow the directions issued or laid down in (through manuals etc. or commentaries prepared under their authority) their *G. Rs.* and Orders and on the other they are unwilling to let the public know the reasons for the said *G. Rs.* and Orders. This practice is likely to lead the officials to interpret them in an arbitrary manner. If there is any objection to giving a *G. R.* or Order in full it should not be allowed to be referred to in books (even when written by Govt. officials) which are published and kept on sale for the public. In view of the fact the Land Revenue is not to remain a reserved subject in future it may not be unreasonable expect the Revenue Department to be more liberal in this respect.

**One Anna Court Fee.**—Occupants holding land under the terms of Survey Settlement are 'persons holding temporarily' settled land under direct engagement with Government and therefore, one anna



Court Fee is sufficient for an application presented by such occupants, to an officer of land revenue relating to matters described in *Sch. II No. 1 (a) Second Clause, Court Fees Act, 1890*. See *G. R. 634, dated 28-1-1888*.

[\*] (28) in Sind the word “Mukhtyarkar” shall be deemed to be substituted for the word “Mamlatdar” wherever it occurs in this Act.

## CHAPTER II.

### CONSTITUTION AND POWERS OF REVENUE OFFICERS.

4. The chief controlling authority in all matters connected with the land revenue is vested in the Commissioner, subject to the Governor in Council.

Chief controlling authority in revenue matters.

There shall be one or more Commissioners as the Governor in Council, subject to the orders of the Government of India, may direct; and the Governor in Council shall prescribe what territories are to be under the control of each, whether generally or for any specific purpose, and may from time to time alter the limits of such territories, all orders made on this behalf being duly notified.

Extent of territories under the Commissioners.

The territories under each Commissioner shall form, and be called, a division [b],

The territories under a Commissioner to be a division.

[c] and for the purposes of this Act the territories comprised in the Province of Sind shall be deemed to form a division and the Commissioner in Sind shall be deemed to be the Commissioner of that division. [e]

#### Commentary.

**Powers of Government**—The Code confers no power expressly to remit land revenue, but the power to impose implies also the

[a] This definition was added by Bom. Act IV of 1913, s. 6 (j).

[b] Words repeated by Act XVI of 1895 are omitted.

[c—e] These words were added by Bom. IV of 1913, s. 7.

power to remit, and is reserved to Government except in so far as they formally delegate it.

The power to reduce the sanctioned assessment either on account of deterioration of the soil or mis-judgment in the classification (*G. R. 1783 of 1904; 8046 of 1908*) or on account of the sub-division of survey numbers (*G. R. 1698 of 1910*) is reserved by Government subject to the delegation to the Director of Land Records in *G. Rs. 524, 4972 of 1914* and *787 of 1916* which cover all reductions due to clerical and arithmetical mistakes without limit of amount and the general delegation to the Divisional Commissioner in *G. R. 7569 of 1907; G. R. 6490 of 1910 and 4164 of 1916* which extends to an annual assessment of Rs. 20.

**Change in the Law**—The words 'whether generally or for any specific purpose' were inserted with the object to enable one Revenue Commissioner to undertake certain special duties within the territorial limits of another.—*Proceedings of the Bom. Leg. Council for 1877, p. 194.*

There are at present three Divisional Commissioners each in charge of a Division in the Presidency proper. Sind is in charge of a separate Commissioner. The three Divisions in the Presidency proper are (1) The Northern Division, (2) The Central Division, and (3) The Southern Division. The districts in each division are:—

N. D.	C. D.	S. D.	Sind
Ahmedabad	Ahmednagar	Belgaum	Hyderabad
Broach	East Khandesh	Bijapur	Karachi
Kaira	West Khandesh	Dharwar	Larkhana
Panch Mahals	Nasik	Kanara	Sukkar, Thar & Parker
Sirat	Poona	Kolaba	Upper Sind
			Frontier
Thana	Satara	Ratnagiri	Nawabshah
	Sholapur.		

**5.** The Commissioners shall be appointed by the Governor in Council, and shall exercise the powers and discharge the duties conferred and imposed on a Commissioner under this Act, or under any other law for the time being in force,

Appointments and duties of Commissioners.

and so far as is consistent therewith all such other powers or duties of appeal, superintendence and control within their respective divisions, and over the officers subordinate to them as may from time to time be prescribed by Government.

#### Commentary.

**History**—One Revenue Commissioner for the whole presidency was appointed by Regulation V of 1830. A second was appointed in 1843, under the authority of Act XVII. of 1842 and the collectorates were then all brought into either the Northern or Southern Division, each Division being subject to the control only of the Commissioner of that Division.

In 1830 the supervision of the Police being made over to them they became thenceforth Revenue and Police Commissioners. In 1877 a third Commissionership was created, and the supervision of the smaller political agencies being added to the work, the title of the officers was changed into the simple one of Commissioners, as in other parts of India. The three Revenue and Police Commissioners were graded according to seniority of appointment to the post with the Commissioner of Customs, Salt, Opium and Abkari.

In financial matters the powers of the Commissioners were as strictly defined as those of other officers. In Acts which have been recently passed e. g. those about Municipalities, Local Funds, Hereditary offices, etc. and also in the Rules made by Government under these and other Acts, the powers of the Commissioners were generally laid down. In all other matters relating to the revenue, their authority over the acts of the Collectors is only limited by special exceptions.

The Commissioners may be said to have no original work except when any inquiry of importance is delegated to them by Government. But references on all subjects of revenue administration are made to them not only by the Collectors, but by Government. They travel about their respective divisions in the fine weather, and examine the work and records of the Collectors' offices, etc., but there are no defined rules to regulate their tours. The head of each Commissioner's office establishment is an Assistant, with the rank of Deputy Collector.

The fact of the Commissioners being essentially supervising and not executive officers, accounts for the small number of orders as to their work. Reference must be made to the chapters referring to particular subjects for the powers of Commissioner's as to those subjects.—p. 25. *Hand-Book for Revenue Officers by Nurme, (1884).*

**Powers of a Commissioner**—The general superintendence of all the administration of the Code is entrusted to the Divisional Commissioner. Except for the powers expressly reserved by the Code to Government, the Commissioner can exercise all the other powers.

He can sanction the grant of revised or renewed sanads for land or cash allowances (*G. R. 4941 (11) of 1902*) and can sanction alterations in Sanads for alluvion or diluvion (*G. R. 8885 (13) of 1910*). He can revise the limits of Sub-divisions of districts (*G. R. 2591 of 1881*).

The Commissioner can remit non-agricultural or miscellaneous Revenues and judi on Inam Lands exceeding Rs. 100. (*G. R. 6862 of 1883*). He can remit grazing fees under the pass system. (*G. R. 9084 of 1906*) and can also make grants of timber for certain prescribed objects from non-forest waste land upto Rs. 250, (*G. R. 8811 of 1907*)

The Commissioner can, provided no defect of system or procedure requiring Government orders is disclosed and there has been no serious negligence which might require disciplinary action, (*G. 4653 [8] of 1908*) write off without limit irrecoverable dues for boundary mark repairs (ss. 122-3; *G. R. 11289 of 1910*) and all kinds of revenue and tagai without limit (*G. R. 1704 of 1904*); and irrecoverable value of stores or public money upto a limit of Rs. 500 (*F. D. 3977 of 1911*) and unserviceable dead stock to any amount, sending annual statement to the Accountant General (*G. R. 3116 of 61*). This last power was extended to the Collector by *G. R. 5941 of 1902*. For delegation of his powers as to boundary marks see *G. R. 5295 (60,61) of 1911*.—See *Land Revenue Rules, 1921. (1930 Ed.) by Anderson*.

**Inspection**—The Commissioner is required to satisfy himself that the Prant Officers, the Mamlatdars and Mahalkaries have done a proper amount of inspection and audit. He is to supervise the same.—*G. R. 2870 of 1880*.

**Commissioner's Land Revenue Administration Reports.**—The Bombay Presidency has no Board of Revenue and therefore, the land revenue Reports are prepared by Commissioners in Sind and of Divisions and the Directors of Land Records and of Agriculture. Of those required by G. Rs. 9521 1910 and 11621 of 1912, the Land Records and Survey and Settlement Report (excluding Sind) due to Government of India by 1st of May every year is submitted by the Director of Land Records and Settlement Commissioner; in Sind as Part III (limited to 20 pp.) of his report, The Land Revenue, Settlement, Statistics and Administration Report due to Government of India on 1st of May every year for Sind (*G. Rs. 2426 of 1903 and 7538 of 1905*) and also by the three Commissioners is submitted in duplicate. Their reports are consolidated for the Presidency proper and their statistics are amalgamated into Presidency tables and the Commissioner in Sind's Report is separately printed in the same volume. (*G. R. 6192 of 1904*).

In the Commissioner's Report the matters dealt with are : (1) Economic conditions and prospects of the Division ; (2) Inspection performed by the

District Officers; (3) Revenue Establishments; (4) Special matters; (5) Assistance to Inamdars and superior holders; (6) General remarks and conclusion.

Commissioner may sanction the grant of the occupancy of land vesting in Government to an official in service or retired, when there is no concession of the revenue and when the gift of the occupancy is not a gift having a money value beyond the fact that the grantee receives the grant in preference to others provided the assessment does not exceed Rs. 75 or in Sind the area does not exceed 100 acres (*See Rule 32 and G. R. F. D. 1578 of 1914 and Notification in F. D. 2292 of 1916*).

6. Each Commissioner shall have such number of Assistants to Commissioners. assistants as the Governor in Council may from time to time sanction, their appointment being made by the Governor in Council. Assistants so appointed shall perform such duties as the Commissioners to whom they are respectively subordinate may from time to time direct.

#### Commentary.

There are at present two Assistants to each Divisional Commissioner one in charge of the English Branch and the other in charge of the Vernacular Branch of the Office.

7. Each division, under the control of the Commissioner, shall be divided into such [a] districts with such limits as may from time to time be prescribed by a duly published order of the Governor in Council.

And each such district shall consist of such [b] talukas and each taluka shall consist of such [b] mahals and villages, as may from time to time be prescribed in a duly published order of the Governor in Council [c].

#### Commentary

Draft Notifications under s. 7 of the Code and s. 5 of the Indian Registration Act, 1908 are submitted to Government for lands transferred from

[a] Words repealed by Bom. IV of 1913, s. 8, are omitted.

[b-b] Words repealed by Bom. IV of 1913, s. 8, are omitted.

[c] Words repealed by Act XVI of 1897, are omitted.

taluka to taluka and sub-district to sub-district *C. G. O. No. 11677, R. D. of 4-11-1919.* When the constitution of a Taluka changes by increase in the original number of villages either by formation of new villages or amalgamation of old ones, a notification under s. 7 is necessary.—*G. R. No. 319-D dated 4-12-1922.*

In submitting proposals involving transfers of any area from one District, Division or Province to another, information regarding (1) area to be transferred with details *i. e.* cultivated area and total; (2) land revenue of the area to be transferred may be furnished for the preparation of the return.—*G. O. No. 1772 of 12-3-1909.*

The Commissioners of Divisions should submit to Government not later than 15th October an annual statement in the form prescribed for the purpose showing the area transferred from one District and Province to another *G. R. No. 3309, dated 9-4-1892.*

The Mahals or Petas at present are :

N. D.		C. D.		S. D.	
District	Mahals	District	Mahals	District	Mahals
Ahmedabad	Modasa	E. Khandesh	Bhadgaon	Belgaum	Chandgad
	Gogha		Edlabad		Bijapur
	Sanand	West Khandesh:	Navapur	Dharwar	Mundargi
Panchmahals	Halol	Nasik :	Chandor	Kanara	Bhatkal
	Jhalod		Peint		Supa
Surat	Valod	Poona	Mulshi	Kolaba	Mundgod
	Mokhada		Ambegaon		Uran
Thana	Umbargaon	Satara	Dhoun	Ratnagiri	Guhagar
	Thana. mahal		Sirur		Mandargad
	Vada	Mababale-shwar	Man	Vengurla	
		Ahmednagar	Jamkhed		
			Pathardi		
			Karjat		
Sind.					
	District	Mahals			
	Karachi	Keti Bunder			
	Dadu	Kohistan			

**Instructions.**—Changes in the boundaries in the districts or territorial limits not only involve great inconvenience and expense in the preparation of new maps, but are also productive of much derangement and confusion in statistical records of all kinds. Care should therefore, be taken that changes are made only when essentially necessary for administrative purposes. The Surveyor General of India should be supplied with copies of all notifications of any changes which may from time to time be made in Divisional or District boundaries.

The Superintendent of Survey should confer with the Collector before submitting his proposals for converting hamlets into distinct villages.—*G. R. No. 6274, dated 10-6-1884.*

Small bodies of bonafide cultivators should be encouraged to take up out lying waste land and to settle thereon and Government should give facilities by way of grant of land for hamlets and land rent-free or at reduced assessment for a term and Takavi advances should be granted liberally. In case of a sufficiently numerous colony, land should be granted free of assessment for standing ground for village cattle, for remuneration to Police Patils and village watchmen. But it was proposed by the Commissioner of Survey and Settlement that it was necessary for making arrangement of Police administration and the proper registration of vital statistics that at least 2% registered occupants of Government land should pledge themselves to settle in the new hamlet for which arrangement is to be made.

8. The Governor in Council shall appoint in each district an officer who shall be the Collector<sup>[a]</sup> and who shall be subordinate to the Commissioner of his division and may exercise, throughout his district, all the powers, and discharge all the duties conferred and imposed on a Collector or an Assistant or Deputy Collector by this Act, or any other law for the time being in force, and in all matters not specially provided for by law shall act, according to the instructions of Government.

#### Commentary.

**Position and Responsibilities of Collectors.**—The following extracts as to the position and responsibilities of Collectors sufficiently show the importance of the office:—“*The whole system of our revenue administration must depend on the vigilance of the Collector, its object being to provide sufficient powers, and leave it to the principal officer to guard against the abuse of them; we have only the choice of taking away from our agents the power to do good or leaving them in some degree the powers to do harm. Against this even a system of check and limitation will not always guard; for a man may be careful not openly to commit irregularities while he is secretly guilty of every sort of oppression. As long as the chief power in the district is in able hands, the good done by the inferiors on this system will far preponderate over the evil, and if the Collector be deficient, I am afraid that no distribution of powers would make up for his want of capacity, or do more than palliate or conceal the evils to which such a want would give rise.*” *Elphinstone.*

“However important the duties of a Judge may be, they are in this country certainly not more important than those of a Collector, who with the exception of the judicial (civil) functions exercises the whole of the

[a] Words repealed by Act XVI of 1895 are omitted.

internal administration of the province, and has occasion for much more varied qualifications.

"His designation is an unfortunate one, and ought to be changed, because it leads to the belief that the collection of the revenue is his sole duty, and that he is a mere tax-gatherer. The collection of revenue is a very subordinate part of his duty: its distribution is a much more important one. His duty extends to every branch of the finance, and its influence is felt in the prosperity of the inhabitants.

"In every country the amount and distribution of taxation are perhaps the most important concerns of public authority; there are no others on which as on them the universal comfort and prosperity of the people depend.

"The duty of a Collector towards his Assistants is most important. He is responsible for all they do and is bound to find them full employment, and in such manner as to give them complete instruction in all branches of their duty, and at the same time to maintain an effective control over them. If a Collector is himself master of his work and possessed of ordinary tact and judgment, he will be able to do this so as to develop the characters of his subordinates and form them into valuable officers of the Government at the same time that he attaches them to himself by one of the strongest ties, that of gratitude for advancement in public life. The Collector who is jealous of his subordinates and endeavours to keep everything in his own hands, is unjust towards those whose interests he should promote, while he needlessly harasses himself, and leaves the work ill-done and the people consequently injured. A Collector should endeavour to throw off upon others all that they can be made to do for him: and he should restrict himself to the duty of distributing the work, and of controlling and supervising the operations of his subordinates.

"The efficiency of a Collector's administration of his duties will greatly depend on the manner in which he conducts himself towards his immediate subordinates. Excessive suspicion of immediate subordinates is as fatal as excessive confidence. A person who is extremely suspicious of advice tendered to him may be as much shackled in his power of independent action as the man who weakly assents to whatever is proposed. Every effort should also be made to render the performance of their duty as little burdensome to them as possible. The officer who keeps them long in attendance at his house, or who requires that they perform their ordinary duties in Court in a painful standing position, cannot derive from them that degree of assistance which would otherwise be rendered. The practice of frequently imposing fines cannot be too strongly deprecated: errors of judgment should never be so punished and corrupt or dishonest actions deserve a very different punishment, and cannot be here either appropriately or beneficially noticed.

"Nothing can pass in the district of which it is not the duty of a Collector to keep himself informed, and to watch the operation. The vicissitudes of trade, the state of the currency, the administration of civil justice, the progress of public works, must all affect most materially the



interests of the classes of whom he is the constituted guardian. Official interference in matters beyond his immediate control must be avoided, but temperate and intelligent remonstrance against anything which he sees to be wrong is one of his most important duties.

“Least it should be thought that these authorities take too high a view of the duties of Collectors as they are at the present time, the opinion of a great living lawyer, Sir James Stephen, as to the Collector being the one responsible head of his district, is also given.

“The maintenance of the position of the district officers is absolutely essential to the maintenance of Constitutional Government in India, and any diminution in their influence and authority would be dearly purchased even by an improvement in the administration of justice. Within their own limits, and as regards the population of their own district the district officers are Government, and they ought, I think, to continue to be so.

“I fully agree that the experience of the people, their ways, their character, and their language which a district officer gains by his constant intercourse with them, is analogous to the experience which an English Barrister gains of men and things by practice at the bar, and that it would be as unwise and as injurious to judicial efficiency to make district officers into Judges before they had acquired that experience as to make English Barristers Judges before they had practised a competent time at the bar.”  
*p. 44 of the Hand Book for Revenue Officers by Nairne, (1884) 3rd Ed.*

**Directions**—As between back arrears of land revenue the Collector can allocate a payment as he pleases, even though the payer specifies it for a particular arrear.—33 Cal 1193.

**Collector's orders as to the procedure in conducting auction sales of** (a) the right of grazing and of the right to take or cut grass in waste lands; (b) the right to take the fruit of specified Government trees for a specified period; (c) dead wood, should be followed [*Rule 129 (2)*].

**Reports of the extent and result of the test of annual valuation should be called for by the Collector every week, so as to enable him to modify his estimate of the effect upon the probable demand and collection of land revenue for the year.**—(*See Administrative Order No. XL, Appendix A*).

In dealing with *darbhast* (execution of decrees) the Collector is not subject to appeal or revision by the Commissioner, but only by the Court. The Collector cannot set aside a *darbhast* sale but may confirm or refuse to confirm the sale (*G. R. 2173 of 1915*). The Collector has power under Rule 81 (within the limits fixed by the Commissioner) to fix the altered assessment when agricultural land is used for a purpose unconnected with the agriculture. Under Rule 37 the Collector may grant unoccupied survey numbers for agricultural purposes either on payment of price to be fixed by him or without charge or he may sell them by public auction etc. He has power to alter assessment in case of alienated surveyed and settled villages, when agricultural land is used for any other purpose (*Rule 92*). Partitions made by the Collector under the decree of Civil Courts cannot be revised by that court.—9 Bom. 662; 15 Bom. 527. When land is unauthorisedly used

for brick-making or for building the Collector may levy fine at a rate not exceeding double the rate prescribed in Rule 100 (*Rule 101 as amended by G. R. 1890/28 of 15-5 1931*).

**The Collector should tour** at least four months and *visit (not necessarily audit or inspect)* 20 villages per month and visit all talukas with two seasons at most and do audit of two talukas each year. The Collector should do the jamabandi (it now consists partly of an audit of the last year's accounts partly an inspection to see that the accounts of the current year are up to date and partly a general test of the work of village officers, etc.,) of one taluka in each of the subdivisions of his district each year. He may depute his *chitnis* to deal with some of the points. [*See Manual of Revenue Accounts (1931 Ed)*].

**Administration Report** which is to be submitted annually should reach the Commissioner by 15th September at the latest.

It should consist of the following particulars :

**I. Preliminary.**—The area in square miles ; (2) Population as per last census.

**II. Names of Officers, i. e.** Assistants and Deputy Collectors and their charges.

**III. Economic conditions and prospects :**

- (1) Nature of past season (this includes crops and water-supply) ; (1A) Canals (in case of Sind districts) ; (2) Cattle and Fodder ; (3) Land Revenue ; (4) Tagai (with remarks on inspection of Tagai wells and other works ; (5) Trade and Industries ; (6) Prices ; (7) Labour and Wages ; (8) Emigration and Immigration ; (9) Public health ; (10) Education. *Note.*—This should be dealt with in relation to the well-being of the agricultural classes and with the progress in the sustained and continuous measures that are taken for more fully equipping the cultivator by means of education to maintain himself in his pursuit of agriculture, or to fit himself for entering on new fields of industry. (II) Summary of material prosperity and prospects.

**IV. Inspection** performed personally and with the assistance of Chitnis etc.

**V. Revenue establishment and Land Records staff.**—This should include of the following : (a) Land Revenue staff ; (b) Land Records staff ; (c) Village officers ; (d) General remarks specially on measurement of sub-divisions.

**VI. Special matters** consisting of (a) Record of Rights with progress of irrigation Record of Rights ; (b) Non-alienable tenure ; (c) Others. Information regarding the annual increase and the total area held on the restricted tenure in the form of a statement should be supplied. Other points are :—(1) Whether the credit of persons holding on the restricted tenure is found to be less than of those holding on the ordinary survey tenure, and, if so, whether their weakened credit

has tended to check agricultural operations. (2) Whether cases have come to light showing that the conditions of the restricted tenure have been evaded, and if so, what action has been taken on them. (3) Generally in what light the restricted tenure is viewed by the agriculturist and money-lending classes.

VII Assistance to Inamdars and superior holders *viz.*—(1) In each village the arrears should be carefully scrutinized in order that the portion which is clearly irrecoverable may be determined and the efforts of the village officers confined to the recovery of the remainder. The amounts treated as irrecoverable should be specified. (2) Is there a tendency on the part of Inamdars to evade s. 85 of the Code (recovery of dues through the village officers); or s. 84A (proportional suspension and remission of rents). (3) Is there a tendency to raise rent in violation of the customary rights of tenants in unsurveyed villages. *Note.*—The number of cases in which village officers have been warned or punished for neglect in the collection of the revenue of alienated villages should be stated. The total number of Assistance suits heard by the Mamlatdars and Mahalkaries should be given. So also the number of suits filed by Mamlatdars and the number of suits taken up by Prant Officers in relief of the Taluka Officer should be mentioned.

VIII. General remarks and conclusion. [See also the Manual of Revenue Accounts (1931 Ed.).]

“Collector” shall mean, in the city of Bombay, the Collector of Bombay, and elsewhere the chief officer in charge of the revenue administration of a district.—S. 3 (11) of the *Bombay General Clauses Act, 1904*.

“Powers of the Collector under the Code, Rules, etc.—The Collector is empowered to remit and suspend ordinary agricultural land revenue to some extent.—*See Ch. 16*. He can remit quarry fees when stone, etc. is wanted for religious or charitable purposes. [*G. R. 5295 (115) of 1911*]. He also can remit the assessment on land assigned or acquired for a public purpose [*G. R. 9193 of 1911*]. He can also remit sale expenses under s. 183 of the Code [*G. R. 6575 of 1900*] and [*G. R. 5295 (81) of 1911*]. The Collector can make grant of timber for certain prescribed objects from non-forest waste lands up to Rs. 50 (*G. R. 3736 of 1909*). He may remit fines under s. 61 of the Code and may remit fines if imposed by him under s. 148 (*Chauthai*). (*G. R. 2485 of 1883*). The Collector signs Sanads for most alienation.—(*H. 7119 II of 27-9-1929*). The Collector fixes irrigation rates under s. 55 within the maximum sanctioned by Government [*G. R. 4347 (5) of 1902*]. The Collector hears appeals from Survey Officers below

grade of Superintendent of Survey under s. 37 (2). (*G. R. 6884 of 1915*) and read with s. 203, this also gives him appellate power in respect of s. 50A, District Municipal Act. The Collector can make reduction for diluvion (*G. R. 1369 of 1916*) and may postpone instalments under *G. R. 8046 (7) of 1908* but only with the Commissioner's sanction. The Collector may transfer Government lands to other departments [*G. R. 4347 (19) of 1902*] and make all assignments under s. 38 (Act IV of 1905).

While the Collector cannot sanction the employment of permanent establishment (s. 21) he can make all appointments to sanctioned posts on the District staff, except Mamlatdars and Head Accountants: and he may in certain cases create and fill temporary appointments. The most important of these cases is in respect of the staff of Circle Inspectors, peons and labourers for partition and sub-division measurement work, and for repairing boundary marks when the cost is recoverable from the parties (*G. R. 737 of 1900; 6067 of 1907; 6557 of 1911; 9545 of 1911*).

The Collector can write off amounts of irrecoverable revenue of all kinds not exceeding Rs. 100 in each case without reference to higher authorities [*G. R. 6862 of 1883, 1714 of 1904 and 11221 (27) of 1912*]. He can write off unserviceable dead stock to any amount, sending an annual statement to the Accountant General (*G. R. 5941 of 1902*).

Irrigation arrears (though not of Land Revenue) can be written off with the consent of the Executive Engineer. (*P. H. A. I, 39 of 1904*). (*Administrative Order No. V; see Appendix A*).

9. The Governor in Council may appoint to each district so many Assistant Collectors and so many Deputy Collectors as he may deem expedient; the Assistants shall be called "First", "Second", "Supernumerary", etc., as may be expressed in the order of their appointment.

Assistant and Deputy Collectors.  
 to be subordinate to the Collector.  
 All such Assistant and Deputy Collectors and all other officers employed in the land revenue administration of the district shall be subordinate to the Collector.

**Commentary**

**Deputy Collectors** fall under the following principal designations: (1) Assistant Commissioner. (2) Personal Assistant to the Collector. (3) District Deputy Collector in charge of Talukas. (4) Huzur Deputy Collector and City Magistrate. (5) Huzur Account Officer without magisterial work. (6) City Magistrate without treasury work.

**Personal Assistant.**—The Collectors of the heaviest Districts *i. e.* Poona, Satara and Thana are allowed Personal Assistants of the rank of Assistants or Deputy Collectors according to the class of work for which aid is needed.—*See G. R. No. 7018 of 8-10-1903, R. D.* This is done in order to relieve them of much office routine work and to give them time for their more important administrative duties.

**Assistant or Deputy Collector in Sind** may be appointed by the Commissioner in Sind under powers delegated to him under s. 9 of this Code by the Governor in Council.—*G. R. No. 9291 of 14-9-1908,*

**Deputy Commissioner.**—The District Officer of Thar and Parkar and Upper Sind Frontier is called a Deputy Commissioner.

**Akrani Mahal.**—The Divisional Forest Officer, North Khandesh Division is appointed *ex-officio* Assistant Collector for the Mahal.—*See G. R. No. 12020 of 24-11-1908.*

**Superintendent of Mahabaleshwar** in Satara District is appointed Deputy Collector under the provisions of Act XX of 1852 and invested with powers of a Mamlatdar under the Mamlatdars' Courts Act (II of 1906).—*B. G. G. 1871, Pt. I p. 424.*

**10.** Subject to the general orders of Government a Collector may place any of his assistants or deputies in charge of the revenue administration of one or more of the talukas in his district, or may himself retain charge thereof.

Any Assistant or Deputy Collector thus placed in charge shall, subject to the provisions of Chapter XIII [a], perform all the duties and exercise all the powers conferred upon a Collector [b] by this Act or any other law at the

[a] Words repealed by Bom. III of 1886 are omitted.

[b] Words repealed by Act XVI of 1895 are omitted.

time being in force, so far as regards the taluka or talukas in his charge:

Provided that the Collector may, whenever he may deem fit, direct any such Assistant or Deputy not to perform certain duties or exercise certain powers, and may reserve the same to himself or assign them to any other Assistant or Deputy subordinate to him.

To such Assistant or Deputy Collector as it may not be possible or expedient to place in charge of talukas, the Collector shall, under the general orders of Government, assign such particular duties and powers as he may from time to time see fit.

#### Commentary

**Duties and Responsibilities of Assistants to Collectors and Deputies—District Work.**—On first taking charge of an office an Assistant Collector generally finds it very difficult to get any clear idea of what his duties are, since they seem to consist almost entirely of giving orders, the great majority of which are of no apparent importance. He will at first think that there is scarcely any original work for him to do. He has to give orders on a great variety of matters in all of which the Mamlatdar has either expressed an opinion or given an order already, and everything that occurs in the district is reported not direct to the Assistant but through the Mamlatdar. It is evident from this that, so far as regards revenue work, supervision of the Mamlatdar and his establishment must be a great part of the duty of an Assistant Collector. But in most cases the first reports come from the village officers to the Mamlatdars, and the payments of revenue are all made to those village authorities by the ryots. It is therefore, necessary to exercise supervision over the village as well as the district officers, and it is because this can only be done by moving about the districts that the Bombay Government (differing from those of the other Presidencies) has always been so particular about Collectors and Assistants travelling for the greater part of the year.

The chief objects of these tours are the following :—

1. To supervise and test by personal inspection the work performed by the numerous subordinates, whose services are indispensable under the system of revenue administration.
2. To obtain an idea of the wants of the country in the way of improvements of all sorts.
3. To gain acquaintance with subordinate Government servants of all classes and with influential inhabitants of the districts, and thus to make the first two objects more easy of attainment.

4. To give the lower and more ignorant classes of the people easy access for the purpose of making known their wants and complaints, and by listening to them to gain their confidence.

It is necessary first to point out in what way supervision can best be exercised over the work of the district and village officers. Experience shows that the fact of an order having been signed and issued affords little or no security that it will be carried out. The part that superior officers can take in the revenue administration of the country must be limited to a certain amount of check and percentage examination. The great number of stipendiary and hereditary officials necessary under the ryotwari system can only be kept in order by impressing them with a wholesome dread of the probability of their shortcomings being brought to light and punished. If a Mamlatdar believes, from what he knows of the character and habits of an Assistant, that after the issue of an order the Assistant will satisfy himself that it has been properly carried out, this will make him far more careful and zealous than the mere receipt of a dozen strongly worded orders. An Assistant can himself examine only a small percentage of accounts, receipt books, boundary marks, etc., and it is therefore, all the more necessary that the examination which is made should be thorough and complete.

The first thing for an Assistant Collector, who is new to his work, to do on encamping in a village, will be to send for the Patel and Koolkarnes or Talates, if they do not come to him of themselves, and simply talk to them about the cultivation, roads, and school of the village, and any other points that may have occurred to him on his journey. The next thing will probably be to appoint a day for '*kul ruzvat*' or examination of ryots' receipt books, and of this only sufficient notice should be given beforehand to enable the ryots to be got together. The Assistant Collector should by no means confine himself to examine the state of each man's receipt book and the amount of his payments, but should, when that is finished, take the opportunity of the villagers being assembled to ask them if they have anything to say in the way of complaints, wants, etc. Things may thus often be found out in a quarter of an hour's talk which would never be the subject of petitions, especially if the Assistant accustoms himself, as he soon may do, to be independent of the assistance of his own office people, and to go to the *kul ruzvat* alone. Petitions should when necessary be inquired into on the spot, and no opportunity missed of visiting fields, tanks, buildings etc., about which there may be quarrels or petitions. Anything very bad in a sanitary point of view (which is very likely to be the subject of petition) should be noticed and reported to the Collector if necessary. The school should be visited and reported on to the local educational authorities if necessary. The rules for examining boundary marks, as also those relating to Local Funds, roadside trees, village officers, etc. should be carefully gone into. All these subjects may give the Assistant work even in out of the villages, and so, of course, will various magisterial and police duties, which need not be mentioned here.

The village work being thus disposed of, and the Assistant having gained, some acquaintance with a certain number of *patels* and others, he begins to think what he should do in the way of supervision when he reaches a Mamlatdar's or Mahalkary's station. The first thing to look to is the amount of outstanding work and unanswered references. These are generally contained in two or three *rumals* or bundles of records, and should be gone through carefully, and the Mamlatdar called on to explain any undue delay etc. If any particular matter seem ill-done, the file containing cases of the same sort previously decided should be examined so also should any class of cases in which the Assistant Collector may, from experience of his work, think the Mamlatdar to be wanting. He should make as much acquaintance with the Karkoons of the Mamlatdar's establishment as possible, and in examining the records it is generally better not to have Mamlatdar himself present. There is no better practical test of a Mamlatdar's efficiency, and the interest he takes in his work, than to ask him off hand for the particulars of any petition that may have been presented. A good officer will generally be able to give an account of the whole case, while it is bad sign if the Mamlatdar has to refer to Karkoon before he can tell anything about it. In the matter of taking petitions—although it is not supposed that he is to do the Mamlatdar's work for him—the Assistant should be very chary of refusing any, or of returning them with a recommendation to apply to the Mamlatdar, the village officials, etc. Of course, when the petitions refer to matters which ought to be taken into the Civil Court, or which distinctly belong to other departments, nothing can be done, but any matters in which the Collector has any authority should be received, even if they can only be sent on with an endorsement, and any complaint against the Mamlatdar, Karkoons or village officials should receive particular and immediate attention. Nor should oral petitions be discouraged, even though it may be necessary before anything is done, to get them reduced to writing. It is very necessary also to warn young Assistants not to allow their Shirestedars or Karkoons to take too much upon themselves or to exercise any independent supervision over a Mamlatdar's work, which they are very ready to do if not checked. No one in this position should be allowed so much power as to make it worth a Mamlatdar's while to conciliate him or gain his good-will. And as to the common people although it may be hard or next to impossible to make them believe that the office people have no influence, it is easy to show them that every man can, if he likes, come and tell his story to the Prant Saheb, in his own way, and at his own time, without any intervention of inferior subordinates. In simply riding from village to village or about the country, a little observation will often show the Assistant things which require action of some sort, but which will never be reported. If drunkenness seem to be prevalent he may assume that there is something wrong in the number or management of the liquor shops, which should then be looked into, and in any case he should make himself acquainted with the local arrangements for the manufacture and sale of liquor, and do his best to check facilities for its consumption. The state of repair of the



roads, tanks, bunds etc. should be noticed and the condition of the road-side trees. It is of course always necessary to observe the state of the crops, and to bring to the notice of the Collector any special wants of particular villages, such as water supply, extension of the village site, etc. ; at the same time the remedial measures which may seem necessary or possible should be mentioned. It is not to be supposed that the above, even with the detailed orders of Government on the examination of accounts, counting the treasury, examining the registration records etc., are by any means exhaustive as to the Assistant Collector's work. In every district special objects of observation will be found, and the taste of individuals will lead them to particular study of special subjects, and there is scarcely a subject that can be studied without some good resulting.

As to the manner in which the Assistant's tour should be arranged, it is desirable that he should, as far as possible, visit every part of his charge, and get within visiting distance of every village in it at one time or another in the year. If he does this it may be left to his taste how to do it, whether by a regular circuit, or by a succession of marches broken up by long halts.

It is often a matter of difficulty to decide what petitions should be referred to Mamlatdars to report on, and what enquired into personally. This must of course often be decided by consideration of locality, but as a general rule it is safe to say that all complaints of extortion or tyranny by any Government servant under him should be enquired into by the Assistant Collector himself, and with the least possible delay. Another point not less important is for the Assistant Collector to see that in cases referred to the Mamlatdar for enquiry, the latter enquires into them himself promptly and does not simply send on as his own the report or conclusions of a general duty karkoon or a Talati. Unless care is taken to insist on this there can be no enforcing of responsibility.

In connection with the prevention of unnecessary delays may be mentioned the monthly returns of outstanding work (*nilal patras*) which are sent in by the Mamlatdars to the Assistant Collectors. If these are scrutinized, as they usually are, by a Shirastedar or Karkoon, they will generally be found to be utterly useless. The Shirastedar will if he think the number of outstandings unduly large, write an order to that effect adding that they must be reduced and he will go on writing this month after month till, finding that the Mamlatdar takes no notice, he will give it up as a bad job. But it will seldom occur to him to examine the returns critically and see which of the matters may fairly be allowed to take a long time, and which ought to be enquired into and disposed of with the least delay possible. But if the Assistant Collector himself examines these returns he will soon get a very good idea of the way work is done in any particular office and it is his own fault if after that the Mamlatdar is allowed to spend an unlimited time over his enquiries, or to treat every sort of reference as of equal importance. Many Mamlatdars think it a

quite sufficient reason for any amount of delay in reporting things referred to them to say that they have given it to a Karkoon or a Talati to report on. This should never be allowed as an excuse but the responsibility of the Mamlatdar insisted on for delay, about everything that is sent to him, as he is of course quite as able to resist delay on the part of his subordinates, as the Assistant Collector is to resist it on the part of the Mamlatdar. It may also be mentioned that a close examination of batta bills of subordinate establishments will frequently show how the work of a Taluka is done. The proper performance of their duty requires that the Mamlatdar and some of his karkoons should be constantly going about the taluka: if a very small amount of travelling is done it is pretty certain that some works are neglected. But number of days of absence from kutcherry is a very small test, if the villages visited and the work done at be not enquired into.—A *Hand-Book for Revenue Officers by Nairne* p. 74 (1884) 3rd Ed.

“Any other law at the time being in force.”—These words are not limited to laws relating to land revenue but include all Acts of the Government of Bombay in which a contrary intention does not appear.—*G. R. No. 5941 of 26-8-1902*; see also *Keshav v. Jairam*, 36 Bom. 123; 13 Bom. L. R. 1031. (In this case Beaman J. referred with approval to the above G. R. but at the same time made it clear that a Govt. Resolution though serves to throw useful light is no binding authority on the High Court). But not those powers of revision of the Collector under s. 23 of the Mamlatdars' Courts Act, 1906, for the reason that the Deputy Collector is not the Chief revenue officer in charge of the revenue administration of a district, and also because the words 'any law for the time being in force' in s. 203 (ch. XIII) of the Code must relate to any law *ejusdem generis* with the Land Revenue Code and would not embrace the special law relating to the Mamlatdars' Courts Act.—per Scott J. in *Sonu v. Arjun*, 17 Bom. L. R. 579.

“Subject to the general orders of Government”. The Governor in Council has sanctioned delegation of powers in respect of all executive orders of the Local Government.—*See G. R. 5941 of 26-8-1902*.

There should be no unnecessary reservation of powers by the Collector under this section.—*G. R. No. 7078 of 8-10-1903*.

Power to sign or countersign all bills for the Collector whether as Collector, District Magistrate, or District Registrar may be delegated by him, to his Personal Assistant—*See G. R. No. 1642 of 29-2-1904*.

Personal Assistant may sign "for the Court of Wards" as the Collector can exercise all or any of the powers delegated to him by the Commissioner [ s. 19 (2), Court of Wards Act, 1905 ] through his Personal Assistant ( See G. R. No. 2839 of 26-3-1913 ). The meaning of 'exercise through' in s. 19 (2) of the Bom. Court of Wards Act, 1905 is to be taken as equivalent to authorisation and the difference between delegation and authorisation is that responsibility is devolved with delegation and not with authorisation. (*ibid*).

If placed in charge of City survey areas in a district a Huzur Deputy Collector or any Assistant or Deputy Collector not in charge of a Taluka may be given by the Collector such particular duties and powers of a Collector as he may deem fit in order to enable that officer to administer the City Survey area.—G. O. No. 67 of 8-1-1921.

The Huzur Deputy Collector or Treasury Officer is a sort of Personal Assistant to the Collector for treasury and account work and obviously all correspondence between him and the Collector will take place just as between Collector and his Chitnis ; that is to say, it will either be oral or by unofficial office notes. The Huzur Deputy Collector puts up drafts or proposes letters to Collector for sanction and when the Collector has approved he signs them for the Collector.

**The Mamltdars' Courts Act.**—Neither an Assistant Collector nor a District Deputy Collector can revise the orders of the Mamltdar under s. 23 of the Mamltdars' Courts Act, 1906. As the powers of a Deputy Collector or an Assistant Collector do not extend beyond the Taluka or the Talukas of the District which should have been placed specially in his charge he cannot be the 'Chief Revenue Officer in charge of the revenue administration of a District' as required by the expression 'Collector' defined in the Bombay General Clauses Act, 1904.—*Sonu Janardan v. Arjuna Darks*, 39 Bom. 552; 17 Bom. L. R. 570. This case was followed in *Venkatesh v. Bhiku*, 45 Bom. 1135 (1921), where the High Court held that the order of the District Deputy Collector who purported to interfere in revision under s. 23 of the Mamltdars' Courts Act and who has no jurisdiction to interfere should be considered as nullity.

Generally speaking all powers of the Collector under the Land Revenue Code or any other law (unless contrary intention

appears) are also exercised under s. 10 by the Assistant or Deputy Collector in respect of the talukas in his charge (*G. R. 5941 of 1902*). But the Collector may always reserve any power he thinks fit. In particular, Government have directed that powers under Rule 82 (now Rules 81 and 82 which provide for higher rates than settled on lands used for non-agricultural purposes) should not ordinarily be delegated (*G. R. 3459 of 1908*). The power of arrest is to be exercised only when specially delegated. (*G. R. 1743 of 1883*). The Assistant or Deputy has certain powers of executing *contracts and leases* under Home Dept. G.R. 7119-II of 27-9-29 and sanads for tree planting in open sites in villages. He may fine watan village revenue officers. (*G. R. 10431 of 1912*); he (in Ahmedabad) appoints, punishes, and dismisses *mukhis* and police patels (subject to control of the District Magistrate) in talukdari villages. (*G. R. 1276 of 1921*).

The Collector will delegate by name the power to write off irrecoverable revenue upto Rs. 25. (*G. R. 6042 of 3-4-23*).

To a Supernumerary or Personal Assistant, powers must be specifically delegated. (*G. R. 5941 of 1902*). Powers of a Collector under s. 135F are conferred on Superintendent of Land Records (*G. R. 1457 of 26-5-21*) but not those under the Land Acquisition Act.

**Bom. Irrigation Act, 1879.**—The powers conferred upon the Collector under the Bom. Irrigation Act are to be exercised by an Assistant Collector according to this Section.—*Nawazali Shah Pir Ali Gohar Shah v. Rustomali Shah*, 14 S. L. R. 53.

**Watan Act.**—The duty of determining the custom of the *watan* as to service, and what persons shall be recognised as representative watan-dars, and of registering their names, is by s. 25 of the Bom. Hereditary Offices Act, 1874 vested in the Collector and the Assistant and the Deputy Collectors are invested by Section 10 of the Code with the powers of the Collector in this respect.

But it is doubtful if the term 'Collector' used in s. 15 of the Bom. Hereditary Offices Act, 1874 would include an Assistant or the Deputy Collector, under provisions of s. 10, of the Code.

**Tours.** The Assistant or Deputy Collector is required to be on tour for seven months of the years and spend at least seven days at each taluka for audit. Camps should not last less than seven or eight days. The idea that four or five villages can usefully be inspected in one morning must be abandoned. Such rapid visits should not be allowed except of course where it is necessary to cover a lot of ground while examining the general

condition of crops or an epidemic or some other matter which requires only a short time in each village. (See Manual of Revenue Accounts, 1931 Ed.) The Assistant or Deputy Collector is required to inspect Taluka treasuries and answer the questions given in the Sub-Treasury Manual.

Whenever a Deputy or Assistant Collector visits a village he should decide all heirships, disputes and fees since the last visit of the Mamlatdar to that village.

**Annual administration Report** by Assistant or Deputy Collector in charge of a sub-division should consist of the following: (I) (a) Area in square miles of the sub-division (including Indian states) (b) Population by last census.

II Charges held by officers under him.

III Economic conditions and prospects of the sub-division.

IV Inspection of (a) Taluka and Mahal Kacheris; (b) Sub-registrars' Kacheries; (c) Police Sub-Inspector's Offices; (d) Range forest offices; (e) Schools; (f) Liquor and opium shops; (g) Dispensaries. *Note*-A statement showing his test of village officers' and Circle Inspectors' inspection work should be appended.

V Revenue establishments and Land Records Staff—(1) Land Revenue Staff (with remarks as to the strength, efficiency, conduct, volume of work, etc.); (2) Land Records Staff; (3) Village officers; (4) general remarks on progress in [training of village accountants in survey and in] measurement of sub-divisions.

VI Special matters particularly, remarks on the examination of Mamlatdars' Records.

VII Assistance to Inamdars and Superior holders.

VIII General remarks and conclusion.

**11.** If the Collector is disabled from performing his duties, or for any reason vacates his office or leaves his district, or dies, his Assistant of highest rank present in the district shall, unless other provision has been made by Government, succeed temporarily to his office, and shall be held to be the Collector [a] under this Act until the Collector resumes charge of his district, or until the Governor in Council appoints a successor to the former Collector and such successor takes charge of his appointment.

An officer whose principal office is different from that of an Assistant Collector, and who is an Assistant Collector

[a] Words repealed by Act XVI of 1897 are omitted.

for special purposes only, shall not be deemed to be an Assistant for the purposes of this section.

**12** The chief officer entrusted with the local revenue administration of a taluka shall be called **The Mamlatdar;** his appointment. **a Mamlatdar.** He shall be appointed by the Commissioner of the division in which his taluka is situated.

His duties and powers shall be such as may be expressly imposed or conferred upon him by this **His duties and powers.** Act, or by any other law for the time being in force, or as may be imposed upon, or delegated to him, by the Collector under the general or special orders of Government [a].

#### Commentary.

**Duties and Responsibilities of Mamlatdars and Subordinate Establishments**—The Mamlatdar is at the head of an office considerably larger than that of any Assistant Collector, and besides the members of his own office he has also under his orders all koolkarnees and Talaties, and to some extent also the Patels, of the villages within his jurisdiction. He is in charge of the taluka treasury, into which all money due to Government in that taluka is paid, and from which nearly the whole of the money expended for Government in the taluka is issued. (*See also Mr. Hope's Manual*). All orders from the Collector to any persons, officials or non-officials, pass as a rule through the Mamlatdar, and petitions received from any inhabitants of the taluka are almost invariably sent to him for report. From this the importance of the Mamlatdar's position will be understood even without considering his magisterial authority. But besides this purely revenue work the chief official of every department in the collectorate also corresponds direct with the Mamlatdar, as the Superintendent of Police, the Executive Engineer, the District Forest Officer etc., and it is to the Mamlatdar that any one, official or non-official, travelling through the district, applies for aid.

There is no doubt that Mamlatdars as a rule are very hard-worked, and their responsibilities are more like those of the Collector than an Assistant Collector's. It is clearly therefore, the duty of their superiors to do all that is possible to lighten their work, and to uphold as far as possible, their authority over their subordinates. It may be safely said that it takes a first rate man to perform well all the multifarious duties of a Mamlatdar in a large taluka while even in the least important taluka an inefficient man will inevitably expose his inefficiency in a very short time. The most

[a] Words repealed by Act XVI of 1895 are omitted

ordinary supervision of the work of a district should therefore, be sufficient to show an Assistant Collector what the Mamlatdar is worth as an official.

It need scarcely be said that an officer of such importance should be treated with great consideration by all who are in any way above him. Elphinstone in 1821 wrote of the necessity of "raising our Mamlatdars to a rank which might render it creditable for Indian gentlemen to associate with them." He proposed that their pay at first should be Rs. 200 or 250 and increase one-sixth for every five years' service a rate of pay which, even with the present enhanced expenses of living, our Government has not yet offered them.

Speaking generally it may be said that the Mamlatdar disposes of all matters of routine connected with the receipt of revenue and the tenure of land, referring to the Assistant Collector only such matters as from their importance or novelty require the orders of higher authority. On these matters the Mamlatdar does not generally report direct to the Collector except in answer to his references. As a rule all the orders of a Mamlatdar on revenue and miscellaneous matters are appealable to the Assistant Collector in charge of the taluka. The chief exception to this are decisions under Bombay Act III of 1876 (now Bom. Act II of 1906) in which there is no appeal. The karkoons of the Mamlatdar's office are appointed by the Collector. The Head Karkoon who is generally a subordinate magistrate, has charge of the treasury and office when the Mamlatdar is away from headquarters. The other karkoons have particular duties assigned to them, but all are entirely under the Mamlatdar's orders.—*A Hand Book for Revenue Officers by Nairne (1884) 3rd Ed.*

The word 'Mamlatdar' is derived from the Arabic word 'Muamla' with the suffix 'dar'. 'Muamla' means business, a serious, difficult or complicated matter; a person or officer thoroughly comprehending such matter.

The word 'Mukhtyarkar' is Arabic in origin. It means an authorised manager.

Mukhtyarkar in Sind corresponds to a Mamlatdar.—[s. 3 (28)].

Collector can delegate certain powers to a Mamlatdar only for his own district and such powers can be exercised only in the Taluka of the district.—*Gangaram v. Dinkar Ganesh, 37 Bom. 542.*

Chitnis to Collector and Head Clerk to Collector.—Both these officers are graded with a Mamlatdar.—*See G. R. 8881 of 23-12-1891 R. D. and G. R. 219 of 26-3-1920 F. D.*

The Mamlatdar should exercise such powers as the Collector may delegate to him. But these delegations must be made "under the general or special orders of Government" and also they must be made in all cases by name and not merely in virtue of the office held. (*G. R. 7773 of 1913; 239 of 1914*).

These *ex-officio* powers are given in Order XI. (*See under s. 14 infra and also in Appendix A*). Therefore it is desirable that a printed form should be used by every Collector as follows :—

“ To Mr. A. B.

“ Whereas you have been appointed to be (or to do duty temporarily as) Mamlatdar (Mahalkari) of.....you are hereby authorized during the tenure of that office to exercise the following powers :—

( Here print the powers below detailed. )

( The Collector should strike out whatever powers he elects to reserve. )

Collector of.....”.

**Power to sanction transfers and leases of lands given on restricted tenure** is not ordinarily delegated to Mamlatdar [ G. R. 4347 (17) of 1902 and 8703 of 1910 ). See also Rule 37 in Appendix A.

**Under the provisions of Record of Rights** if a person does not produce any document in his custody for which a notice is served on him the Mamlatdar or Mahalkari etc. can levy fines upto Rs. 15 (*G. R. 7176 of 1912 and 7623 of 13-4-1923*).

**If the Register of Alienated lands (Taluka form III)** discloses any change in area or judi or Inam land in any village not subject to Record of Rights the Mamlatdar should obtain the particulars and obtain orders of Deputy Collector, or Collector. Mamlatdar should visit such villages and inquire into alienations etc.

**Mamlatdar is immediately responsible for the upkeep of the Record of Rights** within his taluka ; so is the Mahalkari within his Mahal or Peta. He must therefore, satisfy himself that all Circle Inspectors and Talaties under him understand their duties and are carrying them out. He is to certify with his initials every entry tested, correcting on the spot any found incorrect after full inquiry. After the inspection the Mamlatdar should insert any orders given to Talati or Circle Inspector in the Village Inspection Book. If a taluka is a large one an Extra Aval Karkun is sometimes given a portion of the taluka as a Mahal. In each of these divisions of the taluka the officer in charge has all the powers of Mamlatdar for Record of Rights purposes. The important things to be done in the matter of Record of Rights are : (1) To check all heirships ; (2) to give orders on all fee cases ; (3) to settle disputed cases ; (4) to watch and expedite the disposal of the measurement and mapping of fresh sub-divisions and of course the testing, both at the chavdi and in the field, of mutations in Village Form No. VI, the corrections of the Index, Village Form VII, and entries in the crop and tenancy registers. [*See also notes to Ch. XI (of the Record of Rights)*].



The powers which may be delegated under Administrative Order VIII are these :—

Section.	Extent of power.	Authority.
25, 26 32 and Watan Act.	All To fine hereditary or stipendiary village revenue officers.	R. 5295 (9)-1911. R. 2116 and 4100-1883, 1953-93, 5491-03, 5595- 1904.
42, 43, 70 45 (4), 61 (G), 79A and 82.	All To sign eviction notices approved by the Assistant or Deputy.	R. 4347 (17)-92. R. 5295 (85)-11.
80, 86 90	All. [Mukhtyarkars in Sind included. R. 8048 (1)-1908]. To sanction sale of movables in alienated villages.	R. 2598 and 6024-83, 9901-06. R. 5295 (47)-11.
91	To accept security from defaulting inferior holders.	<i>Under this order.</i>
117B 135F	All Upto a limit of Rs 15	<i>Under this order.</i> R. 7623-94-24 and 134- 24.
135H (3) 141-143, 145 148 149	All All All To issue certificates direct to other Mamltdars (apparently in the same or other districts of the Presidency).	<i>Under this order.</i> R. 8046-1908, 7773-13. R. 7176-12. R. 5295 (71)-11.
152	To issue notices and remit notice fees levied by mistake.	R. 5295 (73)-1911.
153, provision (a)	To issue notices threatening forfeiture.	R. 5295 (74)-1911.
154	To distrain and sell moveables in unalienated villages.	R. 5974-1891.
156	To determine what property is exempt.	R. 4347 (17)-1902.
185, 166 (3)	All, in respect of such sales as he has himself power to make.	R. 5295 (78-9)-11.
181	To put in possession and give certificate.	R. 5295 (80)-1911.
186 190 (3)	All All	R. 8785-89. R. 5295 (83-84)-1911.
L. R. Rules— Rule 41 (and a. 68), Rule 58	All (eksali sales) Permit tree cutting in watan land.	R. 5295 (36)-1911. R. 5295 (22)-1911.
80 (and a. 65)	To specially selected Mamltdars.	R. 3479-08, 5295 (32) -1911.
37, 42, 64, 65, 66 (and a. 170.)	To confirm sale at any auction when the Collector has previously fixed (Rule 124) an upset price which is realized. (For powers as to auctions, see Chapter XVIII of L. R. Rules by Anderson, 1930 Ed).	R. 5295 (22)-1911.

Under other laws and rules, powers have been given to Mamlatdars :—

- (1) To enter the heirs of Summary Settlement (Class II unstarred) Inams ;
- (2) to appoint, give leave, and determine heirs of inferior village servants. (*G. R. F. D. 595-1867*).
- (3) To permit cutting of trees in uncommuted service lands [*G. R. 5295 (22)-1911*].—*Administrative Order No. VIII. (See Appendix A for Orders and Rules)*.

In issuing his delegation order to the Mamlatdar the Collector can reserve any power he thinks fit, which will then be exercised only by the Prant Officer, *i. e.* the Assistant or Deputy Collector. In delegating to a Mahalkari, he will probably reserve more powers and he will also specify whether the Mahalkari is to be considered the immediate subordinate of the Mamlatdar or of the Assistant Collector for the purposes of s. 203 (appeals, etc.). The Collector can also appoint a Mahalkari and assign certain powers to him without specifying the local limits of his Mahal (*G. R. 6824-14*) but the necessity of such appointment shall be reported to Government (*s. 13*). In such a case he will be practically a Deputy Mamlatdar within the taluka, exercising such power as may be given to him ; and he will not be 'below the rank of an Aval Karkun' for the purposes of the Record of Rights.

Under s. 8 the Collector is the Collector of the district, the Mamlatdar being entrusted with the local revenue administration of the smaller unit known as the Taluka. It follows that the Collector can only delegate powers for his own District and the Mamlatdar can only exercise delegated powers in the Talukas, of the Districts in which the delegation occurred.—Per Scott C. J. in *Gangaran v. Dinkar*, 15 Bom. L. R. 665 (1913).

Disputes entered in the register of disputed cases (in connection with the Record of Rights) should be disposed of by the Mamlatdar etc. [Rule 103 (1)]. Regarding an appeal against an order of officers deciding such disputes see Rule 108 (5) in Appendix A.

**Mamlatdar is always to see that his Staff are properly employed.** All office work is divided into certain departments and compilations and clerks are put in charge of particular branches. It is best to keep one clerk always at the same work. Only those men who are admitted into the upper branch and likely to become administrative officers should work in each branch and section in turns in order to get a fair general knowledge of the whole system. Regular attendance at office is most important both in order to get a proper amount of work from the clerks as well as to facilitate the business of the public. Of course the Mamlatdar has to go on tour but he must always insist that his Aval karkun and staff attend office regularly and punctually according to a fixed time table.

**In dealing with petitions** Mamlatdar if he goes within a reasonable time to that place should visit the village or field or house in question and clear up everything properly on the spot. He should keep a Tour File and place all petitions or matters sent to him for inquiry and report in that file

and should arrange his tour so as to dispose of them as early as convenient. Each Mamlatdar should prepare a list of villages in his taluka arranged by survey and tenure groups as directed in the Manual of Revenue Accounts.

In trying possessory, assistance ( and even criminal ) cases the Mamlatdar will find it very convenient to hear the witnesses present on the same day. It takes less time and labour to hear each case continuously till it is finished or at any rate till it reaches a definite stage at which Mamlatdar can make up his mind to frame a charge or not.

Unqualified candidates and village officers should not be allowed to work at a taluka. The unqualified candidate is the most dangerous obstacle to the improvement of the quality of the Revenue service. It is the duty of the Mamlatdar every year in December to cause the Register ( a Record of leases and contracts of land for non-agricultural purposes such as salt pans, reclamations, recreation grounds etc. Village Form II of which a duplicate is kept at the Taluka called Taluka Form II ) to be examined and leases falling in between 1st August and 31st July of the following revenue year should be flagged ; the Talati should then be reminded to take proper action. It has to be remembered that the liability to revision of assessment on expiry of the original is a matter which requires sharp attention inasmuch as it is directed by G. R. 2028 of 1883 [ *Standing Orders of Govt. in R. D.* p. 1234 (1892) ] that a notice should be given to the lessee six months before expiry.

Annewari is required for the purpose of the suspension of revenue only when there is doubt as to whether the season is below 6 annas etc. ( *G. R. 6363/28 of 2-2-1911* ). The opinion of the Committee formed for the purposes of annewari should be communicated by the Circle Inspector to Mamlatdar who should then make a provisional decision which should be published in Taluka Kachori and in the *Chara-lee* of the villages concerned. The Mamlatdar or the Collector should supply to the public on payment of copying fees information relating to anna valuation. — *Administrative Order XXXIA ( See Appendix A for Rules and Orders )*.

Recourse to coercive process when revenue is not paid according to demand. The first step would be the issue of notices by the Village Accountant, of course if the Collector or Mamlatdar so directs notices can be dispensed with and attachment of crops or other moveables can be made the first step but generally a notice is first given. The village accountant will prepare them and send them to Mamlatdar for his signature and seal. The Aval karkun may also sign them.

The Mamlatdar receives reports regarding any epidemic disease if it appears and of diseases appearing among any domesticated animals and arranges for medical relief and assistance.

Security to the extent of Rs. 5,000 should be furnished by a Mamlatdar while a Mahalkari with treasury should furnish security to the extent of Rs. 3,000. [ *Administrative Order XII ( see notes to s. 23 infra ) and also Appendix A* ].

13. Whenever it may appear necessary to the Governor in Council, the Collector may [a] appoint The Mahalkari; to a taluka one or more Mahalkaris [a] and, subject to the orders of Government and of the Commissioner, the Collector may [b] assign to a Mahalkari [b] within his local limits such of the duties and powers of a Mamlatdar as he may from time to time his duties and powers. see fit, and may also from time to time direct whether the Mahalkari's immediate superior shall, for the purposes of section 203 [c], be deemed to be the Mamlatdar or the Assistant or Deputy Collector, or the Collector in charge of the taluka.

[d] When a defined portion of a taluka is placed in charge of a Mahalkari, such portion shall be called a mahal [d].

#### Commentary.

The object of the amendment by Act IV of 1913 was to make provision for the appointment of Mahalkari without a defined local charge. Previously it was necessary to go through the formality of constituting a local 'mahal' and the Aval Karkun or such other person had to be notified as a Mahalkari in charge of a section of the Taluka.

Immediate superior of the Mahalkari should be the Assistant or the Deputy Collector in charge of the Taluka.—*G. R. 2658 of 1-5-1906.*

It is the Collector who appoints the Mahalkaris and assigns them such of the duties and powers of a Mamlatdar as he deems fit. (*Ibid*).

A Mahalkari may perform the clerical work of preparing the Irrigation Record of Rights, but cannot be appointed a Canal Officer under s. 76 (1) of the Bombay Irrigation Act, 1879. (*G. R. 7418 of 1918*).

[a—] These words were substituted by Bom. IV of 1913, s. 9 (1), for the words "appoint a Mahalkari to be in charge of a defined portion of a taluka."

[b—] These words were substituted by Bom. IV of 1913, s. 9 (1), for the words, "assigned to him."

[c] Words repealed by Bom. III of 1886 are omitted.

[d—] This paragraph was added by Bom. IV of 1913, s. 9. (1).

An Extra Aval Karkun is frequently treated as such a Mahalkari.—He has power to try Assistance suits under s. 86 (*G. R. 8616 of 1891*) and summary suits under s. 5 of the Mamlatdars' Courts Act, 1906 [*G. Rs. 72 of 1906 and 8260 of 1906*].—*Administrative Order No. X*; see *Appendix A for Rules and Orders*. Powers of Collector under s. 154 of the Code can be delegated to an Extra Aval Karkun either by name or by designation. An Extra Aval Karkun is not a Mamlatdar or a Mahalkari within the meaning of s. 12 or 13 of the Code. The powers of Collector under s. 156 cannot be delegated to him.—*G. R. 6215/28 of 17-11-30*.

14. It shall be competent to a Mamlatdar or Mahalkari, subject to such general orders as may from time to time be passed by the Commissioner or by the Collector, to employ any of his subordinates to perform any portion of his ministerial duties: provided that all acts and orders of his subordinates when so employed shall be liable to revision and confirmation by such Mamlatdar or Mahalkari [a].

Mamlatdar or Mahalkari may depute subordinates to perform certain of his duties.

#### Commentary.

The powers of a Mamlatdar's First or Aval Karkun are regulated by this section. He has been specially given power to sign notices of demand under s. 152 of the Code and may remit the fees if wrongly charged. [*G. R. 5295-(72) and (73) of 1911*]. He is given power to receive Rajinamas under s. 74 (*G. Rs. 1743 of 1889, 7428 of 1905*). He can also levy fees upto a maximum of Rs 15 in each case under s. 135F (*G. R. 7623 of 9-4-24 and 13-4-24*). An Aval Karkun can exercise in the absence of the Mamlatdar any powers specially given by the Rules [but not those which are delegated to a Mamlatdar by the Collector by name (*32 Bom. 279*)] to Mamlatdars. [See *Rules 54, 67-69, 74 (2), 96, 103 and 138 in Appendix A*]. The Aval Karkun is given power to try rent suits up to a limit of Rs 100.—(*G. R. 208 of 1921*). The Collector may also delegate the power to selected Treasury Head Karkuns. [*G. R. (L. C.) 541 of 22-9-1923*].—(*Administrative Order No. XI, see Appendix A for Rules and Orders*).

[a] Words repealed by Bom. Act XVI of 1897 and Bom. IV of 1913, s. 9, (2), are omitted.

**15.** If a Mamlatdar or Mahalkari is disabled from performing his duties, or for any reason vacates his office, or leaves his taluka or mahal, or dies, such subordinate as may be designated by orders to be issued from time to time on this behalf by the Collector, shall succeed temporarily to the said Mamlatdar's or Mahalkari's office, and shall be held to be the Mamlatdar or Mahalkari under this Act until the Mamlatdar or Mahalkari resumes charge of his taluka or mahal, or until such time as a successor is duly appointed and takes charge of his appointment.

**Commentary**

A substitute appointed under this section by the Collector can exercise powers under the Mamlatdars' Courts Act as s. 3 of the amended Act II of 1906 has substituted the words " exercising for the time being " for the words ' ordinarily exercising ' occurring in the old Act.—*Deorao v. Narayandas*, 25 Bom. 325; 36 Bom. 277. (See also the *Commentary on the Mamlatdars' Courts Act, 1906* by the writer.)

**16.** In villages where no hereditary Patel or Village-Accountant exists, it shall be lawful for the Collector under the general orders of Government and of the Commissioner to appoint a stipendiary Patel or a Village-Accountant who shall perform respectively all the duties of hereditary Patels or Village-Accountants as hereinafter prescribed in this Act or in any other law for the time being in force, and shall hold their situations under the rules in force with regard to subordinate revenue officers.

Nothing in this section shall be held to affect any subsisting rights of holders of alienated villages or others in respect of the appointment of Patels and Village-Accountants in any alienated or other villages.

Saving the rights of holders of alienated villages.

Stipendiary Patel and Village-Accountant to be appointed where no hereditary Patel or Village-Accountant exists.

### Commentary.

**Duties and Responsibilities of Village Officers.**—To complete the official chain that connects Government with the ryot, we have now only to mention the village officers, that is, under our Government, the Patel, Koolkarnee or Tulatee, and Mahar. Of these the Patel is the chief, as is shown by the name generally given him in the works of English writers the "headman of the village." Elphinstone says: "The Patels are the most important functionaries in the villages, and perhaps the most important class in the country. They hold their office by a grant from the Government (generally that of the Moguls), are entitled in virtue of it to Lands and fees, and have various little privileges and distinctions, of which they are as tenacious as of their land. Their office and emoluments are hereditary and saleable with the consent of Government, but are seldom sold except in cases of extreme necessity. The Patel is head of the Police, and of the administration of justice in his village but he need only be mentioned here as an officer of revenue. In that capacity he performs on a small scale what a Mamlatdar or a Collector does on a large \* \* \* ; he collects the revenue for Government from all the ryots, conducts all its arrangements with them, and exerts himself to promote the cultivation and the prosperity of the village. Though originally the agent of the Government, he is now looked on as equally the representative of the ryots, and is not less useful in executing the orders of the Government than in asserting the rights, or at least in making known the wrongs, of the people." [See pp. 15-16 of the Report on the Territories conquered from the Paishwa by the Hon. Mount Stuart Elphinstone (2nd Ed. published in 1872)].

The Patel's respectability and influence in his village should be kept up by allowing him some latitude both in the expenditure of the village expenses and in restraining petty disorders within his village. So far from wishing that it were possible for the European officers to hear all complaints on such subjects, I think it fortunate that they have not time to investigate them, and think it desirable that the Mamlatdars also should leave them to the Patels, and thus preserve a power on the aid of which we must in all branches of the Government greatly depend. Zealous co-operation of the Patels is as essential to the Collector of Revenue and and to the administration of civil justice, as to the Police, and it ought therefore by all means to be secured. Too much care cannot be taken to prevent their duty becoming irksome and their influence impaired by bringing their conduct too often under the correction of their superiors. I would lend a ready ear to all complaints against them for oppression I would not disturb them for inattention to forms, and I would leave them at liberty to settle petty complaints their own way, provided no serious punishments were inflicted on either party \* \* \*. If we once destroy our influence over the Patels or theirs over the people we can never recover either." Though it is not absolutely necessary that the Patel should be able to read and write, and frequently not possible to get one who can,

yet whenever practicable this amount of education should be insisted on. (*A Hand-Book for Revenue Officers by Nairne (1894-95; 3rd Ed.)*)

The Village Accountant, keeps the numerous records and accounts of the village. The watan of Koolkarnee does not exist in many villages, and even in some whole districts. In this case the appointment of a stipendiary officer is necessary who is called a Talatee. A greater degree of education and intelligence is expected from Talatees than from Kulkarnees, and they are more completely under the control of their superiors, and for these reasons many district officers prefer the administration of villages by Talatees to that by Kulkarnees. But the Talatee often has three or four villages, or in wild districts even eight or ten, in his charge, and so cannot give the same attention to them, nor can he be expected to take the same interest in them as the hereditary Kulkarnee of a single village often does. Thus the advantages and disadvantages of the two systems are pretty well-balanced.

The office of the Talatee does not unfortunately qualify for pension in the same way as the service of the karkoons does. (Now it is made pensionable; see below).

The Mahar is the menial servant of the village. "The most important revenue duty of the Mahar is to watch over the boundaries both of the village lands and of each individual's field, and to give evidence in cases where they are disputed: he watches over crops, whether cut or growing, as long as they are in the fields. He is also the public messenger and guide".—(*Elphinstone*). In some districts where there are no Mahars the watans are held, and most of the duties performed by men of other castes such as kolis, Ramoshis, etc.

With regard to the collection of revenue it need only be added that the Patel and (in some instances) the Village Accountant, receives it from the ryots. The Accountant enters it in the Government books and gives the ryots their receipts and the Mahar carries it to the Mamlatdar's treasury. Similarly, whatever happens in a village of any nature requiring that it should be made known to Government, it is the Patel who enquires into it and makes the report, which the Koolkarnee writes and the Mahar carries to the Mamlatdar. Returns made from the village to the Mamlatdar (a list of which will be found in Hope's Manual [now the Manual of Revenue Accounts has been revised by Mr. Anderson (1930, 5th Ed.)] are generally in the name of the Patel though the Kulkarnee writes them.

The village system exists most vigorously in the Deccan, where every village has its full complement of Wuttundars. In the Coast districts generally it has not been so well preserved: in Canara there are no hereditary village officers at all; in Gujarat no watans of Mahars and but few of Kulkarnees; in the Khotee districts of the Southern Konkan few Wuttundars of any sort; and in the Northern Konkan no kulkarnees, and but few inferior wuttundars. But everywhere under our Government there is for every village, either hereditary or stipendiary, a Patel, an



accountant, and a menial servant.—p. 177 *A Hand Book for Revenue Officers by Narain (1884-85; 3rd Ed.)*

Since the introduction of the British Rule the power of the Patel is very much weakened by too an great interference of the Mamlatdars. His emoluments are lessened by the abolition of *Saudir Waurid*,

The term 'village officer' includes both Patel (Mukhi) and the Village Accountant (who is otherwise known as *Talathi* in the Konkan and Gujarathi districts, *Shanbhag* in Kanara and *Kulkarni* or *Patwari* in some parts of the Deccan, Khandesh and Southern Maratha Country Districts). In large villages there are separate Patels for police and revenue duties. One or more village accountants are appointed for one village according to size and other circumstances.

**Powers of village officers under Irrigation Act.**—Village officers are invested with powers under s. 9 of the Bom. Irrigation Act, 1879.—*G. N. 10 P. W. D. of 11-5-1887.*

Village officers are indirectly responsible for the preservation of forests as being the property of the Government. Village Officers in forest villages should submit a half yearly report on the state and condition of the trees belonging to Government and in private (Malki) numbers in their respective charges (sazas) to the Assistant Collector in charge of the Taluka who should forward it to the Divisional Forest Officer.—*G. R. 5062 of 19-7-1899.*

If the villages are small, one Talati is appointed for two or more villages which is called his charge or saza. The Collector is authorised to modify such charge (saza) without reference to Government where no additional expenditure is involved (*G. R. 9540 of 1-10-1909*). Their services are now pensionable under Civil Service Regulations. Their pay is personal. A Talathi may be asked to do the Patil's work in addition to his own by an additional payment under Government sanction. (*G. R. 8003 of 1927*).

In alienated villages where there are no hereditary officers stipendiary Patels or Village Accountants are appointed for discharging Government duties. They are not private servants of the Inamdar. It is not competent to a Collector to supersede any Patel whom an Inamdar has a right to appoint. But it is legal to appoint such for purposes which the Inamdar's nominee is not intended to fulfil such as the preparation of vital registers and such matters of general

administration, and an officer so appointed might combine his duties to the alienated village with duties in other villages. A Talati to whose charge (*saza*) an alienated village is attached for such purposes, as in Kolaba is legally competent as a village officer to give when required effect to a decree of the Mamlatdar's Court under Bom. Act II of 1906.—*L. R. 5626 of 9-7-1892.*

It is the duty of village officers to warn landholders of the dates on which instalments of land revenue are due and to use their influence in securing prompt payment without resort to notices of demand etc. (*Rule 119*).

**'Holders of alienated villages or others'; 'or other villages'.—**These terms were used with a view to make it clear that all existing rights were saved and also the rights of those others who were not holders of alienated villages as it was admitted that there might be others than holders of alienated villages who ought to come within the provision.—*Proceedings of the Council of the Governor of Bombay for the year 1877, Vol. XVI, pp. 128-29.*

Village officers should report the need for precautionary measures when they are of opinion that instalments will not be punctually be paid (*Rule 119*).

**The powers to fine.** Village (revenue) officers is delegated to Mamlatdars or Mahalkaris by G. Rs. 2116 of 1883 ; 4100 of 1883 ; 1953 of 1893 ; 5891 of 1903 ; 5595 of 1908 (*See Administrative Order VII in Appendix A*).

**Security** to the extent of Rs. 200 must be furnished by a stipendiary Patel appointed under this section. (*Administrative Order XII; See Appendix A*).

**Annual interview**—Though the presence of the rayats or even of the Patils, is not necessary for the business in hand, still in districts where there is any such custom as that of giving *pan-supari* to the hereditary village officers, it should be maintained; and the annual interview between the Prant and Village officers should not be abandoned—[*See Manual of Revenue Accounts, 5th Ed. (1931)*].

**Register of Births and Deaths** in a village (Village Form XIV) is to be maintained by the Police Patel but if he is illiterate the Talati or some other competent person under the Patel's instructions should write it. The Police Patel is responsible for custody of the Form. When death is the result of violence the Patel should fill up the register according to his judgment, on the facts known within the first few days after death.

In natural deaths the usual causes of death should be noted especially deaths of women during and after child birth. All deaths from epidemics such as cholera, small-pox, plague, measles, must be described.

For Small-Pox, Cholera and Plague there is a special Register and it is called Village Form XIV-B. As soon as an epidemic breaks out the Patel is to obtain information and fill in the columns.

The Police Patel is to keep accounts etc. prescribed in the rules under Cattle Pound Act, 1871 and certain registers of criminal classes in the village as may be directed by the police officers.

At the time of collecting money the Patel and the Talati should ordinarily sit at the Chavdi. When a rayat tenders money to Talati he should fill up the receipt form which should be signed by Patel also. If the Patel is ill or absent unavoidably the receipt should be signed by the Talati only. The Patel is responsible only for the cash handed to him and signed for at the day's close; but if he signs a receipt he is also responsible for the statement that the amount was actually received. But of course he is not responsible for details or for bringing the amount properly into the accounts.

The duty of the Patil in the matter of Record of Rights is to assist the Talati in maintaining the same. He is allowed to sign every entry in the Record at the time it is made by Talati (Kulkarnee) and his local knowledge should be a safeguard against false entries.

It is his duty to serve all notices or requisitions from Talati or Circle Inspector on the persons concerned and to summon the people when they are required to assist in the inspection of the record by superior officers; and he must see that all transactions which may come to his notice are duly recorded by Kulkarnee. Above all he is required to spread among the people a knowledge of the Record of Rights and of their obligations in connection therewith; briefly, that every Kajibedar or tenant of land is obliged—(1) To report the acquisition of any right over land or the extinction of any encumbrance in his favour within three months of the occurrence; (2) To produce within one month when required by Talati any information or documents needed for the compilation or revision of the record.

In the matter of remittances (chalans) i.e. Village Form X. (1) The cash must be counted by Talati in presence of the carriers and Patel and placed in a bag or other package together with a slip showing the amount. (2) The village officers are responsible for seeing that they are trustworthy and fit persons. If the village is near the Taluka and there is not more than one village servant available either Talati or the Patel should accompany him. [See *Manual of Revenue Accounts, 5th Ed. (1831)*]

Rewards such as cash, jewels, or pagad's awarded to village officers are paid from ordinary contingency bills; (see *Manual of Revenue Accounts*).

Village-Accountant to keep such records as he may be required to keep by the Collector; and to prepare public writings.

17. Subject to the general orders of Government and of the Commissioner, the Collector shall prescribe from time to time what registers, accounts, and other records shall be kept by the Village-Accountant [a].

It shall also be the duty of the Village-Accountant to prepare, whenever called upon by the Patel of his village, or by any superior Revenue or Police officer of the taluka or district to do so, all writings connected with the concerns of the village which are required either for the use of Government or the public, such as notices, reports of inquests, and depositions and examinations in criminal matters.

#### Commentary

**The Village Accountant and his duties.**—In his Report on the territories conquered from the Paishwa, Elphinstone writes: "The Coolurnee keeps the numerous records and accounts of the village. The most important are, 1st, the general measurement and description of all the village lands; 2nd, the list of fields, with the name, size, and quality of each, the terms by which it is held, the name of the tenant, the rent for which he has agreed, and the highest rent ever produced by the field; 3rd, the list of all the inhabitants, whether cultivators or otherwise, with a statement of the dues from each, to Government; and the receipt and balance in the account of each; 4th, the general statement of the instalments of revenue which have been realised; and 5th, the detailed account where each branch of revenue is shown under a separate head, with the receipts and balance on each. Besides the public records, he generally keeps the accounts of all the cultivators with each other, and with their creditors—acts as a notary public, in drawing up all their agreements; and even conducts any private correspondence they may have to carry on. He has lands; but oftener fees allotted to him by Government, from which he holds his appointment."

Village Accountant is to keep land revenue accounts and statistical returns and other records as prescribed by the Manual of Revenue Accounts.

Village Accountant not to levy inspection and comparing fees.—No fees shall be charged for any search, or inspection, or

[a] Words repealed by Act XVI of 1895 are omitted.

comparison made or granted by village accountant.—*Rule 142 (9) (b) L. R. Rules (1921)*; [See *Appendix A for Rules*]. Query—Is this dropped through oversight or intentionally in the 1930 Ed. of L. R. Rules?

**Village Accountant to grant certified copies of certain records within ten days.** [See *Rule 137 of the Bom. L. R. Rules (1921) in Appendix A*].

**Duties of village officers in the matter of recovery of land revenue reporting to Mamlatdar under the name of probable defaulters to enable him to take precautionary measures are laid down in Rule 119 of the Bom. L. R. Rules (1921).** [See *Appendix A*].

**All payments of land revenue are ordinarily to be made to the village officers of the village in which such revenue is due.**—See *Rule 114 of the Bom. L. R. Rules (1922)*. [Appendix A]. Payment of land revenue ordinarily to be made to Village Accountant in presence of Patel. (*G. R. 3845 of 1883*).

**All fees where copies are granted by village officers should be retained by them.**—*Administrative Order XLIX*; See *Appendix A*.

**Security to the extent of Rs. 200 must be furnished by a stipendiary village accountant.**—*Administrative Order XII*; See *Appendix A*.

**Breach of certain L. R. Rules (1921) by a village officer or city surveyor (i) by taking or levying fees for preparing a document or a copy or an extract which is to be done without charge, or (b) by charging fee for granting permission to inspect or for making search for records for which no fees are to be charged; (c) by refusing inspection of land records; (d) by refusing to prepare a document or copy or extract or to sign or to certify them as required, (e) by neglecting to make report or perform certain duties required of him are punishable on conviction before a Magistrate.** (*Rule 133*).

**Talatis are executive and not ministerial officers for Civil Service Regulations.**—*G. R. 7268 of 1918*.

**The duties of Talati in giving receipts.**—The Talati shall give a receipt for every sum, however large or small which he receives on behalf of Government. He should not refuse an amount because it is not the full amount due. If the Talati has not got the Receipt Book (*Village Form IX*) with him at the moment when money is offered, he may write a provisional and "Kachha" receipt on a piece of paper he can get, and replace it by a proper receipt from Village Form IX when he gets back to his office.

**The ordinary procedure for the Talati in collecting money is to sit at the chavdi with the Patel and to have in front of him the Land Revenue**

Daftar. When a rayat tenders money the Talati will look up Village Form VIII B and see what is due. He should then collect it or as much of it as he can and immediately fill up the receipt form on both sides, foil and counterfoil, posting the amounts under the proper heads shown; the Patel should also sign. But if the Patel is ill or absent unavoidably a receipt signed by the Talathi only is quite valid. [See *Manual of Revenue Accounts*, 5th Ed. (1931)].

The residence of the Talati is to be fixed by the Prant Officer. (*G. R.* 5497 of 1900).

18. For the purposes of Chapters VIII, IX and X [a] the Governor in Council may appoint such Survey Officers; officers as may from time to time appear necessary. Such officers shall be designated "Commissioner of Survey," "Superintendent of Survey," "Survey Settlement Officers," and "Assistant," or otherwise as may seem requisite, and shall be subordinated the one to the other in such order as the Governor in Council may direct.

Subject to the orders of the Governor in Council the officers so appointed are vested with the their duties and powers. cognizance of all matters connected with survey and settlement, and shall exercise all such powers and perform all such duties as may be prescribed by this or any other law for the time being in force.

#### Commentary

The principle object of survey is the imposition of a field assessment which in its turn is revised and fixed periodically. (*See Ch. VIII for details*).

The main function of the Land Records Department is to maintain all survey and classification records up-to-date, and for this purpose to carry on the field operations preliminary to the incorporation of changes in these records. It has further to organize and carry out rural and city surveys on an extensive scale and maintain them in a state of usefulness. Special surveys for private individuals or bodies such as relate to Inam villages, surveys in connection with Railway or Municipal or Local Board projects, etc. and surveys on behalf of other Departments of Government and Native States are also frequently undertaken. The supervision of the preparation and maintenance of the Record of Rights, the periodical inspections of boundary marks and the introduction of Revenue Settlements complete the function of the Department. It has the following staff:

[a] Words repealed by Bom. III of 1886 are omitted.

A **Director of Land Records** who is also **Commissioner of Settlements** (*Note*:—This post has been kept in abeyance at present. The technical portion of the Director's work has been given to the Superintendent of Land Records, Central Division whose designation is now changed to Senior Superintendent). Four Superintendents of Land Records (including the Senior Superintendents and the one for Sind), District Inspectors, and Cadastral Surveyors,

- (a) Circle Inspectors from District Staff under the control of Collectors over whom Director of Land Records, Superintendents and District Inspectors exercise the functions of inspection and advise only.
- (b) Cadastral Surveyors form the Land Records Staff proper, working under the direct control of the Department of Land Records.

**Unalienated and alienated villages.**—A substantial record of rights and interests in lands has been prepared for all unalienated and many alienated villages throughout the Presidency and steps are being taken to extend it to the remaining alienated villages. The record has proved of great value to the land revenue administration.

**City Surveys** form an important part of the administration of the Land Records Department. Such surveys have now been introduced in Bombay City and in most of the important cities and towns in the Presidency.

**Combined offices** are held by the **Settlement Commissioner and Director of Land Records.**—The present Settlement Commissioner (now the office is held in abeyance) was previously called 'Commissioner of Survey'. After the abolition of old Survey Department Government did not approve of the revival of the old designation of Survey and Settlement Commissioner.

**Director of Land Records** is responsible for the maintenance of records upto date for lands surveyed or assessed by causing to be corrected clerical errors, etc. and by causing to be incorporated in land records all changes in boundaries, areas, tenures and assessments even of sub-divisions of survey numbers, etc. (*Rule 15; see Appendix A*).

**Administration Report** by the **Director of Land Records and Settlement Commissioner for 'Land Records and Survey and Settlement'** (excluding Sind) which is due to Government of India by 1st May is printed along with that of Commissioner in Sind as part III of the Report. As the Divisional Commissioners exclude Survey Settlement and Land Records matters from their Reports the Collectors have to send duplicates of these parts of their Reports to the Director of Land Records direct. (*Note*:—It appears that now the Senior Superintendent is to submit the annual administration report).

The **Superintendent of Land Records** is an Assistant to the Commissioner in matters relating to Land Records and measurement work and the maintenance of the Record of Rights (now in everything except the technical portion of the Director's work which is entrusted to the Senior Superintendent).

2. In each of the districts included in the charge of the Superintendent he will be assistant to the Commissioner and the Director of Land Records (now this office is kept in abeyance *sine die*) in all matters relating to the Survey Records.

3. He will exercise no direct authority over the Circle Inspectors but he is invested with full powers of inspection, and will systematically bring to the notice of the Collector through the Director of Land Records (now through the Commissioner) any deviation from the usages and custom of the Survey Department with the object of preserving uniformity.

4. In order to see that the Circle Inspectors understand their duties he will at every opportunity take a small test of the check exercised by them over the village officers in crops, waste and boundary mark inspection.

He will scrutinize *jantries* circulated for the use of village officers in crop registration and endeavour by their aid to improve the accuracy of crop statistics.

The Superintendent will subject to the control of the Director of Land Records (now to Commissioner) supervise the measurement and assessment of *pot hissas* (sub-divisions of survey numbers) according to rules sanctioned by the Director and take test of the work done by the survey authorities.

6. His duties with regard to District Survey Officers and District Inspectors are :—

First he should make thorough periodical inspection of each district survey office at least once a year spending 10 days at the office to draw up a careful memorandum of all irregularities discovered whether as regards custody, method of correction, issue of maps, extracts, certified copies, collection of fees, etc.

Secondly, he will countersign all *Akarbands* or *kamjasti patras* after signature by the Head-quarter Assistant and the District Inspector and after examination of the correspondence which led to the change in the *Akarband* satisfying himself that the scrutiny of the District Inspector has been thorough and formal *Akarbands* will then be either sent back or if correct be returned for safe custody to the District Survey Office.

Thirdly he will be held responsible that the rules for the conduct of the work at the District Survey Office are in form and in accordance with the recognised practice of the Survey Department and that the members of the office are competent. The nomination of the members of this office will vest in the Superintendent subject to the approval of the Director.

Lastly he will by field test and otherwise *i.e.* by scrutinizing his diaries and examining his office, exercise a strict control over the District Inspector in his professional capacity.

7. His duties towards the Director of Land Records (now towards the Commissioner and Senior Superintendent) will be to keep such records and



supply such information as the Director may require. He will further assist the Director in the inspection and test of village statistics and forms.

R. He will watch the working of the Circle Inspector's rules in each district and will submit through the Collector, from time to time modifications in or additions to the rules now prescribed whether special to suit the conditions of any particular district or general, to the Director who will on approval, pass them on for the sanction of the Divisional Commissioner. He will similarly seek to improve the rules for the guidance of District Inspectors and the District Survey Office.—*Compilation of Rules and Standing Orders relating to the Duties and Supervision of Land Records Establishment in the Bombay Presidency (excluding Sind).*

Superintendent of Land Records has powers and functions similar to those of Prant Officers (Assistant or Deputy Collector) so far as concerns the correction and test of the record and levy of fees (*G. R. 1457 of 1921*). His more general duty is to secure uniformity throughout the division so far as is consistent with local peculiarities and remove difficulties in regard to technical points. He is to suggest to the Collector the issue of orders on important matters. On matters of general interest he will report for orders to the Director (now to Commissioner). The Collector should consult the Superintendent before issuing local orders dealing with the upkeep of the record. He is a Survey Officer and can levy fees under a 13F of the Code. (*G. R. 1457 of 1921*). [*See also Administrative Order No. IX in Appendix A*].

The transfers of jurisdiction involved in territorial changes must be reported to the Superintendent of Land Records (*G. R. 1163 of 1868; G. R. 3215 of 1870*) by copies of the Government Orders.

Survey and Settlement Officer appointed under ss. 18 and 19 of the Code will not be able to exercise powers conferred on a Collector by ss. 132 and 133. But the Collector can delegate them to a Deputy or an Assistant Collector under a 10 (3) of the Code. (*See G. O. 801 of 16-3-1920*).

The District Inspector of Land Records is a revenue officer (*G. R. 1327 of 1912*) and can issue summonses for evidence or documents. He has power to order measurement on the application of parties and to levy fees for it. (*G. R. 1318 of 1920*). He can levy fees under a 13F of the Code. (*G. R. 1457 of 1921*). [*See also Administrative Order No. IX in Appendix A*]. He is empowered to correct mistakes on the spot and to dispose of disputed cases which are entered in the register of disputed cases kept for the purposes of the Record of Rights (*Rule 108*) when it is convenient for him to do so (*G. R. 1377 of 1908*). Ordinarily this latter duty is left to the Mamlatdar. The object of the District Inspector's test is rather to see that the Talati and the Circle Inspector understand their duties and are carrying them out, and to secure uniformity in the manner of writing up of the Mutation Registers, etc. throughout the district. The District Inspector of Land Records is required to show in his diary the number of beira, fees and disputes decided and the number of entries tested by him and the proportion of errors found. He has to prepare agricultural returns showing

irrigated crops, and giving the figures of uncropped area, etc. He has also to prepare quinquennial and decennial returns showing the number of cattle and water sources.

**Supervising Tapedars** in Sind are Survey Officers. (*See Administrative Order IX; Appendix A*).

**19.** It shall be lawful for the Governor in Council to appoint one and the same person, being otherwise competent according to law, to any two or more of the offices provided for in this chapter or to confer upon an officer of one denomination all or any of the powers or duties of any other officer or officers within certain local limits or otherwise as may seem expedient.

**Commentary.**

The offices of the Settlement Commissioner, Director of Land Records and Inspector General of Registration were held by one officer.—*See G. R. 8833 of 18-8-1915*. But now the office of the Settlement Commissioner and Director of Land Records is held in abeyance (*see notes to s. 18*). The duties of the Inspector General of Registration are transferred to the Excise Commissioner while the Photo-Zinco Office is given under the control of the Commissioner C. D.

**Powers of a Survey Settlement Officer** can be conferred upon an Assistant or Deputy Collector or any other officer employed on City Survey work in addition to his own duties.—*See G. N. 1368 of 9-2-1909, in re: survey of lands within the Municipal area of Igatpuri*.

The Collector is empowered within the limits of his district to hear and determine appeals from the decision or order passed by a Survey Officer below the grade of a Superintendent of Survey under ss. 37 (2) and 119 of the Code and s. 50A of the District Municipal Act, 1901. These powers vested in the Collector by G. N. 14447 of 29-11-17 may be delegated to Sub-Divisional Officers. But in these cases an appeal from the decision of these officers will lie to the Collector under s. 203 of the Code.—*G. O. 3092 of 3-11-1920*.

**20.** The appointment of all officers mentioned in sections 4 to 13 and 18 and 19 shall be duly notified.

Certain officers' appointments to be notified,

Any officer appointed to act temporarily for any such officer shall exercise the same powers and perform the same duties as might be performed or exercised by the officer for whom he is so appointed to act.

Acting appointments.

#### Commentary.

Government notifies the appointment of Commissioners, Collectors, Assistant or Deputy Collectors, and Survey Officers mentioned in s. 18 of the Code.

The Commissioner notifies the appointment of Mamlatdars.

The Settlement Commissioner (now the Divisional Commissioner) notifies the appointments of District Inspectors of Land Records.

The Collector notifies the appointment of Mahalkaries.

21. Subject to rules [2] made under section 214, the appointment of all members of the establishments of the undermentioned officers shall, unless otherwise directed by Government, be made by those officers respectively, viz.:—

- the Commissioners,
- the Collectors,
- the Commissioner of Survey,
- the Superintendent of Survey,
- the Survey Settlement Officer.

The appointment of all members of the establishments of all other officers mentioned in the foregoing sections of this chapter shall be made in their respective departments by the Collector and the Superintendent of Survey, provided that it shall be lawful for them to delegate such portion of this power as they may deem fit to any subordinate officer, but subject to the retention of a right of revision at any time of the appointments that may be made by such subordinate officers.

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[2] Words repealed by Bom. IV of 1913, s. 10, are omitted.

**Commentary.**

The Settlement Commissioner and the Director of Land Records corresponds to the Commissioner of Survey.

Superintendent of Land Records corresponds to a "Superintendent of Survey" mentioned in this section.

There is no separate Survey Settlement Officer at present but the work is done by officers of the rank of Sub-divisional Officers, Assistant Collectors or Deputy Collectors whenever appointed by Government.

**Note.**—From 1907 the functions of the Survey Department have been entrusted to the Settlement Commissioner who is also the Director of Land Records. The staff of the Director of Land Records consists of Superintendents, one for each division in the Presidency Proper, a District Inspector for each District and Cadastral Surveyors.

**Circle Inspector** is not a survey officer (*Administrative Order No. IX. See Appendix A for Rules and Orders*).

**In the case of suspensions and remissions** when they are sanctioned the Mamlatdar should cause a copy of that statement to be sent to the village for publication in the Chavdi, etc. Circle Inspectors and Revenue Officers of superior grades should satisfy themselves (by personal observation) that the publication has been made as directed and that any torn or defaced notice has been replaced and (by direct inquiry) that the remissions and suspensions and the Collector's orders under s. 84A of the Code have been read and explained to the villagers. The Circle Inspectors and other Taluka officers must examine not less than 25 per cent. of the rayats' receipts and of the entries in the Tenancy Register within three months after the remissions and suspensions have been declared, giving special attention to receipts and entries affected by the order.

In alienated villages the same procedure should be followed throughout as far as practicable, and in those in which Village Forms VIII-A and B and the Tenancy Register or corresponding forms do not exist, the Inamdar should be invited to provide every inferior holder who is entitled to remission or suspension and whose dues are not collected through the village officers with a combined demand and receipt form showing the remission or suspension sanctioned for each and the balance due for payment. (*Administrative Order XLII. See Appendix A for Rules and Orders*).

**In crop inspection.**—Circle Inspectors and other officers should pay special attention to survey numbers said to be waste; as encroachments and unauthorised occupations will naturally occur chiefly there the Circle Inspector and higher officers should check them and see that possible revenue is not being improperly lost. The Rules of the Land Records Department require Circle Inspector to inspect waste survey numbers exhaustively.

The Circle Inspector is required to see that a Talati under him knows how to write up the Mutation Register. He must take the opportunities afforded by his intercourse with people to see that they understand their obligations in the matter of Record of Rights. It is his duty to attest the correctness of every mutation made, which he will initial and date in token that he is satisfied. If he finds any entry, after inquiry, to be incorrect, he will enter what he finds to be correct not erasing any word or figure but correctly as described in Rule 106. (See Appendix A).

He should ascertain that no entries are omitted which ought to be recorded. There are many ways in which this may be tested. The following tests may usefully be applied :—

- (1) Compare the Death Register with the index of names. The Index should be read out to the villagers so that the decease of any Kabjedars who were residents of other villages may be ascertained.
- (2) Make detailed inquiries on the field of individual Kabjedars regarding each number recorded as being in their possession whether any encumbrance has been added or extinguished, or any other change has occurred.
- (3) Examine Registration Abstracts, Kamjasti Patrahs and Tagai Loan Advances [ *Tagai Form II* ] to see that the changes are duly recorded.
- (4) See that full opportunity to dispute any entry has been given by posting up the notices, and that all disputed cases have been entered in the Takrari Register.
- (5) See that documents obtained from the parties by the Talati under s 135E of the Code are promptly returned.
- (6) Pay special attention to the heirship enquiries and bring to the notice of the Mamlakdar when the number of these in arrears, or the number of dispute cases, is especially large.
- (7) It commonly happens that many Kabjedars of land in one village live in a neighbouring village. When this is the case the Circle Inspector should take the record of the former village when visiting the latter, after giving due notice that he is coming for the purpose.
- (8) Take care that Talati has duly sent copies of all mutations of alienated lands.
- (9) He need not note his orders in the Village Inspection Book for the Talati to carry out subsequently ; but will in all possible cases himself execute them. Only general instructions for guidance and matters he cannot help leaving for the Talati to deal with will be entered.

In testing the Record of Rights, tenancies and crops in the field, the Circle Inspector should take register into his possession and go to the fields and ask the villagers ' whose crop is that ? ' In this way he should verify the entries in the register. No test of mutations or tenancies made in the chavdi is at all comparable with the test made in the field, when the boundaries and differences between the crops at once disclose separate interests and holdings.

When the Circle Inspector finds in the Receipt Book [ *Village Form IX* ] that A has paid money on account of the land of B when A is not a near relation or a recorded tenant of B, he should suspect an omission in the Register of Tenancies or in the record of sales and mortgages, and should enquire.

The Circle Inspector should examine Village Form XVI (Register of Water Sources which is prepared quinquennially) when he examines the crop inspection. This examination is to be finished before 30th April.

**22.** The Governor in Council shall from time to time  
Seals. by notification prescribe what revenue  
officers shall use a seal, and what size and description of  
seal shall be used by each of such officers. [a]

**Commentary.**

**Seals to be used by the following Officers:**

A. (1) Commissioners of Divisions and Commissioner in Sind. (2) Deputy Commissioner in Sind. (3) Collectors. (4) Assistant Collectors and the Colonization Officer, Jamrao Canal. (5) Deputy Collectors (including Treasury Officers of Deputy Collector's grade and Superintendent of Land Records. (6) Mamlatdars. (7) Mahalkaries. (8) Mukhtyarkars (Sind) and the Assistant Colonization Officer Jamrao Canal. (9) Huzur Treasuries C. D. ; S. D. and N. D. (10) City Survey Officers N. D. (11) Resident Magistrates of Bandra and Borsad invested with powers under Mamlatdars' Courts Act, 1906. (12) District Inspectors of Land Records. (13) Assistants in charge Head Quarter Offices, Land Records Department; Dharwar and Poona and in the Northern Division when appointed.

B. The seals shall be circular and of the following dimensions and material :—

- (a) Silver seals of which the diameter should be  $1\frac{3}{4}$  inches for the officers named in (1) to (3) hereinbefore mentioned.
- (b) Seals of brass, copper or gun metal (*whichever may be the most durable material*) of which the diameter should be  $1\frac{1}{2}$  inches for the officers named in (4) and (5) hereinbefore mentioned (except Huzur Treasury Officers)—see D (below)
- (c) Seals of brass, copper or of Gun metal (*whichever may be the most durable material*) of which the diameter should be one inch only for the officers named in (6) to (12) hereinbefore mentioned.

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[a] Words repealed by Act XVI of 1895, are omitted.

C. Pending the preparation of the above mentioned seals, the seals hereto used shall continue to be used by such officers herein-before mentioned as have used them.

D. It has been directed that the diameter of the seal of the Huzur Treasury Officers shall be one inch instead of one and a half inch [*See B (b) of the preceding order*].

(G. N. No. 9159 dated 18-11-1896; G. N. No. 10477 dated 21-12-1896; G. N. No. 3717 dated 17-5-1897; G. N. No. 3908 dated 5-6-1899; G. N. No. 5219 dated 25-7-1901; G. N. No. 5332 dated 30-6-1905; G. N. No. 4602 dated 6-5-1908.)

The practice of using metal seals not only for sealing purposes *i. e.* when wax is to be impressed but for all purposes should be continued.—*G. R. 4764/24 of 23-12-1925.*

### CHAPTER III.

#### OF THE SECURITY TO BE FURNISHED BY CERTAIN REVENUE OFFICERS AND THE LIABILITY OF PRINCIPALS AND SURETIES.

**23.** It shall be lawful for Government to direct that such revenue officers as it deems fit shall, previously to entering upon their office, furnish security to such amount as Government may in each case deem expedient, either by deposit of Government paper duly endorsed, accompanied by a power to sell, or in the form contained in Schedule B [a].

The amount for which such security shall be furnished may be varied, from time to time, by order of Government, which shall also determine the number of sureties to be required when security is taken in the form of Schedule B.

#### Commentary.

The Commissioner in Sind is given under Act V of 1863, all the powers of Government under s. 23.

[a] Words repealed by Box. III of 1935 are omitted.

The amount of security to be furnished by Revenue Officers previously to entering upon their office as given in Administrative Order XII is as follows :

	Rs.
1. Head Accountants ... ..	5,000
2. Mamltdars ... ..	3,000
* 3. First Karkuns to Mamltdars (G. N. 733—2-3-20).	1,000
4. Special Head Karkuns for payment of Military pensions (R. 8436—14) ... ..	500
5. Treasury Nagdi Karkuns (to Mamltdars and Mahalkaris) (F. 520—21) ... ..	3,000
6. Mahalkari with treasury (F. 520—31-8-21) ...	1,000
7. First Karkun to Mahalkari with treasury (F. 38—21) ... ..	1,000
8. Shroff Karkuns to Mahalkari of Kohistan and Keti Bandar (R. 3608—06) ... ..	500
9. Mahalkari without treasury ... ..	80,000
10. Treasurer at Poona ... ..	20,000
11. Treasurer at Kanara, Kolaba (R. 10466—06) and Ratnagiri ... ..	40,000
12. All other Treasurers ... ..	1,000
13. First Karkuns to Treasurers of Kanara, Kolaba and Ratnagiri ... ..	2,000
14. All other First Karkuns to Treasurers ... ..	2,000
15. Second Karkun to Poona Treasurer ... ..	1,000
* 16. Karkuns other than any of the foregoing employed in Huzur Mamltdars' or Mahalkaris' (R. 3608—06) offices on Shroff's work ...	500
17. Karkuns for payment of Military pensions (G. R. 8436 of 1914) ... ..	1,000
18. Supervising Tapedars in Sind (R. 7568—12) ...	1,000
19. Tapedars in Sind ... ..	200
* 20. Stipendiary Patels or Village Accountants appointed under s. 16, and Japtidars appointed by the Collector to manage attached Khoti villages (R. 3451—08, 8811—1916) ... ..	200
21. Karkuns or Clerks who write the registers of copying, comparing, search and inspection fees and of bhatta and permanent advances and take charge of moneys deposited for those purposes in Revenue Courts ... ..	200



	Rs.
22. Headquarter Assistants in Survey Offices (R. 2245—99) ... ..	200
23. Accountant in the office of the Commissioner in Sind (R. 7978—15) ... ..	1,000
24. City Maintenance Surveyors (R. 4737 of 5-5-22...	200

\*In the case of Officers specified in Nos. 3 and 16 the amount of security to be furnished may be raised by the Commissioner to such amount not exceeding Rs. 5,000 as he thinks fit ; and in No. 20, he may exempt in special cases, *e. g.* Khoti villages (*G. R. 39 of 1917*).

Security is to be furnished before entering on appointment whatever may be the probable duration of his tenure thereof, to the amount specified above or to such smaller amount as the Collector may, in the particular case, deem reasonable and sufficient.—*Administrative Order No. XIII (ibid)*; Number of sureties may be one or more, if the amount of security does not exceed one thousand rupees ; otherwise shall be not less than two.—*Administrative Order No. XIV, (see Appendix A for Rules and Orders.)*.

Note.—One Government Servant (exception is made in the case of retired Government Servants and servants of Local Bodies) should not be allowed to stand as surety for another for the purposes of this section (*G. R. 6064/28 of 1-11-1930*). But in Sind a Government Servant serving in one Department should be permitted to stand surety for a Government Servant serving in another department ; provided, in the case of Hindus that they are not members of the same joint family.

For Treasurer's security bonds under the Civil Account Code there are special forms. But when they are acting as revenue officers it is preferable to take their securities under these rules (*G. R. F. D. 3697 of 1890*) *vide* form schedule B of the Code (*F. D. 4436 of 1882*) but when Government paper is deposited the form is prescribed in *G. R. F. D. 3739 of 1882*.

Duties of heads of offices in respect of securities furnished or to be furnished by officers serving in the office are described in Administrative order XV ; *See Appendix A*.

No Karkun should ordinarily have in his custody more than the amount for which he has given security : surplus should be placed in the treasury (*G. R. 4431—1901*)—*Administrative Order No. XV, (ibid)*.

A register of securities is to be kept by Collector for scrutiny by the Commissioner during his tour. He is to submit annually to the Commissioner, on 1st October, a certificate that all such securities are good and sufficient.—(See *Administrative Order XVI in Appendix A*.)

Expired bonds are preserved till there is no possibility of their being of use (*G. R. F. D. 3449 of 1990*). These bonds are exempt from stamp duty (*B. G. G. Pl. I p. 493 of 1881 and p. 1808 of 1889*).

British India—The property pledged (*Administrative Order XV*) must be in British India (*G. R. 2192 of 1900*).

**24.** The Collector or the Superintendent of Survey may, at any time after security has been given by a revenue officer subordinate to him, if it appears to him that the security taken is unsatisfactory, or if the officer is transferred to an office for which larger security is required, or for other sufficient reason, demand fresh or additional security, and in case of the officer failing to give such security within one month after its being required of him may suspend or dismiss him: provided always that no greater security shall be demanded than is required by the orders of Government under the last preceding section.

#### Commentary.

**Notes.**—If for some other appointment he has furnished security of a less amount, all that is required is to raise the amount to cover the deficit. The discretion given to the Collector is intended to cover short acting appointments or other special circumstances. Ordinarily additional security is not required from an officer who has already given a smaller security when appointed to an office which he is not likely to hold more than three months.

**25.** The Collector or the Superintendent of Survey or any other officer deputed by the Collector or Superintendent of Survey for this purpose shall, in all cases in which he may have a claim on any revenue officer or on any person formerly employed as such in his department

**Demands for money papers, etc., to be made known in writing to the person concerned;**

or district for public money or papers or other Government property, by writing under his official seal, if he use one, and signature, require the money, or the particular papers or property detained to be delivered either immediately to the person bearing the said writing, or to such person on such date and at such place as the writing may specify.

If the officer or other person aforesaid shall not discharge the money, or deliver up the papers or property as directed, he may cause him to be apprehended, and may send him with a warrant, in the form of Schedule C, to be confined in the civil jail till he discharges the sums or delivers up the papers or property demanded from him:

who may be arrested and confined in jail if he fail to produce them.

Provided that no person shall be kept in confinement for more than a month.

Provided that no person shall be detained in confinement by virtue of any such warrant for a longer period than one calendar month,

#### Commentary.

Notices and Warrants under this section as well as under s. 26 of the Code can be issued by Mamlatdars and Mahalkaris.—G. R. (R. D.) No. 5295 of 1-6-1911.

Superintendent of Survey referred to here corresponds now to the officer styled as Superintendent of Land Records.—See notes to s. 18; *supra*.

Village Officers.—See notes under the next section.—i. e. s. 26 and also under s. 3 (1) at p. 10 ante.

26. The Collector of his own motion, if the officer or other person is or was serving in his department and district, and upon the application of the Superintendent of Survey, if such officer or person is or was serving in the survey department in his district, may also take proceedings to recover any public moneys due by him in the same manner and subject to the same rules as are laid down in this Act for the recovery of arrears of land

Public moneys may also be recovered as arrears of revenue;

and search warrant may be issued for recovery of papers or property.

revenue from defaulters, and for the purpose of recovering public papers or other property appertaining to Government may issue a search warrant and exercise all such powers with respect thereto as may be lawfully exercised by a Magistrate under the provisions of Chapter VII of the Code of Criminal Procedure, 1898.

It shall be the duty of all persons in possession of such public moneys, papers or other property appertaining to Government to make over the same forthwith to the Collector, and every person knowing where any such property is concealed shall be bound to give information of the same to the Collector.

Persons in possession of public moneys, etc., bound to give them up.

#### Commentary.

Public monies due by defaulters to be recovered as arrears of land revenue but not by forfeiture of his lands because lands can be forfeited only if arrears of land revenue are due in respect of them.—(See s. 153 of the Code and notes thereunder).

Hereditary Village Officers appointed or officiating under the provisions of Bombay Hereditary Offices Act, or the Matadars Act, 1889 are revenue officers for the purposes of ss. 25 and 26.—See s. 3 (1) of the L. R. Code and notes at p. 10 ante.

Records prepared by an hereditary officer in pursuance of the duties of his office, or by order of a superior officer, or of the present or former Government are the property of Government and the Mamlatdar or Mahalkari may enforce their production in accordance with the provisions of ss. 25 and 26 of the Code.—See s. 70 of the Bombay Hereditary Offices Act, 1874, as amended by Act III of 1915.

Notes.—In Inam villages the production may be legally enforced under s. 70 of Act III of 1874 of papers unconnected with the private rights of holders but affecting the general administration of Government, e. g., Registers of Births and Deaths, etc. (G. R. No. 5383 of 1889). The rights of holders of Inam villages are limited by the rights of Watandar village officers under s. 85 of the Code. The accounts, therefore, which the Watandar Village Officers keep of

demands and collections of Inamdars' revenue are not exempt from the operation of s. 70, even though the rights and interests of Government are not concerned.—*G. R. 8286 of 1913.*

**Notices and Warrants** under this section can be issued by Mamlatdars and Mahalkaries.—*G. R. 5295 of 1-6-1911.*

**27.** The surety or sureties of such officer or other person as is aforesaid, who may enter into a bond, in the form of Schedule B, shall be liable to be proceeded against jointly and severally in the same manner as his or their principal is liable to be proceeded against, in case of default, and, notwithstanding such principal may be so proceeded against :

provided always that in any case of failure to discharge or make good any sum of money due to Government or to produce any property of Government of ascertained value no greater sum than is sufficient to cover any loss or damage which the Government may actually sustain by the default of the principal, shall be recovered from the surety or sureties as the amount which may be due from such surety or sureties under the terms of the security bond executed by him or them:

And provided also that the said surety or sureties shall in no case be liable to imprisonment in default of producing public papers or property, if he or they pay into the Government treasury the whole or such part of the penalty named in the bond as may be demanded.

**28.** If an officer or other person as aforesaid or his surety or sureties against whom a demand is made, shall give sufficient security in the form of Schedule D, the Collector shall cause such officer or surety if in custody

Surety to be liable in the same manner as principal.

Sureties not liable to imprisonment, if penalty be paid.

An officer or surety in jail may, by furnishing certain security, obtain his release.

to be liberated, and countermand the sale of any property that may have been attached, and restore it to the owner.

**29.** The liability of the surety or sureties shall not be affected by the death of a principal, or by his appointment to a situation different from that which he held when the bond was executed, but shall continue so long as the principal occupies any situation in which security is required under section 23, and until his bond is cancelled.

*Liability of surety not affected by death of principal or by his taking a different appointment.*

The heirs of a deceased officer shall be liable by suit in the Civil Court for any claims which Government may have against the deceased, in the same way as they would be for similar claims made by an individual.

*Liability of heirs of deceased officer.*

#### Commentary

The heirs will be liable only to extent to which the property of the deceased has come into their hands.

**30.** Any surety, whether under a separate or joint bond, may withdraw from his suretyship at any time on his stating, in writing, to the officer to whom the bond has been given, that he desires so to withdraw; and his responsibility under the bond shall cease after sixty days from the date on which he gives such writing as to all demands upon his principal concerning moneys, papers or other property for which his principal may become chargeable after the expiration of such period of sixty days, but shall not cease as to any demands for which his principal may have become liable before the expiration of such period, even though the facts establishing such liability may not be discovered till afterwards.

*How surety may withdraw from further liability.*

**CHAPTER IV.**  
**OF CERTAIN ACTS PROHIBITED TO REVENUE**  
**OFFICERS, AND OF THEIR PUNISHMENT FOR**  
**MISCONDUCT.**

**31.** No revenue officer shall, except with the express permission of Government, or of the Collector, or Superintendent of Survey to whom he is subordinate,—

**(1)** engage in trade, or be in any way concerned, directly or indirectly, either as principal or agent, in any commercial transaction whatever;

**(2)** purchase or bid either in person or by agent, or in his own name or in the name of another, or jointly or in shares with others, for any property which may under the provisions of this Act or of any other law for the time being in force be sold by order of any revenue or judicial authority in the district in which such officer is at the time employed.

**(3)** hold directly or indirectly any farm or be in any way concerned on his private account in the collection or payment of revenue of any kind in the district in which he is at the time employed;

and no revenue officer shall

**(4)** derive either for himself or for any other individual any profit or advantage beyond his lawful salary or emolument from any public money or property with the collection or charge of which he is entrusted or connected; or

(5) demand or receive under the colour or by the exercise of his authority as such revenue officer, or by way of gratification or otherwise, or knowingly permit any other person to demand or receive on his behalf any sum or any consideration whatever over and above what he is legally entitled to demand or receive under the provisions of this Act or of any other law for the time being in force.

Not to make or receive undue executions or presents.

#### Commentary

**Hereditary Village Officers** are not revenue officers for the purposes of this section. But due notice should be taken by Collector and their Assistants in case of complaint from parties injured and inflict proper punishments in any cases proved against them.—*G. R. 158 of 12-1-1860; See Standing Orders of Government in R. D. Vol. II p. 953 (1902 Ed.)*.

**Talaties detected to be engaged as money lenders** in their villages should at once be dismissed.—*G. R. 4120 of 15-3-1878; See Standing Orders of Govt. in R. D. (Ibid)*.

**Stipendiary village accountants** are governed by this section. They should not be permitted to engage in money lending or to purchase lands at public sales. They may hold hereditary lands and there is no objection absolutely to their holding of lands purchased otherwise than at a public sale. If the position of a Talati as a holder of land in his own charge, taluka or district conflicts in any case to the proper performance of his duty as a village accountant, he should be transferred.—*G. R. 5635 of 31-7-1883; See Standing Orders of Govt. in R. D. (Ibid)*.

**Any paid servant of Government accepting a commission** for taking evidence should hand over forthwith to his superior officer or the neighbouring treasury any and every sum which he may receive as a fee for his service.—*G. R. 2551 of 11-5-1889 and G. R. 4893 of 9-7-1889*.

**Annual declaration of all landed property** is required for the purposes of s. 31 (2) from all officers.—*G. R. 3000 of 1903; See Administrative Order XVI; (Appendix A.)*



**Government servants are to be considered whole time employees with certain exceptions and their leisure must be held to be no more than is actually necessary for recreation.—G. R. 1039 of 2-11-1906.**

**Courtesy, tact, and good temper are necessary qualifications.**—The paramount necessity of displaying the above qualities in their (officer's) dealings with the people with whom they (officers) are brought into daily contact has been more than once impressed upon all officers, European and Indian both by Local Governments and by the Government of India and must be known to all.

It is absolutely necessary that officers should display these qualities in their dealings with the people with whom they are brought into daily contact. The lack of these qualities constitutes so serious a disqualification that manifestation of grave defects of temper and repeated loss of self-control should be regarded as constituting inefficiency.—G. R. 6275 of 26-8-1913.

**Privileges of Revenue Officers.**—Along with disabilities there are certain special privileges enjoyed by Revenue Officers, for instance, Revenue Officers are not liable to be sued for damages in any Civil Court for any act *bona fide* done or ordered to be done by them as such in pursuance of the provisions of any law in force.—See s. 6 of Act X of 1876.

Previous to bringing any suit against Government for any act or omission the plaintiff has to show that he presented all appeals in time to higher authorities.—See s. 11 of Act X of 1876 and *Ranchod v. Secretary of State for India*, 22 Bom. 173 (1896).

Previous notice is required to be given under s. 80 of the Civil P. Code, 1903 before instituting a suit against the Secretary of State for India or a public officer for acts done by him in that capacity.

**Government's right to refer to High Court.**—Government has power to refer questions to High Court on which they desire to have its decision even during the course of a trial or investigation of suit, claim or objection etc. (s. 12, *ibid*). A Subordinate Judge of the 1st class (and not a Court of Small Causes) only should receive and entertain and hear suit against an officer of Government or Secretary of State. (S. 32 of the Bom. Civil Courts Act, 1889 as amended by Bom. Act VI of 1926).

**The Government Servants' Conduct Rules** apply to every person holding any civil office, other than a nominal one, under Government (*Rule 1 of Govt. Servants' Conduct Rules*). He is not to accept (a) directly or indirectly even

on behalf of another person, or (b) permit a member of his family so to accept, any gift, gratuity or reward or offer of gift, gratuity, etc. from an Indian. The head of a Government or Administration or a Political Officer may accept a ceremonial gift (which is to be deposited with Government) from an Indian Prince or Chief on certain conditions. Government servant may accept flowers or fruit or similar articles of trifling value. A wedding present of reasonable value may be accepted by Government servant or allowed to be accepted by a member of his family from a personal friend. A gift of substantial value may be accepted if absolutely necessary but should be delivered to Government unless otherwise directed. But all these practices are to be discouraged as far as possible (*Rule 2; ibid*).

Rule 3 states that a Government servant may not receive complementary or valedictory address, accept any testimonial presented to him or attend a public meeting or entertainment held in his honour and he may not take part in similar acknowledgment of services of another Govt. servant, etc. This does not apply to the Head of Govt. or Administration so far as an address is concerned. At the request of a public body a Govt. servant may sit for a portrait etc. when the same is not to be presented to him. He may take part in raising funds (but not to solicit subscriptions) to be spent for educational or charitable or such other public purposes in honour of another Government servant. Rule 4 prohibits the acceptance (except with previous sanction) of a trowel, key or other similar article at a ceremonial function such as laying of a foundation or opening of a public building, etc. This does not apply to the head of a Government or Administration or Commissioner in Sind or a Judge of a High Court, etc.

A Government Servant may not without previous sanction accept any subscription or such other pecuniary assistance for any purpose whatever, from an Indian Prince or Chief, etc. (*Rule 6; ibid*). Resignation of a Government servant is not to be obtained for the benefit of others by offer of money etc. (*Rule 7; ibid*). No gazetted officer should enter into lending or borrowing transaction with a person having immoveable property within his jurisdiction. But this does not apply to ordinary business with a Joint-Stock Bank or a firm. In the case of non-gazetted officers the restriction may be released at the discretion of the head of the office. Certain exceptions are made in the case of dealings with Co-operative Societies [*Rule 8*]; see also the *Hand Book of Co-operation for Societies in Bombay and Sind by the writer*. A Government servant of gazetted rank before entering into transaction (unless it is done *bona fide* with a regular dealer) of purchase or sale etc. of moveable or immoveable property with an Indian residing or having property within his jurisdiction should report to Commissioner or such other officer appointed by Government and take his orders in the matter. This does not apply to a gazetted officer who is about to leave the station (*Rule 9*). Neither an I. C. S. Officer nor a Military Officer may hold or acquire immoveable property in the territory of an Indian Prince or Chief. An I. C. S. Officer or a Military Officer who is not a native of India should not directly or indirectly hold or

acquire immovable property in a province where he is serving, etc. This does not apply to a native of India in so far as he may continue to hold immovable property already acquired, etc. He may acquire such property by succession, inheritance, etc. and with previous sanction may purchase or acquire by gift any immovable property. But he may not be allowed to serve in that district (*Rule 10*). *Note*.—This rule does not apply in case of immovable property acquired for residential purposes. Government servant or candidate must make periodical declaration of immovable property and district in which it is held by him, his wife, member of his family and dependants (*Rule 11*). Government servant is not to invest other than in immovable property allowed by Rule 10 or so as to make it possible to be influenced or embarrassed in his duties. He may hold shares in a company outside his district. Under certain conditions and with some reservations he is allowed to invest in a Co-operative Society. (*See Hand Book of Co-operation for Societies in Bombay and Sind by the writer*). (*Rule 12*). He should not speculate or purchase grant of land containing minerals with a view to dispose of the same to companies or purchase and sell notoriously fluctuating securities (*Rule 13*). He may not take part in the promotion, registration or management of Bank or Company, etc. except under certain conditions (*Rule 14*). He is not to engage in trade or undertake any employment other than public duties; occasional work of literary or artistic character may be undertaken so long as it is not considered undesirable by Government. Secretaryship of a club is allowed to be taken. (*Rule 15*). An involunt Government servant or one whose moiety of salary is constantly attached or is under attachment for two years or for a large sum is liable to dismissal particularly if he becomes thereby inefficient or is hopelessly involved or it is undesirable to retain him (*Rule 16*). Government servant may not communicate official documents or information to servants of other departments, to press or private individuals unless empowered so to do (*Rule 17*). He is not to participate in editing or management of newspapers or other periodicals; and with permission only if it is of non-political character. (*Rule 18*). But he may contribute anonymously (subject to conditions of Rule 17) to press. But such discussion should be temperate, reasonable and conducive to public interest. However, Army Regulations in force have to be observed. A Government servant may not publish in his name any statement or opinion which may embarrass Government so far as public is concerned. So also no publication of information or opinion should be expressed upon matters relating to foreign countries so as to embarrass the relations between this and the other country. (*Rule 20*). He may not give evidence before a public committee without previous permission and if allowed he is not to criticise Govt. policy or their decisions. This does not apply to Statutory Committees or judicial inquiries. (*Rule 21*). He is not to take part in political agitation or subscribe in aid of it or attend political meetings of certain types without permission. He may for the purpose of removing misapprehensions, correcting misstatements and refuting disloyal and seditious propaganda defend and explain in public the policy of Government; but he may not make com-

munication to press in regard to policy or acts of Government without sanction. (*Rule 22*). Whole time Government servant is not to interfere by canvassing or using his influence in an election to legislative Councils. But he may record his vote according to rules. Similarly a whole time Government servant should refrain from taking part in elections to municipal committees, district boards, local boards, etc. unless they themselves are allowed to stand as candidates. He is also not allowed to stand for election without previous permission (which is to be rarely given) to Local Bodies. To issue address to electors or publicly to announce himself or allow it to be done through others as candidate or prospective candidate for election is taking part in it. (*Rule 23*). He is not to have recourse to Court or to Press for the vindication of his public acts or character from defamatory attacks without permission of Government. This does not apply to vindication of private acts or character. (*Rule 24 of the Govt. Servants conduct rules*).

**32.** Subject to rules [a] made under section 214, all revenue officers may be fined, reduced, suspended, or dismissed for any such offence as is described in the last preceding section, or for any breach of departmental rules or discipline, or for carelessness, unfitness, neglect of duty or other misconduct by the authority by whom such officer is appointed; or by any authority superior to such authority; and this power may be delegated by such first-mentioned authority, in whole or in part, to any subordinate officer on the same condition that the power of appointment may be delegated under section 21 :

A revenue officer whose monthly salary exceeds Rs. 250, to be fined, etc., only by order of the Governor in Council.

Provided that, excepting Mamlatdars, no revenue officer, whose monthly salary exceeds Rs. 250, shall be fined, suspended, reduced, or dismissed except by order of the Governor in Council.

**Commentary.**

The maximum period for which revenue officers may be suspended under this section should be fixed at six months. It appears hardly practicable to fix any maximum period for suspension pending or during enquiry into alleged or suspected misconduct, but in cases where an officer is suspended the enquiry should be carried out as promptly and speedily as possible and no necessary delay

[a] Words repealed by Bom. IV of 1913, s. 10, are omitted.

should be permitted to occur and when it is not completed within two months from the date of the suspension of the official the Collector should monthly report to the Commissioner the cause of delay till the case has been disposed of—*G. R. No. 9981 of 19-12-1884*; *Standing Orders of Government in R. D. Vol. II p. 954, (1902)*.

The power of fining village officers (stipendiary as well as hereditary) may be delegated to a Mamlatdar (as revenue officers) only. Under the Village Police Act VIII of 1867 the power of fining a Police Patel is limited to First Class Magistrates by the Collector under this section or under s. 84 of Bombay Act III of 1874, subject to a right of revision and subject to any limitation, laid down by any law or rule which the Collector may think fit to impose.—*G. R. 2116 of 13-3-1883 and G. R. 4100 of 30-5-1883*; *Standing Orders of Government in R. D. Vol. II p. 953 (ibid)*.

Subject to the above conditions the Collector is authorised to delegate to any Mahalkari the power to fine hereditary village officer in sums not exceeding Rs. 2 (*G. R. No. 5891 of 23-8-1903*.)

The power to punish village officers with fine may be delegated to Sub-divisional officers in accordance with the orders contained in *G. R. No. 2116 dated 13-3-1883 and G. R. No. 5891 dated 28-8-1893* save in respect of stipendiary village accountants organised in a graded service in whose case the modification of existing orders is not considered necessary.—*G. R. 10431 of 14-11-1912*.

Fine should not be resorted to freely, but should be employed as a punishment to be inflicted on the spot and in public, in case of wilful slackness and disobedience on the part of village officers.—(*ibid*).

The several punishments of dismissal, discharge or removal when to be inflicted—The punishment of dismissal should be considered to be a bar to re-employment in Government service and should be reserved for serious cases. Unless serious cases of actions or omissions showing unfitness to perform the duties of a particular office, or of a particular character and where it is not thought necessary to bar re-employment under Government the term "removal" or "discharge" should be used.—*G. R. 2749 of 19-5-1905*.

**33.** When any revenue officer passes an order for fining, reducing, suspending, or dismissing any subordinate officer, he shall record such order or cause the same to be recorded together with the reasons therefor in writing under his signature in the language of the district or in English.

All such orders to be made in writing.

**Commentary.**

Inquiries into misconduct of subordinates should be made in a judicial form but all evidence conducing to moral conviction should be admitted. It should be noted in whatever form it is received and explained to the person charged. It may preferably be recorded in the form of questions to which the person charged should be required to give specific answers.—*G. R. 7170 J. D. of 16-10-1883.*

In cases of dismissal a statement showing briefly but clearly the charges brought against the official, the evidence supporting those charges, the motives which are supposed to have influenced him, and the opinion of the dismissing authority on each charge, should be recorded.—*G. R. 1549 of 9-5-1883.*

The grant of confidential letters to accused persons in conducting inquiries is open to objections.—*G. R. 3780 of 20-5-1904.*

**34.** No fine inflicted under the foregoing provisions shall in any case exceed the amount of two month's pay of the office held by the offender at the time of the commission of the offence.

Fine not to exceed two months' pay ;

All fines inflicted under this chapter may be recovered from the officer's pay or, if necessary, may be realized in the same way as arrears of land revenue are recoverable under this Act.

**35.** If the Collector or Superintendent of Survey whether of his own motion, or on appeal from a subordinate officer's order, pass an order for fining, reducing, suspending or dismissing any revenue officer subordinate to him whose monthly salary does not exceed thirty-five rupees, or

Appeals.

if any authority superior to the Collector or Superintendent of Survey pass any such order against a revenue officer whose monthly salary does not exceed ninety-nine rupees, no appeal shall lie against such order, except and provided always that at least one appeal shall lie against every order made, of his own motion, by any authority other than Government, for dismissing an officer whose monthly salary exceeds thirty-five rupees.

And no appeal shall lie against any order for inflicting a fine not exceeding one rupee.

#### Commentary.

Notes.—Owing to revision of pay since 1921 the limits of pay mentioned above require to be altered by legislation.

An officer's liability to criminal prosecution not affected by this Act.

**36.** Nothing in this chapter shall affect any officer's liability to a criminal prosecution for any offence with which he may be charged.

Any officer

Officer may be suspended during trial, and subsequently suspended, reduced or dismissed.

subjected to such prosecution may be suspended pending the trial, and at its close may, upon a consideration of the circumstances brought to light during its course, be suspended, reduced, or dismissed by any competent authority, whether

he have been found guilty or not.

### CHAPTER V.

#### OF LAND AND LAND REVENUE.

**37. [a] (1)** All public roads, lanes and paths, the bridges, ditches, dikes, and fences, on, or beside, the same, the bed of the sea and of harbours and creeks below high-water-mark, and of rivers, streams, nullas, lakes, and tanks, and all canals,

All public roads, etc., and all lands which are not the property of others, belong to Government.

[a] This was originally a 37. It was numbered sub-section (1) of section 37 by Bom. XI of 1912, s. 1.

and water-courses, and all standing and flowing water, and all lands wherever situated, which are not the property of individuals, or of aggregates of persons legally capable of holding property, and except in so far as any rights of such persons may be established in or over the same, and except as may be otherwise provided in any law for the time being in force are and are hereby declared to be, with all rights in or over the same, or appertaining thereto, the property of Government ; and it shall be lawful for the Collector, subject to the orders of the Commissioner, to dispose of them in such manner as he may deem fit, or as may be authorized by general rules sanctioned by Government, subject always to the rights of way, and all other rights of the public or of individuals legally subsisting.

*Explanation.*—In this section “high-water-mark” means the highest point reached by ordinary spring-tides at any season of the year.

[a] (2) Where any property or any right in or over any property is claimed by or on behalf of Government or by any person as against Government, it shall be lawful for the Collector or a survey officer, after formal enquiry of which due notice has been given, to pass an order deciding the claim.

[a] (3) Any suit instituted in any Civil Court after the expiration of one year from the date of any order passed [b] under sub-section (1) or sub-section (2), or, if one or more appeals have been made against such order within the period of limitation, then from the date of any order passed by the final appellate authority, as determined according to section 204, shall be dismissed (although limitation has not been set up as a defence) if the suit is brought to set aside

[a] These sub-sections were added by Bom. XI of 1912, s. 1.

[b] Words repealed by Bom. II of 1919, Second schedule, are omitted.



such order or if the relief claimed is inconsistent with such order, provided that in the case of an order under sub-section (2) the plaintiff has had due notice of such order.

[4] (f) Any person shall be deemed to have had due notice of an enquiry or order under this section if notice thereof has been given in accordance with rules made in this behalf by the Governor in Council.

#### Commentary.

**Old law.**—*Bom. Reg. III of 1914* had stated that the ruling power of the provinces subject to the Govt. of Bombay had, in conformity to the ancient usages of the country, reserved to itself and had exercised the actual proprietary rights of lands of every description.

*Bom. Reg. XVII of 1927* in s. 7 laid down :—

**First.**—Uncultivated land not exempt from assessment may be disposed of, with the Collector's sanction, for the benefit of the revenue.

**Second.**—Provided however, that such disposal shall not in any way affect the claim to preference, the right of occupation, or any other rights which individuals may have over such land, as the same may, when contested, be established in a court of justice.

**S. 11 of the Act for City Surveys** and amendment of *Bom. Survey and Settlement Act (IV of 1934)* stated as follows: "In towns and cities all roads and lanes, and all open spaces not in the occupation of any person, and not proved to be the property of any person, vest in Govt. and it shall be lawful for the Collector subject to the orders of the Revenue Commissioner to dispose of them in such manner as may be authorised by general rules sanctioned by Govt. with due regard to common and pasture rights and not so as to deprive any householder of a thoroughfare to his house without reasonable compensation." The Hon. Mr. Mandlik and other Indian members objected to this section being introduced in the Code. They said: This section contains a declaration an enactment of law, which has hitherto had no existence and although some portions of it may be said to be of the nature of truisms as declaring that property which does not belong to any private individual belongs to the State, still, as the section stands, it throws upon holders of land the *onus* of proving that the property in their possession legally belongs to them, and if they cannot accept the *onus* of showing by positive proof that the property is their own, it may be declared to be public property. This is a provision which unduly throws on private property-holders the burden of showing that the property is their own. Hitherto they had only to do that in the case of assessments on Inam property, which is a class of holdings well-understood;

[a] This sub-section was added by *Bom. XI of 1912*, s. 1.

but in this Code there are a number of questions of appropriations of land ; of claims and disputes related to land formed by alluvial and diluvian and of forest stripes, which are being legislated upon for the first time in this part of India, and which throw unduly upon the holders of property the burden of showing what they hold to be their own. No necessity for this law has been shown. Under this section the onus of proof is changed and instead of the Collector who might claim any land as Govt. property being obliged to prove the Govt. title, the holder has to prove his title ; until the holder could show that the land was his, it belonged to the State. To the Hon. Advocate General's argument that the section merely placed on the holder of property the onus of proving that it was his own and really belonged to him in case of his right being questioned and that the mere possession would give a title in itself unless it could be shown to be utterly wrong, the Hon. Mr. Mandlik replied that it seemed to him that under that section a man would have to show something more than possession.—*Proceedings of the Council of the Governor of Bombay of 1877, Vol. XVI, p. 129-130.*

**Change In Cl. 3** after the word 'passed' there were the words "by the Collector". But it was pointed out that if the power of adjudging disputes were reserved only to the Collector (Assistant and Deputy Collectors are covered by the term 'Collector' so far as this section is concerned) in cases like City Surveys or any other large surveys it would be impossible to settle matters in reasonable time. Therefore, it was thought that the survey officer (who may be a *Mamladar*) also should have such a power. This original intention is carried out by striking off the words 'by the Collector' [(Bom. Act. II of 1919) *B. G. G. pt. V. 31-3-1919*],

'Except as may be otherwise provided'—These words are introduced in order to save some portions of the Municipal Act.

**Object of cls. (2), (3) and (4):** Under the law as it stood before 1913 there was no finality to the record that was made under the City Survey. It was open to any person at any time, subject to the general statutes of Limitations to question the entries made under the City Survey, so there was no certainty of the survey record being a correct one and the provisions which existed in the L. R. Code or the Municipal Act were insufficient to give finality within a reasonable time to the record under the City Survey. One of the objects of the City Survey was to secure an authoritative and final decision with regard to Municipal property. S. 37 could never become final and the same uncertainty applied to Government land transferred to a Municipality. In order therefore, to increase the benefits of the survey and safeguard property, it was found necessary to invest the Collector with power to give his decision which would be open to question for only one year, so that finality in the City Survey should be arrived at.

In the case of big villages nothing is more common than the question of encroachment by people pushing forward door steps, obstructing the streets, and interfering with the rights of the public in this way. The

Municipalities also laboured under great difficulties in their efforts to protect public property from wrongful encroachments. When an enquiry officer deals with the land of a big village or a municipal area, he passes certain orders, all of which affect to a certain extent, the right of private owners, but in the case of private owners where the property is that of a private owner that private owner is preserved for ever in his occupancy of the land. The same security to the public in the open spaces and public street in which they have such a great interest in big villages and growing towns is proposed to be given. That property is of very great importance to the public and is constantly being encroached upon and trespassed upon and will be protected if some sort of limitation of time is set up in which a person will have to establish his claim.

The difficulty in the way of the municipalities had also to be removed. Property vesting in the municipality under s. 50 of the Bom. District Municipal Act, 1901 includes lands transferred to it by the Secretary of State for India in Council or by gift or otherwise, for local public purposes: and obviously the same uncertainty and liability to lengthy and expensive litigation attached to these lands as to lands disposed of by the Collector under s. 37 of the I. R. Code as judicially interpreted before the amending Act of 1913 was passed, and the case of property decided by the Collector in the course of a City Survey to belong to a municipality was not protected by any provision of law similar to s. 135 of the L. R. Code. In both these cases the municipality was likely to become involved in litigation as the result of which the transfer of land by Government or the decision of the Collector in a City Survey enquiry was rendered ineffective. To illustrate the mischief or evil it may be mentioned that s. 50 authorised Government to transfer some property to a municipality for a local public purpose. In order to do that the Collector first passes an order under s. 37 and then hands over the property to the municipality, and the municipality probably in taking it from Government uses it for the public purpose for which it might be wanted, and as legislation stood, or as the law had been interpreted by the decisions of the High Court, years after the property had been handed over to the municipality, the municipality might be asked to defend a suit brought by somebody claiming the property as his. S. 135 in the Bom. L. R. Code and Art. 14 of the Limitation Act of 1877 gave one year as the period within which a suit had to be instituted to set aside the order of the Collector or the revenue officer. Thus in this legislation no principle was involved.

Now the difficulty started in this way. Supposing there is land which is entered in the register as unassessed Government land and the Collector decides that this is the land which could be transferred to the municipality for a local purpose. After the transfer a person turns up and prays for the possession of the land. The interpretation which the High Court puts upon it is that it is when his possession is taken away that he is given a cause of action and if he brings suit within 12 years after the date of losing his possession the claim is within time and

if the property belongs to him the Collector has no jurisdiction to pass an order under s. 37 of L. R. Code. The result of this is that the property cannot be properly or validly disposed of for a public purpose for which the municipality wants it for twelve years. The question is—Is it desirable to leave the matter in such a hazy condition for twelve years. Therefore, the real object of the legislation is that directly a question of this sort arises the Collector may be authorised to call the claimant by a notice and tell him that he proposes to decide the question under the L. R. Code and that if he has any contentions to put forward in regard to ownership of the property he might do so. Now if the person knows of the order passed by the Collector, it could not possibly be to the interest of such individual a period of 12 years should be allowed to him to take legal steps and that everybody concerned should be kept in an unsettled state of mind for an indefinite time. Once he becomes aware of the decision of the Collector it is in the interests of the municipality, the community, and the rate payers, that the question should be once for all decided as early as possible, and finality be given to that decision. It is quite obvious that if that person, after knowing the order passed by the Collector, wants to contest his decision, he should do so within a certain period of time.—*Debates in the Bombay Legislative Council for the year 1912 p. 130.*

**Limitation of one year causes much hardship**—It is thought to be unfair that a man should have to file his suit within such a short term as one year. A suit may be launched after the decision of the Collector, because you cannot expect a private individual to take steps and prepare himself for launching into expensive litigation while his matter is still pending before the Collector. If the Collector does not decide matter for 8 or 9 months and only three or four months remained it is impossible for him and it is impossible for 99 men out of a 100 to arrange to take steps in the Civil Court, so long as there was a chance of the matter being decided in his favour without resort to Court. It is only after the Commissioner and Government decide that he can be expected to go to Civil Court, thus, as it stand, the law gives him little time to make his preparations.

It is very hard on a poor cultivator to be forced to bring a suit against a powerful opponent like Government in such a short space of time as one year. In matter of law there should be as far as possible an equality of terms between the parties, irrespective of the position they occupy. Now Government enjoys in all suits the period of limitation of 60 years. It is assisted by a large number of well-trained officers, village officers, Circle Inspectors, Mamlatdars, Collectors and Revenue Commissioners. It has unlimited financial resources at its command and has highly trained experts in law to advise it. And with all these advantages it has been given a period of 60 years to institute a suit of even the simplest nature. Coming to private persons, one person can sue another within a period of 12 years for immovable property. But under the present Act when a

a private person has to bring a suit against Government he has to do so in one year only. A private suiter has to fulfil certain conditions before instituting a suit against Government. S. 80 of the Civil P. Code, 1908 makes it compulsory for a man to give two months notice to the Secretary of State before he brings a suit against Government. We can easily imagine the difficulties of people living in villages when we remember that in most cases there are no public measurement of houses or roads, no surveys and maps to show the titles of the poor people. Now, there are very few villages in India which are not torn by a factious spirit and it is quite possible for a member of one faction to make a false report to a Mamlatdar that a man belonging to a rival faction has encroached upon Government land and in the absence of unimpeachable documentary evidence the oral evidence of the informant is likely to affect prejudicially the interests of the claimant. The man may happen to be away on business or for any other cause. A poor man living in a village in the first place will find it very difficult to launch a suit against Government. In the beginning he has to raise money to embark upon the litigation; secondly, he has to obtain legal advice and; thirdly, he has to collect evidence to prove his title. To do all this a longer period is necessary.—*Discussions in the Bombay Legislative Council for the year 1912 p. 329.*

#### ‘PUBLIC ROADS, LANES & PATHS’

Once a high-way always a high-way.—“This is one of the most familiar of legal principles in England, where no rights are more keenly upheld and contested in country districts than the rights of the public over public high-ways of various descriptions. Indeed societies exist for the sole object of preserving the numerous high-ways whether for carriages or for foot-passengers which are part of the advantages of life in England. The only manner the public high-way can there be stopped up or diverted is under special statutory powers for the purpose.” Observed Marten C. J. in *Ardesher V. Aimal Kurarji*, 31 Bom. L. R. at p. 104 (1928). He further said: “It is also true that a. 37 of the Code vests the ownership of the soil in Govt.; but the section itself contains a saving as regards the rights of individuals and rights of way, and does not contain any power to close any road or to substitute any one road for another. It is also true that, in certain cases by the authority of some statutes such as the District Municipal Act powers have been taken to close roads when necessary and so obstruct rights of way. But there is no similar provision in the Bom. L. R. Code or in any enactment, such as the District Local Boards Act, which could relate to village where there is no Municipality or Notified Area Committee in existence. On the contrary the general power of disposal under a. 37 is expressly limited by the proviso “*subject to the rights of the public*”. It is clear that if a road is a public one, and Govt. not having reserved to themselves any power to close public roads which have been in existence from time immemorial it cannot close such a road or allow it to be closed in any manner.”

The point for decision in the above case (*Ardeshir v. Aimai*, 31 Bom. L.R. 104) was whether the cart track within the village site of Gondavli which was a public road and had been used for the purposes of the villagers and of persons coming to the village, for a very great number of years had ceased to be one when a new local board road was made giving similar access to the village, though at another point. It was thought that the old *gowan* (cart track) was no longer needed by the villagers and since the ownership of all the roads vests in Govt. under s. 37 of the Code it was sold by the Collector to a private individual who encroached upon it and put up fencing at the two ends of the *gowan*. The High Court held: (1) that Govt. possessed no inherent right to block the public road under s. 37 of the Bom. L. R. Code which specifically preserved "the right of way, and all other rights of the public or of individuals legally subsisting"; (2) that the public right of way over a *gowan* (public cart road used from time immemorial) was not affected either by the construction of the new road by the Local Board or by the sale of *gowan* land by Govt. to another private individual; (3) that Govt. were not empowered by any statute to divert existing public highways in the village.—*Ardeshir v. Aimai Kurarji*, 31 Bom. L. R. at p. 104.

#### BED OF SEA, RIVERS, STREAMS, ETC.

**Public waters** are those waters in which the tide ebbs and flows, such as tidal navigable rivers and sea.—*Chander Jalesh v. Ran Churan Mookerji*, 15 W. R. 215.

**Public rights of fishery.**—The soil of tidal navigable rivers and of the sea within territorial limits is vested in the Crown for the benefit of its subjects, who are accordingly entitled to common right to fish therein.—*Reg. v. Kastya Rama*, 8 Bom. H. C. R. 93.

The property in beds of navigable rivers as in the sea-shore and the bottom of the sea is reckoned amongst the *jura regalia* of the Crown.—*Reg. v. Kastya Rama*, 8 B. H. C. R. 93. S. 37 embodies the common law of England which has been made applicable to India saving subsisting rights of individuals. Therefore, a person claiming a right to dig stones in the bed of the sea below high water mark has to prove 60 years' possession.—6 Moore's I. A. 267.

**Fishermen using Govt. sea shore.**—No charge should be levied from fishermen for the use of the Govt. sea shore for the purpose of drying fish or nets but a small rent may be charged if shed or huts are erected for trade or residential purposes (*G. R. 3005/28 of 17-3-1930*).

**Beds of rivers, etc.**—Under s. 37, land formed by the waters of sea, river, etc. receding or having diverted from its original course vests in Government. Land between high and low water-mark is presumably extra-parochial, and vests in the crown, unless title by grant or prescription is proved.

**Riparian owners.**—The occupants and owners of land abutting on streams have certain rights in the water that flows by their land and also in alluvial land formed by the sides of their holdings.—*The First Assistant Collector of*

*Nank and others v. Shaoji Dusrath Patil and others*, 7 Bom. 209; *Nasarranji Pestonji v. Nasarranji Durasha*, 2 Bom. H. C. R. 345. See also ss. 46 and 64 of *Bom. L. R. Code (infra)*.

**Natural rights of riparian proprietors.**—There are three classes of natural rights in water which may be described as:—(1) The right of every riparian proprietor to use the water which flows past his land equally with other proprietors; (2) to have the water come to him undiminished in flow, quantity and quality; (3) to have it come to him unaffected in temperature, force or direction and to go from him without obstruction.

**Ordinary and Extraordinary use of water.**—Every riparian proprietor has an unrestricted right to the use and consumption of the water flowing past his land for ordinary purposes *i. e.* for washing, drinking and domestic purposes and for his cattle, *ad lacandum et ad potandum*. [See s. 7 ill (j) of the *Tribunal Easements Act (V of 1882)*]. In the enjoyment of such ordinary rights he may exhaust the water altogether without reference to any lower proprietor. He has further a right to the use of it for any purpose or what may be deemed the extraordinary use of it. But if he takes and uses the water for purposes of benefit and utility to the riparian estate, such as, irrigation and manufacture, such user is subject to the condition that it does not inflict any sensible injury on the other riparian proprietors or interfere with the lawful use of the water by them.—*Embrey v. Owen*, 6 Exch. 353; *Sussex v. Habbwatt*, 1 C. B. N. S. 570; *Miser v. Gilmour*, 12 Moor, P. C. 131.

**Extraordinary use of water by one riparian owner to the prejudice of other riparian owner not allowed.**—The plaintiffs the riparian owners on one side of a stream had an ancient dam at point B and used to take water collected at B for irrigating their lands as established in 1911 in a previous litigation between the parties. The defendants who were riparian owners on the other side of the stream had another dam at C which was lower down the stream, from which they used to take water for similar purposes. In 1913, the defendants put up a dam at point A which was higher up the stream than point B, and diverted a large quantity of the water at A for irrigating their lands and other lands to the North of the stream lower down. The High Court held that such extraordinary user of the water above B by the defendants to the prejudice of the plaintiffs' rights as established by law could not be allowed and that the plaintiffs were entitled to have the dam at A removed so as to enjoy the quantity and flow of water they had been enjoying at B since 1911.—*Mahala v. Jijai*, 30 Bom. L. R. 443.

**Extraordinary use should be reasonable.**—The user must be reasonable; its purposes must be connected with or incident to the riparian tenement. The water which is taken and used must be restored substantially undiminished in volume and unchanged in character.—*McCartney v. Londonderry and L. S. Ry. Co.*, A. C. 301, 306 (1904). On a question whether the use of water was reasonable, Baron Parke said in *Embrey v. Owen*, 6 Exch. 353. "On the one hand, it could not be permitted that the owner of a tract of many thousand acres of soil abutting on one part of the stream, could be permitted to irrigate them continually by canals and drains, and so cause a serious

diminution of the quantity of water, though there was no other loss to the natural stream than that arising from the necessary absorption and evaporation of the water employed for that purpose; on the other hand, one's common sense would be shocked by supposing that a riparian owner could not dip a watering-pot into a stream in order to water his garden, or allow his family or cattle to drink it."

The owner of the land adjoining a public river or stream which do not vest in any other individual or a body of individuals but in Government has an ordinary right to the flow of water flowing past his land. He has also the right to the extraordinary use thereof, provided he does not thereby interfere with the rights of other riparian owners either above or below him. Subject to this condition he may dam up a stream.—*Orr and others v. Raman Chetti and others*, 18 Mad. 320 (1895); *Debi Pershad Sing and another v. Joy-nath Sing and others*, 24 Cal. 865 (1897).

An easement to take water from a river would be acquired by 60 years enjoyment as of right against Government.—*Secretary of State for India v. Mathurabhai and others*, 14 Bom. 220 (1889); see also s. 15 of the *Indian Easements Act, 1882*.

In an Inam village the ownership of the bed of a stream or river within the limits of such a village vests in the Inamdar.—*Vinayakrao Keshavrao and another v. The Secretary of State for India in Council*, 23 Bom. 39 (1897); *Balwantrao v. F. L. Spratt*, 23 Bom. 761 (1899).

**Property**—The term "property" is used to denote either rights in the nature of ownership or the corporal things, whether lands or goods, which are the subjects of such rights. This dual meaning of the word arises from a natural tendency to identify the corporeal thing with the aggregate of rights which make up the entire rights of exclusive possession or enjoyment; and it is confined to cases where the right involves possession. Thus, when a person is entitled to land in fee simple (absolute ownership as allowed by the system of tenure) in possession, the term property is equally appropriate to describe the land itself and his interest in the land, and this usage is extended to limited interests such as a life estate, in possession. But when the right does not involve possession of a corporeal thing, where for example it is an easement, the term property denotes a right only.—*Halsbury's Laws of England, Vol. 24 p. 137*.

**Note.**—This confusion between the thing and the subject of rights and the rights themselves has been frequently commented upon; [see *Austin's Jurisprudence 4th Ed. pp. 371, 804; Williams Law of Real Property, p. 4 (21st Ed.)*]

In s. 37 of the L. R. Code the word **Property** appears to have been used to denote the corporeal things such as lands and others which are the subjects of rights in the nature of ownership and not only such rights.

#### WASTE LANDS, ETC.

**Waste Lands** belong to the Govt. and a permanent private right cannot be implied from the levy of a rate on a casual and desultory use of the soil.—*G. R. 2493 of 4-5-1881*.



Under the Waste Lands (claims) Act, 1863 when any claim is preferred to any waste land proposed to be sold, or otherwise dealt with, on account of Government, or when any objection is taken to the sale or other disposition of such land the Collector shall call upon the claimant or objector to produce any evidence, or documents upon which he may rely in proof of his claim or objection. (ss. 1 and 2). The Collector may in case of rejection of the claim report the matter to his superior revenue authority which may confirm, modify or reverse such order of the Collector (s. 5). If such authority decides against the claimant the claimant is referred to the Court specially constituted for the purpose which special Court alone has authority to decide the claim (ss. 7 and 8). In every suit instituted before such special Court the claimant shall appear as the plaintiff and the Collector or such other officer of Govt. shall appear as defendants on the part of Government. (S. 10, *Waste Lands Claims Act, 1863*).

#### VILLAGE SITES.

Proprietary right in village sites vests in Govt. according to the custom of the country, unless it has been unmistakably purchased.—*G. R. 4239 of 24-7-1873; Standing Orders of Govt. in R. D. Vol. II p. 1177*, or adverse possession for 60 years is proved; see *Vasta v. Secretary of State for India*, 45 Bom. 789.

Abandoned village sites vest in Government as waste land. Recent and ambiguous acts such as depositing manure and fuel, tethering cattle, are not such acts as to raise presumption of title under s. 110 of the Evidence Act.—*Franji Carwaji v. Goruldas Multhorji*, 16 Bom. 338 (1892).

Waste lands.—Cultivation of plots in Govt. waste for a season or two does not constitute a property or possession of the person so cultivating. *Dulhi or Kauri* cultivation, for several generations, of patches of waste or *warlus* land does not create a proprietary title.—*Bhaskarappa v. The Collector of North Kanara*, 3 Bom 452 (1879).

Onus of proof in unoccupied village sites.—In *Ganjara v. Secretary of State for India*, 20 Bom. 801 (1895) *Jardine J.* was inclined to think that even in the case of a village site Government cannot rely on any general presumption that as against the party in possession it must show title. But this judgment cannot possibly be said to be a very satisfactory one on the question whether in the case of an unoccupied village site the general presumption of title is with Government. Nor was any reference made there to s. 57. Sir Lawrence Jenkins C. J. referred to this case in *Hanmantrao v. the Secretary of State for India*, 25, Bom. 287 (1901) as distinctly showing that even in the case of a village site Government cannot rely on any general presumption and that as against the party in possession it must show title.

Both these cases (*i. e.* *Ganjara v. Secretary of State* and *Hanmantrao v. Secretary of State*) were referred to and discussed by *Macleod C. J.* and *Fawcett J.* in *Vasta v. The Secretary of State for India in Council*,

45 Bom. 789 (1920) where the facts were as follows:—A *gabhan* (house site) which was waste or vacant came into the possession of the plaintiff in 1898, who immediately afterwards built a house upon it. In 1915, the Government claiming the *gabhan* as theirs recovered from the plaintiff rent, local fund cess and fine; he was also ordered to pass a lease or to give up possession of the *gabhan*. The plaintiff sued in 1917 for a declaration that the site was of his ownership and that the orders passed might be cancelled. The High Court while dismissing the suit held that the onus of establishing title to property by reason of possession for sixty years lay upon the plaintiff. In this case Macleod C. J. did not consider the judgment in *Gangaram v. the Secretary of State* as a satisfactory one on the question whether in the case of unoccupied village site the general presumption of title is with Government. In the same case (*Vasta v. the Secretary of State*) Fawcett J. did not think that *Hanmantrao v. the Secretary of State* could be considered as a conclusive decision on the question whether mere possession of land that appeared to have been formerly unoccupied throws the onus of showing a title upon the Secretary of State. He remarked that the difference of opinion between the two Judges who first heard the appeal and also the difference of opinion between the referring Judge and the Chief Justice on the important question whether the possession entitling the plaintiff to defeat Government's claim need be possession according to title or might be quite independent of any such question of title in that case deprived the decision of any effect as a binding judgment on the main point under discussion. In the course of the judgment Macleod C. J. referred to the case of *Secretary of State for India v. Chellikani Ramarao*, 39 *Mad. 617* at p. 631 (*P. C. 1916*) and observed: "It seems to me that there is no force in the argument that s. 110 of the Indian Evidence Act must be applied and that because the plaintiff showed he had been in possession for a period of twenty years, the onus was then thrown on the Secretary of State of proving that the plaintiff was not the owner. S. 37 clearly shows that all unoccupied sites are the property of Government unless an individual can establish in his own right a title to such unoccupied property. The Secretary of State is able to show by the general law that he is the owner of the land in question and in order to oust him the plaintiff in this case has to prove either that he has got a title better than the title of the Secretary of State or that he has obtained a title by adverse possession, that is to say, by possession for sixty years."

In the same case Fawcett J. stated: "S. 37 of the Bom. L. R. Code puts Government on a superior footing to a private individual in regard to a claim to lands which originally were waste or unoccupied. A legitimate presumption arises that the title to the particular *Gabhan* or village site vests in Government under the old customary laws and s. 37 of the Code and the presumption displaces the original presumption arising in favour of the plaintiff under s. 110 of the Indian Evidence Act."

**Instructions.**—Land granted by Government out of unoccupied or other land in which the proprietary right vests in Government at the time of the grant ought not to be granted in full ownership, but only the right of occupancy thereof as it is usually termed under the L. R. Code of 1879—Occupation now means possession.

**Subject to rights of individuals legally subsisting.**—In *surannanna v. Secretary of State for India* 24 Bom. 435 the Collector disposed of certain land to which the plaintiff claimed to be entitled and the High Court decided that any order made under s. 37 of the L. R. Code is expressly to be subject to the rights of individuals legally subsisting, and if the plaintiff had a right in land any disposition made by the Collector under s. 37 would not deprive the plaintiff of that right, and therefore, the plaintiff could ignore the Collector's order and bring a suit in respect of the land—per Beaumont C. J. in *Damodar v. The Secretary of State*, 33 Bom. L. R. at p. 77 (1930).

'It is declared'—"The use of this expression to introduce new rules of law is not incorrect, and is far from uncommon. The nature of the Act must be determined from its provisions" the Judicial Commissioner of P. C. observed in *Hording v. Commissioners of Stamp for Queensland*, A. L. J. 769 at p. 775 (1898). S. 37 of the L. R. Code itself provides that the ownership of Government thereby declared, is subject "to the rights of individuals legally existing." Therefore, where the *Khots* of a village asserted a claim to occupy and cultivate lands left dry in the river bed as far as the middle of the bed opposite their *khoti* village, the lands in question being treated for nearly a hundred years as part of the village, the High Court held that s. 37 of the Code does not deprive the *Khots* of the rights acquired by them in virtue of the *Khotship* of the whole village to cultivate the lands in question.—*The Secretary of State for India v. Wasudeo Sakharam*, 31 Bom. 456; 9 Bom. L. R. 719.

#### RIGHTS OF MUNICIPALITIES, GOVT. & INDIVIDUALS.

Lands transferred by Govt. under s. 50 of the Bom. Dist. Municipal Act, 1901 to the municipality are dealt with under s. 37 of the Code and R. Rules framed thereunder. Under the Bom. L. R. Code all land is (a) agriculture, (ii) for building purposes, and (iii) for a purpose other than agriculture or building. All land included in a municipal district is (1) Government, (2) private, or (3) municipal. All municipal land remains with the Government, (b) acquired under the Act, or (c) transferred land remains with the Government. Formerly, in municipal districts where a city survey had been made, much of the Govt. land was transferred to the municipality by the encroacher

of it bearing the cost of survey. This policy has however ceased. Besides such transferred lands, under L. R. Rule 32 (See *Appendix A*) land may be given to 'local authorities' (municipalities, local boards, etc.) for various purposes and on the conditions laid down in the Rules (See *Appendix A for Rules*) and such orders as Govt. may issue, from time to time. Land vesting in municipality is not exempt from land revenue unless such exemption is given by the terms of the grant. Land vesting in a municipality under the Bom. Dist. Municipal Act, 1901 is not relieved (unless specially exempted) of the liability to pay land revenue (s. 41) merely because it vests in a corporation. The Municipal Act does not exempt such land from land revenue. So where land is not exempted the Commissioner when giving sanction to a lease by the municipality may require that the land revenue thereon be paid. The benefit of any agreement made by a municipality with Govt. not to levy assessment would not ordinarily extend to the assignees of the municipality. A municipality is not entitled to any concession as regards fine and altered assessment when they acquire agricultural land for non-agricultural purposes in cases in which such acquisition is remunerative (*G. R. 8633 of 3-11-1892*). If a site used as a market and vesting in municipality ceases to be used as such, it reverts to the original owner and cannot be disposed of by the municipality. In the absence of anything to the contrary, the transfer of land to the municipality has the effect of vesting it in the municipality for the purposes of the Municipal Act and not absolutely. Municipalities are required to spend their funds in maintaining all public buildings [ 56 (b) Bom. Dist. Municipal Act, 1901 ] and in securing or removing dangerous buildings or places [ s. 54 (1) (g) of the Municipal Act (*ibid*) ] but when so removed the site would not vest in the municipality. S. 50 of the Municipal Act omits all mention of these sites, and the specific mention of lands which do vest in a municipality, excludes by implication all not specifically mentioned.—*G. R. 1890 of 13-3-1891*. (*Standing Orders of Govt. in R. D. Vol. II p. 959 (1902)*).

**Building sites and plots of open ground**, which have not been dedicated to public use or already transferred to the municipality, are declared to be specially reserved by Government. But this does not apply to small pieces of ground lying between the houses and the road-way in an irregular street or road of varying width (Rule 53). Separate vacant sites between houses do not vest in the municipality.—Rule 53 (See *Appendix A for Rules*).

**The power of reservation** under s. 50 of the Bom. Dist. Municipal Act, 1901 is to be exercised by Govt. before the property vests in municipality. Once the property vests in the municipality the power of reservation cannot be exercised. There is no power given in the Municipal Act to Government

In reserve roads which have been vesting in the municipality.

puts G. **disposal** "includes gift, lease or sale or any other transfer.—Land to a cla. A ne vested under the statutory rules or law in a municipality or legitimate pre. not be disposed of by that body in perpetuity in breach of village site vests ernment to its reversion. (*G. R. 1890 of 1891*). The Acts of the Code and se bodies require sanction to the disposal of their land and arising in favor

even Government, will not sanction the sales in perpetuity (*G. R. 4511 of 1899*) but so long as the municipality, etc., sell only their interests, the land which has vested in them is "alienated" from Government and Government did not claim any share. (*G. R. 3445 of 1911; G. R. 441 of 1912*). When the purpose for which the land vests ceases it reverts to its former owner (*Generalra Mohan v. Corporation of Calcutta, 44 Cal. 689 (1916)* and is liable to land revenue; (*G. R. 2579 of 1918*).

A municipality holding land from Government upon payment of a periodically settled assessment, cannot, in demising such land, emancipate it from that liability (*G. R. 7596 of 1917; See also G. R. 8202 of 1918*).

When a municipal district is extended (or newly created) care must be taken to reserve Government rights over such land as tanks, aqueducts, etc. which it is not intended should vest in the Municipality.—*G. R. 6523 of 1917*. But in case of any doubt the grant must be interpreted strictly in favour of Govt. as against the municipality, the grantee.—*Faman v. The Collector of Thana, 6 Bom. at p. 199*.

The word "street" (in the definition of street, road is included) in s. 50 of the Bom. District Municipal Act, 1901 means and includes not merely the surface of the ground but so much above and below it as is requisite or appropriate for the street for the preservation of the street for the usual and intended purposes.

**Public Streets.**—S. 50 (2) of the Bom. District Municipal Act, 1901 [and s. 63 (2) of the Bom. Municipal Boroughs Act, 1925] vests public streets in a Municipality in trust subject to the provisions of the Act. S. 90 (1) of the District Municipal Act (and s. 114 of Bom. Municipal Boroughs Act, 1925) gives power to a municipality to discontinue or stop up any public street and to sell (the power to sell evidently includes the power to lease) land theretofore used or acquired by the municipality for the purpose of public street, so far as it may not be required for the public streets. This power is subject to the provisions contained in sub-sec. (2) of s. 40 in the case of the Bom. District Municipal Act and s. 48 in the case of the Bom. Municipal Boroughs Act, 1925. *Note.*—This is a special case of streets and the analogy does not apply to others *i. e.* to tanks etc.

**Encroachments on streets in Municipal areas.**—The municipality cannot legally sanction the sale of plots on which encroachments have been erected, as streets are vested in them as a trustee [s. 50 (2) of the Bom. District Municipal Act]. Only the surface of a street vests in the Municipality and the sub-soil remains with the owner. When the owner is Govt. the land below the surface may be vested in the Municipality who may sell it to the encroacher

under s. 90 of the Bom. District Municipal Act, 1901.—*See G. R. 2640 of 7-3-1924.*

**Street land which is encroached upon** can be sold by a Municipality to a private individual under s. 90 (1) of the District Municipal Act for the purposes mentioned therein.—*See G. R. 2640 of 7-3-1924.*

**Lands encroached upon in Municipal areas.**—The rights of Government can be ascertained and rent levied on land encroached if the Municipality does not claim it for use as street land or for disposal under s. 90 (1) of the District Municipal Act and unless the title of the Municipality has become extinct by adverse possession after a lapse of 30 years under article 146A of the Indian Limitation Act, 1908.—*G. R. 1788 of 25-8-1924.*

**Compromise by Municipalities in suits against them by private persons.**—Municipalities are competent to effect compromise under s. 165 of the Dist. Municipal Act in suits against them by private persons for claims to lands after the city survey has been completed by admitting the plaintiff's claims. The compromise in such case being in effect an agreement to transfer the land in consideration of the withdrawal of the case it is subject to s. 165 (1) of the District Municipal Act, 1901. *Note.*—In the case of a transfer of any property previous sanction of the Commissioner under s. 40 (2) being required the interests of Government are necessarily safeguarded.

**The difference between Roads vested in Municipality and other roads** is that in the former case the Municipality is responsible for lighting and watering, etc., while in the latter it has only power of control to prevent the road from becoming a nuisance or the rights of the public being interfered with.—*Chairman, Howrah Municipality v. Haridas Datta, 43 Cal 130. (1915).*

**Public right of way.**—Every member of the public and every sect has the right to use the public street in a lawful manner and it lies on those who would restrain him or it to show some law or custom having the force of law abrogating the privilege. A suit will therefore, lie for a declaration of right of an individual community to use the public road.—*Baslingappa v. Dharmappa, 34, Bom. 571; 12 Bom. L. R. 586 (1910).* Continued user by the public of a way raises a presumption that that way belongs to the public, that it has been dedicated by the owner for the public use for which it has been used; and it is not incumbent upon the public to show by what particular owner the road has been dedicated.—*Mahmuda Mudha v. Nallayya Gonnlon, 32, Mad. 527 (1909).*

**Dedication of a road to the public** may be express or implied. The most common mode in which a highway is supported as such is by prescrip-

time. If all persons without distinction have indiscriminately for a considerable period of time without interference used and enjoyed the way, such a way will be presumed to be a highway.—*The Collector of Surat v. Nansarwanji Darashah, P. J. for 1888 p. 159.*

A person dedicating land to the public may limit the purpose of the dedication as he wishes, but the dedication must be to the public as a whole. There cannot be in law a dedication to a limited part of the public. In order to constitute a valid dedication to the public of a highway by the owner of the soil, there must be an intention to dedicate. User by the public is only evidence of such dedication.—*Mahmud Rastum v. Munkaraul, 22 Bom. L. R. 563 (1920).*

An owner of land adjoining a highway is entitled to access to such highway at any point at which his land actually touches it, but he has no such right, if a strip of land however narrow, belonging to another and is not subject to the public right of passage intervenes. This right of access is a private right, and is distinct from the right to use such highway as soon as he is upon it which he enjoys only as a member of the public. Interference with such private right, will, if wrongful, support an action and amounts to 'injurious affection' of his premises for compensation purposes. (*Moore Grt. S. W. Railway Co. 10 I. C. L. Q. 48 Ex. t Ch.*) Where an obstruction interferes with a person's public right only and not with his private right of access, his claim if any, must be based upon the ground of a public nuisance causing special damage to him.—*Halsbury's Laws of England, Vol. XVI.*

**Rights of Municipalities over public streets**—The rights of Municipalities in respect of public roads are very limited. Though the road vests in them, the soil does not belong to them (*see notes below*). The only powers which Municipalities have is to make, repair and keep properly cleaned such high-ways and do such things upon them as are necessary for convenience, but they have no right to obstruct or divert them. They can, however, divert new streets and roads which they may have laid out or made. Any house or building may be set forward for improving the line of any public street, but such permanent alienation would require sanction. [(*G. R. 1890, of 13-3-1891*), and ss. 90, 50 (2) (f) and 40 of the *Bom. District Municipal Act, 1901.*]

Municipality can sell or grant any portion of a public street to an individual house-holder under cl. 2 of s. 30 of Bom. Act. VI., 1873 [*i. e.* now s. 20 (1) of Bom. Act III of 1901] which authorizes Municipalities for the purpose of improving the line of any public street to allow any house or building in that street to be set forward. [(*G. R. 5935 of 21-8-1898*); *Statutory Orders of Govt. in R. D., Vol. II p. 958*].

Where there is no Municipality the public streets vest under s. 37 of the Bom. L. R. Code in Government. But they vest in Government like other lands "except in so far as any rights of any persons may be established in or over the same." In public streets the public have a

permanent right of way extending to every portion of such streets, and it would be an infringement of this right for Government or their officers to sell or grant any land belonging to a public street to an individual. Where therefore, there is no Municipality the right to dispose of any portion of a public street is more limited than in a Municipal District, for Government have not even the legal power to allow a house to be set forward. (*G. R. 5935, of 20-8-1886*); see also *Ardeshir v. Aimal*, 31 Bom. L. R. p. 104. (*ante*).

**Private streets**—"Khadkis" (in Gujarat) and "Khaskacho" (in Sind) are private streets over which a certain group of persons have a right of temporary use from time-honoured practice.—*G. R. No. 2906 of 10-11-1921*.

**Provincial or Trunk Roads** when within Municipal limits are always specially reserved by Government, and do not vest in a Municipality, but are, unless in any particular case expressly shown not to be so meant as for example in s. 70, 'public streets' for all purposes of the Municipal Act.

If a person has encroached upon an open space or portion of open ground which cannot be reasonably claimed as forming part of public road and if it is found inexpedient to enforce the law against him the occupancy should be recognised to be his on his giving usual occupant's *Kabulayat* and paying the usual occupancy price if any.—(*See G. R. 3915 of 23-6-1887*).

**Ownership of sub-soil of public street.**—Under s. 50 of the Bom. District Municipal Act, 1901, all public streets (and so much of the sub-soil as may be necessary for the purposes of the street) are vested in and belong to the Municipality, and are under their direction, management and control, and are held by them as trustees subject to the provisions and for the purposes of the Municipal Act. In spite of this vesting of public streets the Government have some interest in the sub-soil of and in the column of air above the public streets—*G. I. P. Railway Company v. Municipal Corporation of the City of Bombay*, 38 Bom. 565, 573 referred to in *Bai Parruti v. The Nadiad Municipality*, 25 Bom. L. R. at p. 66.

**Rights of local authorities are limited**—Property vesting in a Municipality by virtue of the provisions of s. 50 of the Bom. District Municipal Act, 1901 can be held and applied by it as a trustee merely, subject to the provisions and for the purposes of the Act. Such statutory vesting gives a Municipality a qualified right only in the absence of any other provision to the contrary in the Statute itself. The right of the 'local authority' concerned does not extend further than is necessary for the purposes for which the property vests in it. If the purposes for which the property vests in a local authority ceases to exist, *e. g.*, if a highway or drain ceases to be a highway or drain, the original owner or grantor becomes entitled to the full and unbridged rights of ownership in the property. (*Ganendra Mohan Ghosh v. Corporation of Calcutta*, 44 Cal. 609; 33 Cal. 1209). It is no doubt true that under s. 4) of the Municipal Act a Municipality is given power to lease, sell or otherwise transfer any moveable or immoveable property vesting in it, but the section requires that the said power must be exercised as is not inconsistent with the provisions and



purposes of the Act. Under s. 90 of the Municipal Act land not required for street purposes can be sold by Municipality. There is no provision in that Act empowering a Municipality to sell or transfer public town-wall or appurtenant moats thereto or even public drains. Municipality is incompetent to sell, lease, or otherwise transfer ditch land although the ditch vests in it, under s. 50 of that Act.—*G. R. 6447 of 2-10-1925.*

**Tank** is a large basin or cistern; an artificial receptacle for liquids (*Webster's Dictionary*). In India it is ordinarily applied to basins in the earth constructed or adopted for storage of water. According to s. 50 of the Bom. Dist. Municipal Act, 1901 all public tanks and also any adjacent land appertaining to it (unless specially reserved by Government) vests in and belongs to Municipality.

Only public tanks *i. e.*, tanks dedicated to the use of the public vest in a Municipality. The entry in the survey records simply as 'tank' does not prove the title of the Municipality.

A tank which has once vested in the Municipality as a public tank is dried up and is no longer capable of use as such, reverts to Government. In the case of property dedicated to the public or vesting in a statutory body like a Municipality it has been held that it reverts to the original owner if it ceases to be used for the purpose for which the dedication or vesting was made.—*Gunendra Mohan v. Corporation of Calcutta 44 Cal. 44 Cal. 689; 33 Cal. 1290; 9 Cal. 75; G. R. 3144/28 of 6-1-1930.*

The word 'Stream' means a current of water, and does not seem to include the bed; while the word 'tank' primarily means the basin itself intended for the storage of water.

**Rights to town-walls in Municipal limits**—Municipalities have no right to the site of town-walls or bastions. The Municipal Act vests these in Municipalities as trustees. They have no power to remove them, unless the walls become dangerous, nor would such removal if effected operate to vest the site in Municipalities.—*G. R. No. 1890 of 13-3-1891.* [See also s. 50 (2) (a) Bom. District Municipal Act, 1901]. The idea is that land which has once vested under the statutory law or rules in a Municipality or other body may not be disposed of by that body in perpetuity in breach of the rights of Government to its reversion.

A Municipality holding land from Government upon payment of a periodically settled assessments cannot, in demising such land, emancipate it from that liability.—*G. R. 7590 of 1917.*

**Weekly Bazar sites in Municipal areas**—If a site is used by the public as a Weekly Market from a period anterior to the establishment of the Municipality it would be a public market within the meaning of the Municipal Act and under s. 50 (2) (a) of the Bom. Dist. Municipal Act,

1901 a public market vests in a Municipality unless it has been specially reserved by Government. If the Municipality proposes to lease a part of the land for building (but so as not to interfere with the market) it is lawful for the Commissioner to require as a condition of granting sanction to the lease under s. 40 of the Bom. Act III of 1901 that any land revenue which may be duly assessed on the land shall be paid in such lawful manner as he or Government may consider suitable (*Land Revenue Code, ss. 52 and 416*). The assessment of land revenue on the land which has not been assessed before is for obvious reasons not subject to the law of limitation.—*G. O. No. 2579 (R. D.) of 15-3-1918.*

Land once vested in the District Municipality can be resumed and the Municipality divested [*See s. 50 (2) of the District Municipal Act, 1901*] and if while so vested it ceases to be used for the purposes for which it vested it reverts to Government (*Guneundra Mohan Ghosh v. Corporation of Calcutta, 44 Cal. 689*) and thereupon can be assessed or disposed of as Government land.

**Trees**—A Municipality has no right to trees growing on Government land not transferred to it. In cases of misappropriation of such trees a suit may be filed against Municipality.

**Govt. is not a necessary party in suits relating to streets between Municipality and private owner.**—The definition of the word "street" as given in s. 3 (12) of the District Municipal Act, 1901 does not in any sense negative the idea of private ownership. The decision of the Survey Authorities that the site in question in a town formed part of a street as defined in the District Municipal Act does not mean that the decision was that the Govt. had any interest in the land. It is really a decision relating to a dispute between the private owners and the Municipality that it was part of street land, which would mean that the Municipality would have certain powers with reference to such land which has been given under the statute. For instance, under s. 90 of the Bom. District Municipal Act, 1901 the Municipality would have power to call upon the owners of the houses in the street to do certain things and to declare it to be a public street if so advised under certain conditions [(s. 90 (4) and (5)] and to that extent the Municipality is interested in upholding the decision of the City Survey Officer. That is a dispute between private owners and the Municipality and the Government have no manner of interest and the Government is not a necessary party.—*Nathalal v. Nadiad Municipality, 25 Bom. L. R. pp. 61-62.*

**Notes.**—When private streets become public under s. 90 (4) of the District Municipal Act, 1901 or by dedication, they do not become the property of Govt. nor the original owners lose their interest in the soil.

Govt. is neither a necessary nor a proper party in a suit relating to public street between a Municipality and a private owner.—S. 9 of the Bom. District Municipal Act, 1901 provided that a Municipality shall be a body corporate, and shall have perpetual succession and a common seal and may sue and be sued in their corporate name. That is the body in which the "public streets" are vested according to the law. That is the body which is interested in questioning the right of a private owner who claims a particular part of a public street as his private land, and that is the body which can effectively interfere with the rights which would be exercisable by a private owner of the land under the Act. Therefore, in a suit arising out of the decision of the City Survey Officer that the land which plaintiff claims to be of his ownership had been declared to form part of a public street ( which vests and belongs to the Municipality ) Government is neither a necessary nor a proper party.—*Bui Parvati v. Nadiad Municipality*, 25 Bom. L. R. at p. 67.

**Adverse possession, for thirty years will deprive the municipality of the land.** A suit by a 'local authority' ( this term includes a Municipality ) for possession of any public street or road is to be brought under Art. 146A of the Indian Limitation Act, 1908, within 30 years. It is not necessary for the purposes of this Article that the 'local authority' should be the owner of the street or road. This Article cannot be restricted to streets or roads formed by the Municipality on lands belonging to or acquired by it in a proprietary right. When a street vests in a Municipality under the provisions of law, such vesting does not transfer to the Municipal authority the right of ownership in the site or soil over which the street exists. Still, a Municipality has certain property in the soil of the street which would enable it as owner to bring a possessory action against trespassers; and possessory suit would be governed by this Article.—*Sundaram v. Municipal Council*, 25 Mad. 635.

**Encroachment on street land in Municipal area for upwards of 30 years.**—When a person has his *ala* ( verandah ) encroaching upon street land for upwards of 30 years it is not competent to a Municipality to issue a notice under s. 122 of the Bom. District Municipal Act directing the owner to remove the same and give up possession of the encroached land, as the owner of the verandah gets title to the site under it by virtue of s. 28 and Art. 146A of Indian Limitation Act, 1908.—*Tayalali Abdullabhai v. Dohad Municipality*, 22 Bom. L. R. 951.

**Distinction between ownership of municipality and Govt. over land.**—The operation of s. 28 of the Indian Limitation Act, 1908 upon Art. 146A would be to extinguish the right of highway on the expiration of 30 years from the date of dispossession of the Municipality by encroachment, and thus free the

land from the burden of the highway, if the person encroaching upon the land be the owner of the land. If the owner of land on which the highway exists be a third party an encroachment of a permanent character on the public highway will also, as a general rule, operate as occupation of the soil and dispossession of the owner of the soil equally with the Municipality and his ownership will be extinguished in favour of the trespasser at the expiration of the ordinary period of limitation *viz.* 12 years and at the expiration of 30 years, the ownership thus acquired by the wrong-doer will be freed from the burden of highway. But if the highway has been dedicated to the municipality by Govt. the right of Govt. can only be extinguished at the expiration of sixty years' adverse possession or occupation by the trespasser. Therefore, in cases in which the site of street belongs to Govt. the municipality will be barred after the expiration of 30 years from the date of its dispossession, but Govt. will have the land freed from the burden of the highway and will be entitled to remove the obstruction or encroachment, and after removing the same, it may again dedicate as a highway the portion of land thus freed from the burden. But if it suffers the obstruction to continue for a further period of 30 years, the trespasser would become the absolute owner of the land.—*Smularam v. Municipal Council*, 26 Mad. 635; *Basareswaraswamy v. Bellary Municipal Council*, 38 Mad. 6.

**As long as a trespasser has not perfected his title by prescription a street continues to be street in spite of the fact that it has been encroached upon. A highway can be destroyed by natural causes but not by trespass.**

**Questions of rights between Municipality, Govt., or individuals.**—S. 50A of the Bom. District Municipal Act, 1901 (added by Bom. Act X of 1912) provides that claims by or against municipality may be inquired into by the Collector (or an Assistant or Deputy Collector or a Survey Officer) in respect of any property or right over the same by following the procedure laid down in L. R. Code (*i. e.* as provided by s. 37). The period of limitation for filing a suit is fixed at one year from date or order or date of order on appeal or appeals.

**Questions of rights between Government and Municipality.**—Where the right to any piece of ground is in dispute between a Municipality and Government, the Collector shall endeavour to decide the dispute and with special regard to Rule 53. (*See Appendix A for Rules*). Where the Collector is in doubt or the Municipality does not accept his decision, the case shall be referred to the Commissioner. To secure finality the ultimate order should be made under s. 37 (2).—*Administrative Order No. XXII under the Bom. Land Revenue Rules, 1921.* (*See Appendix A for Rules and Orders*).

#### LOCAL BOARDS, GOVT. & INDIVIDUALS.

**Village roads and tracks.**—The question whether a particular track vests in a Local Board is a question of fact in each case; but generally speaking, unless the track had vested in the local board

under the provisions of ss. 41 and 42 of Bom. I of 1884 or the Local Board had acquired an interest in it in some specific manner, a track would not vest in the Local Board. Under s. 30 (a) Local Boards must maintain so far as they can, roads vesting in them. Ss. 31 and 49 are concerned with the respective spheres of District Local Boards and Taluka Local Boards; they do not raise the question of ownership. Under s. 31 Taluka Local Boards control works maintained at their cost and works the control of which has been delegated by the District Local Board. S. 49 determines the responsibility for expenditure. S. 49 (c) does not specify roads vesting in the Taluka Board, but in view of the wording of s. 49 (a) and (b) and of the provisions of the Act already quoted the clause should be so interpreted. There is nothing in these sections which compels Local Boards to maintain roads not vesting in them but in view of s. 30 (k) expenditure on such roads by Local Boards would not be illegal, as the public have a vested right of way therein and it is for the public convenience that they should be able to enjoy that right.

If a particular track does not vest in the Local Board, it and the trees planted by the side of it vest in Government under ss. 37 (1) and 42 of the Bom. L. R. Code, 1879.—*G. O. 9414; G. D. of 10-11-1919.*

**Tanks and trees in them.**—Only such tanks as have been constructed by a Local Board and the trees in such tanks are the property of the local boards. Govt. are not prepared to hand over to the boards all non-irrigation tanks and the trees in them. These are the property of Govt. and the mere fact that they are and have to be repaired by boards under s. 50 (c) of the Bom. Local Boards Act, 1923 cannot confer on Local Boards any proprietary rights.—*G. R. 311B of 7-9-1922 (R. D.)*

**Note.**—The price of redemption of all revenue in perpetuity is not "ordinary land revenue" (Act III of 1909) and land should not be so transferred to anybody not exempted, as Railway Companies are exempt, without a stipulation for the payment of the capitalised Local Fund to the District Board.—*G. R. 2457 of 22-4-1887.*

#### INAMDARS & GOVERNMENT

**Bed of rivulet lying in boundary of Inam village belongs to the Inamdar.**—S. 37 deals only with what is not the property of

individuals and can have no application to the bed of a rivulet which flows through the land of any individual for it would be the property of that individual who owned the land upon its banks. Therefore, where the plaintiffs own the whole village as Inam, they evidently own the bed of the rivulet that lies within the boundaries of their village. Government has no right whatever to claim the land of that bed and demand rent from the persons who may cultivate it.—*Vinayakrao v. The Secretary of State*, 23 Bom. 39.

The rights of a Talukdar to cultivate the land in a river bed included in his estate may be continued without question.—*G. R. 5096 of 6-8-1898*.

The foreshore outside the surveyed limits of a Khoti village vests in Government.—*G. R. 4878/24 of 7-11-1925*.

Claim of Govt. to require Inamdar to reserve certain plots which were cultivable land as village site in Inam village.—S. 61 relates back to s. 38 and both refer only to lands the property of Government in unalienated portions of villages. They do not empower the Government to confiscate any land belonging to an Inamdar and to confer it upon the persons who live in his village.—*Vinayakrao v. Secretary of State*, 23 Bom. 42.

Road-ways in Bhagdari Village.—Government is the owner of the land forming road ways through the village site of a *Bhagdari* village. All the lands of the village site of a *Bhagdari* is not the property of *Bhagdars*. The *Bhagdari* tenure is a particular system of collecting Government revenue. A *Bhagdar* can have only those village fields and the portion of the village site as are assigned to him by Government. He cannot claim the proprietorship of such lands as he is liable to pay rent or assessment to the Government for these lands.—*Unar Annaji v. Secretary of State for India*, 37 Bom. 87; 14 Bom. L. R. 934.

#### RAILWAYS, P. W. D. & FOREST DEPARTMENTS

Transfer of land to Forest Department required for Forest Chowkis and compounds should not be made without the sanction of Government being previously obtained.—*G. R. 5724 of 20-9-1877. Stamping Orders of Govt. in R. D. Vol. II p. 950*.

Transfer of Forest land from Reserved Forest may be made without formal alienation if land is required for Govt. purposes.—*G. R. 7779 of 18-9-1894*.

Collector may sanction the use of forest land to another Govt. purpose up to a limit of 5 acres without reference to Government, if the Conservator concerned has no objection. The sanction of the Commissioner should be obtained when the area exceeds the above limit.—*G. R. 6473 of 29-6-1908.*

Land relinquished by Railway or any other department to the Revenue Department becomes subject to Land Revenue Rules, 1921 (See *Appendix A for Rules*). Land transferred to another department (e. g., Forest, Military, P. W. D., etc.) so long as the transfer is in force, is outside the L. R. Rules, 1921. But such departments have no power to alienate land or its revenue. When they cease to require it reverts to Revenue Department.—*G. R. 1619 of 1910.* When any land in charge of other Department is no longer required by them they should relinquish it to the Revenue Department for disposal.—See para. 250, *P. W. Code and P. W. Circular 9754 of 24-2-1927; see also G. R. 2002/24 of 18-8-1924.* Government may in any case dispose of all rights over land except so far as restricted by the statutory rules of the Secretary of State.

While land is in charge of the P. W. D. the Collector cannot lease it except under orders from the P. W. Department.—*G. R. 8394 of 1899.* The renting of the compound of the building in charge of the P. W. D. requires sanction of Government in P. W. D.—*G. R. 8394 of 1899.*

No charge is made to a non-commercial Department for holding land.—*G. R. 4428 of 1892.*

**Adverse possession against Government**—Art. 149 of the Indian Limitation Act, 1908 provides that a suit by or on behalf of the Secretary of State for India may be brought within sixty years from the time when the possession of the defendant becomes adverse to Government.

Sixty years of continuous possession in the open assertion of an adverse title would be necessary to bar the Secretary of State from recovery of possession.—(*G. R. 128 of 28-1-1891; Standing Orders of Govt. in R. D. Vol. II, p. 878; G. R. 3274 of 12-5-1891*).

**Adverse possession against Government.**—The period of limitation against Government being 60 years a person can convert his possession into an absolute title as against Government, only by proving possession for 60 years. Possession which falls short of this period is insufficient to create a title. Mere evidence of long possession is not sufficient.—*Katsh Ansh v. Secretary of State, 47 Mad. 572 (P. C.); Krishna v. Sagarika, 48 Mad. 570; Secretary of State v. Chalikani Rama Rao, 39 Mad. 617 (P. C.)*. The possession of a person for a period of 12 years, though it would be sufficient to bar a claim by any other party, does not exclude a claim by Government to recover what could be shown to be Government property.—*Secretary of State v. Darbhajoy, 19 Cal. 312 (P. C.)*. Where it was proved that a pecca thatched building had been erected and was in existence for a period of over sixty years and that it had been used

openly for the purpose of tethering cattle and storing hay etc. and where it also appeared that the site had been enclosed by a *Kalli* fence all round, the High Court held that the acts of user were sufficient to constitute a title by adverse possession.—*Secretary of State v. Muthukumara*, A. I. R. 1927 Mad. 456; 101 I. C. 96.

Where certain islands were formed within three miles from the main land in the sea near the mouth of a tidal navigable river, their Lordships of the Privy Council held that Government was *prima facie* the owner of the island (which were jungle lands) and the onus lay on the other side to prove that he had acquired a title by adverse possession for more than sixty years. It does not lie on the Government to show that the defendant's adverse possession commenced within sixty years before the suit. The fact that such islands belong to Government is fundamental; until adverse possession against Government is complete *i.e.* for the period of sixty years that fundamental fact remains. And it is no part of the obligation of the Government to fortify their own fundamental right by any inquiry into possession or the acceptance of any onus on that subject.—*Secretary of State v. Chellikani Rama Rao*, 39 Mad., 617 (P. C.).

**Presumption in favour of individuals when allowed**—In the Privy Council case (*Secretary of State v. Chellikani Rama Rao*, 39 Mad., 617, *see above*) the lands were jungle lands in an island formed in the sea, and the presumption was that such lands *prima facie* belonged to Govt. and the onus was thrown upon the claimants, but where a suit was lodged against Government for possession of lands (other than forest lands) it was found that the plaintiffs had proved possession for more than 12 years (say for 30 or 40 years) and the defendant (Govt.) had failed to establish their title to the land or any possession within 60 years before the suit it was presumed that the plaintiff had held possession for 60 years and the burden was thrown upon defendant, (Govt.) to prove that they, (Govt.) have subsisting title.—*Krishna Aiyar v. Secretary of State* 33 Mad. 173.

**Enjoyment for a considerable time raises a presumption of ownership.** If a person evicted proves that he was in possession and enjoyment for a considerable period a presumption of full ownership arises, which throws upon Government the onus of showing that the land was not private property (s. 110, *Indian Evidence Act*) and it would not be sufficient to rely only upon the words of s. 37.—*In re: Antaji Keshar Tamle*, 18 Bom. 674; *Secretary of State v. Jethubhai*, 17 Bom. 299. It would not be necessary for the persons to show the title or possession for sixty years. When a person is in possession of land, it must be presumed that he has a title, unless and until it can be shown that at some time within sixty years neither he nor any body else did or could claim the land as of right with power to exclude all other possession.—*G. R. 3169 of 22-5-1900*. Mere entry of lands in survey records as Sirkari does not constitute an act of possession by Government and will not start limitation. (6 Bom. H. C. R. 125.) When certain land was wrongly entered in survey papers as Government



land and subsequently sold as such and when the real owner came forward afterwards and claimed the land Government offered him the purchase money and some additional compensation.—*G. R. 7126 of 14-11-1900.*

Instructions to Executive Officers intending to evict persons in unauthorized possession are given in G. R. 9661 of 1-12-1896 to the effect that they must be prepared to give evidence of Government title (a) documentary from the records, or (b) oral that the land in dispute has been at some time or other within 60 years unoccupied, that is, not in the juridical possession of any private person. The marks of possession with regard to property depend on the nature of the property (*Saokhal v. Durpalua*, 26 C. W. N. 733-34). One possesses land by cultivating it, reaping the fruits, going or coming through it or disposing it at pleasure. (*Domal's Civil Law* p. 846, para 2130). In the case of jungle lands the exercise of such acts of ownership over them as would ordinarily be exercised over property of that nature would be evidence of possession, e. g. cutting or preserving the wood, gathering wax, or wild honey, collecting sticks, hay, etc. may all be evidence of acts of ownership or possession. But the cutting merely of wild grass is not an act of possession or dispossession of any party. (*Nauka v. Emdaul*, A. J. R. 1927 Cal. 49). Stacking of wood or grass is not tantamount to juridical possession. A survey map was held to be an evidence of possession when it was made (*Syamul v. Larkman*, 15 Cal. 353). Receipt of rent is also evidence of possession (*Abdul v. Alaloor*, 21 W. R. 429). The fact that a mans name has been entered in Government books and that he has paid Government assessment is a piece of evidence of possession—*Derji v. Gosalhrai* 2 Bengal L. R. P. C. 85. It is only where neither party has exercised acts of ownership over are uncultivated lands or jungles that a Court may presume that the party having title has also possession of land in dispute.—*Rao Hantha v. Kusa Bhatu*, 5 Cal. 481; *Jajulindra v. Hemanta Kumari*, 5 C. W. N. 894 (P. C.). The state of the land before the possession was taken and the circumstances under which the possession was taken would in most cases, even where there is no entry in Government records, be sufficient to show whether the land was private property was not in cases where possession is not long (*G. R. 1173 of 27-2-1896*).

In an enquiry into claims to sites an Assistant Collector should be guided by the law contained in s. 37. The Bombay Rent-free Estates Act (XI of 1822), the Exemptions from Land Revenue Act ( Bom. Act II of 1823) and s. 129 of the Code if they were applicable would only affect claims to exemptions from payment of land revenue, and not claims to proprietary rights.—*G. R. 7931 of 9-10-1884*; *Standing Orders of Govt. in R. D. Vol. II. p. 256.*

Inquiries under s. 37 are to be conducted by the Collector (or Superintendent of Survey or higher officer, s. 205) as laid down in Rule 29 (See Appendix A for Rules) after giving minimum 10 days notice (in the form of Summons under s. 189) in Form B (See Appendix A).

The order passed by the officer inquiring into the claims should be informed by a written notice in Form C (*See Appendix A*) which should be served in the manner laid down in Rule 29.

**Two months notice to Govt.** is necessary before instituting a suit against them under s. 80 of the Code of Civil Procedure, 1908. It should contain the cause of action, the name of party, the relief claimed, etc.

**Notice published in a newspaper** should not be accepted as sufficient by the Collector for the purposes of a suit against the Secretary of State.

**The bar of s. 11 of the Revenue Jurisdiction Act, 1876 cannot be pleaded in suits under s. 37 (3)** instituted in a Civil Court because cl. (3) of s. 37 allows a suit to be instituted within one year from the date of an order under sub-s. 1 or sub-s. 2 passed by the Collector or a survey officer and in the alternative within one year from the date of any order passed by the final appellate authority if one or more appeals have been made against the order of the Collector or Survey Officer. [*See the form of Notice issued under Rule 29 (2)*] and also refer to the *Speech of Hon. Sir Richard Lamb on the Bill (Bom. Act XI of 1912)*.

**Adverse possession by Government.**—The sixty years' limitation provided by Art. 149 of the Indian Limitation Act, 1908 applies only to suits by, and not to suits against Government (*Secretary of State for India v. Bavotti Haji*, 15 Mad. 315 (1892); *Secretary of State for India v. Kota Bapanna-nama Garu*, 19 Mad. 165 (1895)). Claim against Government is subject to the same rule of limitation as the claim against a private individual would be. Therefore, occupation of Government of certain lands believing to be Government and constructing a building on it none having claimed any rent, etc. for over 12 years, gives Government adverse possession against any person laying claim to it.—*Balvant v. The Secretary of State*, 29 Bom. 480.

**Dispute between Government and private owner.**—As to the wider meaning of the word "dispute" such as that between Government and a private owner, s. 37 of the Bom. L. R. Code would rather apply and not s. 119. The word "dispute" in the second part of s. 119 means a dispute between two neighbouring owners and not as between the Collector and the owner.—Per Madgavkar J. in *Malkarjunappa v. Anandrao*, 31 Bom. L. R. at p. 962 (1929).

**Appropriations distinguished from assignments.**—Commissioners are empowered within certain limits and with some restrictions to sanction under s. 37 the appropriation of lands for roads, schools, Dharamshalas and other public purposes, while assignments of land are made under s. 38. The grant of land for threshing floors is an instance of an assignment under s. 38 and may be disposed of by the Commissioner on his authority. (*G. R. 3317 of 12-5-1899*).

Assignments are rather easements (*see Indian Easements Act, 1882*) granted by license and are neither disposals (21 *Bom. 634*) nor transfers to other departments which could be made by the Collector.

Assignments of sites for *ilga, temple*, etc. and for the extension of village sites are appropriations under s. 37 rather than assignments under s. 38.—*G. R. 555 of 29-1-1901* and *G. R. 9424 of 3-10-1906*. Note.—It is clear therefore, that in the disposal of land under s. 37 due regard should be had to all special assignments made under s. 38 of the Code. (*See notes to s. 38, infra*).

Improper use of the Land Acquisition Act not allowed.—It is most inadvisable to acquire land under the Land Acquisition Act, 1894 ostensibly for one purpose and use it for another purpose for which land could not be compulsorily acquired.—*G. R. 9831 of 11-10-1909*. However, the disposal of land so acquired but no longer required is governed by the same rules as Government waste. It cannot be restored to an Inamdar or lease, holder on the tenure on which he held it before acquisition except by a fresh grant under the Rules (now L. R. Rules, 1921).—*G. R. 5872 of 1897*.

Suit for injunction restraining Collector to deal with alluvial land in derogation of adjacent Owner's rights.—The plaintiffs allege that the land in suit was alluvial land, and that under s. 63 the Collector was bound, (if with due regard to the interest of the public revenue he thought the land should be disposed of,) to offer the same to the occupant of the adjoining land (namely, the plaintiffs), the maximum price being three times the annual assessment. That claim was made as long ago as 1911 and in that year the Collector took the view that the land in suit was not alluvial land; that it was marsh land which vested in the Govt. and on that view he disposed of the land in favour of deft. No. 2 (one Shaikh Ali) under s. 57 of the Code. The trial Judge dismissed the suit on the ground that it was barred under article 14 of the Indian Limitation Act, 1908. The plaintiffs appealed to the High Court. Beaumont C. J. following the reasoning in *Serranamma v. Secretary of State* observed: "The Collector has never expressed any view as to whether the land can properly be disposed of having regard to the interests of the public revenue on the assumption that it is alluvial land to which s. 63 applies. Therefore, it seems to me that, assuming the land to be alluvial, still it would not be possible for the plaintiffs to get an order for the recovery of possession of the land. All they could do would be to get a declaration that the case fell within s. 63, because the land was alluvial, and an injunction to restrain the Collector from dealing with the land in derogation of their rights or something of that sort. Any action which the plaintiffs could bring would, not be an action for the recovery of the land to which s. 144 of the Indian Limitation Act applies, but would have to be some form of action to which Article 12) applies, and any such action would be barred after six years.—*Danotar v. Secretary of State, 33 Bom. L. R. 772 (1933)*. (*See this case under s. 63, infra*).

### RULES PROVIDING FOR DISPOSAL OF GOVT. LAND.

Rules regulating the disposal of land vesting in Government will be found in Appendix A. It should however be remembered that any disposal of such land is 'subject always to the rights of way, and all other rights of the public or of individuals legally subsisting.' Rule 39 states that the proprietary right of Govt. in the soil itself is not to be disposed of or granted. The same rule makes it clear that in all grants and disposals it is merely the right of occupation and use (obviously subject to the provisions of the Code) is granted. In all grants of land the right to mines and mineral products (*quarries are dealt with separately*) and the right of access for working or searching for the same should be considered as reserved (Rule 30). Rights to mines and mineral products (reserved by Govt. under a. 69 of the Code) are not to be disposed of without the sanction of Government (Rule 30).

Lands situated within port limits is not to be disposed of without the consent of the Collector of Salt and Revenue and without reservation of certain trees [see Rule 58 (d)] (Rule 30). Land is not to be granted free of land revenue without Govt.'s sanction except as laid down in rules. (Rule 31). Grants to public or charitable bodies for purposes devoid of profit can be made under certain conditions laid down in Rule 32; for instance, that rule states that land may be granted free of price and free of revenue, in perpetuity, or for a term by authorities such as the Governor, the Commissioner and the Collector upto a certain value, for sites for construction at the cost of local or municipal funds or even other funds of schools, hospitals and other public works from which no profit (where profit is to be derived the proper course is to sell the land) is expected and for purposes of religious use, etc.

Land for Dharamshalas in the neighbourhood of railway stations may be granted if such buildings are to remain in charge of Local Board or Municipality (Rule 32). Lands may be granted to private individuals for their services to Govt. or to the community (*ibid*). Note—In making grant to private individuals restraint on alienation without permission and conditions regarding good conduct, loyalty, active support to Government, in times of trouble and disorder etc. may be imposed. In interpreting the word public in grants to public works' it should be remembered that the word public includes the conception of absence of any distinction of caste, race, creed, or membership of a particular association. It is obvious therefore that grants ordinarily for the use of religious bodies, clubs or societies should not be made under this head. Regarding grants to individuals (including firms, companies, etc.) for their personal or commercial profit, they may be made (a) to non-officials: (1) for political reasons (2) for assistance given to police or criminal administration (3) for commercial or industrial purposes; (4) for agriculture; (b) to officials: (1) Civil (2) Military. Rule 33 states that the Collector may sell away revenue free Govt. land if convenient, without previous permission upto the estimated revenue free value of Rs. 100 and with permission of Govt. upto the revenue for value of Rs. 500 and for anything above it the permission of Govt. of India is necessary.

**Revenue-free value means** the total value of (1) the price which the land would fetch (if sold subject to the liability to revenue) and (2) the capitalised value of the revenue which it might bear. The capitalised value would mean according to G. R. F. D. 4159 of 1893 thirty times the annual assessment.

**Gift of possession.**—*Grants in Dharwar district to Shetnadiis.*—Unoccupied land for remuneration upto the estimated occupancy value of Rs. 500 could be made under Rule 34. Except for the Dharwar district the power of granting any land revenue in exchange for annual cash salary is reserved by Govt. (*G. R. 8173 of 1906*). A Shetnadi is one who holds a sanad or grant of land for militia service; the term is applied especially to local militia acting also as police and as garrison of forts.—*Wilson's Glossary of Judicial and Revenue Terms*; shetnadiis are those that have lands assigned them for payment of service, troops; a soldier; public servant.—*Moltenworth*. The value of occupation or possession is the value of the net rent, after deducting the revenue-tax from the gross rent.

**Gift of revenue only.**—Collector can exempt from payment of land revenue upto any extent lands used for sites of hospitals, dispensaries, schools and other public purposes if they do not yield any return to private individuals or local bodies (*Rule 35*). Lands used for hostels, teachers' quarters and play grounds being used for purposes connected with educational institutions are granted revenue-free or exempted from payment of land revenue (*G. R. 2535-37 of 23-12-1929*). A municipality or Local Board may be permitted to use waste land yielding no revenue for such temporary purposes for stacking road metal, etc. during the pleasure of Govt. free of charge. Further extension to religious and charitable purposes which are not public purposes (see the explanation or interpretation of the term 'public' above) and yield no revenue is given by rule 35 (2). It states that lands used for sites of buildings for religious or charitable purposes may be exempted from payment of land revenue provided they yield no return either to private individuals or local bodies, upto certain amounts by the Collector and Commissioner and upto any amount by the Governor in Council.

Condition attached to grants made under rules 32, 34 or 35 are laid down in rule 36. The same rule (*rule 36*) states that the lands will be liable to be resumed if used for different purposes or if required by Government for a public purpose. The compensation payable therefor in case of resumption shall not exceed the amount paid to Govt. for the grant together with the cost or value at that time of any buildings etc. authorisedly erected or works so executed. Where exemption from revenue is granted under rule 35 on land already occupied by the grantee it shall be lawful to impose a fine as laid down under s. 66, in addition to the assessment leviable under s. 44 (*Rule 36*).

**Grant of land for agricultural purposes.**—An unoccupied survey number not assigned for any special purpose may be granted by the Collector for agricultural purposes either on payment of price or without charge. The

Collector may even put it up to public auction and sell it to the highest bidder (*Rule 37*). If such survey number has not already been assessed it shall be assessed by the Collector, at the rate prevailing in the neighbourhood (*Rule 38*). The Collector may grant the survey number revenue-free or at a reduced assessment for a certain term or revenue, free for a certain term and at a reduced assessment for a further term, if the bringing of the survey number under cultivation or its reclamation for other purposes is likely to be attended with large expense or where for special reasons it seems desirable so to do (*Rule 39*). Grant of salt marsh lands (not required for salt manufacture) may be made by taking a lease on certain terms by the Collector under *Rule 40*. Lands in beds of river and not included in a survey number should ordinarily be leased annually by auction to the highest bidder. Such bid is to be deemed as the land revenue chargeable on the land. In Sind the Collector may grant land situated in the bed of a river for cultivation to those holders who have lost their lands by erosion (*Rule 41*).

**Grant of land for non-agricultural purposes.**—Unoccupied land may be sold by auction to highest bidder for building and other non-agricultural purposes. But the Collector may even dispose of such land by private arrangement either on payment of price fixed by him or without charge in his discretion (*Rule 42*). Land for building sites is to be granted under certain conditions laid down in *Rule 43*, the important one being that it shall be in perpetuity and transferable. However these are subject to certain exceptions (*Rule 43*). Unoccupied lands intended for future building sites in certain areas may be temporarily disposed of by taking leases at a certain ground rent and on certain conditions (*Rule 43-A*). In hill stations and such other localities lands may be granted on certain conditions regarding style of building etc. laid down in *Rule 44*. Disposal of lots in an entirely new village site where established is to be made under *Rules 42, 43 and 44* or whichever of these may be applicable (*Rule 45*). Where a new village site is established in lieu of a former one an agreement from the occupants is to be taken as provided in *Rule 45*. The Collector may attach certain conditions when unoccupied land is to be granted for non-agricultural purposes other than building sites. He may alter the assessment according to *Rules 81 to 85* and may fix assessment if the land is not already assessed (*Rule 47*). *Note*—Before disposing of lands for building sites and such other purposes they should be marked out in convenient lots and mapped, due provision being made in the plans for roads and approaches and access of air and light and also for sanitary requirements. (*Administrative Order XXIV*; See *Appendix A for Rules and Orders*).

**Special rules for certain city surveyed areas.**—Special rules are made for the grant of sites in Ahmedabad, Broach, Surat, Rander, Bulsar, Godhra and certain other places. (*Rule 48*). Disposal of strips of lands adjacent to existing building sites regulated by *Rule 48* is to be made as laid down in *Rule 49*. Unoccupied lands coming within scope of *Rule 48* and to which

rule 49 does not apply may be granted by the Collector either for purposes of agriculture or for other purposes. He may sell the same by auction or dispose them of by private arrangement. (*Rule 50*). Building sites in places mentioned in Rule 49 are to be disposed of on certain terms laid down in Rule 51. So also land intended for future building sites in those places may be temporarily disposed of on certain terms described in Rule 51. Unoccupied lands in those places may be disposed of by way of lease on certain conditions (*Rule 52*). Unoccupied building sites and plots of open ground etc. within municipal limits of those places which are governed by Rule 49 are declared to be specially reserved within the meaning of s. 50 of Bom. District Municipal Act, 1901. (*Rule 53*). The reservation mentioned above does not apply to small pieces of ground between houses and road-way etc. (*Rule 53*).

The Rule 54 applies to grants both for agricultural and non-agricultural purposes. It states that permission in writing given by the Mamlatdar under s. 60 to occupy should be in a certain form.

Exceptional cases to which none of the foregoing rules are applicable are provided for by Rule 55 regarding unalienated land. In these cases (governed by Rule 55) the orders of Govt. should be obtained regarding the form to be used wherever necessary (*Rule 56*). Rule 57 states that a copy of the lease signed by grantee and a register of leases (*Taluka Form No 11*) should be maintained by the Govt. officer concerned.

[<sup>a</sup>] 38. Subject to the general orders of Government, it shall be lawful for survey officers whilst survey operations are proceeding under Chapter VIII [<sup>b</sup>], and at any other time for the Collector [<sup>c</sup>] to set apart lands the property of Government and not in the lawful occupation of any person or aggregate of persons, in unalienated villages or unalienated portions of villages, for free pasturage for the village cattle, for forest reserves, or for any other public or municipal purpose; and lands assigned specially for any such purpose shall not be

Lands may be assigned for special purposes, and,  
when assigned shall not be otherwise used without sanction of the Collector.

[<sup>a</sup>] As to the local repeal of ss. 38, 39 and 40, see para. 5 of foot-note [<sup>a</sup>] on p. 1, *supra*.

[<sup>b</sup>] Words repealed by Bom. III of 1886 are omitted.

[<sup>c</sup>] The word "Collector" was substituted for the word "Commissioner" by Bom. IV of 1905, First Schedule.

otherwise [a] used without the sanction of the Collector [b]; and in the disposal of land under section 37 due regard shall be had to all such special assignments,

#### Commentary.

**Scope.**—This section gives to the Collector the power of setting apart lands for public purposes; but the arrangement by which that power is to be exercised by Survey Officers, while survey operations are proceeding is not thereby disturbed.—*The Report of Select Committee.* The Collector can set apart only lands which are the property of Government and which are not in the lawful occupation of any person or aggregate of persons. No private rights therefore, exist in lands assigned under s. 38, nor do such rights accrue while assignments continue. It is obvious that the erection of huts or other structures on lands assigned under s. 38 or the recovery of rent in respect of such lands by private persons is unauthorized and illegal.

**Instructions.**—The purposes for which existing assignments have been made should be distinctly specified in the revenue records and should be notified to the villagers.

**Land set apart for special purposes** is not confined to land set apart under s. 38. Land which has from time immemorial been used as a public road, is none the less set apart for that purpose though this may have taken place years before survey operations took place under Chapter VIII of Bom. L. R. Code.—*Prawal v. The Secretary of State, P. J. for 1897 p. 366.*

**The Collector can appropriate lands for village sites.**—*G. R. 5295 of 1-6-1911.* He may also grant sites revenue free inside a village site where the assessment capitalized at 4% does not exceed Rs. 100.—*G. R. 9193 of 29-9-1911.*

Assignments (*i. e.* the grant of a Communal threshing floor) under s. 38 being revocable are apparently no more than "licenses" within the meaning of Ch. VI of the Indian Easements Act of 1882 and confer no right to hold land as against Government.—*Trimbak v. Secretary of State, 21 Bom. 634.* Such assignments (See this case below) are neither disposals nor transfers to other departments which the Collector is empowered to make by *G. R. 4347 of 1902.*

**Govt. may modify assignments of land set apart for free pasturage.**—Government are not divested of the right to modify assignments on account of "gairan" or land set apart for free pasturage by the words of this Act.—*G. R. 3121 of 18-5-1888.*

[a] This word was substituted by Bom. IV of 1913, s. 11, for the original words "appropriated or assigned".

[b] The word 'Collector' was substituted for the word "Commissioner" by Bom. IV of 1905, First Schedule.



### ASSIGNMENT OF LAND FOR SPECIAL PURPOSES.

**Cattle stands and Dhobies and Potters' grounds**—(1) Gurcharan (*gairan*) or grazing ground for cattle, burial and burning grounds, spots near villages on which the village cattle stand, and lands for the use of village dhobies and potters, and for other recognised public needs may be assigned by the Collector under Rule 73 of L. R. Rules, 1921.—(See Appendix A for Rules).

**Note.**—Land so assigned remains public property; there is no disposal of possession or proprietary right under s. 37. There is therefore, no limit of value. Grants of sites for Idgah, temple or village sites for Idgah, temple or extensions of village sites are not assignments but disposals. Instances of public or Municipal purposes are land for rab-cutting, public latrines. *Gairan* may be transferred to burial ground without Government's sanction; and Government can modify *gairan* assignment.

**Municipalities and Local Boards**—Roads transferred to Local Boards (and Municipalities) (see s. 61-A of District Local Boards Act and 52 of District Municipal Act 1911) vest in those bodies as roads, and as soon as disused or not wanted, revert to Government. Therefore, a District Local Board (or other body) has no power to declare a portion of a road no longer wanted and then to leave it as their own property (G. R. 721/28 of 16-7-28).

**Municipal Gardens or "air spaces"** should not be granted without reporting the real necessity and the market value for Government approval. No also disused Tanks (Rule 75). All such assignments are revocable. [G. R. 4111 of 1923 and *Trimbak v. Secretary of State*, 21 Bom. 684 (see this case below)]. No assigned land could be disposed of for private use till first disassigned. (G. R. 639/24 of 21-7-28.).

**Civil Courts are precluded from entertaining a claim to have lands set apart for free pasturage for villagers.**—The claim to have the Government waste land set apart at the survey settlement for free pasturage reserved for that purpose was considered by the High Court in *Trimbak v. The Secretary of State for India*, 21 Bom. at p. 684 (1896) to be a claim against Government respecting the occupation of the waste land belonging to Government and the High Court held that s. 4 of the Revenue Jurisdiction Act, 1876 precluded the Civil Courts from entertaining it. The High Court observed:

"The Revenue Jurisdiction Act treats questions, respecting the occupation (Webster gives "use" as one of the meanings of the word 'occupation') of Government waste land as questions relating to the land revenue, and the object of the Act is to exclude such questions from the jurisdiction of the Civil Court and to leave them to be dealt with by the Revenue Authority except when they are of the definite nature described in the proviso to s. 4 and in s. 5. A question relating to the discontinuous occupation of the village wastes by the village cattle is as much a question relating to the

land revenue as one relating to the permanent occupation of them or a portion of them by an individual. Claims to establish either right against Government appeared to be claims respecting the occupation of the waste lands. A claim to have lauds set apart for free pasturage for the villagers appears to fall within the meaning of the clause." *Note*.—See this case under s. 39 *infra*.

**Cultivation of unarable land in Survey number when prohibited.**—The laud which is included as unarable (*Jalkharab*) in a survey number assessed for purposes of agriculture only and which is not assessed because it is reserved or assigned for public purposes; or because it is occupied by a road or recognised foot path; or by a tank or stream used by persons other than the holder for irrigation or for drinking or domestic purposes, or used for a burial or burning ground by any community, or by the public; or because it is assigned for village potteries is prohibited from being brought under cultivation under s. 48, sub-section 4 of the Code.

Provided that this prohibition shall not apply in the case of a tank or stream when such tank or stream is used for irrigation only and waters only land which is in the sole occupation of the holder, or when the privilege of cultivating the dry bed of the tank or stream has been specially conceded to the holder.—See *Rule 75 of the Bom. L. R. Rules, 1921*. (See *Appendix A for Rules*).

### THRESHING FLOORS

**Disposal of amount contributed by villagers for acquiring land for assignment as a threshing floor** when the land is acquired at the expense of villagers for assignment as a threshing floor, etc., should be made thus: the amount contributed by the villagers should immediately be credited in the accounts. If the cost should exceed the amount, the excess should be recovered from the villagers. Should the cost be less than the contribution, the balance may be expended by the Collector upon the improvement of the land acquired. (*G. R. 4804 of 28-5-1910*).

**Threshing floors.**—Government provided the villagers with land required for Khalvadi (threshing floors) by acquiring it under the Land Acquisition Act at the cost of villagers. The land thus acquired was made over to the villagers for use as Khalvadi (threshing floors) subject to the payment of the agricultural assessment on the land.

**Instructions.**—Ordinarily the distribution of land set apart for threshing floors should be left to the villagers. If disputes arise, proper orders may be issued. (*G. R. 4748 of 18-5-1912*).

**Burial ground.**—Where burial ground is provided by purchasing private land the cost should be met from local fund, as the duty devolves on Local Authority.—*G. R. 4953 of 9-8-1900*.

### MILITARY DEPARTMENT

**Land assigned for Military purposes.**—No land within the Cantonment limits forming part of the Military camping ground otherwise held for Military purposes shall be used or occupied by railway or otherwise with-

out the sanction of Government of India in the Military Department.—*Govt. of India in their Milg. Dept. No. 415 of 27-2-1897 in G. R. 1978 of 16-2-1897.*

**Camping ground for troops.**—Curtailement of camping ground specially assigned for troops is not allowed.—*G. R. 6881 of 16-3-1897.* Proposals for grant of lands within Cantonments and for transfer of such lands to civil authorities are regulated by the Cantonment Land Acquisition Rules and the Complimentary Rules to these rules and the Cantonment Property Rules under Cantonment Act, 1924.

**Cession of Cantonment.**—On the abolition of the Cantonment the tenures of lands are determined in accordance with the rules in force at the time of the grant where there are no leases, or in accordance with the terms of the lease. (*G. R. 2145/24 of 4-9-1925*). The procedure for notifying the cession of a Cantonment is governed by the Cantonment Act, 1924.

**Assignments of lands for use as open air spaces in Municipal Areas.**—G. Ra. 5319 of 12-7-1904, 10078 of 6-10-1908, 12447 of 7-10-1904, provide for the following conditions as generally attaching to such assignments :

- (a) the site shall be preserved for the free use of the public and no other purpose,
- (b) no building or other structure shall be erected upon it,
- (c) it shall be kept clear and free from encroachment except as provided in condition (d).
- (d) as far as possible and where suitable it shall be planted with trees and flowers, provided with benches, fountains and the like and if necessary, enclosed with suitable fences, and
- (e) such other conditions as may be considered essential in the circumstances of the locality.

**Instructions.**—The Collector of the District shall see that necessary note as to the assignment of the land is made in the survey registers and shall take measures for ensuring that the conditions are carefully observed and the Commissioner should satisfy himself when he visits the town that they have not been infringed.

**Govt. sanction is necessary for assigning an open air space to municipality.**—*G. R. 4108 of 27-4-1897.*

**Govt. land should not ordinarily be given free in future to local bodies for air spaces unless the want of it would endanger public health. The market value of the land should be mentioned along with the proposals for such assignments by the Collector.** (*G. R. 125/24 of 15-4-1926*).

**For temporary purposes Municipalities can permit lands assigned as air spaces to be used with the approval of the Collector or the Local Revenue Officer in charge of the City Survey. Half the proceeds derived from such use should be paid to Government.** (*G. R. 125/24 of 1-2-1925*).

**Transfer of land from one Department to other Department of Government.**—The authority to transfer lands to other departments should be delegated to Collectors. Such transfers cannot be regarded as assignments.—*G. R. 4347 of 25-6-1902.*

**Interdepartmental Rules.**—Local Governments have unrestricted power to transfer land to other departments of Govt. including Imperial Departments such as Military and Post Office. Cantonments fall within this class of transferred lands. Usually the assessment is removed and Village Form I corrected. But when the departments are 'commercial' [in which term Minor Irrigation works are included, (*G. R. 4599 of 1913*)] book debit of the value of the transferred land may be raised. When land is transferred to Railway Companies or State Railways there are special rules (see the Manual of Land Acquisition); such transfers are not included in statements of alienation of land. Land transferred to the Irrigation Department no longer yields revenue to the Land Revenue Department not even sales of grass or other products.

**Imperial buildings and land.**—Govt. of India sanctions transfers of lands or buildings in occupation of an Imperial Department (*G. R. 2111 of 1901*). Land not required by an Imperial Department or Railway, etc., is surrendered to the Provincial Government to dispose of as Government waste land (*G. R. 1619 of 1910*). The Director General of Post Offices may sell Post Office buildings; and also land acquired by or unconditionally transferred to the Post Office (*G. R. 10878 of 1910*).

**Provincial Buildings.**—Commissioners, including Salt and Excise, and Sind, may sanction the inter-departmental transfer of Provincial buildings not on the P. W. list, if heads of offices agree (*G. R. J. D. 8900 of 1912*); or they may sell them if the value does not exceed Rs. 1,000. In other cases, Government in the P. W. D. should be consulted before transfer or sale (*G. R. 3911 of 1862; 7073 of 1881; G. R. F. D. 1529 of 1887*). The renting of the compound of a building in charge of P. W. D. requires Government sanction in P. W. D. (*G. R. 8394 of 1899*). When any land in charge of P. W. D. or other Department is no longer required by them they should relinquish it to Revenue Department for disposal [*Para. 250, P. W. Code and P. W. Circular 9754 of 28-2-27 and see (G. R. 9002[24 of 18-8-24]*)].

[a] 39. The right of grazing on free pasturage lands shall extend only to the cattle of the village or villages to which such lands belong or have been assigned, and shall be regulated by rules to be from time to time, either generally or

Regulation of  
use of pasturage.

[a] As to the local repeal of ss. 33, 39 and 40 see para 5 of foot-note [a] on p. 1, *supra*.

in any particular instance, prescribed by the Collector with the sanction of the Commissioner. The Collector's decision in any case of dispute as to the said right of grazing shall be conclusive.

### Commentary

**Note.**—This section does not apply to any estate in the districts of Ahmedabad, Kaira, Broach, or Panch Mahals to which the Gujarat Talukdar's Act, 1883 extends.—See para 5 of foot-note (a) on p. 1 *supra*.

**Govt. of India do not desire that grazing** should be looked upon primarily as a source of income. But this does not mean that all revenues from scattered Govt. lands should be relinquished. It will generally be possible to lease or otherwise manage the unoccupied lands of a village through the agency of the community not, indeed, at the highest price which they are ready to pay to escape the tyranny of the subordinates of the Forest Dept.; but at a moderate estimate of their value to them fixed in view of the fact that herds and flocks which cannot exist without grazing, are often a necessary condition of the successful conduct of that cultivation upon which the Govt. land revenue is paid.

In Ryotwari tenure of land every survey number or field that is unoccupied or unassigned is in the possession and at the disposal of Govt., and trespass upon it is *prima facie* forbidden. In some cultivated tracts, these unoccupied and waste lands are the only source available from which the grazing requirements of the resident population can be met. Govt. of India are clearly of opinion that the intermixture of plots of Govt. land which are used for grazing only, but upon which trespass is forbidden, with the cultivation of occupancy or proprietary holders, is apt to lead to extreme abuses and especially so when these plots are under the management of Forest Department. The inferior subordinates of the Forest Department are perhaps as reliable as can be expected on the pay which Govt. can afford to give; but their morality is no higher than that of the uneducated classes from whom they are drawn; while the enormous areas over which they are scattered and the small number of controlling staff render effective supervision most difficult. It is not right, in order to protect the grass or the grazing dues on plots of waste scattered over the face of a cultivated district to put it into the power of an underling to pound or threaten to pound, cattle on the plea that they have overstepped the boundary between their owners' field and the next. Still less right is it to permit the exercise of the power of compounding offences allowed by s. 67 (*i.e.* s. 68 of Act XVI of 1927) of the Forest Act of 1878 to depend upon the mere report of a subordinate servant, or to expose him to the temptations which such a power holds out. In these cases the interests involved are trifling while the opportunities of committing extortion are unlimited. (See Circular No. 22-F, of 19-10-1894 issued by Govt. of India on Forest policy.)

**The right of grazing on road sides should not be sold.**—*G. R. 5312 of 28-6-1882.*

**Village cattle**—It is absurd to suppose that the term village cattle includes the cattle of any or every roving grazier who may choose to squat for a few months on the public grounds of the village and to allow his cattle to prey upon the lands set apart for the villagers. It is the duty of the Collector to put an end to an abuse as may appear to have grown up in his Collectorate (where a person who is not a owner of a single square foot of ground in a particular village but has erected a hut on public ground belonging to that village, where he sojourns for a few months while his cattle are engaged in exhausting the grass set apart for the real villagers) and to insist upon the preservation of the village grazing grounds and the Government Forests for the purpose for which they are properly reserved.—*The Collector of Thana v. Bal Patel, 2 Bom. 110 (1877).*

**Civil Courts may declare that the villagers of a village are entitled to rights of free pasturage in a village**—Certain lands measuring about 4,485 acres were set apart by Government as free grazing land for the cattle of a village. Subsequently Government sold a portion of the said land measuring about 2,600 acres to another. The extent of the area over which the village cattle grazed before the sale being thus curtailed the villagers brought a suit against the Secretary of State alleging that the land left for grazing after the sale of a portion of the land was insufficient for the pasturage of the village cattle and prayed that Government should set apart so much of the land as might be necessary for the free grazing, etc. The High Court observed that there was nothing in ss. 38 and 39 of the Code which excluded the jurisdiction of the Civil Courts to declare the existence on the part of the villagers of a right of free pasturage. Yet ss. 38 and 39 gave legislative sanction to the rules which the Collector with the sanction of the Commissioner might frame for the regulation of such rights and with the like sanction to the alienation of the land subject to the sale. The Civil Courts therefore could not go beyond declaring that the villagers of a specified village are entitled to rights of free pasturage over Government waste land within the limits of their village. They cannot enjoin the Collector to pursue any particular course in connection with the lands, while at all events he is acting bonafide in pursuance of the power which the provisions of the statute confer upon him.—*Trimbak v. The Secretary of State for India, 21 Bom. 684 (1896).*

[\*]40. In villages, or portions of villages, of which the original survey settlement has been completed before the passing of this Act, the right of Government to all trees in unalienated land, except trees reserved by Government or by any survey officer,

[a] As to the local repeal of ss. 38, 39 and 40 see para. 5 of foot-note : [a] on p. 1 *supra*.

whether by express order made at, or about the time of such settlement, or under any rule, or general order in force at the time of such settlement, or by notification made and published at, or at any time after, such settlement, shall be deemed to have been conceded to the occupant. But in the case of settlements completed before the passing of Bombay Act I of 1865 [\*] this provision shall not apply to teak, black-wood or sandal-wood trees. The right of Government to such trees shall not be deemed to have been conceded, except by clear and express words to that effect.

In the case of villages or portions of villages of which the original survey settlement shall be completed after the passing of this Act, the right of Government to all trees in unalienated land shall be deemed to be conceded to the occupant of such land except in so far as any such rights may be reserved by Government, or by any survey officer on behalf of Government, either expressly at or about the time of such settlement, or generally by notification made and published at any time previous to the completion of the survey settlement of the district in which such village or portion of a village is situate.

When permission to occupy land has been, or shall hereafter be, granted after the completion of the survey settlement of the village or portion of a village in which such land is situate, the said permission shall be deemed to include the concession of the right of Government to all trees growing on that land which may not have been, or which shall not hereafter be, expressly reserved at the

[a] . Bom. I of 1865 (except sections 37 and 38) is repealed by s. 2 of this Act, which has been repealed by Bom. IV of 1913, s. 5.

time of granting such permission, or which may not have been reserved, under any of the foregoing provisions of this section, at or about the time of the original survey settlement of the said village or portion of the village.

#### Commentary

**Trees and Forest Rights**—‘The sole object with which State Forests are administered is the public benefit’; in these words the Government of India laid down their forest policy in Circular No 22-F of 19-10-1894. In regulating and restricting the rights and privileges of uses in a forest area, the cardinal principle to be observed is that those rights and privileges must be limited otherwise than for the benefit of the right and privilege holders, only where the advantage to be derived by the general public is great and then only in such degree as is absolutely necessary to secure that advantage. It was further laid down in that circular that, subject to certain conditions the claims of cultivation are stronger than the claims of forest preservation. The conditions to which the application of this principle should be subject were that the honeycombing of a valuable forest by patches of cultivation should not be allowed; that cultivation must be permanent; that it must not be merely nominal and an excuse for the creation of pastoral or semi-pastoral villages; and that it must not be allowed to extend so as to encroach upon the minimum area of forest lands of the country, and the reasonable forest requirements, present and prospective, of the neighbourhood in which it is situated. Finally the Government of India laid down that minor forests and pastures and grazing grounds must be managed mainly in the interests of the population of the tract. In regard both to fuel and fodder reserves and to grazing areas pure and simple, especially such as lay in the midst of cultivated tracts, they asked local governments to consider whether it was necessary to class these, or, if they were already so classed, to retain them as forest areas; and if this question were decided in the affirmative, whether it would not be better to constitute them protected rather than reserved forests.—See p. 260 of the *Report of Royal Commission on Agriculture in India (1928)*.

In the abovenamed circular issued by the Govt. of India, the forests of India were broadly classed under four heads; the forest preservation of which is essential on climatic or physical grounds; forests which afford a supply of valuable timbers for commercial purposes; minor forests which include tracts which, though true forests, produce only the inferior sorts of timber or the smaller growths of the better sorts; and pastures and grazing ground proper which are usually forests only in name. The classification of the notified forest area into ‘Reserved,’ ‘Protected’ and ‘unclassed’ needs a few words of explanation. The distinction between ‘Reserved’ and ‘Protected’ forests is that, in the former, there are few or no rights of user and, therefore, it is possible to prohibit the exercise of all such rights except those specially defined. In ‘Protected’ forests, there are established and acknowledged rights of user, and the exercise of these is permitted subject



to such restrictions as it may be found necessary to impose in the interests of the holders and of future generations. Broadly speaking in a reserved forest everything is an offence that is not permitted, while, in a protected forest nothing is an offence that is not prohibited. Cultivators and breeders of cattle are admitted to reserved forests but, in the interests of timber production, which is their main object, it is necessary to define rigidly what the cultivator and breeder may do and they are, therefore, administered under the stringent provisions of chapter II of the Indian Forest Act, 1927, which extends to the Bombay Presidency. Protected forests being somewhat unimportant, it has been considered impolitic for one reason or another to restrict rights too rigidly. They are administered under the provisions of Chapter IV of the Indian Forest Act. Unclassed forests being for the most part situated in inaccessible and undeveloped hill tracts in Burma, Assam and Bengal, we are not much concerned with them. In their case the only measure of control which is exercised over them is the prohibition of felling certain reserved trees.

**Formation of Village Forests.**—Chapter III of the Indian Forest Act 1927 enables local government to assign to the village community the rights of government to or over any land which has been constituted a reserved forest; forests so assigned are called village forests.

Forests and lands which are not the property of Government may be controlled by local government under Ch. V of the Indian Forest Act by issuing a notification regulating or prohibiting in such forests or waste land (a) the breaking up or clearing of land for cultivation; or (b) the pasturing of cattle; or (c) the firing or clearing of the vegetation; when such regulation or prohibition appears necessary for any of the following purposes:—

- (i) for protection against storms, winds, rolling stones, floods and avalanches
- (ii) for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, the prevention of landslips or of the formation of ravines and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;
- (iii) for the maintenance of a water-supply in springs, rivers and tanks;
- (iv) for the protection of roads, bridges, railways and other lines of communication.
- (v) for the preservation of the public health.

The Forest Department in this Presidency came into existence when the appointment of Conservator of Forests was created in 1947. For a few years before that, correspondence relating to trees and forests had been conducted through the Military Board, and it was only in 1865 that it was decided that the general administration of the Forests should be conducted in the Revenue Department.

In the early days of the British rule, as in the times preceding it, but little trouble was taken about the forests or the rights of Govt, in trees, for

the simple reason that the abundance of jungle rendered wood of but little value, and it seemed not worth while therefore, to restrict the people in cutting down trees pretty much as they liked. But the country has gradually been cleared and cultivation has increased with the population, and it has been necessary for Government to interfere to prevent the wasteful destruction of trees.

Under the Forest Department are included not only what is generally understood by the word 'forests,' but also all matters relating to timber trees in Government land, plantations, the supply of timber and fuel, and other minor matters, relating to wood. Owing to little care having been taken in most Collectorates to prevent the destruction of timber, there is now more work to be done in creating forest reserves than in preserving the old forests.

In the very valuable report on the Forests and Forest Department of this Presidency, made by Dr. Brandis (No. 203, June 18th 1870) he says: "Forest business in Bombay is not simply the administration of certain well-defined Government estates which may be managed by a separate agency without interfering with the interests and privileges of the surrounding population. Forest administration in this Presidency means the management of public forests cut up and interlaced with private lands, burdened in most cases by a variety of customary rights and privileges: it comprises further the management of village forest, and maintenance and exercise of the Government forest rights in occupied lands and in private estates. If an independent department were to deal with these multifarious and intricate matters without the co-operation of the revenue officers the result would not be satisfactory". This explains why it is that the work of the Forest Department is to so great an extent under the Collectors.

**The true objects for which the Forest Department is organized and maintained are:—**

- 1st.—To guard and preserve from wasteful destruction the timber growing on defined tracts of land, which may properly be withdrawn from private occupation; and by good management to ensure the supply from those tracts in time to come of the timber needed to meet the wants of the country.
- 2nd.—To combine with the above realization by reasonable means of such a revenue as the Government is fairly entitled to expect from its possession of such valuable property.

But in striving to attain these ends Government are bound to pay due regard to the habits and wants of perhaps the poorest class of the population and they strongly deprecate vexatious and oppressive interference with their daily life, for the purpose of enforcing in petty details the so-called rights of the Forest Department.—*G. R. 6144 of 1-11-1875.*

It cannot be too strongly impressed on all connected with the Forest Department that their aim should be to conciliate the villagers in forest tracts and to secure their co-operation by liberal treatment in respect of their do-

nessic wants, and by giving them employment as much as possible.—*G. R. 5963 of 12-11-1874.*

**Permission to occupy land**—In order to make the point clear the Hon. Mr. Mandlik who was supported by Indian members had suggested that the word 'Government' should be added between the words 'occupy' and 'land'. He said that there were large classes of holdings which would not come within the definition of alienated lands, but were entirely private property, such as *miras* and other lands of the same description. The Code recognised only two classes namely 'alienated' and 'unalienated'. If the word Govt. is not introduced then the section would mean that permission to occupy even hereditary property, such as *miras* lands is requisite. The amendment was lost as official members had opposed it.—*Proceedings of the Council of Governors of Bombay for the year 1877, Vol. XVI, pp. 130-31.*

## ANALYSIS OF THE SECTION.

1	2	3
VILLAGES		
I. Villages in which original settlement was introduced before 17-7-79	Government right to trees in unalienated lands in the villages etc.	Occupant's rights to trees in the lands.
(a) before the date (7-1-65) of Act I of 1865.	(1) Teak, blackwood and sandalwood unless conceded by express words. (2) Trees reserved at or before the original settlement. (3) Trees reserved at any time after such settlement.	All other trees.
(b) between the date (7-1-65) of Act I of 1865 and 17-7-79.	Trees referred to in (2) and (3) above.	"
II. Villages in which the original settlement was introduced after 17-7-79.	Trees referred to in (2) above.	"
III. In the case of land taken up after the original settlement.	(1) Trees referred to in (2) above. (2) Trees expressly reserved at the time of granting permission to occupy the land.	"

**Trees reserved means trees existing at the time of settlement and not trees which may afterwards grow.**—Under this section all the trees except

those that are reserved belong to the occupant. The language applies ordinarily to existing growths of reserved trees at the date of the settlement.

There is nothing in the language of s. 40 to show that all future growths of sandalwood trees or other reserved trees would belong to Government: and the doubt, if any, is removed by the wording of (old) rule 93 (i.e. Rule 62 of the Rules, 1921) which clearly indicates the meaning of the section in that sense. The plain and natural meaning is that the existing reserved trees belong to the Government, and that all future growths belong to the occupant.—*Emperor v. Yellappa*, 22 Bom. L. R. 884; 45 Bom. 110 (1920).

“Govt. cannot, any more than a private person, revoke a gift without donee’s consent if there be breach of condition on donee’s part”, observed the High Court in the *Collector of Ratnagiri v. Vinayak Narayan Surve*, 8 Bom. H. C. R. 2 (1871) where the Collector sought to defeat the operation of Mr. Dunlop’s proclamation on the ground that it was rescinded by Government in a subsequent proclamation of 1851.

Mr. Dunlop’s (Collector and Magistrate, Zilla Southern Konkan) proclamation was as follows:—

“It has been the practice hitherto for the Govt. to claim all Teak, Sisur and other timber trees within the limits of the zilla, even when growing on private lands, on which account people were discouraged from preserving and rearing these timber trees on their lands. The Govt. having heard this and bearing in mind that all people will be much benefitted by the rearing and cultivation of Teak, Sisur, and other trees in the country hereby proclaim, for the information of all, that, exclusive of the Govt. forest in the Sawera and Malvan talukas, whoever may have Teak and other trees growing on their land outside these limits will be exempted from all claims on the part of Govt. Those who are the owners of trees, or who will hereafter raise them on their private land, will be allowed to dispose of them according to their pleasure. No obstruction will be caused on the part of Government. (Dated 1st March 1824)”.

The proclamation by Mr. Harris the Collector of Canara issued on the 18th April 1823 is relied upon by landholders there as giving them certain rights to timber. The proclamation is referred to in *Bhaskarappa v. Collector of North Canara* at pp. 728-29 of 3 Bom. 452 (1879). The proclamation by Mr. Harris is as follows :

“All the raiyats are (hereby) given to understand as follows : “The proprietors of land are, from this date at liberty to cut teak, poon, and all (other) trees growing on their proprietary estates or private gardens, and make use of them according to their pleasure. The mulgars are (hereby) further informed that, in future, the Dock Department, for the sake (on account) of Govt. or any other department, is not in any way prevented

from cutting of teak and poon trees from the private gardens of (their) *rājās*. Yet the cutting of teak and poon trees growing in Govt. jungles is strictly prohibited, as it has been heretofore. All the rājāts should, therefore, fully know that, if any one cut or destroy such trees, he will be subject to criminal prosecution and punishment and should behave themselves accordingly." (See also *G. R. 8049, 21 of 29-3-1929*).

**The right to cut down and sale trees upon land is incidental to the proprietorship of the land because the trees upon the land are part of the land.**—*Per Malikidam v. Malik Boola Khan, A. I. R. 1921 Sind 109. Ruttonjee v. Collector of Thanos, 11 M. I. A 295 followed. See also the definition of land in s. 3 (4) at p. 13 ante.*

**Trees standing on rājāns wāhs (private canals) in front of survey numbers may continue to be the private property of the rājā to whom the canals belonged, though these canals have been transferred to Irrigation Department.**—*The Secretary of State v. Kolumal, 2 S. D. 320.*

**Trees belong to the landlord and not to the tenant is the general rule. In the case of a permanent tenant the origin of which tenancy is lost in antiquity (see s. 83) is entitled to the trees.**

Trees are ceded on all land definitely included in the revenue settlement; obviously waste and forest are not so included.

#### RULES PROVIDING FOR RESERVATION OF TREES AND FORESTS.

Rule 17 of L. R. Rules states that when the sanction of Govt. is received to the assessment under s. 102, a notification in form A (see Appendix A for Forms and Rules) should be published. The notification of revised settlement (Form A) contains the following clause: "the reservations respecting the right of Govt. to trees as made by any general notification at the time of, or after the survey settlement and reproduced (to be stated in the margin of notification) in the margin, or as made by any express order at the time of survey settlement and recorded in the settlement records, are hereby continued. All other rights over trees are conceded to occupants."

Rule 58 states that general concession to occupants (obviously of unalienated land) with regard to the right of Govt. to trees extends ordinarily to all trees except (a) roadside trees planted by or under orders of Govt. (b) teak, blackwood and sandalwood; (c) trees, the produce of which has hitherto been disposed of by Govt.; (d) trees specially reserved. *Note.*—This rule does not apply to alienated lands as is clear from the wording of s. 40 (3). Building sites held revenue-free under s. 128 are alienated (*G. R. 7097 of 1929*). Govt. has no claim on trees in compounds of bungalows to which agricultural settlement does not apply. Rule 30 (b) states that land within port limits should not be disposed of without the reservation as to tree-growth, as laid down in Rule 58 (see above).

**Unauthorised cutting of trees in waste or occupied land may be dealt with under s. 77 of Indian Forest Act, 1927.** That section provides for penalty where any person contravening any rule under the Act, for the contravention of which no special penalty is provided.

**Property in timber on a tenant's holding vests in the Zamindar.**—This is the presumption of law and the general rule in the absence of custom—*Ganga Dei v. Badam and Others*, 30 All. 314 (1903); See also, 38 Bom. 716.

Trees in groves, trees round temples or places of encampment and broadly speaking valuable kinds and specimen trees and trees of special value or utility should be reserved at the settlement and should be so entered in the records (*Rule 59*). This rule covers the case of trees standing on assessed agricultural holdings of occupants. Disposal of trees which are reserved on occupied lands is to be made as laid down in *Rule 60*. The same Rule provides for the disposal of trees on unoccupied land which is to be granted to any person for cultivation in talukas where demarcation of forests has been completed and also where it is not so completed. Cl (6) of *Rule 60* states that in Sind the clearance of reserved trees (*see above*) and of trees not accepted by the new occupant in talukas where demarcation of forests has not been completed, should be made by the Collector.

**Unreserved trees on Govt. land** should be disposed of to the same person to whom the land is to be given and at the same time when the disposal of land is made. (*Rule 61*). *Rule 62* lays down that when the right of Government to the trees in a holding has been once disposed of to the occupant, or when all the reserved trees have been once cut and removed either (a) at the grant of the land, or (b) after such grant, or (c) in Sind, at any time, before such grant, or (d) elsewhere than in Sind within five years before such grant, Government will have no further claims to trees which may afterwards grow, in the holding, or which may spring up from the old roots or stumps, so long as the land continues in occupation. (See also the ruling in *Emperor v. Yellappa*, 22 Bom. L. R. 884, *supra*). But G. R. 7627/24 of 1-5-1927, states that except when in a summary (or Gordon or Pedder) settlement the Saad grant a proprietary title (to the soil or trees) explicitly, the holders have no right to after-growths of sandal and other reserved trees.

*Rules 60, 61 and 62* do not apply to varkas lands in the Thana, Kolaba and Ratnagiri and beta lands in the Kanara district, and to certain lands in some talukas of Nasik district etc. (*Rule 63*). *Rule 63* states that the sale of any tree or of timber covered by that rule confers no right (but see **18 Bom 671**) to after-growth from the root or stump of the tree so cut. Govt. reserves these rights to after-growths, (for a discussions about claim to after-growth of teak trees in varkas lands in Kolaba, see G.R. 6607/28 of 23-3-1937).

**Forest Register** i. e. Village Form No I-A is kept only for villages where there are more than five survey numbers assigned as forest. Where there are only five or less, the necessary particulars can be given in Village Form I noting rights in Column 21 of that Form. This Form should be compared with the records of Forest Department (*Notification under Forest Act, G. R. 14262 of 1919*) before the Mamlatdar signs it. When land is set apart as Forest its assessment is removed. When Forest legally so constituted is transferred to the management of the Revenue Dept. without being formally disforested, it will remain classed as Forest [*See Manual of Revenue Accounts, p. 26 (1931 ed.)*].

The village accountant is to count and note in Village Form No. XII any fruit trees (old enough to bear fruit) of the following kinds which are scattered about the field:—Mango, Tamarind, Jack, Coconut, Tad and Date Palms. If at any time it is directed to count any other trees, such as the Mahoda (Mhowra) or the Bayan, this can easily be done. But when the whole or a distinct portion of the field is entirely set apart for growing palms or fruit trees, then the area under those trees will be given and not the number.

When fruit trees are counted, they are presumed to be scattered about and not occupy completely a definite area of land. Area entirely under Date palms or Tads for toddy production should be given separate headings.—*See Manual of Revenue Accounts, p. 157. (1931 ed.)*

#### SANDALWOOD TREES.

**Sandalwood trees grown after Survey Settlements**—The accused were occupants of a survey number in a village in which the first survey settlement was introduced in 1855 and the revised settlement in 1888-89. Considerable time after the settlements, sandalwood trees grew on the land. Those trees having been cut and removed by the accused, without the permission of Government, the accused were convicted of a breach of rule 2 framed by Bom. Govt. under s. 75 cl. (c) of the Indian Forest Act and punished under s. 76 of the Act. On a reference reversing the conviction and sentence the High Court held:

(1) That the trees in question which were not shown to be in existence at the date of the settlements, belonged to the accused as occupants and that they had committed no offence in cutting their own trees; (2) that under Rule 93 (VII) (i.e. Rule 62 of the L.R. Rules, 1921) framed under s. 214 of the Bom. L.R. Code and s. 40 of the Code the right of Government was confined to reserved trees existing at the date of the settlement.—*Emperor v. Yellappa* 22 Bom. L. R. 884 (1920); 45 Bom. 110.

**Sandalwood trees**—Forest Department should undertake disposal of Government sandalwood trees growing in lands outside forests. (*G. R. 4622/28 of 23-6-1930*).

**Sandalwood trees in village sites**—The survey of the fields round a village site may necessarily involve the fixing of the boundaries of that site but it is not a survey of that site. Such a survey requires the orders of Government under s. 131. The High Court in Yellappa's case (see this case above at p. 159) has merely decided the question of the rights of Government in such sandalwood trees in surveyed lands as had grown since the time of the survey of 1879. The question of the ownership of trees in lands surveyed between 1855 and 1879 is a question of fact in each case as is shown by s. 40, and this section shows also that Government reserved their right to sandalwood trees in lands surveyed before 1855, unless the right to them had been conceded by clear and express words. So also Rule 62 applies only to settled lands, (*See G. R. 3536/24 of 26-5-1928*).

**Rules for regulating the exploitation of sandalwood growing in malki lands in the Dharwar, Kanara, Belgaum and Bijapur Districts as per ss. 41 and 76 of Indian Forest Act, 1927 and s. 214 of the Bom. L. R. Code, 1879:**

**1 Right to sandalwood trees:—**All sandalwood trees—

- (a) Which stand in occupied lands and were reserved at the time of the survey settlement;
- (b) Which stand in occupied lands and were not reserved at the time of the settlement but were specially reserved at the time of granting the land;
- (c) Which stand in Government waste land including unoccupied gaathan land; and
- (d) which stand in watan or service Inam lands except in cases where a summary or other settlement has been applied and the sanad issued under such settlement confers on the inamdar in clear and unmistakable terms a proprietary right over such trees

are the exclusive property of Government.

**2. And their preservation:—**Every occupant or holder of land shall be responsible for the due preservation of Government sandalwood trees growing thereon and shall, in the event of an injury to any such trees from whatever cause at once report such fact to the nearest local Revenue or Forest Officer.

**3. Cutting, etc. of sandalwood trees to be subject to license:—**No person shall cut, uproot, store or mark sandalwood trees or timber, or convert the same into powder or oil or in any other manner without a license from a Divisional Forest Officer, which shall be subject to such conditions as Government may, from time to time, prescribe.

**4. Mode of application for license to cut or uproot Sandalwood trees:—**The application to the Divisional Forest officer for the grant of a license to cut, or uproot sandalwood trees under rule 3 shall clearly specify the survey numbers, the name of the village and of the taluka, and the number of sandalwood trees sought to be cut or uprooted in each survey number and shall be accompanied by the requisite documents to prove the title of the applicant to the said trees.

**5. Enquiries to be made by the Divisional Forest officer:—**On receipt of the application, the Divisional Forest officer shall make such further enquiries as he deems necessary regarding the title of the applicant to the trees, and on the conclusion of such enquiries he shall issue the necessary license if the trees are found to belong to the applicant.

**6. Conditions of the license to be observed by the licensee:—**The licensee shall be bound by the conditions contained in the license granted under rule 5 which shall specify *inter alia* the name of the officer to whom the license is to be taken by the applicant prior to the cutting or uprooting of the trees and the period within which the trees are to be cut or uprooted.

**7. Cutting etc. to be done after marking:—**The licensee on receipt of the license, shall take it to the officer named therein and shall cut or uproot



the trees after they are marked by that officer with such mark as may be prescribed for the purpose by the Conservator of Forests, S. C.

8. **Mode of application for license for conversion, storing or marking of sandalwood:**—An application for the grant of a license for conversion, storing or marking of sandalwood under rule 3 shall clearly show the source from which the material has been derived and shall be accompanied by documents proving the applicant's title to the same.

9. **Enquiry to be made by the Divisional Forest officer:**—On receipt of an application under rule 8 the Divisional Forest officer, after making such enquiries as he deems necessary regarding the applicant's title to the material, shall on the conclusion of such enquiries issue the necessary license if the sandalwood is found to belong to the applicant.

10. **Conditions of the license to be observed by licensee:**—A license under rule 9 shall be bound by the condition contained in his license which shall specify *inter alia* the name of the place or places where and the period within which the conversion of sandalwood shall be carried out and, in the case of a license granted for storing sandalwood, the place or places where it is to be stored. Licenses for storing sandalwood shall be issued ordinarily for a period not exceeding one year at a time, and may be renewed annually.

11. **Accounts of sandalwood stored to be kept:**—Every holder of a license for storing sandalwood shall keep an account of the sandalwood received and disposed and disposed of by him in such manner as may be prescribed by the Divisional Forest Officer and the accounts and stock shall be open to inspection at any time by an officer not lower in rank than that of a Range Forest Officer.

12. **Private property marks to be registered by wholesale or retail dealers in sandalwood:**—Dealers in sandalwood who wish to sell the wood wholesale or retail must get their private property marks registered as required by rule 19 of the rules mentioned in rule 16.

13. **Storing of sandalwood allowed in certain cases:**—Nothing in the above rules requires the possession of a license for storing sandalwood not exceeding 14 lbs. in weight for purely religious or domestic purposes provided that the sandalwood is legally obtained and *id non dicitur alicuius*.

14. **Return of licenses:**—On expiry of their period the licenses issued under rule 5 or 9 shall be returned to the Divisional Forest Officer.

15. **Penalty for breach of rules:**—Any person who infringes any of the foregoing rules, except rule 2, shall be liable to be punished with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 500 or with both. The penalty for an infringement of rule 2 shall be that stated in section 77 of the Indian Forest Act, 1927.

16. **Applicability of the rules:**—In other respects the Bombay Presidency Forest Produce Transit Rules, 1922, published in Government Notification in the Revenue Department No. 240-D, dated the 24th July 1922,

as subsequently amended, shall apply. (*G. R. No. 7491/25 of 29-4-1929, B. G. G. Pt. 1, p. 882. Dt. 2-5-1929*).

### RIGHTS OF SARANJAMDARS, INAMDARS, KHOTS, IZAFATDARS, ETC., TO TREES AND FORESTS

**A saranjam tenure ( class I ) imports no proprietary rights in the soil and consequently no right to trees. The onus of proving the existence of such forest rights would be on the Saranjamdar.—*Ramchandra v. Venkatrao*, 6 Bom. 599. (1882)**

**In Inam, Personal ( Class II ) and Devasthan ( Class III ) all trees in lands settled under Summary Settlement, or in respect of which full enquiry was made in lieu of Summary Settlement, belong to the holder.—*G. R. 2232 of 14-3-1884*.**

**Inamdar's rights over forest in his village.**—When the right of an Inamdar to the forest lands in his village is admitted by Govt. and it is proved that he is the sole owner thereof, the Inamdar can apply to Govt. for placing the forest under the management of the Forest Dept. The terms on which the transfer is effected are embodied in a lease, and are agreed to by the Inamdar on one side, and the Collector and the Forest Officer on the other.

If it cannot be proved from the Collector's records or otherwise that the Forests were at the time of settlement in the possession of Govt. the title of the Inamdar will not be questioned. But it is obviously desirable that before the settlement of the forests of a taluka or district is considered complete, it should be clearly determined, to what lands the Summary Settlement has been applied.—*G. R. 3079 of 15-4-1884*.

**Right to cut timber by an Inamdar**—Where a Sanad contained only the words "the village of Manavali has been conferred on you an Inam, to be enjoyed by you, your son, and grandson. The Government dues of the village viz., the koolbab koolkanoo (i. e. all taxes, and assessments), present taxes, and future taxes together with the house-tax, but exclusive of haks due to hakdars, shall continue to be debited from year to year, from the year next succeeding," it was held that the plaintiff's sanad did not operate as an alienation of the soil of the village, or confer on him a proprietary title in it, and therefore gave the plaintiff no right to the timber growing upon the soil—*Vaman v. The Collector of Thana and the Conservator of Forests*, 6 Bom. H. C. R. 191.

**Property in tree planted by person in charge of property**—Where it was shown that a person while acting as a mutavali of a shrine planted a mango tree the High Court held that he could acquire no property in the tree by so doing nor could any benefit which he, whilst acting as mutavali might have derived, by taking the fruit of the tree, enable him to acquire any right of ownership in the tree as against the shrine.—*Narribbi v. Mapanlal*, 16 Bom. 547. (1891)

**Rights of khots to trees on Varkas lands**—In a dispute as regards the ownership of certain trees between khots and Govt. it was held that the

matter in dispute was concluded by a Kabuliya passed to Govt. and that the *khots* could not claim more than one-third of the sale proceeds of the trees. Per Shah J.—“The *khots* in this case were not in permanent occupation of the lands in question nor did they have such interest in the lands as would enable them to obtain the benefit of Dunlop's proclamation. If the proclamation applied to the *vakas* lands in question, the *khots*' rights to the trees were not affected by the *kabuliya*.”—*Sadasica v. Secretary of State*, 20 Bom. L. R. 141.

A *Maktdar* of village has no property whatever in the soil and consequently also none in the trees planted by him when the *makta* or lease expires.

**Inamdar's Forests**—In cases where at the time of settlement, forest rights had been specially reserved, and were not in the enjoyment of the Inamdar, he should not be held to have any claim whatever to them. In cases where the Inamdar has at the time of settlement exercised rights of forests, and the land has not been specially set apart for valuation, [ according to Rule 2 of a. 2 of (Bom.) Act II of 1863, ] then the settlement should be made according to the survey assessment, irrespective of the value of trees, which should be held to belong unreservedly to the Inamdars. In cases where the Inamdar has at the time of the settlement exercised forest rights and the land has not been surveyed and assessed but has been reserved for special valuation, then in making the settlement the value of the land for purposes of cultivation, together with the forest growth thereon should be taken into consideration (*G. R. 1796 of 11-5-1867 and G. R. 3538 of 17-10-1867*). In cases where the absolute right of Govt. in trees cannot be established, there appears no remedy against an Inamdar who refuses the settlement as regards the trees when the summary settlement of the land revenue of village has been effected. (*G. R. 1044 of 14-3-1867*) The Forest Settlement officer should inquire into all cases in which Inamdars claim a right over forest in their villages. It is advisable that the *sanad* should be examined in every case before the forest should be allowed to cut down in Inam villages. It seems expedient that Govt. should be satisfied either from the fact that quit rent has been calculated on forest revenue or otherwise that the settlement did extend to forest land before the claims of an Inamdar to such lands are finally admitted. (*G. R. 6457 of 29-10-1881; 3303 of 28-4-1883; 0037 of 6-3-1884; 4111 of 21-5-1884; 7092 of 5-10-1888; and 7851 of 5-11-1888*.) When once it is ascertained that a village has come under summary settlement, it is quite unnecessary to trouble the Inamdar, as Govt. have independent means of determining Inamdar's rights. In other cases the Inamdar should only be asked to furnish information, etc. when the Forest Settlement officer has reason for doubting the real state of the case concerning his village. [ *L. R. No. 1808 of 16-12-1885, ( vide G. R. 469 of 20-1-1886 )* ]. With regard to the forest right of Inamdars in their villages the rules to be followed are:—(1) that the words *Jal, Taru*, etc. in a *sanad* give a right to the forest; (2) that the Inam Commissioner's decisions are final; and (3) the Summary Settle-

ment gives a right to the forest. (*G. R. 8185 of 9-10-1885*). By a Summary settlement an Inamdar becomes entitled to all forest rights over all land at the time of settlement in his holding, when a summary settlement has taken place; the right to the trees does not depend on any mention of the trees or any express intention to give or retain the contract over them, but solely on a question whether the trees stand within the area to which the summary settlement applies. [*L. R. 368 of 6-4-1889, (vide C. R. 5572 of 11-8-1890)*] Inamdars whose titles have been adjudicated before the Summary Settlement Act became law and who have since agreed under the Act to pay a Nazrana of one auna in order that their holdings may become their transferable private property are to be deemed to have full proprietary rights as Inamdars to whom a Summary Settlement has been applied [*L. R. No. 31 of 6-1-1885 (vide G. R. 539 of 19-1-1885)*]. In the case of Khots G. R. 3363 of 1-5-1883 states that Govt. will claim no right over teak trees already planted nor upon those that may hereafter be planted subject to the conditions *viz.*—(1) that an officer of the Forest Dept. be permitted to count the number of trees planted and see if it correspond with the number given out as such by petitioners, and (2) that petitioners agree in writing that before cutting any they should inform the Forest Officer and should any be cut without previous intimation to that officer the petitioners will lose all right to the timber cut, and it will become the property of Government. No distinction should be made between rights to trees enjoyed by occupants in return for certain amount of assessment, and those enjoyed by service Inamdars in return for service. (*G. R. 9578 of 19-12-1889*.)

Right to trees in service Inam lands cannot be claimed (when such land is held without proprietary right) either (a) as proprietors, or (b) as occupants. Rights to trees may be conceded by Govt. (*G. R. 2156 of 24-3-1890*). Rules regulating forest rights in alienated villages are made in Panch Mahals by G. R. 952 of 22-2-1879 (*See Bom. Forest Manual, Vol. II p. 290*) For Govt. management of Talukdari forest in Panch Mahals see G. Rs. 4725 of 23-6-1883; 8999 of 15-11-1884 and 1664 of 26-2-1885. (*ibid*). When an Inamdar has agreed merely to pay judi on timber or on "cuttings" judi cannot be levied on profits derived from the sale of minor forest produce such as leaves of apta, temburni, and pallas trees, hirdas, sikakai, etc. (*G. R. 6632 of 8-9-1883*.)

**Rules for management of forests in which Izafatdars in Thana Collectorate have a share**—At least three months before the commencement of any cutting in the forest, the Izafatdar should send a yadi to the Mamlatdar to be forwarded to the Divisional Forest Officer stating: (a) the species of trees or description of the forest produce, that he proposes to cut, i. e. whether Teak, Blackwood, Rywal (building timber), Firewood, Bamboos, Karvi or other; (b) the approximate amount of each kind or description and the circumference and the length of trees and poles which he intends cutting; (c) the limits within which the fellings are to take place i. e. whether the entire forest area or only a certain portion of it; (d) the period or periods of fellings; (e) whether the Izafatdar is going to cut the timber etc., him-

self, and afterwards sell it or whether the trees or other forest produce are to be sold standing in a lump to a contractor to be removed at his own cost ; (f) in case of a contract in writing a copy is to be given along with the pass, if the agreement is oral ; terms as to price, quantity and other particulars to be furnished (*Rule 1*). Rule 2 states that the Izafatdar is to issue a pass with every cart, raft or load of timber or other forest produce exported from his village, whether by himself or his servant or by contractor or purchasers. In the printed forms with counterfoils which are to be retained by Izafatdar the following details should be filled by the Izafatdar or his authorized agent : (a) species and description of forest produce i. e. whether timber (and if so its kind) firewood, bamboo, karvi, etc., (b) form and shape i. e. whether logs, beams, rafters or other, (c) quantity, i. e. cubical measurement or number of pieces ; (d) price paid or to be paid, and name of contractor or purchaser and the date of his agreement ; (e) distinguishing marks ; (f) destination ; (g) date when pass was granted and how long it is to continue in force. Any timber or other forest produce if removed without such a pass it shall be liable to seizure by a Forest or a Revenue or a Police officer (*Rule 3*). The accounts i. e. Stock-account books, Roskird, ledger, passbook, memorandum book, receipt book, etc., in connection with their forests are to be kept by Izafatdar (*Rule 4*), in person or his duly authorized agent. (*Rule 5*), the official year being 1st of April to 31st of March. (*Rule 6*). Rule 7 states that on certain dates the Izafatdar should send their accounts to the Taluka Kacheri. When the accounts are compared and examined the amount of judi payable to Govt. is to be recorded in a Roskird under the signatures of Mamlatdar, Forest Inspector and the Izafatdar. In case of dispute reference is made to the Collector. Rule 8 makes it necessary for Izafatdar to pay the judi within seven days in the Mamlatdar's treasury. Rule 9 enables the Collector or the Assistant Collector, the Conservator of Forests, the District Forest officer, the Taluka Forest Inspector or the Mamlatdar to call for and examine the Izafatdar's accounts in his village at any time. Rule 10 empowers the Conservator of Forests to appoint Rakhvaldars or other forest subordinates in Izafatdar's village in order to protect Govt.'s interest at Govt. cost.—(*G. R. 6770 of 2. 12. 1875, as amended by G. R. 9822 of 28. 9. 1908; see also p. 240 of the Bombay Forest Manual, Vol. II. (1921)*)

**Note.**—The above rules should be worked with care and consideration for the position of Izafatdars. Govt. can claim only a share of the actual income from forests and the management of forests having been resigned unreservedly into their hands the Forest Dept. will not be justified in interfering in any way with a view of securing either a more economical or a more profitable management.—(*L. R. 426 of 1-5-1876; vide G. R. 2867 of 12-5-1876*).

Govt. are entitled to calculate judi on the Izafatdar's actual income from his forest, and not upon the Forest Dept's estimate of their value.—(*L. R. No. 591 of 21. 6. 1876; vide G. R. 3856 of 5-7-1876*.)

The Izafat tenure is a variety of service tenure, of hereditary district officers chiefly Deshmukhs and Deshpandes. At the introduction of British

Rule there were about 124 villages under this tenure. They were resumed and managed by Govt. as the duties of the hereditary district officers had become useless during the continuance of the Maratha farming system. When it was decided to restore the villages to their former holders, most declined to resume charge and the number remaining on Izafat tenure fell to 16. When the Izafat villages of the Karjat taluka were surveyed it was decided that the holders were liable to pay full survey assessment, but as no assessment was placed on any but rice land, the holders enjoyed under the 30 years lease the profits of warkas cultivation. In the villages of other talukas in the Northern Konkan the survey tenure was introduced, but the Izafatdar was allowed 10 per cent. of the revenue as remuneration for the collection of the assessment. The lease of the Karjat Izafat villages having expired, a similar remuneration has been allowed to the holders, the full assessment on warkas as well as rice being levied. They were further allowed to the privilege of occupying land belonging to persons dying or disappearing without known heirs according to previous practice. Izafat villages are in fact now held on the survey tenure, the Izafatdars holding a position analogous to that of superior holders.—*Character of Land Tenures and System of Survey and Settlement in the Bombay Presidency; Selections from the Records of the Bombay Govt. No. DXXIV.—New Series.*

**41.** The right to all trees specially reserved under the provision of the last preceding section, and to all trees, brushwood, jungle, or other natural product growing on land set apart for forest reserves under section 32 of Bombay Act I of 1865 [ <sup>a</sup> ] or section 38 of this Act, and to all trees, brushwood, jungle or other natural product, wherever growing, except in so far as the same may be the property of individuals or of aggregates of individuals capable of holding property, vests in Government; and such trees, brushwood, jungle or other natural product shall be preserved or disposed of in such manner as Government may from time to time direct.

Government trees  
and forests.

#### Commentary

**History**—The Hon. Mr. Mandlik and some other members proposed that this section should be dropped or in the alternative it should be made clear that it applies only to Govt. land as such by introducing the words "on Govt. land" and by striking out the words "wherever growing.....holding

[a] Bom. I of 1865. (except ss. 37 and 38) is repealed by s. 2 of this Act, which has been repealed by Bom. IV of 1913, s. 5.

property." It was argued that there was particular reason why the onus of proof should not be placed on individuals, etc. In the case of property of that kind growing in the jungles, private proprietors were at a very great disadvantage in proving continuous possession. The amendment was lost all the official members voting against it.—*Proceedings of the Council of the Governor of Bombay, 1877 vol. XVI pp. 131-32.*

'Or other natural product'—These words were added with the view of protecting the existing rights of Govt. to such products as lac, honey, gum, resin, Catacha, etc.—*Proceedings of the Bom. Leg. Council, 1877, p. 132.*

**Provisions for the protection of the Govt. Forests** are made in this section. Looking to the magnitude of the public interests both economic and financial which the important and growing Department of Forests represents no exception can be taken to the moderate extent to which provision is made for their protection.—*Proceedings of the Bom. Leg. Council of 28-1-1875. B. G. G. pt. V. 1875, p. 65.* The importance of the question of forests can hardly be overrated. The climate of a country, the rainfall, the fertility of the soil, are all affected by the preservation or destruction of its forests. The extension of railways is one of the great necessities of this country; and one of the chief obstacles to the rapid construction of the railways is the scarcity of timber, produced by long years of neglect and improvidence.—*Vaman Janardan Joshi v. The Collector of Thane and the Conservator of Forests, 6 Bom. H. C. R. 195. (1869)* **Note**—It is obvious that the expression 'or other natural products' is to be understood *in a broad generis* with trees etc. (see *Mahadeviah v. Secretary of State, 6 Bom. L. R. 1117*). This section does not therefore cover excavated stones, earth, etc. These may be called the 'minor products' of land and their disposal is regulated by rules 66 to 70 of the L. R. Rules, 1921 (see *Appendix A for Rules*) see also notes to s. 43 *infra*.

**Persons bound to assist Forest officers and police officers.**—Every person who exercises any right in a reserved or protected forest, or who is permitted to take any forest produce from, or to cut and remove timber or to pasture cattle in, such forest, and every person who is employed by any such person in such forest, and

every person in any village contiguous to such forest who is employed by the Government, or who receives emoluments from the Government for services to be performed to the community;

shall be bound to furnish without unnecessary delay to the nearest Forest officer or Police officer any information he may possess respecting the commission of, or intention to commit, any forest offence, and shall forthwith take steps, whether so required by any Forest-officer or Police-officer or not,

- (a) to extinguish any forest fire in such forest of which he has knowledge or information.
- (b) to prevent by any lawful means in his power any fire in the vicinity of such forest of which he has knowledge or information from spreading to such forest,
- and shall assist any Forest-officer or Police Officer demanding his aid
- (c) in preventing the commission in such forest of any forest-offence; and
- (d) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

(2) Any person who, being bound so to do without lawful excuse (the burden of proving which shall lie upon such person) fails—

- (a) to furnish without unnecessary delay to the nearest Forest-officer or Police officer any information required by subsection (1);
- (b) to take steps as required by subsection (1) to extinguish any forest fire in a reserved or protected forest;
- (c) to prevent, as required by subsection (1), any fire in the vicinity of such forest from spreading to such forest; or
- (d) to assist any Forest-officer or Police-officer demanding his aid in preventing the commission in such forest of any forest offence, or, when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender;

shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.—S. 79, *Indian Forest Act, 1927*.

Village officers should be made to understand that they are indirectly responsible for the preservation of forests as being property of Govt.—*G. R. 5062 of 19-7-1899 as amended by G. R. 3025 of 5-5-1902; see also Bom. Forest Manual vol. II p. 205; for neglect village officers are punished (G. R. 850 of 26-1-1891).*

**Grazing Rules for the Bombay Presidency excluding Sind** are made by G. Rs. 4217 of 17-5-1928, 12-10-1928 and 13-12-1929. Rule 1 defines forest villages as those which contribute land to forests; non-forests villages are those which do not do so; village cattle are cattle kept by persons other than professional graziers at one and the same village all the year round except when they are taken for grazing purposes to an authorised forest cattle camp. (*Note*—The Divisional Forest Officer in consultation with the Collector is to decide who are 'professional graziers'). Grazing unit is the open forest of the area in which cattle are entitled to graze in consideration of payment of fees or the grant of free-grazing. In closed forests grazing is prohibited, but there shall be no closure to grazing within a quarter of a mile of a village. With the concurrence of the villagers concerned the Collector may close portions of open forests to grazing for part of the year in order to improve the growth of grass (*Rule 2 of Grazing Rules*). The Collector and the Divisional Forest



Officer are to fix the number of cattle to be admitted in an area of open forest. However they have to provide grazing ground elsewhere to the excess of the maximum [Rule 3 (*ibid*)]. The admission of cattle to grazing areas should be made in the following order:—(1) village cattle of forest villages of the district subject to certain restrictions; preference may be given to cattle of certain villages in certain area; (2) Village cattle of non-forest villages of the district subject to certain restrictions; (3) village cattle from another district; (4) non-village cattle whose owners usually reside in the forest circle; (5) cattle from Indian States and other cattle not specified above (Rule 4, *ibid*). The Collector and Conservator should decide whether or not sheep should be admitted to graze in any open forest in charge of Forest Dept. Goats may where customary be admitted when accompanying flocks of sheep, but then only in proportion of one goat to 50 sheep (Rule 5, *ibid*). Grazing fees and provision for permits is made by Rule 6. The same rule (rule 6) states that in forest villages ordinarily fees will be levied on all cattle subject to certain limitations. Village cattle of forest villages in Panch Mahals and Thana districts and in the Peint taluka of the Nasik district will continue to enjoy the privilege of free grazing in open forests of that forest block to the formation of which the villages have contributed land. Fees at the rates fixed for village cattle of non-forest villages are to be paid for grazing in other open areas. (Rule 7, *ibid*). Village cattle for which fees have been paid are entitled to graze (a) in all open forests in charge of the Forest Dept. and (b) in all pasture reserves and revenue waste lands in forest villages also (c) in all pastures, reserves and revenue waste lands of non-forest villages in the district, except those which are specially reserved for grass cutting and those in which the grazing has been granted free or sold to a particular village under Rule 8, under certain conditions. Non-village cattle are entitled to graze (1) subject to the maximum number admissible in open forest, in all open forests in the Forest Circle and (2) subject to rules framed for the guidance of the Panchayat when a panchayat has been formed in all pasture reserves and revenue waste lands not reserved for grass cutting or not granted free or on payment to a particular village, within the forest circle; the Collector may close against such grazing any particular portion of the area (Rule 7, *ibid*). In non-forest villages grazing on pasture reserves and revenue waste land shall be regulated as follows; (1) if a panchayat has been formed for the management of the village forest or grazing ground, grazing shall be managed in accordance with rules framed; (2) If no panchayat has been formed (a) grazing shall be granted free if the area is insignificant; preference is to be given to the cattle of that village, (b) grazing shall be sold to the villagers of the village in which the pasture reserves or revenue waste lands are situated at a certain rate per acre if the area is not insignificant and does not produce grass fit for cutting. In this case also the preference should be given to village cattle; (c) grazing should not be granted free nor sold if the area is insignificant and produces grass fit for cutting. The grass should be sold by auction for cutting and after it is cut

grazing may be permitted in the discretion of the Collector as to terms. (*Rule 8, ibid*). Rule 10 provides for cattle census at intervals showing the name of the owner, the area of his holding and the number of his cattle. Forest officers are to collect grazing fees and issue permits in respect of cattle which graze in areas in charge of Forest Dept. Village officers are to collect grazing fees and issue permits where cattle graze solely in area in charge of Revenue Dept. (*Rule 11, ibid*). Rule 12, describes permits which are to be issued in respect of cattle entitled to grazing whether on payment of fees or free in accordance with the privilege. Rule 13 states that cattle should be in charge of a responsible herdsman and the maximum number to one herdsman should be fixed by Collector and the Divisional Forest Officer. The said rule (*Rule 13,*) describes his responsibilities with respect to carrying the permit and the care to be taken of the cattle in his charge. Rule 14 provides for penalties for contravention of rules and states that cattle found in forests in contravention of provisions of the grazing rules shall be liable to be impounded and in the alternative compensation may be recovered not exceeding double the grazing fees. Compensation may be recovered in addition to pound fees in cases of deliberate trespass, absence of herdsman or damage to young plantations. It is to be assessed by the Divisional Forest Officer. Cattle which have accidentally strayed from fields or open forests a few yards across the boundary into closed forests, or from a road or watering place shall not be impounded if there be a herdsman with them and if he has endeavoured to prevent trespass. (*Rule 14, ibid*). Rule 15 says that in seasons of draught the Commissioner may relax the rules to such extent as may be necessary. The same rule (*Rule 15, ibid*) provides for special rules regulating grazing in organised teak areas of Kanara, Dharwar and Belgaum districts. [*Addenda and Corrigenda No. 164 to Bombay Forest Manual Vol. II. (1921).*]

#### RIGHTS OF DISTRICT HEREDITARY OFFICERS AND SERVICE INAMDARS TO TREES.

**District hereditary Officers** have no right to trees standing on the lands which they hold for service uncommuted and without proprietary rights.—*G. R. 419 of 17-1-1887*, but they have a right to cut trees in non-service watan lands. (*G. R. 7195 of 28-7-1911.*) Gadkari have no right to teak trees in Gadkari lands. (*G. R. 9680 of 9-10-1914*).

**Service tenure** is a privileged tenure, and the extent of the alienation conveyed in the privilege is governed by the general rules which do not presume cession of forest rights in the absence of proof. Govt. can disallow altogether the cutting of trees in service lands or can permit it subject to such conditions as they may think fit to impose.—(*G. R. 5987 of 6-9-1888*).

In an alienated village in which the grant of Service land was made by Govt. prior to alienation of the village to the Inamdar and was thus excluded from Inam to the latter, the right to trees and such service lands would undoubtedly vest in Govt. while in villages where the Service grant was

consequent to the alienation of the village, such right must be considered to vest in the Inamdar.—*G. R. 7664 of 17-11-1888.*

• **The holders of Service Inam lands** have no right to the timber or Forest on their land unless they hold a title-deed conferring proprietary rights in express terms. (*G. R. 7633 of 9-11-1887*).

**Rules regarding cutting of trees in Service lands** are as under:—

(a) Occupants of service holdings may with the previous permission of the Collector, cut any trees standing in their holdings.

(b) The Collector shall not, except for express reasons to be recorded in writing, refuse permission unless the trees be reserved at the Survey or form portion of sacred groves or are roadside or other trees useful to the community and whose destruction would be a public loss.

(c) In the case of an application to cut isolated teak or other reserved trees, the Collector may grant them on payment of their estimated value. Where a permission to cut several of such trees is applied for, the application should be disposed of by the Conservator.

(d) Where trees are reserved in the case of ordinary occupants they should be reserved also in those service lands to which a settlement converting them into private property has not been applied. The occupants of service lands concerned should be warned that the concession now allowed is granted as an act of grace and not as an admission of any right, and that it is revocable at the pleasure of Govt. (*G. R. No. 6376 of 9-9-1899*).

In giving permission the principle to be observed is where the custom is for the land to pass from an occupant to his natural heirs independently of the wataudar who actually performs service, the permission should be given; but where the land passes with the office and the holder enjoys only a temporary usufruct, permission should only be given for good reasons such as that "the trees are ready to fell, damage the crops, or the like." (*G. R. 6153 of 9. 9. 1899*) See Bom. Forest Manual Vol. II p. 286.

Trees in Service Inam lands may be cut with the permission of Mamlatdars and Mahalkaris subject to the usual conditions referred to in *G. R. 6376 of 9-9-1899*. (*See this G. R. above*) *G. R. 5295 of 1-9-1911*.

Reserved trees in Service Inam Lands can be cut with the permission of Divisional Forest Officers specially empowered by conservators.—*G. R. 5651 of 16-4-1913*.

Civil Court cannot try suits against Govt. for trees in Patil Inam land. *DeSwaia Derino v. The Secretary of State for India in Council*, 18 Bom. 319 (1893).

For the rights of occupants to growth subsequent to the settlement see *Emperor v. Yellapur*, 22 Bom. L.R. 884, in s. 49 at p. 160 *supra* and also Rule 62 in Appendix A.

Government will be prepared to grant reasonable concessions to holders of land and other persons with a view to encourage them to undertake to form babul plantations on lands suitable for the purpose near the villages.—

*G. Rs. 6282 of 5-8-1884 and 9384 of 26-11-1884.* Efforts on the part of Revenue Officers to promote arboriculture will be appreciated.—*G. R. 4118 of 14-6-1901.*

Measures for the promotion of arboriculture in the Bombay Presidency are recommended by the Government of India. (*P.W.D.*) 2289 of 26-10-1910 and 60 of 13-1-1911. (*See notes to s. 42 infra.*)

**Planting of trees in open spaces** in villages is encouraged by the grant of special concessions such as free enjoyment of produce of trees by Govt. For Form of Sanad to be issued see Appendix.—*G.R. 8966 of 21-12-1901.*

Concessions to be given to private persons and continued to their legal heirs with a view to encourage them to plant trees at their own expense in lands set apart for common use of the village in Govt. unassessed waste, and in reserved forests in charge of the Revenue Dept. are included in the following instructions:—

- (1) Before planting is undertaken, the permission of the Mamlatdar or Mahalkari shall be obtained.
- (2) On receipt of an application for permission, the Mamlatdar or Mahalkari shall ascertain by local inquiry whether there is any objection to permission being granted. In cases of doubt, especially when the land is reserved forest, in charge of the Revenue Dept. or already contains trees of any value which are the property of Govt. the case shall be submitted for the orders of the Sub-Divisional Officer.
- (3) In case of permission being granted a permit shall be given to the applicant, stating precisely the extent, situation and boundaries of the land in which he is permitted to plant trees and setting forth the conditions specified below. No restriction shall be placed on the number or kind of trees to be planted:—
  - (i) No right over the land shall be granted to the permit-holder.
  - (ii) The permit-holder shall be allowed to erect any fence which may be necessary for the purpose of protecting the trees planted by him.
  - (iii) The usufruct and the timber of the trees, i. e., the leaves, twigs, flowers, fruits and branches of the trees, and the trees themselves when fallen or felled shall be given entirely free to the permit holder.
  - (iv) Power to remove the trees when necessary, without claim to compensation, shall be reserved to Government; trees so removed being given free to the permit-holder under cl. (iii).
  - (v) The permit shall be subject to cancellation if the trees are not planted in accordance with the permit within a reasonable time to be fixed

in the permit, and thereafter if they are not in the opinion of the Mamlatdar or Mahalkari properly tended and kept. When a permit is cancelled, any trees that may be on the land shall be given to the permit-holder under clause (iii) or shall be forfeited to Government as the Mamlatdar or Mahalkari shall direct.—*Supplement to B.G.G. of 9-1-1913 and Bom. Forest Manual, Vol. II p. 203.*

*Note*—The concessions granted to permit-holders are to be continued to their legal heirs without any restriction with regard to succession or transfer.—*G. R. 9124 of 6-9-1918*; see also *Bom. Forest Manual, vol. II, p. 204.*

**Right to trees or produce of trees on Government land**—If a man plants a tree on Government land, the tree and the produce thereof become the property of Government. A claim to enjoy the produce cannot be maintained by custom nor the enjoyment of the produce of trees on such lands amount to recognition by Government of a right. For such recognition a special arrangement or agreement with Government or its officials is necessary. The exception in favour of private rights in s. 41 extends to lands set apart for Forest Reserves under s. 38.—*See G. R. 8550 of 3-11-1881 [Bom. Forest Manual, Vol II, p. 199 (1921)].*

2. Trees grown in dry beds of streams which are not included within the boundaries of occupied survey numbers are to be treated as Govt. property, unless and until the occupant can establish a claim to them. [*G. R. 649 of 30-1-1882*; *Bom. Forest Manual (ibid)*].

**Instructions**—In cases where the boundaries of a field are not laid down on the banks of a stream the area of the field as recorded in the survey registers should be taken as the guide in determining how far the right of the occupant extends. The occupant should be allowed the benefit of the trees on the area recorded, all beyond it being held to be the property of Government subject to the provisions of the Bom. L. R. Code regarding alluvion. (*See G. R. 649 of 30-1-1882*).

**Trees inside a Railway fence** are the property of the Railway Company unless reserved.—*G. R. 217 of 11-1-1899* and *G. R. 9313 of 18-12-1883*. (*Bom. Forest Manual Vol. II, p. 202*).

**For right to trees in occupied lands in the districts of Kelaba, Thana and Ratnagiri** see press note issued by Government (*vide G. N. 12060 of 23-11-1908*), pp. 2078-2081 *B. G. G. Pt. I of 3-12-1908*.

### FREE GRANTS OF TIMBER FROM WASTE LANDS OUTSIDE FOREST

Commissioners can make such grants of timber from Government waste lands subject to the same conditions as have been laid down for such grants from Forests, provided that the trees are not required for shade or any other public purpose.—*G. R. 8811 of 4-9-1907*.

Collectors can make such free grants from such lands upto the value of Rs. 50.—*G. R. 3736 of 14-6-1909*.

Mukhtyarkars in Sind are vested with the powers of the Collector to dispose of trees on Government lands except in village sites when their value does not exceed Rs. 25 in all.—*G. R. No. 435/24 of 4-4-1924*.

**Rules Regulating disposal of grazing and minor products (i.e. earth, stone, sand, etc.) of land**—Produce of Govt. trees may be sold by auction annually or for a period of years as the Collector may direct (*Rule 64*). Trees to be sold under s. 41 should be disposed of by auction or otherwise (*ibid.*) Rule 65 provides that grazing or other produce of unoccupied land vesting in Govt. (R. D.) and of all land specially reserved for grass or for grazing (except land assigned to villages for free pasturage probably under s. 38) may be sold by public auction or otherwise, as the Collector deems fit annually or otherwise upto five years. (*See Appendix A for Rules.*)

Ordinarily the purchasers' rights will close on dates specified below :—

Collectorates	Waste assessed Dry-crop Land	Waste assessed Rice Land	Reserved Kurans and unassessed Waste
All in Sind	31st July	31st July	31st July
Thana	31st March	31st March	31st December
Dharwar	31st March	31st December	1st May
All others	31st March	31st March	1st May

[<sup>a</sup>] 42. All road-side trees which have been planted and reared by, or under the orders of, or at the expense, of Government, and all trees which have been planted and reared at the expense of Local Funds by the side of any road, which vests in Government, vest in Government. [<sup>a</sup>] But in the event of such trees dying, or being blown down, or being cut down by order of the Collector, the timber shall become the property of the holder of the land in which they were growing; and the usufruct, including the loppings of such trees, shall also vest in the said holder; provided that the trees shall not be lopped except under the orders of the Collector. [<sup>b</sup>]

#### Commentary

**Object**—Next to providing good water supply few benefits of a really more simple and practical character can be conferred on the country than by

[a-a] This was substituted by Bom. IV of 1913, s. 12 (a), for the original paragraph.

[b] Paragraphs 3 and 4 repealed by Bom. IV of 1913, s. 12 (b), are omitted.

planting avenues of trees. A great deal of attention has been given to this subject of late years and a great deal of public money is now annually expended on this description of planting. It is well therefore to take this opportunity of recognising the public rights in these trees.—*Proceedings of the Bom. Leg. Council, dated 28-1-1875*; (*B. G. G. for 1875, pt. V p. 67*).

**History**—Recently the planting of trees on the side of provincial roads is taken away from the Local Boards and entrusted to P. W. Dept., or the Collector of the District. As regards the trees which have been planted in former times on the side of provincial roads and under s. 42 of the L. R. Code they are vested in Govt. When the road itself is vested in the Local Board the trees along the side of the road are also vested in the Local Board. The proper arrangement is, in whatever authority the road vests, in that same authority the trees should vest. The L. R. Code defines the trees which are vested in the Govt., and those trees will be, all those on the side of the provincial roads, that have been put in at the expense of the Govt., and those that have been put in at the expense of the Local Board. In future, local funds will not put in any more trees on the side of Govt. roads, they will put in trees only on the side of the Local Board roads. [*See the discussion on the Bill (Now Bom. Act IV of 1913) B. G. G. Pt. VII p. 155, 20-5-1913.*]

All Road-side trees planted by or under the orders of Govt. will generally be considered to be reserved by Government.—(*Rule 59*) See *Appendix A for L. R. Rules.*

Village officers are to protect Govt. trees on local and provincial roads without any additional remuneration.—*G. R. 2731 of 5-5-1876*; see also *Bom. Forest Manual Vol. II. (1921 Ed.)*

Mamlatdars may be delegated the powers of a Collector under this section.—*G. R., (R.D.) 4447 of 25-8-1902*. They can permit the cutting and lopping of road-side trees.—*G. R. 5293 of 1-7-1911*.

Trees planted by the side of village roads and tracks not vesting in a Local Board vest in Govt. If a particular track does not vest in a Local Board, it and the trees planted by the side of it vest in Govt.—See ss. 37 (1) and 42 of this Act.—*G. O. No. 9114, (G.D.) of 10-11-1919*; but subject to rights of public as laid down in *Arteshir v. Aimagi*, 31 Bom. L. R. 104 at p. 121 (*supra*).

The P.W.D. is now in charge of the management of the road-side trees on the Provincial Roads [*G.R. (P.W.D.) 300*; *C.W.-1159 of 27-8-1890*] therefore there may not be any necessity for the Collectors to issue 'Sanads' for planting road-side trees.—*G.R. (R.D.) 1037 of 7-2-1891*.

#### CONCESSIONS, FACILITIES AND ENCOURAGEMENT BY GOVERNMENT

The question of the maintenance of avenues of trees on road sides in India was taken up by the Govt. of India and subsequently G. E. A-2298 of 25-10-1910 was issued and a Manual of Arboriculture, Bom. Presidency was prepared in 1912. The subject is of great importance because of the welcome shade thereby afforded to wayfarers, the substantial addition to the beauties

of the landscape and the mitigation of the discomforts of long journeys by road. In addition to these advantages it also tends to the maintenance of the roads themselves and is thus ultimately a source of income.

**Planting of road-side trees** should be encouraged and the names of Mamlatdars and Mahalkaris doing special good work in this matter should be brought to the Commissioner's notice. When seedlings or cuttings are planted out the services of village officers and villagers should be utilised as much as possible in looking after trees and rewards should be given freely.

**Planting of trees on the boundary of the fields** is to be encouraged by Collectors by giving an assurance in the form of a 'Sanad' to the effect that the holder and his children are to enjoy the fruit of the trees hereditarily for ever. Government have no claim to the fruit but the trees are the property of Government and shall not be cut down or injured by any one. When fields are mortgaged the name of the owner should be entered in the 'Sanad' and not that of the mortgagee.—(*G. Rs. 3233 of 26-6-1880 and 4849 of 14-9-1880.*)

With a view to encouraging the planting of road-side trees by private agencies the planters are permitted by Govt. to take the loppings and wood of the trees, provided that the trees are not lopped or cut down without the permission of the Collector.—*G. R. A-1970 of 5-10-1911.*

**Instructions**—Where practicable, road-side planting should be usefully supplemented by utilising small plots of waste land along the roads, such for instance as corners of fields too small to be of any use for cultivation, and for which compensation had therefore to be given when the line was acquired and making mango or other plantations thereon. Especially in places where wells are built for the use of travellers, thirty or forty mango trees planted round (but not near enough to allow of their leaves falling into the wells) will soon provide convenient and shady resting places for travellers.—*G. R. 4251 of 22-7-1881.*

For babul plantations in assessed Nos., see *G. R. 4118 of June 1913, (R. D.)*

For revenue free grants for 'huris' or groves in Sind, see Comr. in Sind's Special Circular No. 16.

The assessment on land not exceeding one acre was remitted for groves of trees or 'amrai' by *G. R. 1037 of Feb, 1891*, but this is not allowed under the new rules unless the land is handed over to a public body.

**The Chief administrative control** rests with the Commissioners exercised through the Superintending Engineers where the work is carried out by the P.W.D. and in other cases by the Commissioner. The financial control will be exercised by the Superintending Engineer or the Commissioner as the case may be. The chief technical control will be exercised by the senior Conservator of Forests. Executive control will be exercised by (1) the District Board, or (2) the Taluka Board, or (3) Municipalities, or (4) the P.W.D. Arboriculture on provincial roads will be carried out by the Executive Engineers. The Commissioner will decide in each case whether operations on District Board Roads maintained by the P. W. D. shall be carried out by the Executive Engineer or the Board but where the Board retains



arboriculture in its own hands it must be responsible that the operations do not interfere with road repairs. Operations on both roads maintained by Local Boards or Municipality will be carried out by the agency which maintains the roads subject to the approval of the Collector.

In case of new district roads the cost of tree planting and water supply at convenient distances is invariably to be included in the estimate.—*G. R. 4271 of 5-10-1909.*

Trees on sides of roads taken over by the P. W. D. from Local Boards for maintenance as provincial roads under *G. R. A-2467 of 5-19-1905 (P. W. D.)* should also be taken over and so maintained. [*G. R. A-1389 of 23-5-1906 (P. W. D.)*]

The planting and preservation of trees by the side or in the vicinity of roads vesting in Local Board is to be made by such Board. (*s. 50 Bom. Local Board Act, 1923*)

Local Boards may be transferred the management of road-side trees on local fund roads in charge of the P.W. Dept. provided the local boards agree to it. Permission of the Commissioner who will consult the Chief or the Superintending Engineer for such transfer has to be obtained.—*G. R. (R. D.) 497 of 18-6-1929.*

Trees abutting on cart track in municipal limits belong to the municipality (*see G. R. G. D. 7410 of 12-8-1929*.) All trees provided for public streets in municipal limits belong to the municipality (*s. 50 of Bom. Dist. Municipal Act, 1911*) and municipality is empowered to spend money towards planting and maintaining road side trees (*s. 58 ibid*). Municipality may require by written notice the owner or occupier of land to cut down, lop or trim all trees which overhang, endanger or obstruct any public street (*s. 118, ibid*).

Timbers from Government forests required for fencing roads with trees both on provincial roads and local fund roads should be granted free of payment. No sanction of Govt. in each case is necessary (*G. R. 7740 of 25-9-1935*.) The proceeds of dead wood and loppings of trees on local fund roads should be credited to Local Fund.—*G. R. 1982 of 18. 12. 1882.*

Free grants of timber.—Commissioners may sanction such grants to local funds upto the value of Rs. 50 for improvement in local communications, hedging talas, water courses etc. (*G. R. 1951 of 15-2-1887*.) Also for village school houses.—*G. R. 4073 of 31. 5. 1895.*

Timber for local fund purposes must be paid for in the same way as that required by any other department of Government.—*G. R. 1657 of 22-4-1869*

Forest revenue cannot be appropriated to local funds (*Govt. of India No. 217 of 1-4-1865*). From this it follows that the sale proceeds of the Govt. rights in trees in occupied numbers cannot be made over to the local funds. (*G. R. 2973 of 12-7-1865*.)

When trees are planted on road-sides by an Inamdar's ancestors, a sanad is given confirming the Inamdar's right to dead wood and fruit and any loppings necessary for the trees, better growth, with a clear proviso that any act prejudicial to the spirit of the original grant *viz.*, the maintenance

of the trees for the good of the public, will render the sanad liable to forfeiture.—*G.R. 3992 of 24-5-1913.*

**43.** Any person who shall unauthorisedly fell and appropriate any tree or any portion thereof or remove [\*] from his holdings [\*] any other natural product [\*] whether of the like description or not [\*] which is the property of Government, shall be liable to Government for the value thereof, which shall be recoverable from him as an arrear of land revenue, in addition to any penalty to which he may be liable under the provisions of this Act for the occupation of the land or otherwise; and notwithstanding any criminal proceedings which may be instituted against him in respect of his said appropriation of Government property.

The decision of the Collector as to the value of any such tree, or portion thereof, or other natural product, shall be conclusive.

[a-a] These words were inserted by Bom. IV of 1905, First Schedule.

#### Commentary.

“Whether of the like description, or not.”—These words are inserted to make it clear that s. 43 refers not only to natural products, *ejusdem generis* with trees but also to stones etc. It was observed in an earlier ruling *Madhavdas v. Secretary of State*, 6 Bom. L. R. 1117 by Jenkins C. J. that it would be a forced construction to hold that the expression ‘natural products’ as used in this section covers excavated stones, earth etc.

The word ‘appropriate’ is intentionally retained in this section as it is the right word (*See the discussion in the Legislative Council; B. G. G. Pt. VII p. 162 of 20-5-1913.*) It has been expunged by Act IV of 1913 from almost all other sections and the word ‘use’ is inserted. Chandavarkar J. in *Secretary of State v. Laldas*, 13 Bom. L. R. at p. 20 (1909) had interpreted it to mean permanent use as against temporary use. He said: The word “appropriated” means in its natural sense, ‘made one’s own’, and conveys the idea of exclusion. To appropriate anything for any purpose is to set it

apart for that purpose in exclusion of all other uses. American and English Encyclopædia of Law : *Whitehead v. Gibbons*, 10 N. J. Eq. 235.

The Mamlatdars are empowered to exercise the powers of Collector under this section. [G.R. 4347 (17) of 25-6-1902.]

Trees in Government waste lands if unauthorisedly appropriated are covered by s. 43 of the L. R. Code, and prosecutions can be made either under the rules framed under L. R. Code or s. 379 of the I. P. Code.

The unauthorised cutting of trees on private land reserved by Govt. can be dealt with under the Forest Act and the rules made thereunder.—G. R. 3394 of 25-5-1903.

#### RULES REGULATING DISPOSAL OF EARTH, STONE, SAND, ETC.

Rules regulating disposal of earth, stone, kankar, sand, etc. Earth, Stone, Kankar, Sand, Murum, etc. from bed of sea, creeks, rivers and nullas or from any unenclosed waste (not pot-kharab) in a village may be removed free of charge by a potter or brick maker for purposes of his trade or by a person for his domestic or agricultural purposes with the permission of Patel or Tapedar (in Siud) (Rule 67); and with the permission of Mamlatdar stone may be removed free of charge from the above mentioned sources for building a well (Rule 68). But if excavation of soil is likely to damage or destroy a valuable building or land required for special public purpose or any boundary mark previous sanction of Mamlatdar is required and he shall refuse permission to the extent necessary to prevent damage or destruction (Rule 69). No removal allowed by rules 67 and 68 is to be made from land within port limits, or on the banks or shore of any port without the concurrence of the Collector of Salt Revenue (Rule 69). If the trade of the potter or maker of bricks or tiles is sufficiently extensive or lucrative the Mamlatdar may grant permission on payment of fees (Rule 69). The Collector may reserve the right of his previous permission in such cases or localities as he may think fit (Rule 69). An appeal lies to the Mamlatdar in cases of refusal by the Patel or Tapedar (*ibid*). Earth, Stone, Kankar, Sand, Murum, etc. (except stones fallen from banks of built tanks) may be taken free of charge from a village tank with permission of patel. No excavation should be allowed to be made within 10 cubits of the foot of the embankment of any such tank. (Rule 70); (See Appendix A for L. R. Rules, 1921).

Disposal of the right to remove Earth, Stone, Kankar, Sand, Murum or any other material which is Govt. property may be made by the Collector under Rule 66 in his discretion subject to the privileges conferred by rr. 67 to 70 (*supra*). The rate charged (when not disposed of by public auction) to the purchasers including Railway Companies should be calculated as laid down in Rule 66 (2). *The rates of quarry fees per 100*

cubic feet for Railways as per G. R. 2334 of 1920 (G. M. R. D. 196-B of 14-2-1931) are the following :—

(All as measured on delivery, unless otherwise stated).

	Rs.	a.	p.
(i) Building stone by cubic measure in the actual building	...	1	0 0
(ii) Surplus stone removed from quarry but not consumed (125 c. ft. reckoned as 100)	... ..	1	0 0
(iii) Ballast, or concrete	... ..	0	8 0
(iv) Special stone used for pitching; measured as arranged by the Collector	... ..	0	4 0
(v) Kankar from cultivated land	... ..	0	8 0
(vi) Sand	... ..	0	2 0
(vii) Surface boulder stones	... ..	0	2 6
(viii) Kankar in unassessed waste	... ..	0	4 0
(ix) Muram or white earth	... ..	0	2 0

State managed Railways and the B. B. & C. I. Railway are to be charged the usual royalty for the extraction of mineral products from land included in reserved forests.—*G. R. 8478/24 of 14-6-1929.*

The Collector can remit quarry fees when stone, etc. is wanted for religious or charitable purposes. (*G. R. 5295 of 1911*).

**Note.**—It is obvious that in occupied land charges for quarrying, etc. are levied not as "Stone and Mineral and Sand fees from Govt. land" but they are altered assessments under ss. 48 and 65 and consequently the sum is not assigned to or to be paid to Local Boards.

**Local Boards and Municipalities.**—Quarry fees and fees for earth, stone, sand are allotted to the Local Funds (*G. Rs. 1057 of 1890 and 7251 of 1897*). If such fees are realised from land vesting in Municipality they belong to Municipality (*G. Rs. 4225 of 1888 and 2743 of 1891*). Local Board itself may quarry free of charge. (*G. R. 8824 of 1906*).

**Village Panchayats** are exempted from payment of fees for removal of stones for public purpose from quarries situated in Govt. forest (*G. R. 8478/24 of 27-6-1930*).

[<sup>a</sup>] 44. In villages or lands in which the rights of Government to the trees have been reserved under section 40 subject to certain privileges of the villagers or of certain classes or persons to cut firewood or timber for domestic or other purposes, and in lands which have been set apart under section 38 for forest reserves subject to such privileges, and in all other cases

[<sup>a</sup>] As to the local repeal of s. 44, see para. 5 of foot-note [a] on p. 1-1 *supra*.

in which such privileges exist in respect of any alienated land, the exercise of the said privileges shall be regulated by rules to be from time to time, either generally or in any particular instance, prescribed by the Collector or by such other officer as Government may direct. In any case of dispute as to the mode or time of exercising any such privileges the decision of the Collector or of such other officer shall be conclusive.

### Commentary

**Importance.**—A thorough examination of the whole economics of the supply of fuel to the cultivator is urgently needed. The practice of burning cowdung cakes is partly, no doubt the result of preference. It is a slow burning fuel and a fire once started can be left to take care of itself. But apart from preference, cowdung at present is the only supply of fuel which the great majority of cultivators can obtain. In fact it is the absence of a sufficient supply of firewood which, over large parts of India compels the burning of cowdung as fuel. It should therefore be made a point that a supply of fuel be made available and that it should be made cheaper to the cultivator to enable him to discontinue the burning of the very valuable farm-yard manure which is so rich in nitrogen.

[A] The objects for which free grants may usually be made are: (1) the relief of poor people whose houses have been destroyed either by fire or flood; (2) in special cases the construction of dwellings where members of wild tribes or new settlers are too poor to purchase wood; (3) agricultural purposes (such as implements) in cases in which it is shown that such grants are absolutely necessary. *G. R. 4031 of 15-2-1887.*

[B] The powers of officers to make free grants for purposes mentioned above in [A] are restricted to the limits as follows:—(1) Divisional Commissioners may sanction free grants to any one person to a value not exceeding Rs. 20. (2) Collectors in the presidency proper (except the Collector of Kanara) may sanction free grants to any one person to a value not exceeding Rs. 100. (3) Divisional Forest officers may sanction free grants to any one person to a value not exceeding Rs. 50. (4) Commissioners of Divisions may sanction free grants of timber up to the value of Rs. 20 to the Taluka Local Boards for improvement of local communication (in bridging nallas, water-courses, etc.) (5) Commissioners may also sanction free grants of timber up to the value of Rs. 20 in each case for repairs and construction of village school houses. (6) Sub-Divisional Officers of the Revenue Dept. in the Presidency proper are authorised to submit direct to the Divisional Forest Officers recommendations for the grant of free wood up to Rs. 50. *G. R. 4073 of 31-5-1895; 1662 of 2-3-1897; 21 of 6-1-1907; 11221 of 7-12-1912 and 4271 of 10-4-1923.*

**Sind.**—The orders given above in [B] do not apply to Sind, where cultivators have the privileges of cutting wood on waste lands, and where only in special cases, such as a whole village being burnt down, the Commissioner sanctions a free grant of wood, when necessary. The Commissioner in Sind has full discretion in the matter of making free grants and of authorising Collectors and their Assistants to make them.—(*G. Rs. 1051 of 15-2-1887 and 11221 of 7-12-1912*).

**Kanara.**—The orders given regarding Divisional Commissioners, Collectors etc. in [B] and those contained in *G. R. 1051 of 15-2-1887* given in [A] do not apply to Kanara. The rules applicable to Kanara will be found in Appendix V A to Vol. II of the Bom. Forest Manual (1921 Ed.).—*G. R. 1728 of 19-3-1887*.

**Privilege restricted to agricultural population in talukas containing forest.**—The powers mentioned in [B] are restricted to talukas in which there is natural forest. And the whole intention of the system is to allow the population, and particularly the agricultural population dwelling in the vicinity of the forests, a privilege which can conveniently be exercised by them without material detriment to the public interest. It has never been contemplated that it should be incumbent on Govt. to give wood free by way of charity to members of any community whose houses may be destroyed. In cases of a great calamity Govt. may appropriately assist with grants of wood, but it is to be remembered that the grants made under the rules with regard to the powers of the several officers are restricted to the talukas and to the inhabitants of talukas in which there is forest.—*G. R. 1662 of 2-3-1897*.

**How to ascertain value of wood.**—(1) The value of the wood specified in the rules is the value of the trees as they stand in the forest, and it is contemplated that grantees should make their own arrangements for felling and carrying the wood, as people living in the vicinity of the forest conveniently can do. The value of wood at depots or in towns is a very difficult thing and varies according to distance from the forests. It would be impossible in any rules to make provision as to the limit of value of wood got at such places. If in any cases the persons to whom free grants of wood are made can appropriately get the wood at depots within or close to the forest area or at departmental cuttings, there is of course no objection, but this is a matter for arrangement by the Forest Officers and not for regulation by rules.

(2) In the Southern Circle when the wood is given free for any purpose for use in outside districts the value of the free grant should be assessed on an estimate of the average auction sale rates of the current year or the year previous according to circumstances. In Kanara and Belgaum the value should be calculated according to the seigniorage or royalty fees.

(3) In the Northern and Central Circles the year's auction-sale rates in a district should be taken as the standard for calculating the value of free grants of wood which may be made therein.—*G. Rs. 2126 of 12-4-1881; 2571 of 11-6-1881 and 3707 of 28-6-1881*.

**Utmost promptitude necessary in making free grants of wood**—The value of free grants of wood is very much reduced by delay on the part of the Forest Department in supplying timber. The Conservator will take care that there may be no complaints on this subject, and it will be the duty of the Collector to prevent any unnecessary delay.—*G. R. 2331 of 1-5-1889*. In case of destruction by fire of houses in forest areas timber of inferior species required for temporary huts should be made available with the utmost promptitude by the Range Forest Officer on production of a certificate from the Mamlatdars.—*G. R. 7324/24 of 19-7-1927*. Recommendations for the grant of wood, free of charge, to agricultural labourers or sub-tenants of registered cultivators in special cases may be submitted.—*G. R. 2614 of 27-3-1885*.

**Grants of free timber to subordinates of Forest and other Govt. Depts. in poor circumstances.**—Govt. have already directed in their *G. R. 8120 of 18-11-1886*, that assistance in material be given to forest guards who construct huts for themselves within their beats or rounds. In their *G. Rs. 1051 and 1662 dated 15-2-1887 and 2-3-1897*, Govt. have sanctioned, under conditions, the grant of free timber to "poor people". In the latter term, subordinates not of the Forest Dept. only but of all Govt. Depts. are included, if their circumstances bring them within the meaning of the term. These concessions are in the opinion of the Govt. sufficient for the legitimate needs of subordinates of the Forest Dept.—*G. R. 1151 of 18-2-1901*.

**Postal Department** need not pay for the comparatively small quantity of wood which is apparently required by it for sheds of postal runners, torches, etc. The wood should be cut in such forests as the Forest Officers consider it may be cut in without injury, and it should be supplied to the Postal Dept. free of all charge except the expense incurred in cutting and removing it, the latter being arranged for by the Postal authorities themselves.—*G. R. 4031 of 5-8-1880; 8812 of 8-11-1884 and 1742 of 28-2-1885*.

**Special grants of timber** or other forest produce, free or at favourable rates, for specific purposes, require the sanction of the Govt. of India if they exceed the following values :

1. For the construction of large works of public utility, such as railways, tramways, and the like—Rs. 10,000.
2. To Village Communities, Public Bodies, Departments of Government or sections of the community in their collective capacity—Rs. 1,000.
3. In other cases Rs. 500.

Within these limits, and subject to the principles laid down in Circular No. 8-F, dated 21-5-1897 (*Bom. Forest Manual*), such grants may be sanctioned by the Local Govt. but all concessions of whatever value made under (1) for the construction of railways or tramways must be reported at once to the Govt. of India. The Local Govt. may delegate to the Chief Conservator or Conservator the power of sanction (subject to the above limits) up to the value of Rs. 1,000 and to any selected officer or class of officer in charge of a Forest Division up to the value of Rs. 250 in any one case.

The Conservator and Deputy Conservator of Forests in charge of Circles are authorised to sanction the grants for the purposes mentioned in clauses (2) and (3) up to the limits specified therein, and to delegate to Deputy and Extra Deputy Conservators of not less than 10 years' service the power of sanction up to the limit of Rs. 100 in any one case for the same purposes. A report of the grants made should be submitted to Govt. Grants for the purposes stated in clause (1) continue to require the sanction of Government.—*G. Rs. 7324 of 25-7-1907; 8385 of 3-10-1910; 7744 of 25-9-1905; 924 of 28-1-1919.*

**Grants from Govt. waste lands and forests in charge of Revenue Officers**—The Commissioners of Divisions and in Sind are empowered to make grants of timber from Govt. waste lands outside forests, subject to the same conditions as have been laid down for grant from forests, provided they are satisfied in each case that the trees are not required for shade or any other public purpose. (*G. R. 8811 of 4-9-1907*). The Collectors in the Presidency proper are empowered to make free grants of wood from such lands up to the value of Rs. 50 subject to the above conditions. (*G. R. 5736 of 1-6-1909*). The Collectors in the Presidency proper are empowered to make free grants of timber from forests or revenue waste lands in their charge up to the limit of Rs. 50 for religious purposes to village communities, public bodies, etc., in their collective capacity subject to the conditions that the Collectors are satisfied that the trees are not required for shade or any other public purpose, that the Divisional Forest Officer (if there is one) is consulted before the grant is made and that care is taken not to denude the lands of trees.—*G. R. 7113 of 31-7-1912.*

**Note**—See also discussion under s. 41 for free grant of timber from waste lands outside forests.

**Free grants in Inam villages**—In cases where the alienee has forest rights the rayats of alienated villages should look to him for free grants of timber; in cases where the forest rights are vested in Government, there is no objection to allow them grants as if they were inhabitants of unalienated villages.—*G. Rs. 3752 of 20-6-1887; 5486 of 13-3-1887.*

**45.** All land, whether applied to agricultural or other purposes, and wherever situate, is liable to the payment of land revenue to Government according to the rules hereinafter enacted except such as may be wholly exempted under the provisions of any special contract with Government or any law for the time being in force.

But nothing in this Act shall be deemed to affect the power of the Legislature to direct the levy of revenue on all lands under whatever title they may be held whenever and so long as the exigencies of the State may render such levy necessary.

All land liable to pay revenue unless specially exempted.

And special exemption may in case of necessity be overruled for a time.



**History of land revenue**—It is a historical fact that from a very ancient time, long before the Mogul Empire, the Kings or Rajas and other lesser Chiefs were accustomed to take from the cultivators of the soil in their dominions or chiefships, a certain share of the produce of every cultivated acre, unless, as a special favour that share was remitted. The earliest literary mention of the State share is in Sanskrit books especially in the 'Laws of Manu,' a well-known Hindu Text Book. Manu tells us that Raja has need of land revenue to maintain his armies and administration and he is therefore entitled either to 'one-sixth' or 'one-eighth', or 'one-twelfth' of the gross produce. According to his description of the fiscal administration of an ancient Hindu State the main source of the State revenue was the share of gross produce of all land varying according to the soil and the labour necessary to cultivate it. The revenue was collected, not from individual cultivators but from the community represented by the headman. The aggregate harvest was collected into a common heap and the share of the State was set aside by the headman before the general distribution.

(*Encyclopædia Britannica*). Between the village headman and the King was a chain of Civil officers consisting of Lords of single villages, Lords of 10 villages, Lords of 100 villages and Lords of 1000 villages. These were responsible for the collection of revenue, for which they were remunerated by fees in kind, by a portion of the king's share of the produce or by holding land revenue-free in virtue of their office.

This plan of raising a revenue is obviously associated with the early kingdoms resulting from the Aryan immigration. Even among non-Aryan tribes (whom we associate with the name 'Dravidian') there was a curious method of giving the ruling chief an income in a somewhat different way; at first they allotted a portion of the land in each village group, for the Chief; and this was cultivated by slaves or by some special arrangement. Traces of these 'Chief's farms or Royal lands' are still to be found in more than one locality. But from whatever cause, whether by the influence of the contact with the Aryans or otherwise the time came when a share in the produce was levied (additionally) from all land except certain privileged holdings of the priests and of the old founders and heads of the village.

In the earlier days of the Muhammadan administration, the State share of the gross produce demanded by the Hindu kings was converted into the *Khiraj* or tribute payable on land in countries under Muhammadan rule, though the share taken was greater than before. The existing agency of collection was also utilised. The rapid expansion of some of the Muhammadan kingdoms, however, made the collection of the revenue under this system a difficult process, and measures were adopted for regulating the collections and securing a complete or partial commutation of the State's share of the produce into money. The Institutes of Timur embodied the first systematic attempt in this direction. Sher Shah (1540-55) made the next, but did not reign long enough to give general effect to his measures. The third and the most famous settlement was that of Tolar Mal during the reign of Akbar. He had the land measured

carefully and then divided into four classes according to the fertility of the soil. The Government share, which was fixed at one third of the gross produce, was commuted into money with reference to the prices of the previous 19 years. The commutation rate was originally applied to the actual produce of the year, but this practice was found to be administratively inconvenient. Settlements were therefore concluded on the basis of a ten years' average. The system involved the maintenance of an elaborate set of accounts and the employment of a host of tax-gatherers, who intervened between the cultivator and the Supreme Government. One of these was the Zamindar, who was unknown in his present signification to the early Hindu system. Originally he was merely a tax-collector, or farmer of the revenue, who agreed to contribute a lump sum from the portion of the country allotted to him. Todar Mal's settlement continued in force without material alteration for nearly a century, but as the authority of the Central Government declined, a number of imposts (known as *abwabs*) were added by the provincial rulers. Sir John Shore calculated that the *abwabs* imposed by Jaffer Khan. Shujauddin and Alwardi Khan amounted to about 33 per cent upon the *tumar* or standard assessment in 1658, and the impositions of the Zamindars upon the ryots to more than 50 per cent. of the same. (*Minute of Sir John Shore, 18th June 1789, paragraph 41, Fifth Report on East Indian Affairs, 1812, Volume II, page 11.*) Such was the state of Land Revenue Administration when the East India Company came into possession of Bengal, Bihar and Orissa.

The account of Akbar system as given in Ain-i-Akbari is not very clear with regard to details, but the main points are obvious, *viz.*, that the assessment was based upon a land classification and fixed for a term of years. This system was imitated by Akbar's great contemporary Malikambar the Abyssinian Minister of the Adilshahi dynasty of Ahmednagar and was carried on by Akbar's successors Jehangir and Shahajan.

**The history of Maratha Revenue System** has to be divided into two parts. *viz.* (1) the early period from the time of the great Shivaji to the end of the rule of the 3rd Peshwa; (2) the period of the farming-system under the last Peshwa, Bajirao.

**So far as the early Maratha period** was concerned the settlement of the land revenue was an annual affair; and it consisted of two operations *viz.* first, a settlement of the revenue in bulk for each individual village between the Mamlatdar or the Kamavisdar and the Patel, aided by the old hereditary district officers, Deshmukhs and Deshpandes, and secondly, a distribution of the amount so agreed upon by the Patel over the holdings of the individual cultivators. The first operation was carried out upon consideration of the general state of the cultivation and crops of the current year in comparison with those of the previous year. On this basis a total amount was fixed to be levied from the village as a whole for the year. The Patel then made the individual distribution over the various holdings. The assessment

was divided into two parts mainly, the land assessment proper, and extra assessments over and above the land assessments called *Patties*.

Under the last *Peshwa*, the methods of administration took a distinct turn for the worse. The ordinary revenues of the districts proved insufficient to meet the heavy cost of the wars and the extravagance of his Court. The result was the introduction of the farming system. It may be briefly described thus :—

The Office of *Mamlatdar*, who was the collector of revenue, was put up to auction among the *Peshwa's* attendants, who were encouraged, and very often compelled, to bid large sums. The *Mamlatdar* in his turn let his district out at an enhanced rate to underfarmers, who repeated this operation till it reached the *Peasants*. The system resulted in great oppression, and, as Elphinstone points out, "a man's means of payment, not the land he occupied, were the scale on which he was assessed." (See also the *Bombay Survey and Settlement Manual*, Vol. I, p. 18.)

When the administration passed into the hands of the British, farming was abolished, the revenue was levied according to the actual cultivation. Ultimately the *ryotwari* system, which had meanwhile been introduced in *Madrās* was adopted.

#### WHO IS PROPRIETOR OF THE SOIL, THE STATE, COMMUNITY OR THE RYOT ?

**State ownership of land.**—There is considerable historical evidence that the land revenue and the additional levies superimposed on the standard assessment in the shape of *Almshole* in Bengal and *Patties* in the *Mahrattas*, constituted a very oppressive tax, and very often made a possession of land a burden rather than a privilege. It seems doubtful however, from the statements of contemporary historians, that any right to ownership of land on the part of the ruler was definitely recognised. Sir Mountstuart Elphinstone who had been directed to report on the *Mirasi* tenure in the century under the *Mahrattas*, summarised the conclusions he based on the reports of his three Collectors and on his own enquiries as follows :—

.. That a large portion of the *ryots* are the proprietors of their estates, subject to the payment of a fixed land-tax to Govt.; that their property is hereditary and alienable, and they are never dispossessed while they pay their tax, and even then they have for a long period (at least thirty years), the right of reclaiming their estate on paying the dues of Govt. Their land-tax is fixed; but the late *Mahratta* Govt. loaded it with other impositions, which reduced that advantage to a mere name.—[*Referred to in Fyfe's Report*, The Govt. of Bombay, 13 Dec. H. C. R. (1875)].

The doctrine that the land belongs to the State as Crown property was repeated in the despatch of the Court of Directors dated 17-12-1856, and it was there claimed that the land assessment should be treated as taxation and not as rent. The same position was re-affirmed in a Despatch of Sir C. Wood in 1854. Again in para. 31 of the Despatch of Lord Lytton's Govt. to the Secretary of State dated 6-4-1860 in reply to Sir J. Caird's Report on the Condition of India, a similar disclaimer of the assertion of a general proprietary right is noticed. It seems from the above

that the British did not succeed to any rights of absolute ownership, though it would obviously be dangerous to draw final conclusions of a general nature regarding the conditions in a vast country with a heterogeneous population split up into large numbers of small States, each of which had its own separate history and which had come under the British Govt. at different periods and under different circumstances. Accordingly, Colonel Baden Powell has been very guarded in his summary of the position of the British Government as follows :—

“(1) Government used its own eminent claim as a starting point from which to recognise or confer definite titles in the land, in favour of persons or communities that it deemed entitled.

“(2) It retained the unquestionable right of the State to all waste lands, exhibiting, however, the greatest tenderness to all possible rights either of property or of user that might exist in such lands when proposed to be sold or granted away. This right it exercised for the public benefit, either leasing or selling land to cultivators or to capitalists for special treatment, thus encouraging the introduction of tea, coffee, cinchona and other valuable staples. Or it used the right for constituting State forests for the public benefit, or for establishing Government buildings, farms, grazing grounds, and the like.

“(3) It retained useful subsidiary rights, such as minerals, or the right to water in lakes and streams. In some cases it has granted these away, but all later laws reserve such rights.

“(4) It retained the right of escheat: and of course to dispose of estates forfeited for crime, rebellion, etc.

“(5) It reserved the right necessary for the security of its income (a right which was never theoretically doubtful from the earliest times) of regarding all land as in a manner hypothecated as security for the land revenue. The hypothecation necessarily implies or includes a right of sale in case the revenue is in arrears” (*Baden Powell: Land Systems of British India, Vol. I, pp. 234-235*).

**The Indian Taxation Inquiry Committee (1925)** was of opinion that in the case of lands under permanent settlement, the Govt. had no proprietary right, and that as regards Khas Mahal estates and waste lands outside the permanently-settled areas, they have full proprietorship. On the question of Govt's rights in relation to ryotwari and other temporary-settled tracts, the Committee was divided in opinion. The committee also was unable to record an unanimous and definite finding on the vexed question whether the land revenue is a tax or a rent.

**Another theory.**—The State is not an end in itself, but as a means for the full realization of individuality, for the fulfilment of individual and national life. But, of course, its efficiency must be maintained at a high level, and the State is justified in raising as much revenue—but not a pie more—as may be absolutely necessary for maintaining that level.

The soil belongs neither to individuals nor to the State, *unless it is thoroughly national and democratic*. In other words, the soil belongs to the

State, provided that it is national and democratic. If a State is not of this type, the soil belongs to the community as a whole.

If where a State is national and democratic, the soil belongs to the State, and land revenue is rent, not tax and in that case the State is entitled to take, by way of land revenue, as much as it reasonably can. It does not necessarily follow from this that it should demand the maximum amount. The State is not a mere landlord; it is a moral person and has much higher and wider duties to perform than those of a landlord. We often hear the argument advanced, that the Govt. should take more from the people, because, otherwise, the surplus that may remain with them after meeting the bare wants of life may be wasted and lost to the State through their extravagances; they will spend their money on drink and other vices and luxuries, instead of on objects that will fructify and improve their condition. This possibility of money being wasted by the people is considered a sufficient justification for screwing out of them every penny that may be possible, as if the Govt. themselves do not sometimes indulge in wasteful expenditure and do not fatten on the vices and luxuries of the people. Again, if this principle is sound, it ought to be applied impartially to all, not only to agriculturists, but also to all classes of people, since indulgence in wasteful expenditure on vices and luxuries is more in evidence among wealthy classes than among the middle or lower classes.

An interesting theory that of partnership in ryot and the State has been set up by Prof. Dwijadas Datta in his "Peasant Proprietorship in India" (1924 Ed.). He advocates the proposition that the State does not claim a share in the produce upon any such theory as ownership of land, or the unearned rent but simply because—just as the crop is the product of the ploughing and sowing by the ryot—so too it is the product of the labour of the State in defending the ryot while he works, maintaining law and order, providing amenities; and the magnitude of the share of each should be regulated by the contribution of each to the final result.

Another side of the question involving the theory of State ownership has been ably put forward by Mr. Anderson in his "Facts and Fallacies about the Bom. Land Revenue System," (1929 Ed.). He rightly states that "perhaps heat is generated in such discussions (about the ownership of land or soil) because of a feeling that the Govt. of India and the people of India have opposed interests. But once we recognise the Government as the agent and trustee for the people we shall get a truer perspective." He writes, "The first article of the American constitution says that all land in the U. S. A. belongs to the sovereign people and is held (as in the case of all land in England since 1660) from the State on "free and common socage", a tenure only resembling occupancy under the L. R. Code. That is a cardinal principle of every self-governing commonwealth. Manu says plainly that all land is the King's, and the Shariat of the Moslems says that all land is the Sultan's; and Bernier (who travelled in India on commercial business in the palmy days of the Grand Moghal before Marathas or English had touched their

majesty, or such a thing as European domination in India was even dreamt of) says that in "Hindoostan every acre of land is considered the property of the King" (p. 354, *Travels in Hindoostan, Constable, 1891 Edn.*)

"Babylon, Egypt, Ancient India & Turkey.—The Babylonian Code of Khammurabi (on which Manu is largely based) regards lands as the State property; and recognises the power of the State to grant it as Watan (*Historians' History of the World, I, 503-507*).

"In Chanakya's 'Kautilya Arthashastra' (Science of Political Economy) about 320 B. C. just when Alexander of Macedon was stirring things up a bit, he observes that nearly all land is the property of the State and is let on half-crop share. (No doubt the exceptions referred to religious grants). (*R. S. Vaidyanath Aiyar*).

"In Egypt four-fifths of the land is direct State property (following the Shariat law) and one-fifth is held from the State on privileged tenure precisely parallel to the ordinary Bombay occupancy rights. The 'Institutes of Timur' lay down that all land belongs to the State and it is very doubtful whether the idea of private ownership of land existed in Asia till recent times. It is usually not mentioned in the old Shastras on inheritance, whereas today it would take the first place.

"The actual practice.—To get nearer home if the Maratha Govt. did not own the land then how did they grant Jahagir after Jahagir to Poona Brahmins down in the Karnatak where they do not even know the language? How is it that all the small succession States cut out of the collapsing dominions of the Peshwa act to-day as owners of immense stretches of land? There are advertised in newspapers for sale vast areas of land by a certain Maratha State. If the Marathas owned the land—I mean the Peshwas as head of that State—then it is certain that whatever rights they had passed by the surest of all titles on earth, that of conquest and treaty, to the British Govt. But if they did not own the land then will you call on all their Inamdars and Jahagirdars to vacate, and all their Rajas and Chiefs to disgorge and give up the lands they own as 'Sheri'? It is certain that these chiefs, etc. did not inherit that land from any previous holders. They acquired it by conquest and under the ægis of the actual public law of India—so far as there be any—that all land belongs to the ruler and the State except in so far as they grant or concede titles over it. The British succeeded to this right and likewise recognised (this was the novelty) the titles created by the predecessors of the present Govt. out of pure generosity."

#### ALL LAND IS LIABLE TO LAND REVENUE

In general theory all land is liable to land revenue—Reg. XVII of 1827 in s. 2, cl. 1 laid down "All land whether applied to agricultural or other purposes, shall be liable to the payment of land revenue, according to the established principles which govern the assessment of that description of land to which it belongs, except such as may be proved to be either wholly or partially exempt from the payment of land revenue, under any of the provisions contained in Ch. IX and X of this Regulation." The right of the State to demand land revenue is asserted by the earliest

as well as the latest Bombay enactments on the subject, viz. B. m. Reg. XVII of 1827 (ch. I. s. 2) and s. 45 of the Code respectively and that in terms practically identical.

**Certain lands are not included in the area assessed to land revenue.**— Though various Land Revenue Acts following the old Regulations have declared that the Govt. 'is entitled to a share in the produce of every bhiga of land;' but as a matter of fact there are some practical distinctions. Land is, *e.g.*, occupied by the houses and streets of towns and cities, cantonments and 'stations' (as we call the places where the European population, official and non-official, resides); there is also land devoted to special purposes, such as public forests or plantations; camping grounds used when troops march from place to place; public parks and gardens; grazing farms for the cavalry or for stud-breeding, etc. Then within the area of villages there is often, I may say usually, a certain extent of land occupied by the groups of village houses and the open space around them, where the cattle stand, and where the weavers stretch their webs; here also is the village grove, and the place of public meeting, and probably the village pond or tank. Speaking generally, Land Revenue is not levied on such areas; at all events not in the same way as it is on agricultural land.—*Land Revenue & Tenure in British India by Baden Powell.*

**Special exemption in cases of necessity can be overruled for a time:**— This is clear from the following clause inserted both in the Regulation and the Code.

"Nothing contained in the preceding clause shall be understood to affect the right of Govt. to assess to the public revenue all lands under whatever title they may be held whenever and so long as the exigencies of the State may render such assessment necessary."

#### LANDS MAY BE CLASSIFIED INTO ALIENATED AND UNALIENATED

The power of the State to assess all lands also involves another power that of alienating the right to receive assessment in favour of individuals; and it is to the use of this power in the time of preceding Indian Govt. that the class of "alienated" or *Imam* lands is largely due. Thus from this point of view land may be classified into unalienated and alienated land [see notes to s. 3 (20) at pp. 45-49 *supra*.] Even now the right of making such grants is reserved by Govt. but, during the troublous times preceding the British rule, when the whole country was in confusion, any petty, semi-independent chief considered himself competent to alienate lands.

But further, this power was assumed, also by farmers of the revenue and executive officers of all grades, even down to Patels; indeed in Gujarat, a large proportion of the alienated lands were comprised of "vechania" and "girania" or Govt. lands sold and mortgaged by Patels to individual cultivators.

In such circumstances it is not to be wondered at if, while a proportion of claims to *Inam* were undoubtedly genuine, being founded upon valid or semi-valid grants, a still larger proportion were fraudulent and in derogation of the rights of the State.

About the year 1841 the question of alienation was taken up and some inquiry into the claims of *Inam* lands was made. In the inquiries surreptitious and fraudulent character of a large proportion to claims to alienated land were discovered. Thereupon two important measures were taken in hand *viz.*, the reorganisation of Poona Daftar (Govt records of the Maratha administration) which was an invaluable source of information in connection with the subject of alienation, and the appointment of a committee in 1843 to inquire into the alienated lands of the Southern Maratha Country.

The inquiry under the committee of 1843 went on for nine years and in 1852 the committee was transformed into *Inam* Commission and its proceedings were given a legal status by Act XI of 1852.—‘An enactment for the adjudication of titles to certain estates claimed to be wholly or partially rent-free in the Presidency of Bombay.’ This *Inam* Commission was to come to a decision on any claim under certain rules. *Inams* were divided into four classes, *viz.*, personal, *Devasthan* (for the support of mosques, temples, etc.), hereditary service and political; claims into these were to be adjudicated upon severally according to certain principles. The Commissioners were subsequently authorised to investigate claims to cash and grain allowances also.

Investigations under Act XI of 1852 proceeded steadily for a period of 11 years in Khandesh, the Deccan and the Southern Maratha Country. The operations of the *Inam* Commission Enquiry were found to be very slow and cumbersome and there was another defect that the Act did not apply to Gujarat.

Thereupon it was decided to introduce a system of ‘Summary Settlement’ which was to be extended over the whole presidency. The main principles underlying this settlement were (a) the conversion of all personal *inam*, whether adjudicated by the *Inam* Commission or not into transferable freehold; (b) the imposition of a quit-rent or *najarana* upon such lands on account of such conversion. These were embodied in the two Summary Settlement Acts—No. II of 1863, which applied to the so called ‘New Provinces’ of the Deccan, Khandesh and Southern Maratha Country and No. VII of 1863, which were applied to the ‘Old Provinces’ of Gujarat and Konkan.

The terms of the Summary Settlement Act applied to Personal and *Devasthan* *Inams* only, the two other classes, *viz.*, Service and Political being expressly excluded from their operation and reserved for separate treatment.

These latter two classes may be classified as follows:—

- I. Village officers *i.e.* Govt. officers (a) useful to Govt. and village, (b) useful to village only and (c) useless alike to Govt. and village;
- II. Hereditary district officers;
- III. *Saranjamdars* and *Jahagirdars*.



The land held by village officers useless both to village and community such as the Potadar, Chaugula was treated as follows:—(1) in the Old Provinces—the full survey assessment was imposed; (2) in the New Provinces—an assessment of half the full survey rate was taken; in both these cases as there was no longer any service to be performed, the lands were converted into transferable free-hold.

In the case of village officers useful to the village community such as Kazi, Joshi, Kumbhar, Sutar, Lohar, Jangam, etc. the settlement arrived at was (1) in Old Provinces—the lands held were assessed at either half or quarter of the survey assessment according as the service performed was more or less useful to the community. (2) In the New Provinces—the land held was assessed at a quarter the assessment. In this class the holdings being still subject to service were made non-transferable.

In the case of village officers useful to Govt. *i. e.* the hereditary Patel and, in the Deccan, the hereditary village accountant or Kulkarni, the principle of settlement adopted was to provide adequate remuneration for that member of the family in which the office was hereditary who was actual officiator for the time being. The sources of income were generally three *viz.*, (1) land, for the most part exempt from rent; (2) direct levies in cash and kind from the rayats or compensation in lieu thereof; (3) cash payments from the Govt. treasury. The true value of the income derived from these sources taken in the above order was determined and adequate remuneration for the officiator provided from them when sufficient; when insufficient, an assignment from the treasury made up the deficiency; when more than sufficient, the land in excess was assessed at one half the revised Survey rates. These are the broad general principles upon which this *viz.* Settlement was effected.

In the case of inferior village servants, such as, Mahars, Talwars, etc., their holdings being small and for the most part already heavily burdened with quit-rent, required no settlement other than their continuance in their existing state.

The hereditary District officers *i. e.* the old hereditary officials such as Dewais, Deshmukhs, Deshpandes, etc., who were the chief instrument for the collection of revenue under the Peshwas, were superseded by the British inasmuch as the present revenue system did not require their services at all. Theoretically these officers might have been deprived of their emoluments on cessation of service, but this was not done, and a settlement was arrived at by Commissions appointed, one for Gujarat and the other for the rest of the Presidency, *i. e.* Deccan, Konkan and Karnatak. The settlement arrived at by the former is called the Padder settlement and the latter is called the Gordon settlement. The principle adopted was that of 'commutation for service', by which the Zamindars as they were called, were allowed to retain the greater part of their allowances, a levy of from 3 to 8 annas only in the rupee being made as commutation and also as a cure for a possible defect of title.

**Political Inams** *i. e.* Jahagirs and Saranjams which were grants by the State for the performance of civil or military duties, or for the maintenance of personal dignity of nobles and high officials were settled in the following way:—Some of these had been guaranteed by special treaty between the holders and the British Government, but such as had not been so guaranteed were inquired into and settled by the Inam Commission. The principle of settlement was the same as that adopted in the case of Personal Inams, *viz.*, they were continued hereditarily for one or more generations according to the date at which the original grant had been made.

**Unalienated land may be classified into Govt. land (i.e. waste land etc.) and land which has been occupied.**—Disposal of Govt. land and exemption from payment of land revenue is regulated by L. R. Rules 30 to 57. (see pp. 144 to 147 and also Appendix A for Rules.)

S. 48 of the Code divides land for the purposes of land revenue into (a) land used for the purposes of agriculture, (b) land used for the purpose of building and (c) land used for a purpose other than agriculture or building.

**Regarding non-agricultural lands it include:—**

1. Land sold under Rule 33 revenue-free in perpetuity. (Strips of land near houses or on roads granted under Rule 49 or incorporated in the grantee's holding, whatever its tenure).
2. Alienations made under the Code and Rules for public, charitable, etc. purposes (under Rule 32) and land vesting in a Municipality under s. 50 of the Bom. Distt. Municipal Act, 1901 and not reserved under Rule 53 ;
3. Land assigned for public use under s. 33, such as burial ground, threshing floor, etc ;
4. Land held for reclamation to non-agricultural uses under special leases or for salt manufacture ;
5. Land within a Cantonment not in control of Revenue Department and land assigned for camping ground for troops. (See notes to s. 38 *supra* at pp. 150-1.

**Non-agricultural land falls into the following categories:—**

- (a) Occupied, but according to custom not subject to taxation ; though not necessarily exempted if Govt. choose to assess them. Under this head are included lands in cities, towns and villages occupied by houses or otherwise :
- (b) Lands occupied upon leases entered into in past years, under rules or orders not now in force ;
- (c) Lands occupied and assessed on ordinary non-agricultural tenures and agreements according or approximating to rules not now in force ;
- (d) Unoccupied and at the disposal of Government ;

(c) Lands alienated under some grant or title to exemption whole or partial (not the same as described in (b) above which is clearly exempt by custom and sufferance).

Strict proof must be given of any right set up in derogation of the inherent right of the sovereign to assess the land at his discretion; and the facts that the lands in question were waste lands reclaimed from the sea which the inhabitants were invited to cultivate, or that a very small rent has been paid for many years, do not show that Govt. has forfeited its right to enhance the assessment in respect of such lands.—*Shapurji v. The Collector of Bombay*, 9 Bom. 483 (1885).

#### HOW FAR DOES THE LAW OF LIMITATION AFFECT THE RIGHT TO LEVY ASSESSMENT.

There is no period of limitation prescribed by any law within which alone the Govt. should exercise its prerogative of imposing assessment on land liable to be assessed to the public revenue.—*Bokkupalli Jagannatham and another v. The Secretary of State for India*, 27 Mad. 16 (1903).

Rule of limitation in bar of the right to levy assessment does not exist.—(*G. R. 8579 of 19-8-1915*).

There is no limitation as to the period within which assessment can be claimed (see *Secretary of State v. Bai Kurarbai*; see also *G. R. 10817 of 1919*.) But claims to fines or assessments for use of land for a purpose other than that for which it had been assessed accrued due more than sixty years ago are barred by Art. 149, Schedule II of the Limitation Act of 1877. Thus a fine which became legally due (but was not levied) in 1850 could not be levied in 1920; but it is asserted by Govt. that assessment since 1851 could be levied in 1920. (See *G. R. 6887/24 of 7-6-1928*).

When land has been converted from agricultural use and at the time of its conversion was (1) *unassessed*—it can be assessed at any time but retrospectively only if converted or first used without permission (*G. R. 7332 of 1917*). (2) *agriculturally assessed* (and that assessment never since the conversion revised or guaranteed)—in this case fines at 30 times the assessment can be levied if the assessment was imposed under Act I of 1867. But if the assessment was imposed after 1879 then fines and altered assessment to be imposed according to the rules under s. 48 current at the time of conversion (*G. R. 8418 of 18-7-1923*). Retrospective levy (deducting the agricultural assessment paid) can be made whether the conversion was with permission [*The Collector of Thana v. Dadabhai Honaji*, 1 Bom. 352 (1876) and (*G. R. 8516 of 1901*)] or without permission (*G. R. 1 of 1904*). (3) *If after conversion the non-agricultural land was by mistake agriculturally assessed*—These cases are very rare and require no special treatment.

**Note**—In *Shapurji Jiraji v. The Collector of Bombay*, 9 Bom. 486 (1885) the retrospective levy was held illegal and that view was supported in *G. R. 8418 of 1923*. But since 1879, s. 48 (2) makes the liability arise when use is changed; and therefore, even if Collector does not find it out till 30 or 35 years have passed still he could legally demand back payment, unless

he had known of the use and exempted under proper authority; but those payments must be at the rates sanctioned for those years, not at new rates. But this is likely to cause great hardship.

In G. R. 7058 of 26-9-1923 Govt. thought that Non-Agricultural land whether Sarkari or occupied Kharab, which had not been assessed and which was excluded from settlement guarantee was liable to be assessed from the first year in which the occupation was officially discovered.

**Grant of land for residences connected with educational or religious institutions.**—Govt. of India are averse from grants of lands being made specially for the purposes of a residence apart from the erection of religious or educational buildings, but in G. R. 555 of 19-1-1918 they did not object to a parsonage or a clergy house being built on land which it was proposed to grant for religious or educational purposes when the land to be occupied by parsonage or similar buildings was an integral part of the land required and was small in amount both in itself and relatively to the total area involved. However the question of grant within the limits fixed by law was left to the discretion of the Govt. of Madras the case having arisen there.

**Land not specially exempted may be assessed at any time.**—In 1841 a certain survey number in Belgaum City was purchased by one N in auction sale from Govt. The land was sold on transferable and heritable tenure. There was no evidence of any condition about the payment of assessment in the sale. Uptill 1919 the land was held free of assessment. Under the ordinary law *i. e.* s. 2 (1) of Reg. XVII of 1827 the land was liable to the payment of land revenue when bought by N in 1849. Under these circumstances in G. O. No. 714 R. D. of 1-3-1920 Govt. maintained that the fact that land had not been assessed in the last sixty years did not bar the right of Govt. to assess it then (*i. e.* in 1920) under s. 47 of the Code.

Certain sites were originally agricultural lands which were included in the village sites at the revision survey. It was disclosed that these sites were sold by Farokt-khats (sale-deeds), dating from 1859-62 as transferable and hereditary property for building purposes, without any condition as to payment of assessment but subject to the condition of erecting a building within a certain time and to the payment of town improvement tax if any fixed later. In all these cases no assessment or rent had been levied for the last sixty years or so. S. 2 of Bom. Reg. XVII of 1827 was in force prior to 1859 and it made all land liable to payment of land revenue in the absence of special exemption. Under these circumstances Govt. in G. O. No. 2131 R. D. of 16-7-1920 expressed the view that the sites could be assessed under Rule 56-II of the L. R. Code (old) Rules.

[<sup>a</sup>] 46. All alluvial lands, newly-formed islands, or abandoned river-beds which vest, under any law for the time being in force in any holder of alienated land, shall be

Liability of alluvial lands to land revenue.

[<sup>a</sup>] As to the local modification of s. 46, see para. 5 of foot-note [<sup>a</sup>] on p. 1, *supra*.

subject in respect of liability to the payment of land revenue to the same privileges, conditions, or restrictions as are applicable to the original holding in virtue of which such lands, islands, or river-beds so vest in the said holder, but no revenue shall be leviable in respect of any such lands, islands, or river-beds until or unless the area of the same exceeds half an acre and also exceeds one-tenth of the area of the said original holding.

#### Commentary

**Scope.**—This section refers to alluvion formed on alienated lands. Alluvion formed on unalienated lands is dealt with in ss. 63 and 64. of the Code. The present section merely determines the liability of the new land to the payment of land revenue.

The Code gives no power to frame rules for alluvion, and does not deal with the proprietary right but only with the liability to pay land revenue (or quit rent and *sajami*, if alienated).

This section cannot apply to *khoti* or *Talukdari* villages, because land held by *Khots* and *Talukdars* is not considered as alienated. It might apply to *Kadim* or *Phut Inam* lands in such villages.

**Interpretation.**—The words 'under any law for the time being in force' not only in this section but in ss. 37 and 63 are no doubt vague and probably have reference to *Stokes' Alluvion and Diluvion Bill (1878)* which was before the Govt. of India when the *Bom. L. R. Code* was passed. (This Bill was based on the general principle of the law of alluvion by which an adjoining owner is *prima facie* entitled to the accretion in preference to the others). Some reference to this subject is found in some *Municipal and Port Trust Enactments* outside *Bombay Island*.

Alluvion or the mode of acquiring property by means of accretion has been generally recognised in all systems of law. In civilised countries accretions belong to the owners of land to which they adjoin. In tidal and navigable waters if such formations are on the bed of river or on the shore of the sea, they would belong to Govt. (*Secretary of State v. Chelliani Ran Rao*, 39 Mad. 617), while in non-tidal and non-navigable rivers they belong to the riparian owner. [*Secretary of State v. Kalirikutti and others*, 13 Mad. 369, (1890): 41 Mad. 840]. The necessary condition for the acquisition of property by alluvion is that it must be gradual, slow and imperceptible degrees. The same principle has been followed in India, although in application thereof physical and geographical conditions prevailing here, have to be taken into account. [*Secretary of State v. Kalirikutti and others*

**13 Mad. 369** (1890)]. Accordingly it has been held that the recognition of title by alluvial accretion is largely governed in this country by the fact that the accretion is due to the normal action of physical forces. In the English rule, *viz.*, that it must be gradual, slow and imperceptible, the two last words are only the qualifications of the word 'gradual' (*Secretary of State v. Raja of Vizianagaram*, **45 Mad. 207**). The principle of alluvion has been also made part of the written law in this country (*viz.*, *Bengal Reg. IX of 1825 and the Alluvion and Diluvion Rules*). It is also the basic principle on which Sir Whitlay Stokes framed his Alluvion and Diluvion Bill (1878), which never passed into law. S. 46 of the Bom. L. R. Code recognises the ordinary principle of alluvion inasmuch as it is framed on the assumption that alluvial land, etc., vests in the holder of alienated land, and it provides for its liability to land revenue.

**Alluvion** is described by Justinian as an imperceptible increase and land is said to be acquired by alluvion when it is acquired 'so gradually that one cannot say' how much is added at any particular moment of time. But if by the violence of a river, a portion of the land is added to the estate of an adjoining owner, the land is continued to be the property of the original owner. Accretion to be considered 'gradual' must be by gradual, slow and imperceptible means.—*Narendra v. Achhaibar*, **28 All 647** (1906).

**Alluvion** is interpreted to mean strictly gradual, slow and imperceptible [imperceptible day by day as it occurs but of course perceptible enough in the long run (*Halsbury's Laws of England. Vol. 23 p. 362*)] accretion by deposit of fresh soil by the water upon existing riparian land.—*Justinian* and **3 Bang. L. R., 525** (1870). Sand blown by the wind or a mass of shingle suddenly flung up after a storm, or new land left bare by a receding sea or diverted river is not alluvion but derelict land. Nor would the deposits in a river bed which raise their surfaces above the hot-weather water-level be treated as alluvion in respect of a holding terminating on the upper edge of the steep bank of a river high above the deposit; there is no physical connection between them to which the term 'accretion' would be applicable.—*Narendra v. Achhaibar*, **28 All. 847** (1906).

### Ordinary law regarding alluvion

**The ordinary law** independent of the L. R. Code is that the riparian owner becomes the owner of the land gained from a river by gradual accretion.—*Nasarwanji v. Nosarwanji*, **11 Bom. H. C. R., 366**.

**Proof of actual possession** would be sufficient *prima facie* evidence of possession during the submersions where land has been submerged.—*Secretary of State v. Krishnamoni*, **29 Cal. 575**; *Mazhar v. Biharisingh*, **28 All. 760** (1906).

**The right to soil submerged remains with the original owner**—If by the irruption of the waters of a river tidal or non-tidal a new channel is form-

ed. in the land of a subject although the rights of the Crown or of the public may come into existence and be exercised in what had thus become a portion of the river the right to the soil remains in the owner so that if at any time thereafter the waters shall recede and the river again change its course leaving the new channel dry, the soil becomes again the extensive property of the owner, free from all rights whatsoever, in the Crown or in the public. -*Thakurain Ritraj Koer v. Thakurain Sarfaras Koer*, 7 Bom. L.R. 372; 32 I. A. 165 (1905). This case was followed in *Shri Shushilembhatirath v. Secretary of State*, 29 Bom. L. R. 1405 (1927) where the facts were these: The plaintiff was an Inamdar of village Khyad while the defendants were the Secretary of State and others as owners and occupiers of the Govt. village of Maneri. The river Malaprabha in Bijapur district formerly was a dividing line between these villages. It had changed its course and shifted towards the Maneri side. Thus there was a gradual accretion to the land of the plaintiff for a period of 40 or 50 years upto 1905 or later. In 1914, there was an abnormal flood in the river, with the result that there was a sudden and marked change in its course. The plaintiff claimed to follow the river to its new course and to take possession of all the intervening lands including the whole of the old river bed. The defendants contended that at the most the plaintiff was entitled to half of the old river-bed adjacent to his land: the High Court held, that as in 1914 the change in the river bed was due not to gradual accretion but to the sudden and violent effects of an unprecedented flood the plaintiff was not entitled to the relief claimed, apart from one-half of the old river bed.

Where in consequence of a sudden flood in a river, a considerable portion of land clearly distinguishable is forcibly carried off from one estate and added to another, either on the opposite side or lower down the stream the ground so severed still remains the property of the original owner provided he asserts his right to it in proper time. If no such exception can be established the owner of the land which receives the addition is the owner of the accreted land.—*G. R. 8889 of 31-12-1891*.

*Notes*—The fact that a riparian holder (or even a third person) by artifice assisted the alluvion to form does not affect the law. The persons to whom an alluvial strip of frontage had been granted were evicted in favour of the riparian hisedars (*G. R. N. 12283 of 1919*). Nor does the fact that it forms *in situ* of previous diluvion (for which assessment was reduced) affect the title of present riparian holders (*G. R. 744 of 1919*). The existence of a public foot-path along the old estate boundary or anything else which puts a limit to the riparian owner's property would prevent the deposit of fresh soil from being an accretion, and so from being alluvial at all.

The riparian holder is not obliged to accept possession and pay assessment or judi for any accretion, alluvial or not, unless he wishes. If it is unprofitable, he can decline; though he would then run the risk of the land being allotted to some other person. In the case of alluvion there is a limit (in the case of unalienated land) of one acre to his right of free enjoyment; and no limit of his right of occupation of alluvion subject to the payment of

revenue. Conversely this seems to imply no title to exemption from revenue when the extension is not alluvial. In the case of an alienated riparian holding, it has first to be decided whether the alluvion or abandoned shore or river bed, or new island, does vest legally in the Inamdar. It has been held (7 Bom. L. R. 872) not so to vest unless his original grant had covered the area now reformed or reappeared (since such grants are construed strictly against the grantee). Again G. R. No. 744 of 1919 rejects the view that the alluvion formed in place of old diluvion, on the site of an inam grant, becomes Inam: but no reasons are given and the order has not been confirmed by any legal decision. This section does not confer any proprietary right on the Inamdar, but simply refers us to the general law. New islands not formed on any bank or shore and other alluvion not proved to vest in an Inamdar would fall under s. 63.

**Govt. refunded arrears to Inamdar from the date when he laid claim to alluvial land.**—Where the petitioner was the Inamdar of the adjoining land and where the alluvial land was sold every year by public auction and where the Inamdar claimed the proceeds of the sale of the previous years the Government allowed the claim of the petitioner from the date when he laid claim to the alluvial land.—*G. R. 109 of 17-2-1888.*

**Alluvial land artificially formed in the vicinity of Inam lands cannot be granted as Inam.**—*G. R. 8011 of 25-8-1912.*

**Rule 71 allows** holders of land with shifting boundaries to occupy up to such boundaries (*See Appendix A for L. R. Rules*).

**47.** Every holder of land paying revenue in respect thereof shall be entitled, subject to such rules as may be from time to time made in this behalf by the Governor in Council to a decrease of assessment if any portion thereof, not being less than half an acre in extent, [a] is lost by diluvion [b].

Assessment of land revenue in cases of diluvion.

**Scope.**—The limits of area laid down in this section simply determine the question of liability of alluvial accretion to land revenue and have nothing to do with the question of right to hold such accretion. Under this section alluvial accretions formed on alienated land not exceeding the limits laid down will be entirely exempt from the payment of land revenue, while those which exceed that limit were in respect of their liability to the payments of land-revenue, be "subject to the privileges, conditions or restrictions, as are applicable to the original holding" on which such accretions are formed.

**Land reformed after several years is the property of original owner** though it was submerged by the inroads of a river several years before as it

[a] Words repealed by Bom. IV of 1913, s. 13, are omitted.

[b] The paragraph repealed by Bom. IV of 1913, s. 13 is omitted.



is not alluvial and giving a right to Government.—13 *Moore's Indian Appeals* 417.

The holder where he had obtained remission of revenue on account of the submerged area, may be considered to have abandoned his right over the same (*ibid*).

Under Rule 72 the Collector is to dispose of claims under s. 47.—(a) Claims to decrease of assessment on account of diluvion under s. 47 shall be disposed by the Collector. (b) It shall be the duty of the village officers to ascertain and to record the increase due to alluvion and losses due to diluvion in every holding subject to such changes. They shall also report to the Mamlatdar for orders when the area of any newly formed alluvial land or island, or of any abandoned river bed, or land lost by diluvion exceeds the limits prescribed in ss. 46, 47 and 64.—(See *Appendix A for Rules*).

[<sup>a</sup>] 48. (1) The land revenue leviable on any land under the provisions of this Act shall be assessed, or shall be deemed to have been assessed, as the case may be, with reference to the use of the land—

Manner of assessment and alteration of assessment.	(a) for the purpose of agriculture,
	(b) for the purpose of building, and
	(c) for a purpose other than agriculture or building.

Prohibition of use of land for certain purposes.

(2) Where land assessed for use for any purpose is used for any other purpose, the assessment fixed under the provisions of this Act upon such land shall, notwithstanding that the term for which such assessment may have been fixed has not expired, be liable to be altered and fixed at a different rate by such authority and subject to such rules as the Governor in Council may prescribe in this behalf.

(3) Where land held free of assessment on condition of being used for any purpose is used at any time for any other purpose, it shall be liable to assessment.

(4) The Collector or a survey officer may, subject to any rules made in this behalf under section 214, prohibit

[<sup>a</sup>] This section was substituted by Bom. IV of 1913, s. 14, for the original section.

the use for certain purposes of any unalienated land liable to the payment of land revenue, and may summarily evict any holder who uses or attempts to use the same for any such prohibited purpose.

#### Commentary

**History.**—This section was first based on s. 2 cl. (1) of Reg. XXVII of 1827 and s. 25 of Bom. Act I of 1865.

#### S. 48 stood in 1879 as follows:—

**LAND-REVENUE UPON WHAT DESCRIPTION OF LANDS CHARGEABLE.**—The land-revenue leviable under the provisions of this Act shall be chargeable; (a) upon land appropriated for purpose of agriculture; (b) upon land from which any other profit or advantage than that ordinarily acquired by agriculture is derived; (c) upon land appropriated for building sites.

And the assessment fixed under the provisions of this Act upon any land appropriated for any one of the above purposes shall be liable to be altered and fixed at a different rate when such land is appropriated for any other purpose, notwithstanding that the term, if any, for which such assessment was fixed may not have expired. And any land allowed by Government to be held free of assessment on condition of its being appropriated to one purpose shall become liable to assessment if at any time it is devoted to any other purpose.

It shall also be lawful for the Collector or for a Survey Officer, subject to rules or orders made in this behalf under s. 214, to prohibit the appropriation of any unalienated land liable to the payment of land-revenue for certain purposes, and to summarily evict any holder who may appropriate, or attempt to appropriate, the same to such prohibited purposes.

Appropriation of land to certain purposes may be prohibited.

**Objections.**—In the course of the debate the Hon. Mr. Mandlik and the rest of the Indian members objected to this section on the ground that that was a new law and it was very vague. They submitted that an hereditary land-holder could do as he likes with his land, and provisions for levying a different revenue, according to the mode of appropriation, were not at all advisable. When land was first assessed, it would be assessed according to the class in which it was placed by the Survey Dept., and that having been done, no further assessment of that land within the currency of survey settlement had been contemplated by the law. In regard to the appropriation of land for building sites, the legislature had already by Act IV of 1868 made certain provisions and it was thought that the Council ought to accept the Act of 1868 as the basis for operation as to assessments of that kind. As regards the appropriation of Govt. lands any rules which Govt. might make would be applicable and would not require any particular legislative authority to legalise them; and as regards private lands the Act not being intended for the creation or the

extinction of any rights that there should be no interference whatever. The amendment was lost the official members voting against it.—*Proceedings of the Council of the Governor of Bombay of 1877 Vol. XVI pp. 133-34.*

**S. 48 stood in 1901 as follows:—**

**LAND CHARGEABLE WITH LAND-REVENUE.**—The land-revenue leviable under the provisions of this Act shall be chargeable—(a) upon land appropriated for purpose of agriculture; (b) upon land 'appropriated for any purpose' from which any other profit or advantage than that ordinarily acquired by agriculture is derived; (c) upon land appropriated for building sites.

And the assessment fixed under the provisions of this Act upon any land appropriated for any one of the above purposes shall, when such land is appropriated for any other of the said purposes, notwithstanding that the term, if any, for which such assessment was fixed may not have expired, be liable to be altered and fixed at a different rate by such authority and subject to such rules as to the fixing and periodical revision thereof as the Governor in Council prescribes in this behalf.

And any land allowed by Government to be held free of assessment on condition of its being appropriated to one purpose shall become liable to assessment if at any time it is devoted to any other purpose.

It shall also be lawful for the Collector or for a survey officer, subject to rules or orders made in this behalf under s. 214, to prohibit the appropriation of any unalienated land liable to the payment of land-revenue for certain purposes, and to summarily evict any holder who may appropriate, or attempt to appropriate, the same to such prohibited purposes.

The object of the amendment by Act VI of 1901 was to specify the authority by whom altered assessment may be fixed, and (b) to fix such assessment for a specified period and to revise it at the end of that period. The whole effect of the amendment was as stated by Mr. Monteth who moved the introduction of the Bill to make it clear that Govt. could authorise the Collector or other officer to fix and revise assessments on lands of which the appropriation was altered without going through the cumbrous process which otherwise might have been required under ch. VIII of the Code.

The present section was substituted by Bom. Act IV of 1913 for the original section as it stood in 1901. In this new section the words 'use' and 'used' are substituted for the words 'appropriate' and 'appropriated' in consequence of the ruling of the High Court of Bombay in the *Secretary of State v. Laldas Narandas*, 34 Bom. 239; 12 Bom. L. R. 16 (1909) that the word 'appropriate' conveyed the idea of exclusion and that if a person during off seasons when the land is not used for agricultural purposes let it out for stacking timber and derived profit therefrom no additional assessment could be levied for the special user.

The words 'use' and 'used' are substituted as they include both temporary and permanent uses. As explained by Sir Richard Lamb when the Bill was on the Legislative anvil, the practice of the Revenue Dept. since the Land Revenue Code was passed had been to construe the word 'appropriated' as applicable to temporary use; that this practice was continued in all districts until the High Court judgment in *Secretary of State v. Laldas* was passed in 1919 which determined that, 'appropriation' must mean permanently diverted or used. The discussion in the Legislative Council at the time of introducing the change of the wording and particularly the speech of His Excellency which assured the people that if a temporary use say for one year were made,—say in the case of stacking wood that it will not be taxed showed that Govt. did not intend to alter the assessment if a temporary diversion of agricultural land to a non-agricultural purpose (e.g. the cultivator building a plague hut in his field) was made not for the purpose of profit. In the course of the debate it was pointed out that executive orders were issued by Govt. that no extra charge was leviable for plague huts, etc.

'Land assessed for use for any purpose' i.e. either one of the three purposes mentioned above. (*Discussions in the Bombay Legislative Council, B.G.G. Pt. VII p. 163, 20-5-1913*).

'The assessment fixed shall be liable to be altered and fixed at a different rate by such authority and subject to such rules as the Governor in Council may prescribe in this behalf.' These words are inserted to regulate the absolute discretion of the Collector to vary or to alter the assessment and fix it at a different rate, by rules prescribed by the Governor in Council. It shall not be left open to him. As the law stood before the Amending Act IV of 1913 the Collector had to do it at his own discretion subject only to executive orders and to rules for periodical revenue. On account of this amendment no Collector in the exercise of his discretion can run counter to the lines laid down by the Governor in Council.—*Discussion in the Bom. Leg. Council, B.G.G. Pt. VII p. 163 of 20-5-1913*).

The policy adopted by Govt. in the matter of assessment of land was expounded by the Hon. Mr. Curtis in the course of his speech when this section came for discussion in the Council. He said "The assumption that the object of the section (s. 48) as it stood in the old Code was to secure as far as possible that land should be retained for agricultural purposes and that extra charge should only be imposed when the change from agricultural purposes to other purposes was permanent and pronounced, is not correct. The idea underlying all taxation by the State is that the land yields a definite profit and a definite return and as the State as supreme landlord is entitled to a definite percentage of that profit. Where land is used for the purposes of agriculture the return to State is permanently fixed under our system for terms of 30 years. But if in addition to its use for agricultural purposes land also is put to other purposes, in other words if it is developed then the State can rightly come along and demand an additional sum in the form of a share of the additional profit gained by the occupant of the land. At the present

moment land is valued in an undeveloped state. Should there be a change and land be developed afterwards, should the agricultural land be applied to stacking timber and for anything, the State comes in and demands an additional charge. It seems that the new section embodies this idea. If in addition to getting rice crop the owner of the land in the hot weather draws any other profit from stacking timber or lets it out for temporary occupation in any way, he is rightly taxed by the State some percentage."

The Hon. Mr. G. Carmichael said:—"The principle is that the tax should be in proportion to the profit that is obtained from the land. Suppose the land of the man who gets one crop is near a railway station or a new road or a new market town and he finds that besides cultivating the land in cultivating season, he can let it out at considerable profit for stacking wood; he has not spent a rupee on any improvement nor has he gained this extra profit by incurring any expense why then should not this profit be subjected to a tax in the same way as man who gets a second crop has to pay a higher rate of assessment. If he is not taxed on this additional profit other land holders have good ground to complain that they are being treated unfairly, that they are paying a higher proportion than they are to pay. The cardinal principle of our land revenue system is security of tenure. This security is provided by long guarantee usually 30 years in the case of agricultural land which is given under our settlement but there is another principle which also underlies our revenue policy, i.e., the principle that the incidence of taxation should be equally distributed, and that no one should be called upon to pay or bear a larger share of the burden of taxation than he ought to. This principle is quite as important one as the principle of security of tenure; they must be applied together. If a man chooses to continue to use his land for agricultural purposes, he knows that for the period of the settlement his assessment will not be raised. He also knows that if he chooses to use his land for other purposes, i.e. for building, stacking wood, or any other purpose from which he makes a considerable profit, then he knows that his assessment will be raised, that he will have to pay something more, but that increase will be within a maximum which is definitely laid down and which he knows in advance. Now if he does choose to use the land for other than agricultural purposes or for any other purpose in addition to agriculture, he may, if he wishes, obtain from Govt. a guarantee for a long period of fifty years, in some cases it may be 99 years, in any way it will be a guarantee for a longer period if he wishes than the thirty years for which the ordinary agricultural assessment is guaranteed. I do not think that any higher security of tenure should be given than this if we also have regard to the other principle that the taxation of the country should be equally distributed."

#### OBJECTION AGAINST THIS SECTION.

**Original intention**—When the Act No I of 1865 was in force, Govt. never levied any assessment other than agricultural for non-agricultural appropriation of land and remained content by levying

an initial fine in lump which under the rules then in force in a village of class I was fixed at 30 times the assessment. The fine really represented the capitalised value of the probable share in the profits of the occupant arising out of the non-agricultural use and Govt. thought that no alteration in the annual recurring burden on the occupant was equitable. The law on the subject was embodied in s. 35 of that Act. The words 'for any purpose unconnected with agriculture' are important. When the Land Revenue Code (Act V of 1879) became law legislature split up the above section 35 into two. The provisions relating to fine were embodied in ss. 65 and 66 of the Act; the former for non-agricultural appropriation with permission and the latter for a similar appropriation without permission. Under s. 66 further penalties of summary eviction from the entire field for the unauthorised non-agricultural use which might include even the forfeiture of the buildings or anything permanently fastened to the land were added. So far with regard to fine. Then again an entirely new provision for alteration of assessment was embodied in s. 48 and the land was classified in three sub-divisions for the purposes of assessment, viz., (1) land appropriated for the purpose of agriculture; (2) land from which any other profit or advantage other than that ordinarily acquired by agriculture is derived; (3) land appropriated for building sites and the alteration of assessment was made applicable only to the cases of lands the revenue of which was settled under the provisions of L. R. Code. It was tacitly assumed that lands for which the settlement was fixed before the passing of the Act V of 1879, had the guarantee of non-alteration of assessment under s. 35 of the old Act I of 1865. In some districts, the original settlement was revised after the passing of the Act V of 1879 and it was held by the legal advisers of Govt. that if any land was assessed for agricultural purpose at the time of the revision settlement in spite of its previously appropriated to non-agricultural purpose, Govt. were not justified in altering or enhancing the assessment during the period of solemn guarantee of 30 years. The present section (s. 48) entirely does away with the classification mentioned in the original s. 48 of Act V of 1879 and thus makes the variation of use at any time liable to fresh assessment. By Act VI of 1901, certain verbal alterations were made whereby lands already appropriated to non-agricultural use before the settlement made under Act V of 1879 were made liable to alteration of assessment notwithstanding that the term of the settlement might not have expired. Although the law was thus made rigid by classification of uses which were mutually exclusive Govt. attempted in Thana district to realise enhanced assessment for the temporary non-agricultural use of agricultural land during the dry season and that attempt failed under the decision of the High Court of 1909. It appears from the *statement of objects and reasons* of this Bill (now Bom. Act IV of 1913) that the intention of the Govt. now is that when land is used for more than one purpose then Govt. should not be restricted in levying the land revenue on its-use to one purpose and the present s. 48 is inserted to remedy this supposed defect. The development of

commerce and industry in large towns like Ahmedabad, Broach, Surat etc. is such that non-agricultural use or appropriation of agricultural land does not remain fixed. Legislature was wise enough in classing all these uses under one category, *viz.*, cl. 6 of the present s. 48. By doing away with this category of non-agricultural uses provided for in the present Act which comprises a variety of uses, such as (1) stacking of timber, (2) making brick-kilns or tile-kilns, (3) stacking of bales of cotton or grass etc., and giving scope for alteration of assessment from time to time in the hands of the revenue authorities, legislature would be giving undesirable power so that the occupant should be at the mercy of the revenue authorities. Then again, if no permission of this alteration of use for however temporary a purpose is obtained from the Collector the occupant will be liable to summary eviction under s. 66 which is to be amended by changing the word 'appropriation' to 'use'. To take a concrete instance an occupant obtained permission under s. 65 of the Act as proposed to be amended, for using his agricultural land for the stacking of grass bales. Next year he found that as the traffic in timber was more paying to him, he used his land as a timber yard, without obtaining permission, the necessity of which the ordinary ryot might not think of. The inevitable consequence of this petty dereliction on the part of the ryot would be, (1) enhanced assessment according to the will of the revenue authorities; (2) summary eviction from the occupancy, and (3) forfeiture of his holding. It may be argued that the last two steps will not be taken by the Collector but the Legislature ought to be cautious in protecting the rights of rate payers from the probable consequences of wide discretion left in the hands of the executive.

It is objectionable to leave the law in an uncertain condition upon the supposition that the officers of Govt. will always exercise their discretion without any mistake and therefore it does not matter much if the law stands in a vague form and things are let to be disposed of under rules made by Govt. It is impossible that all sorts of cases may be comprised within any particular rules. There may be some omissions and difficulties may arise; there may be a fire in a village and people may have resort to fields or there may be floods or there may be numbers of other reasons which may force people without any desire to profit to have to go to their agricultural lands to use them for the purposes for which they are not assessed. It would be the greatest hardship if that would justify any imposition of additional assessment or the eviction of the person who has been using it in the particular way. It has been urged that if by any use the occupant of the property derives much larger profit, than by restricting it for the purpose for which it is assessed why should not Govt. obtain a share in them. But as to that there has been nothing in the section itself said that where it is used for profit in those cases only assessment will be charged and when it is not used for the profit it will not be

charged.—*See discussion on the Bill-now Act IV of 1913; B. G. G. pt. VII of 20-5-13.*

**This section does not apply** where the land revenue to be altered for an altered purpose is not assessed after 17th July 1879 on which date this Act came into force.

**Scope.**—This section contemplates the case of a holder of land set apart for one purpose appropriating (now 'using') such land for another purpose, for instance, the holder turning his field into a quarry or a building site.

**S. 48 must necessarily be read in close conjunction with s. 65** and probably it would be a more logical arrangement of the Code than the framers of the Code adopted, if s. 48 were to come after and not precede s. 65. If first para. of s. 65 is read in conjunction with s. 48, as it necessarily must be read there will remain no possibility of altering assessment on account of land being diverted from dry to wet crop that is to say from jawari or bajri to rice, or being converted to irrigation. S. 65 distinctly shows that all these acts will come within the meaning of the term 'used for agricultural purpose'. The only object and possible meaning of the word 'use' will be to authorise the variation or alteration of the assessment when the land is diverted from agriculture to building and from either agriculture or from building to some other purpose which is neither agriculture nor building.

This section is not intended to meet the case of trespassers or encroachers or unauthorised occupations.—*G. R. 172 of 12-1-1880* nor to trespassers on Govt. land to whom s. 61 applies.

**Interpretation of para. 2 of s. 48 read with s. 112.**—The question is whether s. 112 which enacts that "existing survey settlements of land revenue ..... shall be and are hereby declared to be in force subject to the provisions of this Act" subjects assessments fixed in and such "existing survey settlements" to the provisions of para 2 of s. 48. Now para 2 of s. 48 applies in terms only to any "assessments fixed under the provisions of this Act". It is clear that assessments fixed in "existing survey and settlements" were not fixed "under the provisions of this Act". S. 112 does not say that they are to be deemed to have been so fixed but merely declares that existing survey settlements are in force subject to the provisions of this Act. It appears, therefore, reasonable to conclude that s. 112 was not intended to embrace any provisions such as that of para 2 of s. 48 but only to such provisions of the Code as are general in their terms.—[*G. R. 10196 of 19-12-1885. (Standing orders of Govt. in R. D. Vol. II. p. 984)*].

Para. 2 of s. 48 does not apply to lands assessed under a survey settlement fixed before the date of the L. R. Code. The words of the para. "the assessment fixed under the provisions of the Act" are specific, and s. 112, declaring existing settlements "to be in force subject to the provisions of this Act," does not make the assessment fixed under such existing



settlements as assessment fixed under the provisions of the Bom. L. R. Code. It cannot be considered that the assessment under the existing settlement was fixed under an order to notification, which by virtue of s. 2 is to be deemed to have been made under the Bom. L. R. Code as in that case s. 112 would seem to be surplusage.—*G. R. 4758 of 3-7-1886. (Stating orders of Govt. in R. D. Vol. II p. 934).*

**Ss. 48, and 66 are closely connected**—Trespassers who unauthorisedly misappropriate agricultural land and use it for other than agricultural purposes should be summarily evicted under s. 66; and the occupant should be given notice why he should not be held liable to pay altered assessment and fine under s. 48. (*G. R. 5212/23 of 23-6-30.*)

**The procedure to be observed in cases in which unalienated land (settled before the Bom. L. R. Code came into force) is appropriated to any purpose unconnected with agriculture** should be the recovery of fine under s. 65 only. No revised assessment under s. 48 can be imposed because the lands are not settled under the Code.—[*G. R. 6306 of 19-9-1887; Stating orders of Govt. in R. D. Vol. II p. 984 (1912).*]

**All land whether applied to agricultural or other purposes is liable to land revenue to Govt. according to the Rules framed unless specially exempted, etc.** (*See discussion under s. 45 at pp. 185-200 supra.*)

**Non-agricultural assessment.**—Under s. 48 (1), the land revenue is to be assessed with reference to the use of the land for the purpose of—(a) agriculture, (b) building, and (c) a purpose other than agriculture or building.

Under s. 48 (2) if the Collector, on receipt of an application for permission to the land as a brick kiln grants the *permission applied for*, the occupant is not entitled to use the land for any other purpose without again applying for the necessary permission under s. 65.—*G. O, 5930 of 25-5-1915.*

As shown above for the purposes of assessment of land revenue the use of land is primarily taken into consideration and according to its use land is classified into three different groups (a), (b) and (c) under s. 48 (1).

Under group (a) comes land used for the purpose of agriculture.

**How to determine the conversion of land from agricultural to non-agricultural uses.** So long as land is used for the performance of operation necessary to put the crop of that land into any ordinary marketable form the occupant of the land is not liable to pay altered assessment. Anything beyond it will make him liable for altered assessment.—*G. R. 5321 of 14-12-1922.*

For a discussion as to what is meant by 'agriculture' 'agricultural purpose' and 'agricultural use' (see the commentaries on the Dekkhan Agriculturists' Relief Act, 1879 and the Bombay Co-operative Societies Act, 1925 by the writer; see also notes under s. 65 *infra*.)

S. 65 states that if land assessed or held for purpose of agriculture is subsequently to be used by the occupant for any other purpose (*i. e.* unconnected with agriculture) the permission of the Collector has first to be obtained. (Mamlatdars and Mahalkaries are authorised to grant such permission in the case of unimportant II class villages.—*G. R. 6406/28 of 11-11-1931*). The Collector thereupon makes an alteration in the assessment as laid down in Rules 81 and 82 (*See Appendix A for Rules*). S. 65 further states that an occupant is entitled to erect farm buildings (*i. e.* residence of the cultivator, tenants, agents, etc., barns, granaries, cattle sheds, and all that is essential for cultivation and therefore cannot be separated from cultivation) and no permission of the Collector is required for the better cultivation of the land or its more convenient use for agriculture.

The definition of 'farm buildings' is difficult. It is impossible to confine to houses and buildings inhabited by servants, tenants and cattle; in Kanara and many of the districts quite substantial buildings are erected on agricultural holdings for the residence of the farmer himself; in this connection it may be stated that storing manure, a dairy farm, cane crushing and Gul making are considered to be agricultural purposes.

Under group (b) comes land used for the purpose of building, and under group (c) comes land used for a purpose other than agriculture or building. For the sake of convenience groups (b) and (c) are discussed together.

Altered assessment is to be levied according to rules made under s. 48 current at the time of conversion. It should not be imposed retrospectively.—*Shapurji v. the Collector of Bombay*, 9 Bom. 486. See also *G. R. 8418 of 18-7-1923*. at p. 199 ante and notes thereunder.

### Summary of chief features of assessment of non-agricultural land in different provinces in India.

The Indian Taxation Enquiry Committee (1924-25) divides lands used for purposes other than agriculture into three classes according as they are (1) outside the limits of villages or towns (2) within the limits of villages, and (3) within the limits of towns.

The practice of dealing with sites of factories and other lands put to industrial or similar uses outside the limits of villages or towns varies greatly in different provinces according, largely, to the theories that are held of the land revenue. In Burma, in areas in which a system of fluctuating assessment is in force, a share is taken on behalf of Govt. only when a crop is grown, and the land built upon is treated as it were fallow. In the United Provinces though the law provides for the charge of the usual agricultural assessment, it is only levied during the currency of settlement, and the land is freed of any charge at the close. In Madras, where there is no statutory provision for the assessment of land to land revenue the demand by the State is made in virtue of the King's prerogative to coll.

ect a share of the produce. It has been held there that legally the share of the produce so taken cannot exceed the produce itself, and that produce must for historical reasons be regarded as agricultural produce. Consequently, the most that can be taken is the assessment fixed on the land as if it were being used for agricultural purposes. In the Central Provinces there is a provision in the law for the reassessment of land assessed to land revenue of agricultural purposes if it is converted to any other use and a reasonable share of the annual value of the land used for purposes other than agriculture is taken.

In Bombay as we know the practice is the same, but the Taxation Enquiry Committee sounds a note of warning that care should be taken not to press the provision too far.

**House sites in villages**—The policy in respect of house sites in villages is equally variable from Province to Province. To take first the case of agriculturists. There is to be observed in this case a reversal of the state of affairs that might be expected namely, that where land is let to a tenant provision of a house site should be part of the subject matter in respect of which the rent is paid. In the *Khas Mahal* lands in Bihar, where Govt. is considered to be the landlord a rent is collected on the house sites of the cultivators in the form of *Moturpha*. In some of the ryotwari provinces, where the position of Govt. as landlord is disputed, the Govt. appears to perform this function of a landlord inasmuch as it gives the cultivators house-sites free of charge as an amenity covered by the payment of land revenue. This practice is not, however, universal. Homestead land in Assam is usually taken according to its class to be worth about 25 per cent. more than the best arable land, down to the equivalent of the poorest agricultural land in the case of bare house sites, and is assessed accordingly. In Lower Burma, the land revenue assessment of non-agricultural land is based on its possible agricultural value and not on its non-agricultural use. When culturable land is used for non-agricultural purposes during the currency of a settlement, it continues to be assessed at the rate that was assigned to it at the settlement. When a settlement is revised it is usual to assess non-agricultural land at the higher rates sanctioned under the new settlement for the agricultural lands in the vicinity.

The same difference of policy prevails, with one exception, in the case of other residents in villages. These people may be divided into two classes, namely (1) hereditary village artisans, the granting of free house sites to whom may be regarded as an extension of the amenity given by Govt. as landlord to agriculturists; (2) the money-lenders, traders and other inhabitants of the villages, who likewise benefit when no levy is made by the amenity granted to the agriculturist, though, as members of a class which contributes little towards the general expenses of the State, they are in no way entitled to do so. The instance in which this case differs from that of the agriculturist is that of Bombay, where there is provision for the levy of assessment, but owing to the practical difficulties of discriminating the agriculturists from the traders, the law has not been enforced

since the year 1886. [ ( *See G. R. 4344 of 18-6-1886* ) *Standing Orders of Govt. in R. D Vol. II p. 972 (1902)* ].

• A further point to be noted in this connection is that in the ryotwari areas of the Central Provinces these sites are not transferable, so that no saleable title can be acquired, and in Madras since 1900 a provision has been entered in the grants of this type declaring the grant subject to cancellation or levy of ground rent if at any subsequent time the village is converted into a town.

**House tax**—The Taxation Enquiry Committee did not recommend any change in respect of the treatment of agriculturists or village artisans in spite of the inconsistency that is apparent in the policies pursued. They contemplate the possibility, as the villages grow of something in the nature of house tax being levied by Village Pauchayats.

**License or tax on profession.** In the case of non-agriculturists also they thought it undesirable to attempt to discriminate for the reasons which led to the abandonment of this tax in Bombay Presidency (*See G. R. 4344 18-6-1886* ). At the same time, in this case they think it desirable to observe that the fact that these people enjoy an amenity to which they are not entitled offers a good ground for the imposition on them of taxation in some other form, of which the most appropriate seems to be a local tax of the nature of a *license or profession tax*. In all cases, the Committee would recommend, where it is not in force, the adoption of a practice similar to that which has been mentioned in the case of Madras, under which new grants of lands of the class in question are made subject to the levy of ground rent if and when the village becomes a town.

**Town lands**—The case of lands in towns is similar, but far more complex. They may be distinguished into four separate sub-divisions as follows:

- (1) Lands which were in private possession and subject to no taxation at the time when the towns came under British Rule, and lands which were revenue-free as old village-site and subsequently included in towns.
- (2) Lands which have been given by the British Govt. on freehold tenure or other tenure of a permanent or semi-permanent nature.
- (3) Lands in towns of comparatively recent growth which were subject to agricultural assessment when they were brought within the town limits.
- (4) Lands in which the Govt. still possess a title or part title and which have been given out under conditions similar to leasehold tenure.

As regards the first of these classes it did not appear to the Committee that it would be practicable at the present day to impose anything in the shape of a Provincial tax.

The second case includes such cases as the quit rent lands in Madras and quit-rent, 'foras' and 'pension and tax', lands in Bombay (*see the Bombay*

*City Land Revenue Act, (1876)*. These cases are in a great measure similar to the former.

The case of lands in towns that still pay agricultural assessment is similar to that of factory sites outside the building area, in respect of which the Committee recommended that there should be adopted generally a law on the lines of that in force in Bombay and the Central Provinces under which, on conversion of a land from the use in respect of which it has been assessed, it becomes liable to revision of assessment. The Committee thought that unless the law is changed it would not be possible to make a revision at least in some Provinces with reference to the annual value instead.

The last class is by far the most important, and includes *Khas Mahal* lands in towns in permanently settled areas, large areas of what are known as *Nazul* lands in Northern and Central India and those that are dealt with under the ground rent rules elsewhere. The Committee put forward for consideration in their cases the procedure adopted under the orders of Govt. of India issued in and after 1895 in the case of ground rents, which are described below.

**The Ground Rent Policy**—The ground rent lands, for instance, in Madras, though they were generally assigned on a rent, were prior to 1895 settled by settlement officers on principles assimilated to those governing the settlements of agricultural lands, but there was no uniform plan adopted in assessing them, and in many cases they were assessed on far less than the actual value. In that year the Govt. of India issued orders from which the following is an extract:—

- “The objects which these principles should secure are three-fold: first, that the grantees should in all cases acquire such security of tenures as to afford a sufficient inducement for the expenditure of capital in building and improvement, secondly, that the source of revenue should in no case be permanently alienated, but that a rent should in all cases be fixed, subject to periodical revision; and thirdly, that the amount of rent to be taken at each revision should be subject to such limitations as may be necessary to secure the grantee in his property.
- “The Govt. of India leave it to Local Governments and Administrations to decide whether sites should be sold, or leased, or granted on a permanent occupancy right. But if they are leased, the lease should not ordinarily be for a shorter period than thirty years, and should in all cases provide for renewals upto a minimum period of ninety years, if not in perpetuity.
- “Ground rent should in all cases be fixed. It should not ordinarily exceed 33 per cent. of the letting value of the site, or be less than the highest rate at which land revenue is assessed on lands in the neighbourhood. It should be subject to revision not less frequently or, if the grant is in perpetuity, at intervals not longer, than thirty years, and at each revision the above limitations should apply.”

( Resolution of the Govt. of India, Dept. of Revenue and Agriculture, No. 21-223-12, of 7-10-1895 ).

These principles were to be applied, not only to new grants, but also to all renewals of existing leases that might fall in. In a subsequent letter (Letter to the Govt. of Bombay No. 1504, of 7-7-1897), to the Govt. of Bombay, the Govt. of India explained that it was not their intention that any part of the full value of such lands should be foregone. They agreed with the view of the Govt. of Bombay that, in towns where there was a keen demand for building land and sites, the restriction of the ground rent to one third of the full competitive rent was inapplicable, and if adopted, should be accompanied by provisions requiring an initial payment to be made by the grantee for the remainder of the value. These principles have been adopted in most of the provinces. In Madras standard scales of ground rent have been fixed, and when any land has to be disposed of, such one of these scales as may be appropriate is applied to the plot, which is then sold by auction subject to that rent. The ground rent is subject to revision at resettlement. The Bombay procedure is more or less similar, and land at the disposal of Govt. is usually sold by auction subject to a standard rate of assessment, which is revised every fifty years or so. When the rate is revised, however, the Govt. take only half the increased value and leave the other half to the owner. In the Punjab, the lands are sold subject to an annual payment, which is periodically revised. In some cases the value is estimated at that portion of the net rent which exceeds a fair remuneration for the capital invested in building the house. In others the original price of the land is compared with the selling price of land in the neighbourhood and the ground rent is then enhanced by two, three or four per cent. of the increased value so gauged. In the case of new towns, the first assessment of ground rent is fixed for five years after sale, and subsequent assessments are made at intervals of ten years. In the urban areas of the Canal Colonies, a different system is followed, and the charge is intermediate between the agricultural and the ground rent rate. The urban areas are divided into three groups (a) intra-mural sites, (b) extra-mural sites for factories, and (c) extra-mural sites for bungalows. The intra-mural sites are again sub-divided into several classes, and appropriate rates are fixed for each class, sites for shops in *mandis* and main streets being charged the highest rate, while the menials' quarters pay the lowest. These rates are liable to revision at each resettlement.

**Increased return due to amenities provided by local bodies.**—With regard to these collections the tendency to hand over the whole or a large part of them to the local body and municipality concerned is noticed. Where development schemes are in progress and there are Govt. lands within areas under development, it is a common practice to assist the scheme by making over the whole or part of the Govt.'s title to the lands to the Development Trusts. These and similar proceedings embody a recognition of the fact that the increased return from the land is partly due to the amenities provided by the municipalities. These tendencies

seemed to the Committee to be in the right direction, and they recommend that the practice of making over a substantial fraction of the proceeds to the municipal bodies should be generally adopted.

A proposal for the taxation of unearned increment has been pressed in several quarters in land values in towns. This is a species of property which is especially suitable for taxation, and a rough attempt to measure and levy toll on such increment has been successfully introduced in Germany. A more ambitious measure introduced in England was not successful and was withdrawn.

The Committee put forward four principal cases which may be distinguished:—

- (1) The attempt may be made to impose the tax generally on increments that have already accrued since some fixed date in the past;
- (2) The endeavour may be to tax past increments in so far as they have accrued to particular persons who may realise them in future;
- (3) Arrangements may be made to tax future increments generally; and
- (4) Arrangements may be made to tax future increments in particular cases, especially those in which they are due to some new development.

The first of these courses was considered to be both impracticable and unfair.

The second plan is more or less akin to that adopted in Germany but in that case no attempt is made to separate the value of the site from that of the building and it is therefore not a true tax on increment of land value. In India a special Stamp duty has been imposed in some towns (for instance in the town and island of Bombay, and the cities like Karachi, Ahmedabad and Poona; *vide* Bom. Finance Act of 1932) on all transfers. While this affects the case in which there has been a loss as well as that in which there has been an increment, the fact that the duty was imposed at a time of rising prices tended to enable the municipalities to secure a small measure of taxation on the unearned increment.

The third plan can only be applied if there is made an accurate valuation of all land in the towns concerned. This was the plan adopted in England under the Finance (1909-10) Act, 1910, which broke down owing to the complicated provisions for separating the value of the site from that of buildings and other improvements. In these circumstances it is recommended that in India no attempt should be made to eliminate the value due to past improvements, but that an account should be maintained of improvements effected in the future, and that the value attributable to such improvements should be deducted from the value on the occasion on which the increment duty is levied. These processes require the services of expert valuers, and can only be recommended to large towns with highly competent staffs, but given that condition, the schemes do not appear to be impracticable in India. In the case of new extensions or of towns in which a large amount of new building is taking place, the process is simpler and can more readily be applied.

The fourth scheme is applicable where a Government or local body is creating new values in lands in towns by town extension or other developments. In these cases it is comparatively easy to ascertain the values of the premises affected before and after the developments, and Acts have already been passed providing for the levy of betterment taxation by local bodies.

### POT-KHARAB

By the term 'Pot-Kharab' is meant 'barren or unculturable land included in an assessed survey number' and includes 'any land comprised in a survey number which from any reason is held not to be likely to be brought under cultivation'. It thus includes 'lands in fields covered with buildings which may be removed at any time, burying grounds which may be disused and brought under the plough, tracks and paths which may cease to be employed as such; beds of nals which may suddenly become culturable from any change in the course of the stream and such like.

In the Joint Report Rules freedom to cultivate such lands included within a survey number without extra-assessment was conveyed by the general guarantee given in Rule 1 and also more specifically by Rule 4 which states: 'In the Registers also a deduction is made on account of barren (unarable) land in certain fields and the assessment placed on the arable land alone; but in the event of the cultivator bringing any portion of the land deducted as barren (unarable) into cultivation no extra assessment is to be levied on that account; the assessment on the field entered in the Register is alone to be levied.'

The Survey Act I of 1865 reaffirmed this privilege in Rule 14 of the Rules framed under that Act. It ran thus: 'If land included at any survey settlement in a survey number as unarable be brought under cultivation no extra assessment will be levied on that account during the period for which such settlement is guaranteed.' By the same Rule, however, certain exceptions were made in the case of 'roads, the beds of tanks used for irrigation, drinking or domestic purposes,' the cultivation of which is forbidden 'when the land occupied by such roads or tanks is included in a survey number save when the privilege of cultivating the dry bed of the same has been specially conceded at the Survey Settlement, or when the tank waters land which is in the sole occupation of the occupant.'

During the currency of the original settlement therefore, no question concerning the assessment of such Pot-kharab lands could arise nor, indeed was the matter considered of sufficient importance to call for special attention at the time of the first revision surveys. As the original guarantee did not extend beyond the period of the original Settlement the land counted as pot-kharab at that settlement but now cultivated was at revision classed as 'arable' and assessed accordingly. In 1874, however, the large increases in Revision, due to the assessment as "arable" of land originally classed as pot-kharab, attracted the attention of Govt. On inquiry it was found that these increases were due to the extraordinarily lax way in which deductions had



been made at the earlier Original Settlements on account of these so called "unarable" lands. One cause of this carelessness was undoubtedly the wild and uncultivated condition of the country at the time of the first surveys under the new system, which led to the classification of much land really arable as pot-kharab. Another cause seems to have been the inclusion within one survey number of small pieces of cultivated and large areas of uncultivated land — classed as "kharab" — in order to save the trouble of division into smaller numbers, without appreciating what the consequences of such a action would be. Hence, as Colonel Anderson remarks: "We find many cases of large areas up to even 400 acres made into a single survey number and a mere fraction recorded as arable." The result was often to place large areas of cultivable land under the determination of "uncultivable" in the hands of persons with no original title to them whatsoever except that conferred by their accidental inclusion within the same survey number. (*Para 9 of Colonel Anderson's Report No. 65 of 17-1-1875*). At the same time the increase in individual assessments due to the assessment of these lands was undoubtedly large, and Government began to have doubts whether such assessments did not contravene the provisions of s. 30 of the Survey Act regarding the taxation of improvements. It was at first decided that this was so and orders were issued that "the same area shall be deducted from each number as unassessed as was allowed at the original Settlement." (*G. R. 6572 of 17-12 1874*). This Rule, was however cancelled shortly afterwards the orders of the Government of India having been received that "all land found arable at the Revision Survey should be assessed." (*G. R. 2773 of 8-3 1876*). Upto 1883, therefore, this rule was followed. In that year, however, the Govt. of India actuated by the desire to do away, so far as possible, with the trouble and expense incidental to the Revision Settlements in the re-measurement and re-classification of the land, addressed the Govt. of Bombay on this question and with reference to pot-kharab lands asked "Whether it may be understood that in those districts, if any, in which the increment due to the cultivation of pot kharab can be resigned, no new valuation of the soil will be necessary ... and secondly, whether any date can be selected in regard to which it must be accepted that all assessments made previous to it were of such a nature as to require a new valuation in their case, but not in the case of districts assessed after that date. In his report upon this question the Settlement Commissioner was able to state that the time had arrived when it would be possible to carry out the wishes of the Govt. of India, remarking that "There are very strong indications now that we are approaching the revision of valuations made at a time when land was only entered as pot-kharab because it was really unfit for cultivation and if we go on assessing such land much longer we shall be running a risk of taxing improvements of a nature over and above the ordinary operations of husbandry. A step therefore, which in 1874 would have resulted in giving large areas of land to persons wholly unentitled to them at a mere quit-rent, seems now to be very advisable on broad principles of justice, and the cancelled orders of 1874 may, I think, with great advantage and without any appreciable sacrifice

of revenue be repeated in 1884. (*Mr. Stewart's Report No. 1360 of 27-6-1883*). This proposal was accepted by both the Government of India and of Bombay and the latter Govt. finally disposed of the matter as part of the important resolution upon the subject of improvements already quoted (*G. R. 2619 of 27-1-1884*) in the following terms: "This Govt. has been inclined ever since 1874 to leave the profit of bringing such land into cultivation to the occupant. But it was found that the area thus treated in the early settlements was so large that to forego assessment of it would occasion an unjustifiable sacrifice of the claims of the public revenue. Action in this matter was, therefore, postponed. But the settlements marked by lavish indifference to pot-kharab have now come under revision. About the year 1874 a more careful system was introduced under the Rules of the Joint Report. His Excellency the Governor in Council has, therefore, resolved that the Settlement Officers shall, in the operations for Revision settlement of land originally settled after 1854, as a general principle, accept and confirm as exempt from assessment whatever area was entered as pot-kharab in the classification of land at the original settlement. In other words, as a general rule, land which, though arable was at the first survey included in a survey number as unarable and was left unassessed, shall also be left unassessed at the Revision Settlement for the benefit of the occupant.

These orders were carried out in accordance with rules varying the requirements of the different Surveys.

To complete this object, it may be stated that in 1891 the following orders were passed, defining two classes of pot-kharab, and safeguarding the rights of occupants in certain cases connected therewith:—

Lands classed as unarable land included in a survey number are of two kinds:—

- (1) Pot-kharab, over which the occupant of the number in which it is included has the sole occupancy rights, such as patches unfit to bear assessment, farm-buildings, threshing floors, etc.
- (2) Pot-kharab, over which the occupant of the number in which it is included has not the sole occupancy rights but which, being devoted to public purposes, is the common property of the village community, such as tanks, burial ground, places assigned to village potters to dig earth from, etc.

"At the Revision Survey it is the practice to exclude the second kind of pot-kharab from the survey number in which it was included at the original Survey and to make it into a separate survey number or pot-number. This practice, though in conformity with the law and the orders of Government on the subject, is calculated to affect the rights of the occupant from whose number the *pot-kharab* is excluded, and to put him to disadvantage, inasmuch as by the separation of the pot-kharab he is deprived of the prospective right to cultivate it, should the kharab at some future time cease to be used for the purpose to which it is at present devoted—an advantage to which he would be entitled if the *kharab* were allowed to

remain in his number. In such cases therefore, with a view to save the occupants from this disadvantage, it has been decided to enter the pot-kharab in the name of the occupant from whose number it has been excluded, and to record a note against it describing the purpose for which it is used by the village community, and prohibiting the cultivation thereof without the permission of the Collector.

#### Scope of s. 48 about pot-kharab.

S. 48 cannot be used in the case of pot-kharab: it is applicable only to assessed land (cl. 1. and 2), or held free of assessment on condition as to its use (cl. 3) which term does not embrace *pot-kharab*. But it is occupied land left unassessed and therefore is at any time liable to assessment under s. 45 without regard to the change of use: it is not covered by the guarantee.

If the use of *pot-kharab* is altered after any settlement then s. 48 applies. —(G. R. 2136 of 1931 and G. R. 19438 of 1917).

Fine can be levied for unpermitted non-agricultural use of *pot-kharab* in spite of the guarantee of no assessment (G. R. 6629 of 1895).

Under the form of notification finally confirmed in G. R. 3012 of 1920 the *pot-kharab* used for non-agricultural purposes or for any purpose is excluded. It is not considered as 'dealt with' (G. R. 11023 of 1909) by the Settlement Officer.

**Pot-kharab land.**—A sheet of rock in a survey number may not be assessed for agriculture but under the section as it stands it may be assessed to building if a building for non-agricultural purposes is erected thereon under s. 65.

**Note.**—As a building site, an out-crop of rock may be a valuable plot in a village. But that does not justify the levy of assessment merely because a house is built on it.

The policy of charging non-agricultural assessment on *pot-kharab* when a house (not being a farm building) etc. is built in it on the ground that the *pot-kharab* was deducted and left unassessed solely from the agriculturist point of view has resulted in reducing villages especially larger ones to slum conditions. A more liberal policy on the part of Govt. by way of encouragement to live on their farms is needed to enable the people to enjoy the full benefits of pure air, good water, etc.

Agricultural assessment should not be imposed on land which was treated as *pot-kharab* in the last settlement and on which farm-buildings have since been erected. (cf. s. 65).—(G. R. 22729 of 18 3-1915).

#### Miscellaneous G. Rs. regarding Pot-kharab.

Some *pot-kharab* land occupied by buildings was included in an agricultural survey number not only at the original survey but also at the revision survey. It was not taken into account in fixing the agricultural assessment at the revision survey on the ground that it was occupied by

buildings that is it was treated as *pot-kharab*. It continued to be used for the same purpose as before. Under these circumstances Govt. in G. R. 11023 of 15-11-1909 stated that though the guarantee under s. 102 was confined to lands actually used for the purpose of agriculture yet as the Settlement Officer 'dealt with' the question of the assessment of the land by including it as *pot-kharab* in an agricultural survey number it became entitled to the benefit of the guarantee ( s. 102 ).

At the next settlement such lands should be expressly excluded from the guarantee. When *pot-kharab* land is converted to the non-agricultural use or when such land is treated as *pot-kharab* because of its particular non-agricultural use, is converted to another non-agricultural use it should be assessed from the year in which it is fixed by the Collector (*cf. G. R. 2156 of 7-3-1910*).—*G. R. 10438 of 27-8 1917*.

A *pot-kharab* land, used for non-agricultural purpose by erection of a building was left unassessed at the time of both the Original and Revision Surveys. Govt. in G. R. 3490/24 of 11-5-1925 held that it was liable to assessment under s. 45 in the absence of a special contract granting exemption. Govt. however thought that only non-agricultural assessment was leviable and not fine under s. 66.

Where there was a family grave-yard (at Ankleshwar) Government in their Resolution (*G. R. R. D. 9833 of 13-10-1916*) stated that exemption from payment of altered assessment could only be allowed for that portion which was actually used as family grave-yard and where that portion was demarkated from the rest of the survey number but if the whole survey number has been let out for some such purpose as storage of timber on rent exemption from the payment of altered assessment even on that portion which was actually used as such grave-yard could not be allowed. Portions so diverted must be made into separate Survey Number.

Land used for setting up grass-pressing machines, or for storage of grass bales, timber or bricks, or for any of the numerous varieties of non-agricultural use other than building, is liable to be assessed by the Collector with reference to the situation, facilities and profits, or in other words, increment value of the plot. The levy of the non-agricultural assessment in such cases is however a matter for the Collector's discretion.—*G. R. 11437 of 24-11-1916*.

**Right of reversion.**—When land is formally acquired the occupant cannot retain any special right of reversion, but there is a natural practice of giving disused roads etc., to the old adjacent owners.

Occupants retain a right to the reversion of *pot-kharab* of class (b) Rule 75 of the Land Revenue Rules when the special use ceases [(*G. R. 3291 of 23-4-1885*) *Standing Orders of Govt. in R. D. Vol. II, p. 1021*] and would also retain a right to land they dedicate without compensation to public usage.

**Cart road assigned as *pot-kharab* when not needed for the purpose.** Where a strip of land shown in the village map as *pot-kharab* because it is

used as a cart road and assigned for that purpose, is no longer needed as such road, the holder of the field may be allowed to cultivate the disused road (obviously if it does not violate the principle "*Once a highway always a highway*". See p. 121 *ante*) on his paying the usual assessment. If each strip is in alienated land assessment should be levied when it is possible to make sure from the survey papers that exemption originally accorded was granted on the ground that the land was to be used as a road or for any other definite purpose.—*G. R. 3993 of 10-4-1916.*

**Instructions regarding Pot Kharab.**—When a field is classified for agricultural purposes it is sometimes found that a part of it is so inferior as not to be cultivable. There may be an out-crop of bare rock or there may be a nala or a pit, such as an old quarry. Also there may be a public way or water-course, or part of the dam of a public tank or some other reason why some part of the field though quite fit for cultivation cannot be permitted to be cultivated. A seasonal use for part of the year, not interfering with the main use (e. g. a hot weather-cart track) is not recognised.

Thus there are two kinds of pot kharabs (1) the uncultivable, and (2) cultivable but withdrawn and reserved for some other purpose.

The Rule (Land Revenue Rule 75 see Appendix A) about the first kind is that unarable land included in a survey number assessed for purposes of agriculture when it is classed as unfit for agriculture at the time of survey including the farm buildings or threshing floor of the holder may be brought under cultivation by the holder at any time without paying any additional assessment. In this class of pot kharab the occupant if he chooses to spend money and improve the land by breaking up the rock or damming the nalla or filling up the pit may cultivate and raise crops on the *pot kharab* without being charged any assessment for it. It is directed in G. R. 2619 of 26-3-1894 [ See *Starting Orders of Govt. in R. D. Vol. II p. 1101 (1912 Ed.)*] that *pot kharab* or land unfit for cultivation such as (1) deep pits (2) water-courses scooped out by streams (3) rocks, etc. are deducted as uncultivable and the holder may bring such land under cultivation without any liability to a charge because it is assumed that such cultivation can only be effected by the expenditure of money, as for instance, in Ratnagiri where upon sheets of rock, walls are built and earth is piled up until the rock becomes a *ri* a field. Such unarable lands though brought under cultivation should be left unassessed. The rule regarding the second kind is that unarable land included in a survey number assessed for purpose of agriculture when preserved or assigned for public purposes, or occupied by a road or recognised footpath or by tank or stream used by the public for irrigation, or for drinking or for domestic purposes, or used for a burial or burning ground by the public, etc., or assigned for village potteries cannot be cultivated under s. 49 (4). (*Rule 75, ibid*). Thus in respect of the second kind of the *pot-kharab* cultivation is prohibited even though the land may be cultivable unless Collector permits it, and alters the assignment of the *pot-kharab* when the purpose for which it was reserved is no longer operative (e. g. the tank is abandoned, etc. but in the case of a road the rule to be observed is: "*once a highway always a*

*highway*' see notes under s. 37; *Supra*). If this class of pot-kharab is permitted, to be cultivated, then it would be (*G. R. 3908 of 10-4-1916*) (even in case of Inam lands summarily settled judi cannot be raised but nuksan and Local Fund can) assessed at the same rate as the rest of the survey number and the assessment increased because it does not require any such expenditure by the occupant to make it cultivable as the first kind is supposed to need. Wherever is possible it was directed that this second kind should be made into a separate survey number at Revision Survey (*G. R. 696 of 1891*), but since this interferes with the reversionary right of the occupant, the order was withdrawn.

Occupants are in possession of both kinds of *pot kharab* but in case of the second class they are in possession subject to certain rights. They may cultivate the first kind if they like and if they can; and the crops grown in the *pot kharabs* are usually disregarded in crop inspection, i. e. in a survey number of 10 acres cultivable in addition  $\frac{1}{4}$ th acre of *pot kharab* if the Talathi at the time of inspection finds the whole field full of crops, he would record the area under crop as 10 acres and not 10 $\frac{1}{4}$ .

When the Talathi is inspecting crops he should follow the rule as laid down below:

"If there is any uncropped area in the field, first see whether there is any *Pot Kharab* or not. If there is some *Pot Kharab* and the uncropped area does not exceed the *Pot Kharab* area, then disregard that area. If, on the other hand, the uncropped area exceeds the *Pot Kharab* area, then treat the excess (not the total uncropped area) as fallow and class it under the proper kind of fallow. If the Talathi finds that although there is *Pot Kharab* in the fields, still the whole area is cropped, he will enter as cropped the net cultivable area of the field, and will disregard the crops grown in the *Pot Kharab*. But if this *Pot Kharab* is of class (2) which ought not to be cultivated, then of course he should take note of the fact and take separate action about it."

**Prohibition of use for certain purposes.** (1) **Manufacture of Salt.**—Use of land for manufacture of salt is prohibited except on certain conditions by Rule 76 of L. R. Rules (*see Appendix A*)

(2) **Removal of earth, stone etc.** is prohibited where land is occupied and is assessed or held for purposes of agriculture only, if it is found to be injurious to cultivation and also when such removal etc. is for purposes of trade or profit or any other purpose except the occupant's domestic or agricultural purposes. (*Rule 77*). Removal of earth, stone, etc. from building site is prohibited except under certain conditions by Rule 78. It is suggested that this rule applies to Gaothan plots.

(3) **Excavation of unalienated land** within site of village, town or city, is prohibited except for certain purposes such as laying of foundations for buildings, the sinking of wells, etc., without permission.

(4) **Collector may refuse permission** to convert land to non-agricultural use under certain conditions (*see G. R. 15159 of 1919*). It is true that sanitary, civic, æsthetic considerations are to be taken into consideration but at the same time it should be remembered that such refusals should rather be exceptions than rules.

*Wada* is open land for storing fodder, maure cattle, etc.. Whether within a *gavthan* such land should be assessed or not turns upon whether the holder has held it by continuous title from a time anterior to British Rule or not.

In G. R. 4344 of 14-5-1835 [ *Standing Orders of Govt. in R. D. Vol II p. 972 (1902)* ] the question was whether house sites in villages should be assessed on transfer to a non-resident non-agriculturist, and of '*Wadas*' used for storing agricultural produce and the like, when separated from the homesteads to which they originally belonged. Govt. concurred with the opinion of the Remembrancer of the Legal Affairs which was as follows:—

"If it is not present intention of Govt. to assess occupied lands in village sites generally, it seems to me impossible to justify the assessment of such holdings in isolated cases."

"So long as a piece of ground is a *pardli* land (patches of open ground surrounding houses) it is subject to the same rules regarding assessment as the house sites to which it surrounds. When however it ceases to answer to the above description, the question of assessing it or of putting fresh assessment upon it is, legally open to consideration under para 2, s. 48. But if in the village or town in which the land is situate house-sites generally are not subject to assessment, it seems to me that it would be unreasonable for the Collector to place an assessment upon that piece of land alone." [ *Standing Orders of Govt. in R. D. Vol. II, p. 972 (1902)* ]. Government however in G. R. 3074/28 of 10-10-1930. R. D. directed that the practice of allowing free of rent, open, and temporary user of *Wada* lands in village sites in Ahmedabad districts should be continued. By the same Resolution Govt. have issued instructions that if in any case exclusive ownership is claimed or attempt made to erect walls or structures steps should be taken to enforce the rights of Government by levy of occupancy rights and rent or by eviction if necessary.

Govt. in G. R. 5344 of 25-7-1893 [ *Standing Orders of Govt. in R. D. Vol. II p. 1073 (1902)* ] laid down that the assessment of land used for non-agricultural purposes should be proposed by the Collector on the introduction of a revision survey (and excluded from the ordinary settlement made by the survey department) and the guarantee might be given either for the period fixed for the taluka or for such other period as might seem convenient.

*Pardli* land has been defined in the Survey and Settlement Manual as 'cultivated or cultivable land surrounding houses within the village site'. It was first mentioned in Wingate's Survey Rules of 1853, where all such areas if above half an acre were ordered to be measured into '*Pardi* numbers' and demarcated, the question of their assessment being left for future decision. Subsequently by G. R. 1765 of 5-5-1858 *Pardis* above one fourth acre in area were ordered to be assessed, those under one-fourth acre being exempted.

*Mafi Kacche* land in Gujarat districts corresponds to the *Pardli* or *Wadyi* land in the Deccan. It is the land used as farm yard attached to cultivators'

houses whether within or without the Gavthan limits. The land appended to house sites of cultivators are exempt from assessment even though cultivated within or without the village site subject to limits as in the case of Pardi (*G. R. 858 of 1872*). It is asserted that all such land bears an assessment though it is not collected. It is liable to Local Fund upon that assessment (*G. R. 1542 of 1921*).

'Mafi Kacha' lands are intended to be used for cultivation or for auxiliary purposes *e.g.* storage of grass, fuel, agricultural implements or tethering cattle. Govt. in *G. R. 14128 of 10-10-1930* have laid down that so long as the uses of Mafi Kacha lands as stated above prevail the lands should be continued to be exempted from assessment. When such lands are used for buildings or other purposes not connected with agriculture they should be subjected to assessment.

**History of Assessment of land for non-agricultural purposes.**—Prior to 29 May 1896 all notifications guaranteeing assessment applied those rates as fixed by the Superintendent of Survey to the whole village. Thus, whether the land was agricultural or non agricultural and whether occupied or unoccupied if it was entered as assessed in Akarbands then that assessment was guaranteed. In 1896 the guarantee notification was amended by *G. R. 4267 of 1896* so that it did not cover any non-agricultural land even if assessed in Akarband in a Settlement intended for agriculture only. After 1901 all unoccupied land whether non-agricultural or not and all non-agricultural land and all land which was judged to be building sites even if occupied was excluded from the settlements. (*G. R. 6573 of 1903*). In 1904 it was ordered by *G. R. 4562 of 1904* that unoccupied agricultural land should be deemed to be included in the settlement, if any assessment was imposed in the Akarband.

Non-agricultural assessments are leviable (1) as an original assessment imposed at survey time under s. 100 by a Survey Officer (unless there be a lease or agreement already in existence); (2) a similar original assessment imposed by the Collector under s. 52 upon land which was left unassessed at the time of the survey and was then occupied or subsequently granted for non-agricultural uses; (3) an altered assessment imposed in place of an original agricultural assessment under s. 48. Besides these there are also rentals (not assessments) fixed under Rule 52 (old rule 36IV) and in special agreements or leases for hill stations, etc.,

Survey and assessment of agricultural land is regulated by Rules 3 to 12 of the Land Revenue Rules (see Appendix A for Rules). The rounding of Dharsod in the case of agricultural assessment is provided for in Rule 10A. This Rule does not apply to Sind which has another but equivalent method—(*G. R. 5387 of 24-5-1926*).

Survey and assessment of non-agricultural land is regulated by Rules 13, 14 and 14A. This latter rule provides for the rounding of Dharsod in case of non-agricultural assessments, rents and fines leviable under Rules 43, 47, 49, 51, 80-83, 90, 92, 93, and 99-103, (see Appendix A for Rules.)



Rules 8) to 103 do not apply in Khoti or Talukdari villages nor to Thana woodland-Rules prescribing the purposes for which unalienated land liable to the payment of land revenue may or may not be used, and regulating the grant of permissions to use agricultural land for non-agricultural purposes are made under a. 214 (d). Some of these Rules are referred to below:

All village site plots *i. e.* 'Gaothan' and all plots for whatever purpose they are used which were excluded from the Revenue survey are exempted. Since that survey any site converted to non-agricultural use is now taxed. The term of 99 years for non-agricultural assessment was fixed at first for 99 years if imposed before 1906; the term of 50 years was fixed when imposed between the period 1906 and 1928 (upto the passing of *G. R. 144/24 of 6-7-1929*) and after 1928 it is thirty years (*Rule 87*).

The proposal to survey and assess village sites as a general measure was abandoned in 1880; and Govt. (without on that account surrendering the right to assess secured under the L. R. Code) recognised in *G. R. 4344 of 18-6-1885*. [*Statutory Orders of Govt. in R. D. Vol. II (1802) p. 872*] the objection to exercising it in isolated cases, merely on the ground that the site or land attached to a site and long held free of assessment has changed hands.

Occupied lands in village sites may be divided into three classes (namely); (1) Lands granted under British Rule; (2) Lands held from a time anterior to British Rule; (3) Land unauthorisedly occupied since the introduction of British Rule.

Lands of the first class have generally been granted under a written agreement or lease or similar document and in their case probably no difficulty would arise. In the second class there would, be few lands for which an original documentary title would be proved. But in most instances possession from time immemorial could be established and in such circumstances the Civil Courts would presume a valid grant and recognise the claimants' proprietary rights. Along with the fact of immemorial possession, the holders of these lands would, as a rule, be able to show that they have been subject to the payment of land revenue. Where any house site or open space (when appropriated to non-agricultural purpose) is held by the occupant prior to the British possession it should be exempt from assessment.—(*G. R. 3478 of 2-6-1900*).

The holders of the lands of the third class would, of course, have no documentary evidence of titles. All that they could establish would be at the most, about sixty years' possession and immunity all that time from payment of land assessment.

Sind.—Village sites might be granted under such general rules as the Commissioner in Sind might consider advisable on the distinct understanding that what was given was not a proprietary title, but a permission to occupy, with liability to the payment of rent or house-tax, should Govt. at any further time consider it necessary to impose it, and that grants of

sites for entire villages should invariably be submitted for the sanction of Govt. [G. R. No. 3752 of 1-8-1872 *Standing Orders of Govt. in R. D. Vol. II p. 1242 (1902)*].

**Different stages in the development of the present Law of Assessment of non-agricultural land.**—The Form of Notification under s. 103 contained originally the following paragraph: "The survey rates as fixed under this settlement will remain in force without increase for a period of (thirty years) commencing from ..... and extending to ....." "

Obviously this wording did not contain any notice about any subsequent modification in any of the assessments at the time of publishing a subsequent declaration under the latter part of s. 102 and therefore such a declaration could not make any modification in the assessment till the guarantee period was over, in spite of the fact that the land was used for a different purpose *i. e.* for a non-agricultural purpose.

The Form of Notification under s. 103 was changed by Govt. Notification 2828 of 10-4-1895 (*B.G. G. Pt. I p. 457 of 11-4-1895*) as follows: The Governor in Council having been pleased to sanction the assessments fixed by the Superintendent of Revenue survey and assessment under the provisions of the Bombay Land Revenue Code, 1879, the said assessments will henceforth be leviable, subject however to such declaration as the Governor in Council under s. 102 of the said Code may hereafter be pleased to make for the purpose of declaring (a) any of (a) such assessments, with any modifications which he may deem necessary, fixed for a term of years."

*Note.*—The words between (a) — (a) were inserted by G. N. 5223 of 28-6-1905.

Thus under a survey settlement before 11-4-1895 the Govt. could not specify any modification in his declaration under s. 102.

**Declaration under s. 102 was not expressly limited to lands used for agriculture alone before 1896.**—The Form of Declaration first sanctioned by G. R. 4267 of 29-5-1296 was: "Whereas Government have sanctioned the assessments fixed by the officer in charge of the survey, in the case of (a) such (a) lands (b) as are now actually (b) used for the purpose of agriculture alone (c) and in the case of unoccupied cultivable lands (c) within the area hereinbelow mentioned etc. now in exercise of the powers conferred by s. 102 of the said Code His Excellency the Governor in Council is pleased to declare the said assessments with the modifications hereinafter specified in respect thereof, fixed for a term of years."

*Note.*—(The words between (a)—(a), (b)—(b), (c)—(c) were principally inserted by G. R. 4582 of 16-6-1904).

A survey settlement upto 29-5-1896 when G. R. 4267 was passed and the declaration under s. 102 not being expressly limited to lands used for agriculture alone if any portion of land was used for non-agricultural purpose it could not be assessed till the settlement expired. In the case of all settlements when the guarantee had expired subsequent to 1896 the clear wording of the declaration as mentioned in G. R. 4267 of 1896 will apply and even

though the Survey Officer had wrongly assessed land used for non-agricultural purposes as agricultural land such wrong assessment will not come under the declaration (which contains the word 'actually') and even if the Collector has actually received this wrong assessment for a number of years afterwards he can in his discretion under s. 52 substitute non-agricultural assessment on that portion of the land from the year when the use was noticed by the Collector. But in such cases he cannot levy non-agricultural assessment retrospectively.—*G. R. 2558 of 7-3-1910 and 2154 of 3-10-1916.*

If the original survey had taken place after 1879 (i. e. after the Bombay Land Revenue Code was passed) the whole aspect changes and if agricultural land is used for non-agricultural purposes it will come under s. 48 because such non-agricultural use of the land came to be assessed after this Act came into force and consequently it will be liable to altered assessment, from the time when it was so used till the revision survey, not only this but the Collector could recover it at any future time of discovery provided the interval between the liability and actual levy was not more than 60 years.

If the second revision survey is postponed for some reason or other the question is whether in the intervening period the Collector can impose altered assessment on the non-agricultural land without waiting for the second revision survey on the ground that the guarantee period of the first revision survey had expired and that he was at liberty to impose non-agricultural assessment at any time after the guarantee period was over. It would appear that there cannot be any interim settlement (*vide G. R. 784 of 3-2-1932*). It would also be clear that the guarantee of the former settlement after its expiry must be considered as current till the introduction of the next settlement (*vide the Ruling of the High Court of Bombay in Appeal No. 98 of 1905 in Secretary of State v. Suka shiehat and others, circulated with G. R. 1327 of 7-2-1912*).

**Appropriations effected before 1865 how to be treated at revision survey**—Portions of land assessed for agricultural purpose only if appropriated prior to the passing of Bom. Act I of 1865, for building or other non-agricultural purposes, should at the first revision survey be separately demarcated (*Cf. s. 116*) and specially assessed under s. 48 (c) of the Code (*G. R. 205 of 9-1-1885*) but it would involve much expense and inconvenience to separately demarcate and assess minute plots of land used for constructing huts, tombs, temples and raised platforms surrounding trees, etc. However in case such as a large building in the vicinity of important towns it would be expedient to act on the principle stated above. The Survey and Settlement Commissioner may in his discretion carry out the principle approved in the above mentioned G. R. or apply 'the pot kharab rules' to such appropriations according to circumstances in individual cases.—*G. R. 3942 of 16-5-1885.*

#### ALTERATION OF ASSESSMENT

Alteration of assessment is to be made under s. 43 (2) when land assessed or held for agricultural purposes is used for non-agricultural purposes.—*Rule 80 of L. R. Rules.*

Land assessed before the Code of 1879 cannot be subjected to altered assessment till the settlements expire. There are now only a few villages (Inam) of this type [(*G.R. 10196 of 1885; G.R. 4758 of 1886; Standing Orders of Govt. in R.D. Vol. II pp. 384 & 385 respectively (1902.)*)]

The question how far does the Law of Limitation affect the right to levy assessment is discussed under s. 45 at p. 199 *supra*.

There is no limitation as to the period within which assessment can be claimed (See *Secretary of State v. Bai Kurrabai*). But claims to fines or assessments accrued due more than 60 years ago are barred by Art. 149 Sch. II of the Limitation Act of 1908. Thus, for example a fine which became legally due (but was not levied) in 1850 could not be levied in 1920. Land assessed before the Code of 1879 cannot be subjected to altered assessment till the settlements expire.

**Alteration of assessment**—When land has been converted from agricultural use and at the time of its conversion was (1) *unassessed*—it can be assessed at any time (*G. R. 7329 of 1917*); (2) *agriculturally assessed (and that assessment never since the conversion revised or guaranteed)*—if the assessment was imposed under Act I of 1865 fine at thirty times that assessment can be levied; but if the assessment was imposed after 1879, then fine and altered assessment according to the rules under s. 48 current at the time of conversion may be levied.—*G.R. 3418 of 13-7-1923*.

The holder of a coconut cart in Bandra in the island of Salsette, in Thana District paying an annual assessment of Ra. 39 to Govt. built a bungalow upon it without the permission of the Collector, who, under the rule purporting to have been issued by the Govt. of Bombay on 1-2-1869 in accordance with the provisions of s. 35 of Bom. Act I 1865, demanded from him a fine equal to sixty times the assessment, and, on the plaintiff's failure to pay the fine summarily attached the land under the provisions of s. 48 of Act I of 1865; The High Court *held*: that the Govt. of Bombay had no authority to make the rule of 1st Feb. 1869, and that s. 35 of the Survey Act providing no penalty for building without the Collector's permission, the attachment was illegal:—*The Collector of Thana v. Dababhai Bomanji and vice versa (cross Special Appeals decided together)* 1 Bom. 352 (1876)

**Assessment guaranteed was not liable to be altered**:—If lands have been assessed even by mistake, as appropriated for agriculture, when they might have been assessed as lands appropriated for building sites (because previous to the revision survey they were converted from agriculture to building purposes) the assessment could not be enhanced until the period fixed for assessment had expired (ss. 102 and 106).—*G. R. 5344 of 25-7-1893. (Standing Orders of Govt in R.D. Vol. II p. 1913; 1912)*.

3. When land has been converted from agricultural use and if after conversion the non-agricultural land was by mistake agriculturally assessed (a) before the issue of G. R. 4267 of 23-5-1886 the guaranteed assessment must run out (*G. R. 3229 of 1901*) and on the expiry a new assessment (not retrospective) may be imposed under s. 52 and no fine is leviable. (b)

after 23-5-1906 the unguaranteed assessment may be altered at any time; but retrospectively and with added fine only if no permission was got (Old Rule 71 now Rule 99). (*G.R. 2156 of 1919; 9514 of 1916 and 19438 of 1917*).

Where building sites have been wrongly assessed by the settlement officer as agricultural lands at the time of revision settlement and revised agricultural assessment has been recovered for a number of years the Collector may fix building assessment when it comes to his notice and such revised assessment should be levied from the year in which they are so fixed and not from any previous year. [*G.O (R.D.) 9514 of 3-10-1916*].

In *Shaperji v. Collector of Bombay*, 9 Bom. 486 retrospective levy was held illegal. In that case there was no change of use but Govt. sanctioned the scheme of reassessment and the Collector imposed assessments and, then sought to recover them retrospectively for the years before he had imposed them. No liabilities to these new assessments had evidently accrued before the date of the reassessment.

Since 1879 a. 48 (2) makes the liability arise when use is changed: and therefore, even if a Collector does not find it out till some years have passed still he can demand back payment unless he had known of the use and exempted it under proper authority. Obviously he can demand payment at rates sanctioned for those years and not at new rates.

If the non-agricultural user of land is brought to notice subsequently but before the standard rates are revised the liability to non-agricultural assessment can only be according to standard rate in force at the time *i. e.* according to old rates. This is in accordance with the principle that the imposition of revised assessment cannot ordinarily have retrospective effect (*Shaperji v. The Collector of Bombay*, 9 Bom. 483).—*G.R. 8418 of 15-7-1925*.

Each non-agricultural area is made into a separate survey number (*rule s. 116*; also see Circular by Director of Land Records, L. R. 54 of 19-6-1917) Industrial land—The term land used for any purpose unconnected with agriculture is described by the Secretary of State as 'industrial' land.

Royalty charge on bricks—Rule 82-A empowers Government to levy an additional rate of Rs. 2½ for every lakh of bricks manufactured in a year in addition to the annual assessment of Rs. 40 per acre on land used for manufacture of bricks.

Grant of permission under a. 65 in hill stations and such other localities may be made after imposing certain conditions as to style of building, etc. (*Rule 84*). The Collector may refuse permission to convert land to non-agricultural use under certain conditions (see *G. R. 15159 of 1919*).

Altered assessment is ordinarily to be levied upon the whole land within a compound of a building and not merely on land covered with building (*Rule 84*.)

The concessions granted under Rule 85 were intended to encourage proper spacing of new buildings and to induce people to take up new lands for buildings are now cancelled except in Bombay Suburban district only.

**Note.**—Rule 85 goes outside the scope and spirit of s. 48 (which speaks of ‘use’ meaning actual use) and for that matter of s. 214. In the *Secretary of State v. Abdul Husen*, 29 Bom. L. R. at p. 1351 Crump and Martin JJ. disapproved of the view held by the lower court which relying upon Rules 81 and 85 had held that the altered assessment could be levied upon the whole area and not merely upon the area occupied by the building. In fact the correct view would be to levy non-agricultural assessment on the portion actually used for building and to levy agricultural assessment on the remaining portion of the compound. In this connection see also *G. R. 10231/24 of 19-9-1929*. This view was taken in the case of *Wadia Woollen Mills, Thana* by Govt. in *G. R. 6887/24 of 7-6-1928*. See also the ruling in *Mahamadbbhai v. Secretary of State* given below.

**Enhanced assessment for converting land from use for brick kilns to erecting building to be levied only on area actually so used.**—On conversion of his land from agricultural to non-agricultural uses by establishing a brick kiln and some huts in 1872, the plaintiff was called upon by the Collector to pay thirty times the assessment as fine for such conversion under s. 35 of Bom. Act I of 1865. At the Revision Survey, which took place in 1889, the land was assessed as agricultural land. Some time between 1897 and 1901 the plaintiff erected substantial buildings on the land. In 1912, the Collector having levied enhanced assessment on the whole of the land from the plaintiff, the latter filed a suit to recover it back: *Held* that building sites do not cover the entire area of the land and it is only upon so much of it as has been covered by the building that the enhanced assessment can be levied after the introduction of the revised settlement in 1889. Such levy of enhanced assessment is not affected by the fact that at the introduction of the revised settlement of 1889, the land was in fact assessed to agriculture instead of to brick-kilns.—*Mahamadbbhai v. Secretary of State*, 42, Bom. 126; 20 Bom. L. R. 22.

Altered assessment is ordinarily to be levied from the first day of the revenue year next succeeding the revenue year in which permission to use the land for non-agricultural purposes was given except under certain contingencies.—*Rule 86 (a)*. When no permission was given the altered assessment levied for non-agricultural use is to begin from the 1st day of the Revenue year in which the use commenced.—*Rule 86 (b)*.

Revision of altered assessment is ordinarily to be made after 30 years except in the Bombay Suburban District where the period is fixed at 50 years (*Rule 87*).

Altered assessment fixed under *Rule 87* if does not exceed Re. 1 may be commuted for a lump payment under conditions mentioned in *Rule 88*.

Maps showing altered assessment are to be maintained by the Collector and the Mamlatdar for their respective jurisdictions under *Rule 89*.

When land assessed for non-agricultural purposes other than building, is used for a building the rate of assessment in such case should be the same as is imposed on land used for such purposes in the locality (*Rule 90*.)

Land assessed for non-agricultural use if used for agriculture only the agricultural assessment may be reimposed on application of the holder under *Rule 91*.

No fine ordinarily shall be imposed under s. 65 that is to say when the permission of the Collector is obtained for the altered use.—*Rule 99*.

When land assessed or held for a particular non-agricultural purpose other than building is used for another non-agricultural purpose other than building the permission of the Collector is required under ss. 65 and 66 and the Collector may in such cases levy altered assessment.

Where no Sanad or agreement specifying the use of a plot of land (a mill compound) was granted when permission for the non-agricultural use was given to the occupant on payment of altered assessment (for stacking cotton) and where a portion of that plot was used afterwards for building purposes in spite of the fact that that plot of land was used for non-agricultural purpose other than a building site and assessed as such it was considered that the non-agricultural assessment which was fixed at that time could not be revised during the period of the guarantee for the plot having been used for building purposes.—*G. R. 5063/24 of 19-1-1926*.

A sanad for the construction of buildings was issued in 1902 to a person and no time limit for the purpose was prescribed therein. It was discovered that the land was not at all used for that purpose. The Collector ordered that the sanad had become inoperative and the land should be restored as agricultural land. The Collector's order was declared to be legally improper in view of the terms of the Sanad.—*G. R. 6198/24 of 25-2-1927*.

Maximum fine leviable under s. 66 may not exceed ten times the altered assessment imposed.—(*Rule 100*.)

100. *Maximum fine leviable under section 66*.—Any fine imposed by the Collector under section 66 shall be fixed by him at his discretion subject to rule 101 and shall not exceed ten times the altered assessment imposed under this Chapter.—*G. R. R. D., 1890/29 of 15-5-1931 (Rule 100)*.

101. *Maximum fine leviable for unauthorised use for building, brick making etc.*—When the material of the soil of any occupied land is employed for bricks or tiles or pottery or for any other non-agricultural purposes, without the permission of the Collector being first obtained and the value of the land is thereby adversely affected, a fine may be levied at a rate not exceeding double the rate prescribed in rule 100.—*G. R. R. D., 1890/29 of 15-5-1931 (Rule 101)*.

102. *Saving of special cases dealt with by Government*.—Notwithstanding anything contained in rules 99 to 101, the Collector may, in such cases as Government deem exceptional or unusual, impose a fine, whether under section 65 or under section 66, at such rate as may be fixed by Government in that behalf.—(*Rule 102*).

The limit of fine under s. 61 is fixed at double the amount of fine that would be leviable under s. 66 and Rule 10) if the same land being in lawful occupation had been used by the holder for the same purpose without the permission of the Collector, provided that a fine upto Rs. 100—may be levied in such cases irrespective of the area—(Rule 103.)

**Right of Govt. to enhance assessment at its discretion**—Where the holders of land of a certain class in the island of Bombay set up a right in derogation of the inherent right of the Sovereign to assess the land at its discretion. Scott J. in *Shapurji v. Collector of Bombay*, 9 Bom. 487 (1885) said: "Strict proof of the right set up must be given, whether the change be one of absolute ownership, revenue-free, or of fixity of tenure at a customary rent; and it must be borne in mind that no presumption is admissible against the Crown from mere lapse of time. *Nullum tempus occurit regi*. In this case the land in question was originally waste land reclaimed from the sea, which the inhabitants were invited to cultivate. It appeared that they at first paid no rent, and that subsequently only they were called upon to pay a very small rent, which had continued the same for very many years. On this question Scott J. said: It does not follow from these facts that the Govt. has forfeited its right to enhance the assessment. The expenses incurred as well as the benefits conferred by Government increase with the progress and development of the community, and it is not only legal, but politic and just, to increase assessments in accordance with the increased value of the land, so far as that increase is caused, not by the exertions of the holders, or the improvements made by them, but by the growth of general prosperity under the influences of good administration."

On the question of strict proof of special grant Scott J. referred to Lord Stowell, that the prerogatives and rights and emoluments of the Crown being conferred upon it for great purposes and for the public use, it shall not be intended that such prerogatives, rights and emoluments are diminished by any grant beyond what such grant by necessary and unavoidable construction can take away." (*The Rebekah, I.C. Rob., 227, 230*)"—*Shapurji v. Collector of Bombay*, 9 Bom. 483 (1885).

**Municipalities & Local Boards**—Lands vested in Municipalities and Local Boards and used for remunerative purposes are liable to assessment in the absence of any special contract to the contrary. There is nothing in the Bombay Local Boards Act, 1923, The Bombay District Municipal Act, 1901, or the Bombay Municipal Boroughs Act, 1925, which provides that lands held by local bodies are exempt from the liability to pay assessment—*G. Nos. 9262/24 of 5-9-1927 and 6694/28 of 22-8-1931*.

**Municipalities in the mofussil** do not get any profit from lands occupied by them for their water and drainage works (unless in very exceptional cases). No assessment, therefore, should be levied on lands occupied by water and drainage works, though such lands yield a return. This applies to public bodies in the Bombay Suburban District and therefore no



assessment either agricultural or non-agricultural should be levied on lands, occupied by them.—*G.R. 3556/24 of 29-11-1926.*

When a municipality acquires or is granted a block of land and leases it out for building or otherwise then (1) non-agricultural assessment is leviable just as it would be leviable if the municipality was a private person; (2) a *Kanad* is due for each site; the Municipality will pay, unless they have sold all their rights. Fees are in future to be levied also on municipal property used for public municipal purposes (*G. R. 15497 of 1917*).

A Municipality is liable to pay altered assessment in respect of agricultural land given by it for building purposes.—*G. R. 13988 of 1-11-1917.*

Land owned by or transferred or assigned to a municipality for one purpose but then leased to non-agricultural uses (such as houses or Cinema Halls) is liable to assessment (*G.R. 3559/21*).

Municipality redeeming agricultural assessment by paying lump sum. The agricultural assessment on certain lands belonging to a Municipality and meant to be used for public purposes such as a bazar and a *dharamshala* was redeemed on payment of a lump sum. Later on the Municipality began to sell the plots from these lands for building purposes. The question then arose as to whether the plots so disposed of could be assessed to non-agricultural rates under s. 48. The Government Resolution sanctioning the redemption did not state that it was only the agricultural assessment that was redeemed, nor was there any specific condition laid down that if the land were used later on for non-agricultural purposes non-agricultural assessment would be levied. It was therefore considered that action under s. 48 (3) could not be taken.—*G.R. No. 2636/23 of 5-8-1929.*

Land under bungalows occupied by officers of the Municipal Water and Drainage Works Departments is liable to the usual non-agricultural assessment but the area under store-yards attached to such works shall be exempted from payment of assessment. (*G. R. 2228/24 of 11-7-1925.*)

Where Municipality held certain lands since 1878 or even before that as licensees for municipal purposes (i.e. public purposes) and where the Municipality leased them out for building purposes, the question was whether the Municipality was liable to pay non-agricultural assessment. Opinion was expressed that the letting out of lands for the building purpose does not amount to the change of user as contemplated by s. 48 though in fact the change has taken place, viz., from the use of municipal purposes to one for private purposes. Though s. 48 does not apply the lands can be assessed as newly assessed lands.—*Cf. G.R. 2023 of 13-11-1926.*

The abolishing of a Cantonment or relinquishment of control by the Military to the Civil Authorities does not affect the tenure of the holder of building sites (i.e. renewal Cantonment tenure). He continues to be a licensee (lessee) of the land as before and is liable to pay rent. The holder does not obtain permanent occupancy rights unless the land is brought under survey and settlement. The rent leviable is to be fixed by the Collector under the rules. (*G.O. 663 of 26-2-1929.*)

**Co-operative Societies.**—Land may be granted free of occupancy price to Co-operative Societies if a public purpose is to be fulfilled—*G. R. 2249/24 of 21-4-1925*. In the case of Co-operative Housing Societies 'general utility' roads i. e. all thoroughfares in the strict meaning of the term are exempted from non-agricultural assessment, while roads within private compounds are liable to assessment.—*G. R. 7939/24 of 29-11-1926*.

**Poles of Telephone Companies and Electric Power Supply Companies on Govt. land.**—With a view to preserving Govt. interests, a nominal rent of one anna per pole per annum should be levied from telephone companies for telephone poles erected on Government land (*G. R. 9598/24 of 14-3-1929*). In the case of poles and towers erected on Government land by the Tata Power Company for electric transmission Government directed the levy of rent at one anna per pole and four annas per tower.—*G. R. 7032/28 of 11-11-1931*.

#### ALIENATED LAND

**Application of s. 48 to alienated land.**—In view of s. 216, s. 48 (1) to (3) would apply to alienated land also, but s. 48 (4) would not apply. Consequently there could be no general prohibition as to the use, and no eviction for unauthorised use of assigned potkharab in alienated land, but only altered assessment, if it had been subjected to a survey settlement.

**Alienated lands used for salt works.**—In the case of alienated lands no extra sum (apart from the quit rent or judi or salami etc.) could be levied as assessment for the privilege of using the land for salt works, (unless there was) an express stipulation that the grant was made for a particular purpose which was not that of making salt.—*G. R. 4956 of 2-8-1898*.

**The holders of service Inam lands such as Maharki [Watan land is alienated land.—S. 3, cl. (19)]** do not come under the provisions of s. 65 which refers to procedure on appropriation to non-agricultural purposes by an occupant i. e. holder of unalienated land.

Nor are the inam lands of such a nature as are allowed by Govt. to be held free of assessment, on condition of their being appropriated to one purpose (i. e. to some specific purpose). Inamdars can appropriate them to any purpose without any sanction and without being liable to pay any extra assessment so long as they keep the land in their possession and guard against such alienations of it as will conflict with the provisions of the Hereditary Offices Act. Such lands therefore, cannot be subjected to any assessment under s. 48. Service lands have not been granted revenue-free on any condition such as that the lands should be appropriated to one purpose i. e. to some one specific purpose. 'Used for any purpose' is not the same thing as 'assessed for a use'. The holders hold the lands free of all assessment on condition of rendering service to Government, the profit, which they can get out of their lands by whatever use they choose to put them to, standing for the remuneration of their service.—*G. R. 3012 of 1891*; *Standing Orders of Govt. in R. D. Vol. II p. 981, G. R. 5115 of 25-7-1891 and G. R. 3411 of 11-5-1893 (ibid)*.

Inamdar of a village into which a Survey Settlement has been introduced and is still in force, is entitled to altered assessment under s. 48 of the L. R. Code in accordance with the Rules published with Govt. Notification No. 5641 of 5-6-1907 as amended by G. N. 12022 (a) of 24-11-1908.—*G. N. 2333 of 11-3-1911.*

Altered assessment fixed by a Collector under s. 48 of the Land Revenue Code (see above) is not subject to the levy of local fund because the definition of 'Survey Officer' in s. 3 (2) of the L. R. Code does not include a Collector as such.—*G. O. R. D. 2353 of 7-8-1920.*

**Alteration of assessment in Surveyed and Settled alienated villages.**—In surveyed and settled alienated villages when land assessed for purpose of agriculture only is subsequently used for a different purpose, the assessment is to be altered in accordance with Land Revenue Rules 81 to 87 inclusive under s. 48 (2).—*Rule 93 (See Appendix A for Rules).*

Inamdar who holds commission under s. 88 (d) can exercise the powers of the Collector under ss. 48, 65, 66, 92 and Rules 81 to 87 except the power of estimating full market value and fixing standard rates.—*See Rule 92.*

The procedure as regards fine leviable under s. 65 and Rules 99 to 102 is described in Rule 93. So also see Rule 95 for the procedure to be adopted when information of use for non-agricultural purposes is received.

A tenant-at-will who had not acquired the rights of an occupant under s. 217 of the Code will not get the benefit of Rules 92 to 98.—*G. R. 5884 of 1908; 5441 of 1907, 6615 of 1910, 8705 of 1910, 1973 of 1911, 2333 of 1911.*

Holders of alienated land in an unalienated village cannot acquire the rights or the disabilities of survey occupants under s. 217 and therefore they do not come under the provisions of s. 65 which applies to an occupant of unalienated land.

Jadid (Inam granted after the advent of British Rule) Inamdars or Miras tenants who hold from an Inamdar in an alienated settled village are liable to pay enhanced non-agricultural rates to their Inamdar.—*Order G. R. 7755 of 1915.*

When khalsa lands in an alienated village have been settled along with the khalsa villages of the taluka then the ordinary rules i. e. Rules 80-88 would apply to them.

The procedure as regards fine leviable under s. 65 and Rules 99 to 102 is described in Rule 93.—(*See Appendix A for Rules*). The procedure to be followed by the Collector on receipt of an application under s. 65 for permission to use land assessed for purposes of agriculture only for any other purpose is given in Rule 94. So also see Rule 95 for the procedure to be adopted when information of use for non-agricultural purposes of land held by an inferior holder assessed for purposes of agriculture only is received.

The orders passed under Rules 92 to 98 are to be communicated to the Mamlatdar who after communicating the same to the applicant or holder of the

land concerned is to take steps to levy the altered assessment or fine, etc. Such altered assessment or fine is to go to the holder or holders of alienated villages.—*Rule 96.*

**Kadim lands** (Inam granted before the advent of British Rule) and Sheri land (land in the Inam village the occupancy of which rests with the Inamdar) are exempted from the operation of Rules. 92 to 95, under Rule 97.

The holder of alienated village for purposes of Rules 92 to 97 is to be taken to be the actual holder or holders, etc., or in cases of doubt the persons who are registered as such in the Register kept under s. 53.

**Change in use of land does not put an end to tenure in the absence of express condition**—The village of Chincholi with certain other villages in the island of Salsette was leased by Government to the defendant's predecessor-in-title in the year 1831. The plaintiffs' predecessors' possession of the land in dispute in the said village was traced upto the year 1867 and the village books of the Khot (defendants) were not available prior to the year 1898. Under the terms of Regulation I of 1808, for preserving the Record of the Principal Rules respecting the Revenue in the island of Salsette, holders were entitled to hold their lands on payment of a fixed grain assessment, or its cash valuation fixed by Government but open to decennial variation. A considerable portion of the land was converted to building purposes; but right upto 1915 only the fixed annual payment of Rs. 13-5-6 was charged as assessment. In the year 1915-1916 revenue survey was introduced into the village under Chap. VIII of the Bom. L. R. Code when the land revenue of the plaintiff's land was raised to Rs. 29-9-10. The defendants having claimed to recover the enhanced rate, which they claimed was not in excess of the money valuation of the grain rental fixed on the land, the plaintiff sued for a declaration that he was bound to pay only Rs. 13-5-6 annually. It was urged on behalf of the defendants that the plaintiffs have lost the right to the tenure by reason of the change in the use of the land. They contended that the lands must be considered to have come into the possession of the plaintiff's predecessor-in-title for cultivation as rice land and having regard to the fixed grain rental leviable on the land, it must be considered that the tenure was to last so long as the land was used for agricultural purposes and that the tenure came to an end by virtue of the act of the holder in putting the land to non-agricultural purposes, and that the restriction to enhancement of rent would dis-

appear by reason of s. 48 of the Code. Patkar J. *held*: "There is no provision in Reg. 1 of 1908 which entailed the forfeiture of the tenure in case the land was used for a non-agricultural purpose. It was not till the passing of the Bom. Act 1 of 1965 that the provision in that direction was enacted by s. 35 of that Act. But s. 35 related to Govt. land and not to lands of private individuals who had proprietary rights in the soil [*The Collector of Thana v. Dalabhai Bomanji*, 1 Bom. 352 (1876)]. In the absence of any condition Reg. 1 of 1908 entailing forfeiture of the tenure created by that Regulation on account of the change in the use of the land, it cannot be held that the tenure of the plaintiff came to an end by reason of the change in the use of the land.—*Kisanlal v. Janmejaya*, 30 Bom. L. R. 992 (1928).

**Inamdars not to recover building fine from Mirasdars.**—The defendants were Inamdars of the village of Nagargaon which was granted to them by the Peshwas in the 18th century and were grantees of the soil as well as assignees of the revenue. The plaintiffs, were Mirasdars or permanent tenants holding under the Inamdars under Miraspatras of 1859 and 1864. Survey settlement was introduced into the village at the request of the Inamdars. The effect of this was to introduce revised assessment of agricultural land and further under s. 217 to render all holders of land in the village liable in respect of such lands to the provision of the L. R. Code. Accordingly rules were made and notified under G. R. 5641 of 5-6-1907 providing for the levy of building fine and assessment according to rules already made under ss. 65 and 48 of the Code. As provided by these rules the Collector at the request of the Inamdars levied building fines for the benefit of the Inamdar assignees of the land revenue. The plaintiffs after fruitless appeals to the revenue authorities filed a suit for a declaration of their rights to hold the land free from building fines and for an injunction restraining the Inamdars from levying such fines. Pratt J. *held*: "S. 5 of the Revenue Jurisdiction Act allows plaintiffs to sue on the footing that though the fine is legal yet the Inamdars by the terms of their grant to them are precluded from levying it. This distinction is clearly made in *Lakshmas v. Gorind*, 28 Bom. 74 (1903) where it was said that s. 217 of the L. R. Code does not take away any right that an occupancy tenant may have acquired independently of his bare status as an occupancy tenant. The sole point for consideration therefore, is the construction of the Miraspatras. It is clear from the deeds that no proprietary right is reserved for Inamdars except the rent and the reversion in default of payment of rent. The deed does in fact give the plaintiffs rights which might be described as those of the Sub-Inamdars. The plaintiffs, are therefore, entitled to a declaration that they are not liable to pay building fine to the Inamdar and to an injunction restraining the Inamdar from collecting such fines through the Collector.—*Dumodar v. Kashinath*, 24 Bom. L. R. 1040 (1922).

49. When it has been customary to levy any special or extra cess, fine, or tax, however designated, from any holder of land, which, though, nominally wholly or partially exempt from the payment of land revenue, has by the exaction of such cess, fine, or tax been indirectly taxed to the State,

Commuted assessment of land indirectly taxed to the State;

or when any land ordinarily, or under certain circumstances, wholly or partially exempt from assessment, is subject occasionally, or under particular circumstances, to the payment of assessment, or of any cess or tax however designated,

and of land liable to occasional assessment.

the said assessment, cess, fine, or tax may be commuted into an annual assessment on the land to be paid under all circumstances, but such commuted assessment shall not exceed such amount as the Commissioner shall deem to be a fair equivalent of the assessment, cess, fine, or tax for which it is substituted and shall not be in excess of the assessment to which the land would be ordinarily subject, if no right to exemption existed in respect thereof.

### Commentary

**History.**—This section is based on cl. 1 of s. 4 and cl. 1 of s. 5 of Bom. Act VII of 1863. The exemptions from Land Revenue (No. II Act 1863) relating to the commutation of cesses, taxes etc., and occasional assessments that were formerly levied on lands wholly or partially exempt from payment of land revenue in the Gujarat districts including Panch Mahals. This commutation is effected either at the time of survey or thereafter by the survey officers or by the Collector in accordance with the orders issued by Govt. in this behalf. The commutation assessment thus fixed is imposed as Judi on the alienated lands which were previously subject to such cesses or occasional assessments. The correspondence and orders on the subject will be found in the Govt. Selection No. 114 (new series) and Govt. Selections containing survey settlement reports of the different talukas in which these cesses etc. were levied. The "occasional

assessment" means an assessment levied occasionally or under particular circumstances *e. g.* when the holder pays assessment only when it is cultivated, or when it is irrigated, or when cultivated with particular crops, etc., (*B. G. G. Part V 1877 page 76 and Select committee's Report para 18*).

**Notes.**—Bombay Act No. VII of 1863 provided for the summary settlement of claims to exemption from the payment of Govt. land revenue and for regulating the terms upon which such exemption shall be recognised in future in those parts of the Bombay Presidency which are not subject to the operation of Act XI of 1852 of the Govt. of India. Ss. 4 and 5 which related to commutation of cesses, etc. and of occasional assessments were repealed (locally) by Bombay Act V of 1879.

**Judi or Salami on Inam lands.**—The amount of Judi levied on Inam lands should never be in excess of the assessment to which the lands would be ordinarily subject if unalienated. Thus if Judi is more than the assessment it should be made equal to such assessment while if assessment is enhanced at a revision settlement it is open to Govt. to levy the full amount thereof.—*G. R. 8391 of 30-11-1882*. Obviously this has reference to the Judi, Salami or other quit rent or land tax 'already paid to Govt.', but not to the quit rent payable under the Summary Settlement Act. Under s. 6, rule 3 of Act VII of 1862, the quit rent is calculated at 1/8th of the assessment minus any sum which irrespective of the settlement was payable to Govt. This quit rent could not be affected by revision but if the sum which was payable irrespective of the Summary Settlement had been imposed under s. 5 of Act VII of 1863 (repealed by Bom. Act V of 1879 and replaced by s. 49 of L. R. Code) as a commuted assessment, which could not be in excess of the assessment to which the land would ordinarily be subject if no right to exemption existed in respect thereof.....Though revision assessment would affect commuted assessment it would not affect in any way the quit rent under s. 6. Such quit rent cannot be reduced to the level of revised assessment under any provision of the law. It is open to Govt. to allow such revision as a matter of grace, but cannot be claimed as matter of right.—*G. R. 4733 of 3-7-1889*.

Where Judi is permanently fixed under Bom. Act II of 1863 it need not be altered in cases where the original assessment included the patasthal assessment in a tract or place where the latter is to be abolished.—*G. R. 136 of 7-1-1890*.

**Reduction of Judi.**—The Judi fixed on lands which originally belonged to useless village servants should not be varied at a revision settlement. But if the Judi exceeds the reduced assessment and the land is irrigated land the Judi should be reduced to 8 annas in the rupee of the Jirayat assessment.—*G. R. R. D. 871 of 18-1-1890*.

When the water rate on Patilki or Kulkarni land is abolished, the scale Judi on such land should be reduced to the level of remaining assessment. But in similar cases of Devasthan and non-service Watan lands of district hereditary officers the Judi need not be reduced.—*G. R. 2338 of 13-3-1916*.

Certain *Jat*. Inam lands and lands of villagers useful to the community were jirayat at the time when the Judi on them was fixed. They were classed as Bagayat at the time of the revision settlement. Water rates were newly fixed on them and were added to the amount of the judi as originally fixed, the whole amount being treated as judi and levied every year. When the new water rates were abolished the judi was reduced to the original amount.

Other *Jat*-Inam lands were Bagayat at the time when judi on them was fixed and the water rate had been taken into account in calculating the judi. When the water rates were abolished the judi was, on the analogy of *G. R. No. 8880 of 27-2-1914*, brought to the level of the assessment that has remained after the abolition of the water rates. (*G. O. 10498 of 2-11-1916*).

**50.** Whenever any such cess, fine, or tax hitherto payable by an inferior holder shall be made leviable from the superior holder, it shall be lawful for such superior holder to recover from such inferior holder the amount of the commuted assessment fixed in lieu of such cess, fine or tax.

Superior holder may recover commuted assessment from inferior holder.

#### Commentary

A permanent tenant is liable for the local cess.— the Defendant was a permanent tenant (Mulgainadar in Kanara District) of certain lands situated in a village in the district of Kanara at a fixed rent from the superior holder (Mula-Vargadar) the plaintiff. The plaintiff sued to recover from the defendant the enhanced assessment levied on the land by Government and the local cess. The High Court observed that the plaintiff should not recover from the defendant any more than the rent reserved in lease in respect of the land but held that the cess is distinct from rent, and, not having been in existence at the time when the lease was made, it is of course not provided for in the lease. In the absence of any contract to the contrary it is equitable, and in accordance with the intention of the Legislature, as shown in s. 8 of Bombay Act III of 1869, that the cess should be ultimately paid by the tenant.—*Ranga v. Suba Hegda*, 4 Bom. 473 (1880)

This case was followed in *Ram Tukaji v. Gopal Dhondi*, 17 Bom. 64 (1892) where the defendant held certain lands at a fixed rent per annum under a permanent lease granted by the plaintiff's father and



where the plaintiff sued to recover local fund cess in respect of those lands from the defendant the High Court *held*—"The difficulty of construing s. 8 of Bombay Act III of 1869, as imposing a duty on the inferior holder or lessee to pay the cess, arises from the want of explicit statement such as may be expected in a law imposing a new tax, especially when this section is compared with s. 50 of Bombay Act V of 1879. On the other hand, s. 8 of the Act of 1869 makes the provisions of the law relative to assistance applicable to all superior holders. The question is one of general importance, and we have taken time to consider it. On the whole, we think s. 8 is open to the construction put upon it, in *Ranga v. Suba Hoysla*, 4 Bom. 473 (1880), by Westropp C. J. and Melville, J., and though that interpretation is not perhaps the necessary meaning of the words, we think we ought to lean to it, in order to avoid the unsettling of titles which might arise if we departed from what those eminent Judges have laid down in that case".

51. When it has been customary to levy a larger revenue under the name of "*vela*" or any other designation, upon any portion of land than such portion would ordinarily be liable to in consideration of other land being held with it which is wholly or partially exempt from payment of revenue, the excess of revenue payable on the said portion of land may be charged upon the land hitherto held wholly or partially exempt.

[<sup>a</sup>] 52. On all lands which are not wholly exempt from the payment of land revenue, and Assessment by whom to be fixed. [<sup>b</sup>] on which the assessment has not been fixed under the provisions of section 102 or 106, the assessment of the amount to be paid as land revenue shall, subject to rules [<sup>c</sup>] made in this behalf under section 2214, be fixed at the discretion of the Collector, for such period as he may [<sup>c</sup>] be authorized to prescribe, and the amounts due according to such assessment shall be levied on all such lands:

[a] This section was substituted by Bom. VI of 1901, s. 4, for the original section.

[b] "And" was substituted for "or" by Bom. IV of 1905, First Schedule

[c] Words repealed by Bom. IV of 1913, s. 15, are omitted.

**Proviso.** Provided that in the case of lands partially exempt from land revenue, or the liability of which to payment of land revenue is subject to special conditions or restrictions, respect shall be had in the fixing of the assessment and the levy of the revenue to all rights legally subsisting, according to the nature of the said rights. [°]

#### Commentary

**History**—The Hon. Mr. Mandlik and the rest of the Indian Members wanted to insert the words “or partially” after the word “wholly” in the first line on the ground that in cases where land was partially exempt from payment of land revenue, there could be no question of assessment. The amendment was thrown out on the ground that land which was only partially exempt from the payment of land revenue, was still to a certain extent liable to payment; and must for the purpose of determining the amount payable be assessed.—*Proceedings of the Council of the Governor of Bombay for the year 1877, Vol. XVI. p. 136.*

**Scope**—The effect of s. 52 is to give the Collector the discretion to fix the assessment. It does not affect the right of a party who holds lands under Govt. or an Inamdar by virtue of a special grant. It does not take away any legal right which an occupancy tenant may have acquired independently of his bare status as an occupancy tenant liable to pay the land revenue according to survey rates (“*Lakshman v. Govind*, 5 Bom. L. R. 694). These remarks of Mr. Justice Chandavarkar with reference to ss. 52 and 217 were referred to by Shah Ag. C.J. in *Damodar v. Kashinath*, 24 Bom. L. R. 1040 (1922) where the facts were: the plaintiffs were persons holding lands under the defendants, by virtue of grants described as miraspatras, who were Inamdars and who were grantees of the soil as well as assignees of the revenue. At the request of the Inamdars survey settlement was introduced into the village. According to the rules framed under ss. 65 and 48 of the Land Revenue Code, the Collector levied, at the request of the Inamdars, building fines from the Mirasdars for the benefit of the Inamdars. The *mirasdars* having sued for a declaration of their rights to hold their lands free from building fines and for an injunction

[a] The validity of past assessments purporting to have been fixed under s. 52 is saved by Bom. VI of 1901, s. 5.

restraining the Inamdars from levying such fines, it was objected that the suit was barred under s. 4 (b) of the Bombay Revenue Jurisdiction Act. The High Court *held*: The special right which a holder claims in virtue of any grant or contract between him and the Inamdar, is not in the slightest degree affected, by s. 217 or the provisions of ss. 65 and 66 of L.R. Code which are rendered applicable to the holders in an alienated village. Therefore, relying upon *Larman v. Govind* the High Court observed that if on the construction of the Miraspatras the right of the plaintiffs is established they are entitled to a decree against the Inamdars.

*In Kishanlal Ratanlal v. Janmejaya*, 30 Bom. L. R. 992 (1928) the facts were: the village of Chincholi with certain other villages in the island of Salsette was leased by Government to the defendants' predecessor-in-title in the year 1831. The plaintiff's predecessors' possession of the land in dispute in the said village was traced upto the year 1867 and the village books of the Khot (defendants) were not available prior to the year 1898. Under the terms of Regulation I of 1808, for preserving the record of the principle Rules respecting the revenue in the island of Salsette, holders were entitled to hold their lands on payment of a fixed grain assessment, or its cash valuation fixed by Govt. but open to decennial variation. A considerable portion of the land was converted to building purposes; but right upto 1915 only the fixed annual payment of Rs. 13-5-6 was charged as assessment. In the year 1915-16 revenue survey was introduced into the village under Chap. VIII of the Bombay Land Revenue Code, when the land revenue of the plaintiff's land was raised to Rs. 29-9-10. The defendants having claimed to recover the enhanced rate, which they claimed was not in excess of the money valuation of the grain rental fixed on the land the plaintiff sued for a declaration that he was bound to pay only Rs. 13-5-6 annually.

The High Court held that the plaintiff was a Sudidar to whom the provisions of Regulation I of 1808 applied and that the land was subject to a perpetual fixed grain rental which was commuted into a fixed money payment and continued to be invariable, until there was a decennial valuation changing the commutation rate; that the defendants were not entitled to demand any sum in excess of Rs. 13-5-6 which had been levied invariably from the year 1867 from the plaintiff. In this connection Patkar J. said: "S. 217 does

not take away pre-existing rights. In *Lazman v. Govind* it was held that the effect of s. 52 of the Bombay L. R. Code is to give the Collector the discretion to fix the assessment; and the effect of s. 217 of the Code is to render the occupants in alienated village subject to a settlement like the occupants in unalienated villages but that neither section takes away any legal right which an occupancy tenant may have acquired independently of his bare status as an occupancy tenant liable to pay land revenue according to survey rates. The question, therefore, in this case is whether the plaintiff had any pre-existing rights in respect of his holding. S. 45 of the L. R. Code would not apply to the present case, as the lands in this case are not wholly exempted under the provisions of any special contract with Government or any law for the time being in force. S. 52 which applies to lands which are not wholly exempt from payment of land revenue contains the proviso that in the case of lands partially exempt from land revenue, or the liability of which to payment of land revenue is subject to special conditions or restrictions, respect shall be had in the fixing of the assessment and the levy of the revenue to all rights legally subsisting, according to the nature of the said rights."

**Effect of amendment**—The present section was substituted for the original s. 52 by Bom. Act VI of 1901, s. 4. The amended s. 52 gives authority to the Collector to assess unoccupied and unalienated lands which were within the operation of an order under s. 95, but which were left unassessed at the settlement (*Statement of Objects and Reasons*).

The word *nehemi* used in documents issued by the Maratha Government does not show that any guarantee is given against alteration when general revision of such grants is determined on.—*G. R. 3773 of 30-9 1864 and 1637 of 20-4-1865.*

When any vacant area is used for stacking grass in the village site the land should be considered as exempt from assessment when the occupant has held the site or space for a time anterior to British Rule. When such space or site has been appropriated subsequent to British rule it should be assessed.—*G. R. 3476 of 2-6-1900.*

A lease for reclamation of marshy lands was granted in 1876 on the conditions that the lands should be reclaimed within 10 years and that after the period of thirty years the land so reclaimed be assessed to such land revenue as would be assessed on similar lands under the rule in force. The lessee reclaimed the lands within the contract period but for a certain portion of the land so reclaimed the whole area was subsequently covered by sea at high tides and no crops were grown. In this case as the lessee fulfilled the condition of reclaiming the land within a specified time and as the lease did not provide for forfeiture in case the lands do not remain reclaimed the lessor could not cancel the lease in perpetuity. Again the lands having been flooded by the sea could not be cultivated and therefore the lessor could not assess them as rice lands.—*G. O. No. 613 of 24-3-1920.*

A *pet kharab* land used for non-agricultural purpose by erection of a building was left unassessed at the time of both the original and revision surveys. It is liable to assessment under s. 45 unless a special contract granting exemption is produced. Only non-agricultural assessment is leviable on it but not a fine under s. 66.—*G. R. 3490/24 of 11-5-1925* (See also s. 48 pp. 220-226 for this.)

Non-agricultural Assessment should be levied by the Collector when the appropriation to non-agricultural purposes is made at the time of the announcement of survey rates according to the rules in force at the time of making it and not according to the rules in force when the appropriation took place.—*G. R. 6513 of 19 9-1902.*

Rules under s. 214 (b) regulating the assessment of land to the Land Revenue and the alteration and revision of such assessment etc. are made by Government (*see Appendix A*). S. 45 lays down the general principle that all land (applied to agricultural or other purposes and wherever situate) is liable to pay land revenue unless specially exempted. S. 102 read with s. 100 enable Government to fix the assessment on all lands which are not wholly exempt from land revenue. However s. 100 lays down that in fixing assessment regard shall be had to the requirements of the proviso to s. 52. At the same time s. 100 makes it clear that the survey officer may determine and register the proper full assessment on lands wholly exempt from payment of land revenue and on lands specially excepted under s. 95 from the survey settlement. S. 106 enables Govt. to direct a fresh survey and revision of assessment.

Rules have been framed by Government under s. 214 (2) (b). Rule 30 deals with the right of Govt. to mines and mineral products and states that it shall not be disposed of without the sanction of Govt. etc. Clause (b) states that the disposal of land within port limits should not be made unless the Collector of Salt and Revenue etc. concurs. Clause (c) reserves the proprietary right of Govt. in the soil when grants and disposal of lands are made. Rule 31 states that without the sanction of the Govt. no land should be granted free of land revenue except under rules made in that behalf. Rule 32 makes provision for the grant of land either free of price and free of revenue in perpetuity or for a term etc. for certain purposes for schools, hospitals, and other public works which do not yield profit, by such authorities as the Collector, the Commissioner and the Governor in Council, to certain extent. Rule 33 makes provision for the sale of land by the Collector revenue free. Rule 34 enables the Collector to grant unoccupied land in the Dharwar district to *Shet-sanadis* for remuneration under certain conditions. Rule 35 enables the Collector to exempt from payment of land revenue lands used for sites of hospitals, schools and for other public purposes etc. under certain circumstances. Clause (2) of the same Rule empowers Collectors and higher authorities to exempt lands used for sites of buildings devoted to religious or charitable purposes to a certain extent. Rule 36 lays down that grants made under Rules 32 and 34 shall be subject to the

condition that they may be resumed by Govt. if conditions are broken or if the lands are required by Govt. for public purpose. Clause (1) (b) of Rule 36 makes provision for compensation to be paid by Govt. in case of resumption of the said lands. Clause (2) of the same rule states that lands granted revenue free under rule 35 may be subject to assessment under s. 48 and be liable to fine under provisions of s. 66 if they are used for purposes other than those for which exemption had been granted, and also if lands granted for agricultural purposes are used for non-agricultural purposes in violation of the condition of the grant.

Collector may grant for agricultural purpose either on payment of a price fixed by him or without charge an unoccupied survey number not assigned for a special purpose. He may sell it by public auction (*Rule 37*). Different forms of agreement are prescribed for lands to be granted on impartible tenures and different forms are prescribed when such lands are also granted on inalienable tenures [*Rule 37 (4)*]. Survey Nos. disposed of under Rule 37 if not already assessed should be assessed by the Collector at rates placed on similar soils in the neighbourhood before such numbers are disposed of. (*Rule 39*). The Collector (with the sanction of the Commissioner in certain cases,) may grant survey numbers revenue-free or at reduced assessment for a certain term, or revenue-free for a certain term or a reduced assessment for a further term etc., if he thinks it necessary for instance when for bringing it under cultivation or its reclamation for other purposes, etc. large expense is necessary (*Rule 39*). The grant is liable to cancellation or full assessment in case of breach of conditions. Obviously after the expiry of the term it shall be liable to full assessment according to the use (agricultural or otherwise) to which the land is put. (*Rule 39*). Salt-marsh lands may be leased for purposes of reclamation by the Collector (after consulting the Commissioner of Salt) subject to the confirmation of the Commissioner on certain terms. Breach of certain conditions will make the lease liable to cancellation at the discretion of the Collector (*Rule 40*). Land in beds of river may be leased by the Collector by putting it to auction for a term of a year or even for a longer period. The accepted bid to be deemed to be the land revenue chargeable on such land (*Rule 41*). Unoccupied land may be disposed of by the Collector for building and other non-agricultural purposes (*Rule 42*). Conditions of grants of land for building sites are laid down in Rule 43. The terms on which land intended for future building sites may be temporarily disposed of in the Bombay Suburban District or such other area to which Rule 43A applies are laid down in Rule 43A. Grant of land in hill stations and such other localities for buildings are made under special conditions laid down in Rule 44. In the case of establishment of entirely new village sites regard should be had to Rules 45, 42, 43 and 44. The substitution for a new village site for an old one should be made in accordance with the provisions laid down in Rule 46. Where unoccupied land is granted for non-agricultural purposes other than building sites the Collector should annex such conditions to the grant as are pres-

cribed in Rule 47. Grant of lands within the sites of Ahmedabad, Broach, Surat, Rander, Bulsar, Godhra and certain other places are regulated by rules 49 to 52 of the L. R. Rules (*Rule 48*). Strips of lands adjacent to existing building sites may be disposed of by the Collector under Rule 49. Unoccupied land (not regulated by Rule 49) may be disposed of by the Collector by auctioning it or selling the same by private agreement (*Rule 50*). The terms on which unoccupied land may be granted for building sites are laid down in Rule 51 (1). Cl. (2) of the same Rule describes the terms on which the land intended for future building sites may be temporarily (not exceeding in any case seven years) disposed of. The terms on which unoccupied lands may be disposed for agricultural purposes only are mentioned in Rule 52. Unoccupied building sites and plots within municipal limits are declared by Rule 53 to be specially reserved by Government, except under certain circumstances. Rule 54 states that form K or form KK should be used by Mamlatdar while giving permission in writing under a. 60 of the Code to occupy land. Exceptional cases to which none of the abovementioned rules apply are provided for under Rule 55 by allowing the Collector subject to the control of the Commissioner to dispose them of in the way he thinks fit. Special forms may be used under Rule 56 where a grant is made on special terms. The document evidencing grant should be in the duplicate and the copy retained by Govt. to be signed by the grantee under Rule 57.

Rules prescribing the purposes for which unalienated land to the payment of land revenues may or may not be used and regulating the grant of permission to use agricultural land for non-agricultural purposes are made under a. 214 (2) (d). The Land Revenue Code Rules made in 1905 and previous to that year were grouped together under XVII different heads while each such heading mentioned the several sections of the Code under which the Rules included in that heading held. This facilitated easy reference to an ordinary reader. No such indication is given by Rules said to have been drawn up since 1921.

Alteration of assessment in the case of unalienated lands assessed or held for purposes of agriculture only when used for non-agricultural purposes is to be made under a. 48 (2) as laid down in Rule 80. For the purposes of rates of altered assessment villages and towns and cities are to be divided into two classes and the Collector is to fix the assessment at a sum per square yard within the limits mentioned in Rule 81. The same Rule states that higher rates in exceptional cases may be levied by Collector with sanction of Commissioner but such rates should not exceed 50 percent. of the estimated annual rental value of land when put to non-agricultural use. (*Rule 81*). In growing towns and villages where there is a keen demand for building sites or for any other special use of land special rates of altered assessment based on a percentage on the full market value estimated on the basis of actual sales of unoccupied land for building purposes are to be levied (*Rule 82*). Rule 82-A empowers Government to levy an additional rate of Rs- 21 for every lakh of bricks in a year in addition to the annual assessment of Rs- 40 per acre on land used

for manufacture of bricks. Grant of permission under s. 65 in hill stations and such other localities may be made after imposing certain conditions as to style of building etc. (*Rule 84*). Altered assessment is ordinarily to be levied upon the whole land within a compound of building and not merely on land covered with building (*Rule 85*). Revision of altered assessment is ordinarily to be made after 30 years except in the Bombay Suburban Districts where the period is fixed at 50 years (*Rule 87*). When land assessed for non-agricultural purposes other than buildings is used for buildings the rate of assessment in such cases should be the same as is imposed on land used for such purposes in the locality (*Rule 90*). Land assessed for non-agricultural use if used for agriculture only on application of the holder the agricultural assessment may be reimposed (*Rule 91*).

100. *Maximum fine leviable under section 66.*—Any fine imposed by the Collector under section 66 shall be fixed by him at his discretion subject to rule 101 and shall not exceed ten times the altered assessment imposed under this Chapter.”—*G. R. R. D., 1890/28 of 15-5-1931 (Rule 100)*.

“101. *Maximum fine leviable for unauthorized use for building, brick making etc.*—When the material of the soil of any occupied land is employed for bricks or tiles or pottery or for any other non-agricultural purposes, without the permission of the Collector being first obtained and the value of the land is thereby adversely affected, a fine may be levied at a rate not exceeding double the rate prescribed in rule 100.”—(*Rule 101*).

53. A Register shall be kept by the Collector in such form as may from time to time be prescribed by the Governor in Council of all lands, the alienation of which has been established or recognized under the provisions of any law for the time being in force; and when it shall be shown to the satisfaction of the Collector that any sanad granted in relation to any such alienated lands has been permanently lost or destroyed, he may, subject to the rules and the payment of the fees prescribed by the Governor in Council under section 213, grant to any person whom he may deem entitled to the same a certified extract from the said Register, which shall be endorsed by the Collector, to the effect that it has been issued in lieu of the sanad said to have been lost or destroyed, and shall be deemed to be as valid a proof of title as the said sanad.



### Commentary

The alienation office in charge of the Commissioner C.D. at Poona maintains a separate printed register for each taluka of this Presidency except Sind. Subsequent changes are also entered and the alienation register is kept upto date.

**Sanads worn out or lost.**—When sanads are worn out or have become useless they should be renewed—*G. R. 1754 of 4-5-1869 and 6012 of 25-10-75*. A duplicate sanad can be granted in cases in which a sanad has been lost or destroyed (such a copy would not be good secondary evidence in a Court of Law.—*G. R. 124524 of 4-2-1925*).

**Alterations and issue of new Sanads.**—The existing sanad should be altered where Govt. waste land is given to Inamdar in exchange of his Inam land taken up by Govt. The Inamdar's assent to the exchange should be endorsed on the sanad and the Collector should certify the alteration in the deed under his signature.—*G. R. 7851 of 23-12-1881*.

Where a sanad is made out in the name of several sharers a copy may be supplied free of charge to each of them, signed and executed by the same off. or . Each of such document should be treated as an original one.—*G. R. 4170 of 2-6-1883*.

**For form of register of alienated lands** see Appendix O-C in Appendix A. The form of statement of alienations to be submitted annually (*G. R. 4391 of 1912*) is given in Appendix O-D. in Appendix A

Commissioners may cancel sanads and issue fresh sanads where there are merely clerical errors, without reference to Govt.—*G. R. 5549 of 8-7-1892*.

Commissioners are authorised to grant new sanads to holders of alienated land or cash allowances when they are required for any reason.—*G. R. 5941 of 28-8-1912*. Commissioners can sanction alterations in sanads owing to alluvion and diluvion.—*G. R. 8535 of 3-10-1910*.

**Rent equal to assessment.**—The fact that the tenants pay the amount of assessment may not be conclusive evidence but it would afford strong presumption that the tenants have attained to occupancy right by virtue of their long holding. The word "Miras" should not be used in case of persons who by virtue of their long holding are presumed by reason of the provision of s. 53 to have acquired fixity of tenure. In cases where a rent is equivalent to assessment it cannot be enhanced unless a right to do so is established by custom or otherwise.—*Sitarum v. Parakuram, A. I. R. 1923 Bom. 449*.

In all grants of land either free of revenue or otherwise a Sanad in such form as may from time to time be prescribed by Govt. shall be issued to the grantee by the Collector (See *Administrative Order XIXIII in Appendix A*).

Where any land is granted revenue free with the sanction of Govt. for any purpose not mentioned in Rules 32, 33 and 35 the form of sanad to be issued by the Collector will be specially prescribed by Govt.

Every sanad issued under Rule 36 shall be registered in the register prescribed by s. 53, in the form given below : (*See Administrative Order XXIII in Appendix A*) :—

## FORM OF REGISTER OF ALIENATIONS.

Register of Alienated Villages and Lands in the  
under section 53.

District kept

Serial Number.	Name of village	Name of the present Alienee	Class of Alienation.	Number.	Particulars of the Sanad.						Duration of tenure i.e. whether containable permanently or hereditarily for more lives than one, or for life only or for what period.	Entire village.	Particulars of the villages or land alienated.			Land Revenue payable to Government.			
					Date, Month and Year.	Name and Office of the Officers signing it.	Name of the holder.	Name of the Tahaka which it is originally entered.	Number of form of the Sanad annexed to the Register.	If part only of the village, the Survey No.			Area.	Survey assessment.	Amount of old judi or salami.	Rate.	Additional Quit-rent, if any, payable under the Sanad.	A amount.	Total.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20

The person or persons whose name or names is or are registered as such in the register kept under s. 53 is or are to be taken to be the holder or holders of any alienated village for the purposes of Rules 92 to 97. (These rules prescribe the procedure to be adopted in cases of surveyed and settled alienated villages when alteration of assessment is to be made or fine, etc. is to be imposed in cases of use of land assessed or held for purposes of agriculture to non-agricultural purposes).

Fees for every certified extract from a register of alienations granted under s. 53 are the following :—One anna for every rupee of the amount of alienated revenue or if the sanad lost or destroyed had been granted under Bombay Act IV of 1868 or under s. 133, a sum equal to one-half of the survey fee which the holder of the building site included in the sanad would be liable to

pay under s. 132 if not exempted by the second paragraph of that section : provided that the fee shall in no case exceed Rs. 10 or be less than 8 annas ; see *Rule 148 (a) (3) of the L. R. Rules, 1921*.

Copies of 'Village Settlement Records' and applications for the same are exempt from Court Fee duty (*G. of I. Notfn. No. 5650 at page 807, B. G. G. of 19-8-89*).

Where the land is alienated and the alienee dies without heirs Government becomes the heir of such an alienee because on the extinction of the grantees, the grant reverts to the grantor and does not become ownerless property (*G. R. 913 of 1851; 2916 of 1872 and 5137 of 1893*). The land upon lapse will be unoccupied assessed unalienated land and is disposed of by the Collector accordingly.

In all grants of land the right to mines and mineral products and full liberty of access for the purpose of working and searching for the same shall be deemed to be reserved unless Govt. direct to the contrary and unless such right and liberty are expressly granted (*Rule 30 of the L. R. Rules, 1921*).

In Sind the Commissioner is authorised to renew seri grants in the desert districts of Thar and Parkar.—*G. R. 2611 of 21-5-1878 and 2054 of 11-10-1892*.

**How to prepare register of alienated lands.**—It is to be prepared as shown above. Great care should be taken in the preparation of the register as otherwise it will not only be valueless but dangerous. The register is to be a District Register. It should therefore be in English and when completed it should be printed and bound in the same manner as the cash alienations lists. It should in the first place be prepared in vernacular for each taluka.

The alienation of each village should be entered and disposed of before the alienation of another village is taken up and the village should be entered in alphabetical order. These lists when duly examined and approved in the Alienation branch should be formed into one general register for the district in English.—*G. R. 4634 of 31-7-1883*.

No municipality can dispose of vested land unless Govt. concurs and transfers to it the ownership of the sub-soil—*G. R. 2640 of 29-10-1921; G. R. 1788 of 25-8-1924*.

In the case of a forfeited alienated holding, where the Collector considers it expedient to allow the land to continue in the possession of its actual holder or tenant, as an occupant of an alienated land, annulling the alienation he shall pass orders accordingly for its continuance.—*Rule 123 (c) L. R. Rules (1921)*

**Note.**—Any degree of re-grant of an alienated holding or transfer of a Inam from one head to another, must receive Govt. sanction.—*G. R. 6278 of 1878*.

**Alteration of assessment in surveyed and settled alienated villages.**—When land assessed for purposes of agriculture only is subsequently used for any purpose unconnected with agriculture, the assessment upon the land so used shall, unless otherwise directed by Government, be altered under

sub-section (2) of s. 48 by the Collector in accordance with Rules 81 to 87 inclusive :

Provided that (a) the powers of the Collector under those rules, other than the power of estimating the full market value and fixing standard rates of assessment, shall be exercised by the holder or holders of the alienated village in respect of land specified in a commission conferring the powers of a Collector under s. 65 or 66 upon such holder or holders under s. 88 (d).—*Rule 92, of L. R. Rules of 1921.* (For rules see Appendix A at the end).

**Note**—Holders of alienated land in a Khalsa village cannot acquire the rights or the disabilities of survey occupant under s. 217 and so are protected against any alteration of assessment under s. 65.

If the Inamdar levied any rates from a 'settled' occupant without Collector's order it would technically be an illegal exaction and a suit in a Civil Court is the proper remedy.

**Jadid Inamdars** or mirasi tenants who hold from inamdar in alienated settled village, are liable to pay enhanced non-agricultural rates to their Inamdar (*Order R.7755 of 1915*). Here too it must be remembered that any terms an Inamdar may grant outside these rules, even in an unsettled village (such as perpetual tenancy at a fixed rent) would lapse if the village lapses. Various circumstances might involve such lapses, therefore it is safer for their non-agricultural tenants to come under these Rules. It has always been the policy of Govt. to survey alienated villages even if they reject the settlement.—*G. R. 5479 of 1855.*

When *khalsa* lauds in an alienated village, have been settled along with the *khalsa* villages of the taluka, then the ordinary Rules (80-88) would apply to them. When a block of Inam land in an alienated village is acquired by Govt. under the L. Acq. Act, it ceases to be "alienated" and also falls under the ordinary Rules 80-88 (*G. R. 906 of 1921*).

Local Fund is not leviable on such altered assessment as it is not assessed by Survey officers [s. 7 (1) III of 1869] but by the Collector or Inamdar (*G. R. 2353 of 1920*). **Note**—Amendment is contemplated.

**In Village Form I** several survey numbers are shown as alienated. This indicates that the full agricultural (or Non-agricultural as the case may be) assessment is not levied, but a certain portion is granted to an alienee or Inamdar for certain reasons. The amount so granted and reduced is called *Nuksan* (in vernacular it means loss); the amount which he pays to Govt. is called *Judi* or *Salami* or quit rent. Sometimes there is no *Nuksan*, but the alienation is nominal. Sometimes the *Judi* even exceeds the assessment; sometimes it is nil. The extra levy of 2 annas in the Rupee (if non-agricultural income) on certain summarily settled inams is still *Judi*. The Printed Alienation Registers are the basis of this Village Form III. These forms are also prepared in Alienated villages (especially for *Kadim* lands). For *watan* lands, the District Deputy Collector has the *Watan* Registers giving genealogies and history.

**Inams and their history.**—As has been stated elsewhere the right to create Inam belongs to the Sovereign power alone. Under former Governments the power to confer grants was exercised by certain specified officers and also in certain cases by the heads of village communities. The grants by the former were tenured *Badshahi* grants as opposed to the non-*Badshahi* grants, the latter were called '*Gao-Nisbat*' Inams. The former usually comprised lands in the village which had remained uncultivated or had been abandoned. The latter were granted rent-free by the village out of its own lands, the loss being made good by the village community; these are the *Vechania* and *Gernia* tenures in Gujarat. *Altamgha* grants (al=road and *Tamgha*=a stamp) were the royal grants under the seal of some of the former Rulers of Hindustan and were recognised by the British Government as sufficient to confer a good title to the land.

*Kadim Inams* (*Kadim* means old) are the inams created by Government before the particular grant to the present Inamdar.

*Jadid Inams* (*Jadid* means new) are those which are created by the Inamdar himself subsequent to the particular grant to him.

After the introduction of the British Rule many land holders claimed to hold land free from payment of land revenue. In many cases the claims of these people were considered to be based on doubtful titles while in some cases fraudulent titles were brought to light. The adjudication of these claims was one of the most difficult task for the Government. In 1843 the Inam Committee was appointed to investigate into the claim to hold land free from the liability to pay land revenue. After 9 years in 1852, the Committee was transferred to the Inam Commission by Act XI of 1852. The operations of the Inam Commission were found to be slow and cumbersome. Moreover the Act did not apply to Gujarat. Government thought it proper to waive the question of exact proof and to treat the matter summarily on certain broad principles, offering certain terms to the claimants. In fact the Summary Settlement was a sort of compromise arrived at between the claimant and the Government. Act II (1853) related to Deccan, Khandesh and Southern Maratha Country and Act AII of 1853 to Gujarat and Konkan. If the Inamdar chose to accept a Summary Settlement on the entire estate as made by the Collector and to submit to the conditions of the Act Government decided to waive an enquiry into title. All personal Inams could, at the option of the holder be heritable and transferable as free hold on payment of *Nazarana*—a specified fee. The estate granted under the Summary Settlement Act was of the full proprietary right and was heritable and transferable. Adoption was also allowed. The Settlement cured the defects, if any, in the titles of the holders against Government and declared the lands to be the private, heritable and transferable property of the holders, their heirs and assignees. The quit-rent payable in the case of *Jat* Inams was four annas in the rupee and *Nazarana* was one anna in the rupee. In the Act VII of 1853 which was applicable to the Gujarat and Konkan, the quit-rent was two annas in the rupee and no *Nazarana*. The provisions relating to Sum-

mary Settlements were declared not applicable to (1) lands held under treaty; (2) lands held as Saranjams; (3) lands held for service; (4) lands already formally adjudicated to be not continuable hereditarily; and (5) Inam lands in villages held on Talukdari, Bhagdari, Narwadari, Khoti and such other tenures.

All the grants are governed by strict rules and usually continue in virtue of a documentary grant or *Sanad*. There are seven main classes of these grants with some subheads under certain classes. There are some *Inams* liable to *Nazrana* on succession. These are certain *Inams* ("starrad under *G. R. 6409 of 1914*) of class II, as determined by the order of the Inam Commission or the forms of their *Sanads*.

**Notes.** Class IV exists only in Kaira, Panch Mahals, Broach and Surat. In many villages there will not exist instances of each kind of Inam, and the sectional heads in the form are optional and need not be written when there is nothing to put under them, but the sequence and the numbering must be quite strictly maintained to avoid confusion in posting Taluka Form III.

Among the conditions on which *Inams* are held we find—

(a) That the holder must be loyal to Government.

(b) That certain *Inams* are held only for the life of a particular person or only so long as male heirs of a particular original grantee continue to exist.

Among the *Inams* in which it is important to watch the continued existence of male heirs and to which special rules of succession apply are:—

Class I.—(a) Saranjams, and

(b) Political (if not for one life only)

Class II.—(a) Investigated by Inam Commission

(b) Do; under Act VII (Gujarat), and Act II (Deccan and Kanara) of 1863, on rejection of Summary Settlement.

(c) Gadkaris and Giras

The Gadkari tenure was settled and *sanads* issued in 1892 (*G. R. 1634 and 4459 of 1889, 306 of 1895*) and alienations before that year were not interfered with (*G. R. 7842 of 1900*)

(d) Shiudia, Holkar or Nizami *Inams*.

(e) Grants to retired Civil or Military officers which are halved at each succession, or regulated by other special terms (See *Rule 32 of Land Revenue Rules*).

More exactly (*under G. R. 6409 of 1914*) "all starred *Inams* under Class II"

Not alienated } (f) Nakra lands of Maleks in Thasra Kasbati villages in Talukdari tracts.  
Palnuk alienations in Konkan or Maval

Class IV.—Devolution by *inheritance* is subject to some restrictions.

Class V.—The Whole

**Non-service Wataas of hereditary District Officers i. e. Inams of Classes IV and V**—These district officers were watanar Government servants like Patils and Kulkarnis of the present day. In each Pargana the head of the Patils was responsible for the collection of Government dues, and the head of the Kulkarnis kept accounts and correspondence connected therewith. In 1863-64 Government thought that their services were no longer necessary, and persuaded them to accept what is called a service commutation settlement by the imposition of a *judi* in commutation of service. The wataas in the five Districts of Panchmahals, Broach, Kaira, Surat and Ahmedabad were settled by Mr. Pedder of the Watan Commission, and those of other districts were subjected to what is called Gordon Settlement. The wataas in the Districts of Panchmahals, Broach, Kaira and Surat, brought under the Pedder Settlement are private property, and are entered under class IV in the accounts. The wataas in the remaining district of Ahmedabad in Gujarat and those under the Gordon Settlement in other districts are continuable hereditarily to the male heirs, *lineal* or adopted. If the person adopted be from the watan family no Nazarana is to be levied. If he be an outsider, his adoption requires the consent of all the sharers in the watan, and the previous sanction of Government on promise of payment of an annual Nazarana of one anna in each rupee of the total emoluments of the Watan. These are entered under class V in the accounts. There are different rates of *judi* imposed on Wataas as shown below:—

					Class IV.
Panchmahals	...	...	...	...	0-4-0
Broach	...	...	...	...	0-5-0
Kaira	...	...	...	...	} 0-3-0 0-8-0
Surat	...	...	...	...	0-3-0
Ahmedabad	...	...	...	...	} 0-4-0 0-8-0
Tbana	...	...	...	...	0-3-0
Ahmednagar	...	...	...	...	0-4-6
Khandesh	...	...	...	...	2-6-0
Nasik	...	...	...	...	} 0-4-6 0-6-0
Poona	...	...	...	...	0-5-0
Natara	...	...	...	...	0-4-0
Bholapur	...	...	...	...	0-4-0
Belgaum	...	...	...	...	} 0-3-0 0-5-0
Bijapur	...	...	...	...	0-4-0
Dharwar	...	...	...	...	0-6-0
Ratnagiri	...	...	...	...	0-5-0
Kolaba	...	...	...	...	0-5-0

Note.—The hereditary offices of these officers although the original services appertaining to them have now ceased to be demanded, are still

treated like those (*e. g.* Patils and Kulkarnis) in respect of which service is still required. Consequently their watan lands, though subjected to *julid* in commutation of service are dealt with under the provisions of the Watan Act, as also under the terms of the Settlement embodied in the Sanad.

No action is taken as to alienations so long as there is a male in the Watan family still living. But 'Watan family' here has a restricted meaning and bad errors resulting in heavy loss to Govt. have occurred through interpreting it too widely.

Each year Talati should make enquiries whether the male heirs exist and Mamlatdar must note that these enquiries have been made in the case of Inams to which the condition applies, and should certify on Village Form III at the end that enquiries have been made. If there are no such inams in the village, it will save time to endorse the fact once for all.

In Class VI (a) the alienation may lapse if the service ceases to be required or even if Collector finds it is too highly remunerated. In Class VII now being brought on to the printed Alienation Registers almost all the alienations lapse and the land reverts to Govt. if the uses for which it is given cease or are modified without permission. It is the duty of Talati to report any such change which comes to notice. (*G. R. 55 of 1902*).

When land is granted for agricultural use wholly or partly free of assessment for a public or charitable object, it will appear as an Inam of Class VII.

**Importance of Register of Alienations.**—The fact that about 1/5th of the occupied land in the Bombay Presidency is Inam or alienated is sufficient to show the importance of this Register.

The alienation register is prepared according to the form laid down in s. 53 for use as regards all alienation in the whole presidency of Bombay. It is therefore drawn in general terms. It is not prescribed merely for the particular form of alienation that comes under the head of 'summary settlements'. There is no heading in the form as regards *Kadim* (*Kadim* hake are grants made prior to the grant of a village in favour of an Inamdar and independently of him), or *Jalid* ('*Jalid*' means revocable gift) grants in summary settlement villages and, therefore, the mere fact that these allowances are simply shown in columns 12 and 13 (of register of alienation) as village expenses deducted in the calculation as assessment does not suffice to show that the Govt. in any way admit that these cash allowances are not to be dealt with as specifically mentioned in the Sanads that were issued.

S. 2 of Bom. Act II of 1863 contemplates the issue of a Sanad as the final authorisation of the settlement, and where sanads are duly issued to the Inamdars, the mere fact that signatures of the Inamdars are not taken on them does not invalidate them.

**Express statements in Sanads.**—Entries in the settlement statement or in the alienation register do not in any way outweigh the expressed state-



ments in the Sanads on the subject of allowances being *Kadwa Hala*. It was so held in the *Secretary of State for India v. Inamdar Desai*, 28 Bom. L.R. 1308 (1926), where the facts were the following: the plaintiffs were Inamdars of certain villages in the Panth Mahals given to their ancestors by Sindhia as personal Inam. This grant was continued by the British Govt. They paid a quit rent to Govt. at the rate of annas two in a rupee of the gross rental after deducting certain cash allowances for annual expenses to be incurred in the villages. The amounts for such expenses were settled in 1866 and alienation registers were made according to this settlement. In 1884 Sanads were prepared in which the cash allowances were mentioned under the heading 'alienations more ancient than the grants.' The Sanad contained a condition that the 'holders shall not have present or future claim to any alienation, whether land or cash more ancient than the grant of the village which shall be permitted to be enjoyed under such orders as the British Govt. may issue till such time as they might finally escheat to the British Govt.' The Govt. decided that the cash allowances should be disbursed in the villages by their officers and not by the Inamdars and the allowances should not be paid to the Inamdars. The Inamdars having sued for a declaration and for a perpetual injunction alleging that the cash allowances were meant for village expenses and were not *Kadwa Hala* and that the Govt. were not entitled to resume them. The High Court held that the plaintiffs having accepted the settlement by which those amounts were deducted to their benefit for the purpose of fixing the quit rent could not repudiate that part of the agreement gave a free hand to the Govt. in regard to the payment and management of those allowances. The High Court further held that the plaintiffs having accepted the settlement as evidenced by the Sanads were prima facie bound by the terms therein contained, and they could only challenge that settlement on some ground such as mistake, fraud or misrepresentation as was the case for instance in *Secretary of State for India v. Sri Jagajyoti Halhansy*, 17 Bom. 407 (1892) (in that case there was a common mistake of fact as to an essential matter that arose for a proper settlement and it was held that the Sanad itself could not prevent the underlined agreement being vitiated because of that common mistake of fact).

[a] 54. The settlement of the assessment of each portion of land, or survey number, to the land revenue, shall be made with the person who, under section 136, is primarily responsible to Government for the same. [b]

Settlement of assessment to be made with the holder directly from Government.

[a] As to the local modification of section 54, see para. 5 of foot-note [a] on p. 1, *supra*.

[b] The paragraph repealed by Bom. IV of 1913, s. 16, is omitted.

### Commentary.

[**Note.**—This section is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888 extends (See *Bom. Act VI of 1888 ss. 1 and 33*)]

**Suggestions**—The proper place of this section would be in Ch. VIII which deals with surveys, assessments and settlements of Land Revenue.

**Change in the Section**—The latter paragraph has been repealed by Bom. Act. IV of 1912, s. 16. It ran thus:—“*When to be made with under-holder.* If the said person be absent, and have left no known authorized agent in the district, so that the settlement of the assessment cannot be concluded with him, such settlement may be made with the person holding under him, or in occupation of the land.”

S. 136 makes the ‘occupant’ primarily liable to Government for payment of land revenue. In case of default by such person s. 136 makes land revenue recoverable from a person in possession of the land.

**Settlement**—The process of determining the amount of land revenue payable to Government is called settlement.

### HISTORICAL SURVEY OF SETTLEMENTS IN INDIA

**Historical Survey of Settlements in India**—Before considering the various systems of settlements it is necessary to take notice of certain features which all varieties of modern revenue settlements have in common. In the first place they must start with (1) a complete survey of the land, involving a preliminary *demarkation* of the necessary boundary lines; because without that, neither can there be an exact account of the culturable land, and the extent of each kind of soil which requires a different rate of assessment; nor can there be any correct record of the rights of all parties, landlord, co-sharer, sub-proprietor, occupancy-tenant, or whatever they are, in case the system requires a Record of Rights. And (2) in any case there must be a correct list of the revenue payers and their holdings, and a schedule accounting for every field and plot of land in each village. These are supplemented by other statistical tables and returns, which illustrate the past history and present state of the village. Lastly (3) there must be a valuation of the land, the ascertainment of revenue rates, the totalling up and adjusting of them to give the sum payable by the estate or holding; in some cases subsidiary proceedings as to the distribution of this total among co-sharers; and the adjustment of tenant rents, are necessary.

Regarding the permanent settlement it was the first system to be tried as the one made without a survey, a detailed valuation of land, and without (at first) any Record of Rights and without any statistical information and even without any demarcation of boundaries.

### THREE MAIN KINDS OF SETTLEMENTS

**Three main kinds of Settlements**—As a matter of fact there have been three main kinds of settlements as Government have to deal either with landlord estates, with village estates (or Mahals), or with separate holdings.

Each kind has one or two local varieties depending partly on peculiarities of the agricultural condition, and partly on the features and incidents of the prevailing tenures of land in the province. The varieties may be classified thus:

**I Settlement for single estates under one Landlord.**—Usually large estates, but not always,

Varities:—

(1) Settlement with Zamindars, i. e. Permanent Settlement of Bengal and North Madras.

(2) Settlement (Temporary) in Bengal of estates and districts not subject to Permanent Settlement.

(3) With Taluqdars in Oudh.

**II Settlement for estates of proprietary bodies usually village communities.** (These are sometimes called *nuzawar*, or more correctly mahawar Settlements).

Varities:—

(1) Settlement of the North West Provinces (including Oudh for villages that are not under Taluqdars)

(2) Settlement of the Central Provinces (called the Malguzari Settlement).

(3) Settlement of the Punjab.

**III Settlement for individual occupancies or holdings.**

Varities:—

(1) The Raiyatwari system of Madras

(2) The Raiyatwari system of Bombay and Berar.

(3) Special Systems (in principle *raiayatwari* but not officially so called) of Burma, Assam, and Coorg.

**Bengal**—The main features of the Permanent Settlement of Bengal were briefly these.

(1) The Settlement was made with the Zamindars, who were declared proprietors of the areas over which their revenue collection extended so that they might have some legal status which would enable them to fulfil their obligations to the Government and induce them to take an interest in their estates. This right was, however, subject to the payment of land revenue and to liability to have the estates sold for failure of payment. The Govt. also reserved the right to introduce any measures they might think necessary 'for the protection and welfare of the dependent taluqdars, ryots and other cultivators of the soil'

(2) The assessment fixed on the land was declared to be unalterable for ever and the Government specifically undertook not to make any demand upon the zamindars or their heirs or successors "for augmentation of the public assessment in consequence of the improvement of their respective

estates". But the Govt. reserved the right to reimpose the *sair* duties which had been abolished in 1790 or any other internal duties, and the zamindars were not to be entitled to any share of the revenues so collected.

(3) The assessment was fixed approximately at ten-elevenths of what the zamindars received in rent from the ryots, the remaining one-eleventh being left as the return for their trouble and responsibility.

**The United Provinces and the Punjab**—The North Western Provinces, which came under British Rule somewhat later, presented a different problem. In Oudh, which was the centre of the old Aryan dominion, there were many petty Rajahs who had been allowed to contract for a sum of revenue and given the name of talukdars. Elsewhere there were a few Rajahs who had become revenue zamindars, but their number was comparatively small. In the rest of the Province, there were found bodies of villagers, claiming descent from chiefs or other notables who had founded particular villages or obtained them on grant, and who laid claim to the whole village area, including the house sites. The British Government recognised the landlord rights of these bodies and made them jointly and severally liable for the revenue to be paid.

**The North West Provinces**—The North West Provinces as extending from the Bihar frontier of Vengal as far as the Jumna river consisted of districts which were occupied by the villages of the landlord type, some of them in the hands of single landlord, others held undivided by a number of sharers, and others being (divided) pattidari and Bhaiachara communities. In their case a system of village or Mahal settlement was adopted as in the Punjab.

**The Punjab**—The system of land revenue in Punjab is, in theory, zamindari; Government does not collect revenue from individual cultivators but from the holders or joint holders of a large estate, normally coinciding with the administrative village. Ordinarily, however, the proprietary body consists of a group of families, not necessarily of common ancestry, who occupy severally quite small holdings, often of no more than a few acres; and although the heads of these families are recognised as joint owners, in theory jointly responsible for the revenue and represented by one of their number as headman or lambardar, in practice, the share of revenue due from each proprietary family is severally distributed and separately recoverable. Thus, as a general rule the so-called landlords are in fact peasant proprietors, each cultivating his own land.

**Central Provinces**—In the Central Provinces, the villages represent aggregates of cultivators, each claiming his own holding and nothing more. Under the Mahrattas the revenues of the villages had been farmed out to individuals called *patels* or *malguzars*. These men had in course of time acquired a quasi-proprietary position. When the British came into possession of the territory they were made proprietors and became responsible for the payment of the revenue. The *malguzari* is also liable to periodical revision.

**Burma**—In Burma there was no land tax before the British conquest. In most places in Lower Burma however, the cultivators paid a tax which varied according to the number of ploughs they used, and the rate was often different according as they cultivated garden, rice, or dry land. The assessment was supposed to represent one-tenth of the value of the gross produce. After the British annexation the area per plough was standardised, and the tax became one on the land rather than on the cultivator. The earliest rates were supposed to represent one-fifth of the value of the gross produce, and the assessment usually fluctuated with the area under cultivation. In 1879 the Government decided that the assessment should represent a portion of the net produce. This was the position when Upper Burma was annexed in 1885. At the time of the annexation of this province rent was paid to the State for the lands which were recognised as Crown lands, but on private lands nothing in the shape of rent or tax was levied, the only general tax being the *thakamada*. Since 1893 the rent in Upper Burma also has been based on the net produce, and a land tax on private lands has been partially substituted for the *thakamada*. The present system in Burma is very similar to that of Madras.

**Madras**—The system of land revenue in Madras outside permanently settled estates is known as the *rayatwari* system. Under this system the person whose name is registered in the revenue accounts as holding any land is liable to pay the assessment on that land direct to Government. He is known as the *pattadar*. Though a *patta* is no document of title, the *pattadar* is actually the owner of the land wherever the revenue registry is up-to-date. In many cases he is also the actual cultivator but land is sometimes leased to tenants, especially in rich wet tracts. The distinguishing feature of this system as against the Permanent Settlement is that the settlement is made with cultivating proprietor year by year and that he is at liberty to relinquish part of his holding, or, subject to certain conditions to add to it by taking up waste lands as opportunity arises.

**Bombay Presidency**—The Honourable Mr. Mountstuart Elphinstone, the first Commissioner of the Deccan, laid down the leading principles of revenue administration in the following terms, namely, that they were "to abolish farming, but otherwise to maintain the native system; to levy the revenue according to the actual cultivation; to make the assessments light; to impose no new taxes, and to do away with none, unless obvious and unjust; and above all, to make no innovations". The individual officers were given wide discretion as to the actual measures to be adopted within the above limitations. It may be observed that just about the time that this system was being introduced in this Presidency, a similar system was being introduced in the Madras Presidency by Colonel Read. Under that system it was proposed to have a complete survey and assessment of the cultivable lands so that Government might thus obtain full and correct information about the resources and economic condition of the districts, which it was not possible to obtain under the *zamindari* system. Another

advantage which it was thought would result from the rayatwari system, was that the rayat would therein have to deal direct with Government; and that consequently he could expect greater justice and consideration from Government as superior landlord than from ordinary landlords under the zamindari system. From these observations it will be clear that the system of land tenure in the Bombay Presidency is analogous to that of Madras inasmuch as it proceeds on the general plan of survey of the land, a division of it into 'survey numbers', i. e. blocks more or less representing the individual holdings, and a determination of the Government revenue rate to be assessed on each field. Thus in the Bombay Presidency the settlement for land revenue (the agreement) is made by Government with each individual. On this account the survey settlement tenure is often called the rayatwari tenure. Occupant is himself landholder and not a tenant as distinguished from the zamindari system of Bengal and Bihar or the village community system of the Punjab. In the Southern Maratha Country, Govt. lands held by individual occupants are called 'rayatawa' lands.

Exceptions to this general rule are the Khoti tenures in the Northern and Southern Konkans and the Bhagdari and Narvadari tenures in some parts of Gujarat. Under the Khoti tenures one person is liable for the assessment of an entire village; whereas under the Bhagdari and Narvadari tenures a number of persons are jointly and severally liable for the assessment of an entire village.

To conclude the Bombay Tenures may be divided into three main classes, namely:—The General Tenure which is known as the Survey Tenure; (2) Special Tenures, the Inams such as (a) Personal Inams, (*Jat Inams*), (b) Political Inams (*Jhagirs* and *Saranjams*), (c) Religious Endowments such as the Devasthan and Dharmadaya Inams, (d) Service Inams which are called *Wataus*, (3) The Miscellaneous Tenure (a) Gujarat—Talukdari, Bhagdari, Narvadari, Vanta, Mehvasi, Maleki, (b) Deccan—Mirasi and Upri, (c) Konkan—(Northern)—Khoti in Salsette and Thana, Izafat scattered over, Shilotri along the coast line, creeks, (Southern)—Khoti, Dharekari. There are isolated cases of village estates and big landlords in the Bombay Presidency proper, but in the majority of cases the lands in villages are held by small holders.

**55.** The Governor in Council may authorize the Collector or the officer in charge of a sur-

Rates for the use  
of water.

vey or such other officer as he deems fit to fix such rates as he may from time to time deem fit to sanction, for the use, by landholders and other persons, of water, the right to which vests in Government, [a] and in respect of which no rate is leviable under the Bombay Irrigation Act, 1879. [a] Such

[ a-a ] These words and figures were substituted for the original words by Bombay Irrigation Act, 1879 ( Bom. VII of 1879 ) s. 2.

rates shall be liable to revision at such periods as Government shall from time to time determine, and shall be recoverable as land revenue.

#### Commentary.

[*N. B.*—*This section should be read along with s. 101*].

**History**—S. 55 is a new law authorising the imposition, and the recovery as land revenue of rates for the use of water the right to which vests in Govt. or which has been made available by Govt. works.—*Report of the Select Committee on Land Revenue Code Bill.*

'Such other officer as he deems fit'—These words enable Govt. to entrust the duty of assessing water to a Canal Officer or to any other special officer.—*Proceedings of the Bombay Legislative Council, 1877 p. 199.*

**Scope**—S. 55 does not permit the Collector to levy a penalty but he can levy the maximum rate sanctioned by Govt. For instance, in the Nasik district the Govt. has sanctioned the levy of ten times the ordinary water rate as an extra rate for taking water without permission.—*G. R. 4034 of 1-5-1914 as amended by G. R. 6746/24 dated 18-8-1926.*

### IRRIGATION

Irrigation is of two kinds : (a) by flow (*Patathal*) ; (b) by lift (*Motathal*).

#### IRRIGATION BY FLOW

**Irrigation by flow** (*Patathal*) includes irrigation from canals and channels, from tanks, rivers and streams.

There are three ways in which the rates for the use of water the right to which vests in Govt. may be imposed, viz. (1) By the Irrigation Dept. under the Bom. Irrigation Act (i. e. s. 44) which enables Govt. to levy such rates for canal water supplied for purposes of irrigation or for any other purpose, as are determined by Govt. from time to time.

**Notes.**—S. 3 of the Bom. Irrigation Act, 1872, describes a canal as including (a) all canals, channels, pipes and reservoirs constructed, maintained or controlled by Govt. for the supply or storage of water; (b) any part of a river, stream, lake, natural collection of water or natural drainage channel notified by Govt. under s. 5 of the said Act. It is thus clear that if a tank of which the entire water supply vests in Govt., is taken over and repaired by Govt. with the intention of keeping it regularly in repair and of controlling the distribution, it then becomes a 'canal' within the defini-

tion of the Bom. Irrigation Act, 1879.—*G. R. 11232 of 1916*. The principles of assessment from the point of view of Govt. of water charge under s. 55 of the Bom. L. R. Code and under the Irrigation Act for canal water are discussed in Govt. Memo P.W.I of 18-1-1921.

The system of levying rates for the use of water from a 'canal' is something like levying rates according to crops. And for the purpose of imposing crop-rate the crops are classified according to the amount of water they require. The work connected with irrigation from sources to which the provisions of the Irrigation Act have been applied is done by the Irrigation Dept. The provisions of the Irrigation Act are usually applied to large tanks and irrigation works, the creation or upkeep of which is costly.

**Patasthal** is of two kinds—*G. R. 3969 of 25-5-1904*.

(A) a fixed addition under s. 101, to the ordinary land revenue assessed upon land in respect of the benefit derived from flow irrigation from a *Pat*, suited to tracts when irrigation is steady and reliable.

Patasthal is also levied for percolation water (not conveyed by any channel) and sometimes for water raised by lift from temporary *budkis* and also for inundation water.

Under s. 101, Bom. L. R. Code, water rates are levied under varying conditions on lands, irrigated by canals or from tanks or streams to which the Irrigation Act is not made applicable.

Irrigation from tanks is a general feature of the Southern Maratha Country and of Gujarat. There are a number of tanks in Dharwar e. g. Medlery, Dambal. In Southern Maratha Country a consolidated rate for soil and water valuation is charged; but in Gujarat separate rates are levied.

Irrigation by "*Pats*" or channels from streams is an important feature of the Deccan, and consolidated Patasthal rates for soil and water are charged, the details of which are shown in the Akarband. These assessments under Bom. L. R. Code, s. 101, fixed at the time of survey, form an integral part of the land revenue and are included in the guarantee given at the time of settlement. They are fixed on an average of good and bad years and are leviable irrespective of the actual water supply available in any one year, and irrespective also of the actual use made by the raiyat who is at liberty to irrigate any part of his field, whether less or more than the area assessed at Patasthal rates. Remission, however, of this assessment, may be granted in years of scarcity when water is not available. If on account of erosion, silting up or for any other reason, irrigation becomes impossible on lands assessed to water-rates under s. 101, application may be made to Govt. to sanction the permanent abatement of the water-rate.—*G. Rs. 5324 of 27-5-1903 and 1788 of 7-3-1904*.

The main difference between rates levied under s. 101 and rates under Irrigation Act is that the former are fixed for a term of years,



irrespective of the use made of the water, while the Irrigation Department charges are governed by the amount of water actually taken in each year.

Government have laid down the principle that they cannot assess under s. 101, Bom. L. R. Code unless they can guarantee the right to water (*G. R. 1888-82*). Therefore, holders, who get water not of right but by occasional concession and grace (Dharmarth) are chargeable only under s. 55 L. R. Code.

(B) An occasional rate from year to year in respect of land actually irrigated, levied under s. 55 L. R. Code, suited to precarious tracts and occasional irrigation.

*Note.*—Rice cultivated annually (not as a rotation crop as in the Khandesh *Phals*) by *Pat* irrigation is not treated as *Patasthal* but as *Tari* and classed for water like all other Rice.

Under s. 55 Bom. L. R. Code, water rates may be applied when no rate is levied under Irrigation Act or has been fixed at the time of Survey, under the Bom. L. R. Code, s. 101. Such rates are imposed when land has been brought under irrigation since the introduction of the settlement, or as an *ad interim* measure pending the imposition of rates under the Irrigation Act.—(See *G. R. 652 of 27-4-1904*; *G. R. 3969 of 25-5-1904* and *G. R. 2956 of 20-4-1904*).

Under this section Govt. fixes maximum rates for each district and the Collector fixes the actual rates each year within these limits. They are quite distinct from the soil assessment and are usually charged in the form of a crop rate, but are sometimes assimilated to survey rates imposed under s. 101.—*G. R. 4347 of 25-6-1882 (item 5)*.

#### IRRIGATION BY LIFT

Irrigation by lift from wells, rivers and streams and *budkis*:—In some parts of the Deccan and Southern Maratha Country and Gujarat the soil classification of land with a greater command of sub-soil water or situated favourably for irrigation from a *budki* has been fixed higher on that account. No additional assessment whatever can be imposed either at the time of the construction or at the time of revision settlement on account of new wells or *budkis*, nor is any distinct water rate levied in the Deccan, Konkan or Southern Maratha Country for irrigation (or irrigation facilities) by lift from wells, rivers or streams.—*G. R. 2847 of 14-4-1904*.

In parts of Gujarat, however, "dekhudiat" rates (i. e. rates for facilities for irrigation by lift) are imposed, *vis.*, in the Surat and Panch Mahals Districts a fixed water rate is imposed under s. 101, Bom. L. R. Code, on lands irrigable by *dekhudis* (or *budkis*) from Govt. rivers. In actual practice, the land has been classed similar to "old rice" land.

Over most of the Gujarat, also, a 'kos' rate (i. e. a rate per water bag) is levied under s. 55, Bom. L. R. Code, for water drawn from wells belonging to Government.

## WATER RATE

All Collectors in the Presidency, other than Collectors in the Province of Sind, (*for Sind see below*) are authorised to fix such rates as they may from time to time deem fit to sanction for the use, by landholders and other persons, of water within the limits of their respective districts, in all cases in which the right to such water vests in Govt. and no rate in respect thereof is leviable under the Bom. Irrigation Act, 1879 (*B. G. G. 1896 Pt. I p. 583*).

Maximum rates for each district should be reported to Govt. for sanction and within such maximum the Collector fixes irrigation rates under s. 55—*G. R. 4347 (5) of 1902*.

Maximum water rates per acre have been sanctioned for the following districts:—

District		Rate per acre
Satara	... ..	Rs. 12 ( <i>G. R. 4873 of 20-5-1911</i> )
Thana	... ..	Rs. 5.
Kolaba	... ..	Rs. 5.
Dharwar	... ..	Rs. 8.
Belgaum	... ..	{ Rs. 12 (perennial crops.) Rs. 8. (other crops.)

Land under Bandharas are governed by rules with regard to fixing of water assessment given under s. 101.—*G. Rs. 3172 of 23-6-74, p. 1158, Standing Orders of Govt. in R. D. Vol. II (1902); 3618 of 14-7-1874 p. 1156. (ibid)*

**Kacha Pats**—Applications for remissions on account of *Kacha pats* which fail to afford water should be enquired into and complied with in seasons of draught [(*G. R. 5458 of 14-10-74 Standing Orders of Govt. in R. D. p. 1221 Vol. II (1902)*)]

**Free grants of water** are given only in special cases and for special reasons. They may be revised at shorter intervals if desirable if not at the end of current settlements. In cases where water is given free the purpose should be specified and it should be used by the concessionaire only and only on his holding. Extension of the same can be made only by the Revenue Officers.—*G. R. 5762 of 2-8-1897 (R.D.)*

Questions relating to the levy and renewals of water rates should be reported to Govt. after consulting the Settlement Commissioner and the Director of Land Records by the Divisional Commissioners.—*P. W. D. 234 I of 5-3-1906*.

Water rates under s. 55 on old wells exempted under s. 48 of the Bom. Irrigation Act should not be levied—[*G.O. (R.D.) 13614 of 24-12-1918*].

In the absence of an amendment to s. 55 in areas in which the construction of new bandharas is undertaken, people who benefit should be asked to agree to pay water cess either in the form of Takavi bonds secured on their lands or in cash.—*G. Rs. 6003/24 of 27-11-1926 and 28-4-1927*.

Commissioner in Sind is authorised to fix rates for the use, by holders and others, of water the right to which vests in Govt., for the cultivation of rice on any land not assessed and entered in the survey registers as rice land. The amount of such rate shall be subject to the approval of Govt. and shall, after sanction, be notified in the office of the Mukhtyarkar of the taluka in which the land on account of which the rate is levied, is situated.

Any person desiring to grow rice in land not assessed as rice land shall make application in writing to the Mukhtyarkar or other officer duly authorised to receive such application, for permission to make use of the supply of water needful for growing rice, stating if he requires it for one year only or permanently and if any person cultivates rice in such land without such permission, he shall be charged with double the rate he would otherwise have been required to pay had he applied for and obtained permission.

All persons who now hold or may hereafter apply to take up lands assessed and recorded in the survey registers as rice lands shall, as soon as possible after the publication of these rules, or on application to take up such lands, be tendered a list of such rice lands, then being or about to be in their occupation, and rice shall not be grown on any number not included in such lists except on payment of the extra rate.—(*B. G. G., 1881, Pt. I. p. 396.*)

Assistant or Deputy Collectors in the course of their inspection should note cases in which serious and permanent injury to cultivation is clearly due to disrepair of (abandoned) tanks. S. 48 enables the Collector to interfere to prevent the appropriation of any tank or pool to any purpose save those in view of which the area covered by it is exempted from assessment.—*G. R. 2207 of 25-3-1899.*

Water rate for benefit derived from tanks should be levied on all lands for the water supplied and those who do not pay should not be allowed to deprive those who do of the advantage to which the latter only are entitled.—*G. R. 5935 of 21-8-1902.*

Directions.—Where tanks or other sources of water are abandoned as Govt. improvements 'Himagat' should be struck off the assessment of land under them; and it should also be struck off the assessment of land which manifestly cannot now be irrigated from tanks maintained by Govt.

(ii) For land which is irrigable from tanks or other sources of water belonging to or maintained by Govt., 'Himagat' should be remitted if in any year the water for irrigation is not available for that land.

(iii) When rice is grown without irrigation from any source of water belonging to or maintained by Govt., the general orders relating to the suspension and remission of land revenue should be applied, with the understanding that the assessment is 'Akasia' (from akash-aky) and soil assessment combined. When any crop other than rice is grown in lieu of rice in rice land, the order should be applied with the understanding that the assessment is soil assessment alone, 'akasia' being entirely remitted.—*G. R. 5475 of 8-7-1905.*

Collectors and Sub-Divisional Officers should bring to the notice of Govt. the fact of local deterioration of soil at an early stage. The subject is of vital importance not only to the well-being of the people but in the interest of Govt. Since the failure to reduce the demand may finally result in loss of revenue to the Govt.—*G. R. 5423 of 5-8-1902 R. D.*

All cases in which a decrease of assessment on account of deficiency of water for irrigation for the remainder of the period of settlement may be considered desirable should be reported to Govt. for disposal through the Director of Land Records.—*G. R. 1788 of 7-3-1904 (R. D.)*

### SUSPENSIONS AND REMISSIONS.

The cases of places where the supply of water is more or less assured and which will not require a wholesale abatement of the assessment but only suspension or remission of water assessment in years of absolute or partial failure of water supply will be governed by No. 7 of the rules regarding suspension and remission published in *G. R. 5324 of 27-5-1908*. See now *Administrative Or. XXXIV in Appendix A.*

(1) It should be remembered that though a taluka as a whole is not classed as precarious, certain groups of villages might well be classed so. It does not necessarily follow that because all patasthal has been abolished, therefore, the taluka is precarious and no assessment should be levied under s. 55. As regards the remaining tracts classed as non-precarious the general principles promulgated in *G. R. 13535 of 18-12-1915* should be applied to them, subject to the proviso that assessment under s. 55 may be imposed in cases which ordinarily fall under the rule of exemption, should it appear to a revenue officer not lower in rank than a sub-divisional officer, on personal investigation, that assessment ought to be imposed in view of plentiful and constant supply of water utilized at small cost compared with the advantage gained.—*G. R. 4967 of 20-4-1917 (R. D.)*

When patasthal assessment has been abolished by executive orders but a revision settlement of the taluka has not taken place so that the land has not been assessed as dry crop a water rate higher than the patasthal share of the assessment cannot be imposed under s. 55.—*G. R. L. C. 4472 of 2-9-1930.*

(2) The Commissioners of Central and Southern divisions should consider the cases in which no definite pronouncement has been made whether the tracts are precarious or not and decide whether such talukas or portions of them should be classed as precarious and entitled to a future exemption of assessment under s. 55.

In the case of suspensions Administrative Order XXXI states 'where the area affected is homogeneous or whole villages are more or less uniformly affected, the suspensions should be announced for such tract or villages without detailed inspection.

The principal difficulty in applying the term 'homogeneous' is in respect of irrigated land. It can hardly be said that land irrigated by wells is

homogeneous with unirrigated land. The general rule is that when fixing the anna-valuation of the crops for a considerable tract such as a taluka, attention is paid only to the dry crop (*G. R. 9952 of 1911*). But if it were specially necessary to determine whether suspensions or remissions should be granted on irrigated lands regarded as "a homogeneous tract" distinct from the dry crop lands, the orders are that each holding in the sense of a single plot of land held by one holder (i. e. the Survey number if undivided, or the sub-division) should be treated individually. If more than half is irrigable it should be treated as irrigated; if less than half then as dry crop. Next the valuation of the crops should be based rather on the general state of the water supply and level. A man who has a well full of water but has not used it hardly deserves compassion. A full utilisation of the existing facilities is presumed by Govt. Therefore, detailed inspection of the crop of each irrigated holding is quite unnecessary. Officers should ascertain (a) which are the irrigated holdings, and (b) what is the general state of water over the tract, and give suspension and remission orders accordingly. These orders might of course be quite different from the dry crop orders,—*G. R. 765 of 1906, 650 of 1907 and 219 of 1914*.

When Officers are not dealing with a tract, such as a taluka or mahal, but when the question is only as to a group of say 10 villages, then they are dealing with a local calamity and Order XXXVII applies. When tank or well irrigation has completely failed either in respect of a single tank through its bursting, or local absence of rain, or in respect of many such sources through short rainfall then a special remission or suspension on the irrigated holdings affected is countenanced under Administrative Order XXXVII.

**Remission in case of failure of water.**—Order XXXIV states 'when the assessment includes a separated rate for water advantages then, if the water fails to such an extent that no irrigated crop, or an irrigated crop not exceeding 4/6 annas can be grown, the  $\frac{\text{whole}}{\text{half}}$  of the portion of the assessment which represents the water rate should in the case of all occupants and superior holders be remitted without suspension (*G. R. 387 of 1907 & 5324 of 1908*). If such remissions are extensive, the Collector should first consult the Irrigation Officer of the district and in case of difference of opinion should refer the case to the Commissioner.

**Notes.**—These separate rates are the Patasthal, Himayat or tank water, Dhokdiat and Akasia. Motasthal on well irrigation is not usually an extra rate, but only a rise (or *chad*) in classification which is not separable from the Land Revenue. The separate or separable water rates are usually distinguished in Village Form L. or a statement supplementary thereto, such as the Himayat statement.

(ii) Akasia is a rate for capacity to grow rice on rain water only. When the rain is insufficient and crops other than rice are grown the Akasia portion is to be remitted.—(*G. R. 6876 of 1915*).

(iii) A water rate not assessed as land revenue but optionally contracted for by the holder, as for supply of canal water is not land revenue and its remission etc. is not regulated by these rules.

In times of draught Mamltdars may be delegated by Collectors their powers of remission.—*G. R. 5295 of 1-6-1911.*

Irrigation arrears (though not land revenue) can be written off with the assent of the Executive Engineer.—*P. W. A. I. 39 of 1904.*

**Pumping Installations.**—Any person willing to erect a mechanical pumping installation on a river or stream should apply to the Collector. The Collector may after consulting the Superintending Engineer on the question whether the raising of water by means of pumps to be installed on a river or stream is likely to affect seriously any Govt. supply for irrigational works, lower down the river or stream should give permission for such installation. For the first 25 years no charge should be made. After that period the circumstances can be reviewed.—*G. R. 2407 of 6-3-1908.* The Ahmedabad Manufg. & Calico Printing Co. Ltd is ordered to pay for a period of 10 years water rate at Rs. 1 per 62500 gallons for use of water from the Sabarmati river by a pump for industrial purposes.—*G. O. 3263 of 24-11-1920.*

Water rate is levied on minor irrigation works under s. 44 of the Bom. Irrigation Act if part X of the Act had not previously been applied and the water supply vests entirely in Govt. and is controlled by the Irrigation Dept. In all other cases water rate other than Himayat assessment is leviable under s. 55 of Bom. L. R. Code.—*G. R. 11232 of 1916.*

#### MISCELLANEOUS INSTRUCTIONS

Some villages have no garden land. Some have no rice land. All the columns for kinds of land are optional and should be given such of the above headings as are required by the Survey Akarband. There are very few villages in which there are more than the 4 recognised categories of land. Therefore, the form given meets all cases just as well as 5 separate forms. The form of Akarband used in the Survey Office for each district and taluka will contain the heads required in that locality; and Village Form I. will naturally coincide.

Orders upon the grant of remissions and suspensions frequently allow independent remission of the special rate imposed on many kinds of rice and garden lands for extra water facilities, without remitting the land-share. For instance, some land is suitable for rice, because it is level and low-lying and collects rain water from the surrounding land by natural flow without any definite water-courses or other constructions. Still it gets more water than the direct rain-fall and so it has a water facility termed 'Akasia' or 'water from the sky.' Other land enjoys water flow from tanks (*Himayat-protection*), wells, streams diverted into pats or water-courses river or tank water elevated by basket (*Dhekudi*) or by *Mot.* New rice land in Kaira is also assessed for water facilities under the designation of "Position class" and Kaira had a special form of Village-Form I. under *G. R. 9455 of 1894.* When the Settlement Dept. distinguishes between the amount charged for

the quality of the soil and the amount charged (this does not include 'sub-soil-water' and 'position' gunas in addition to bhag-annas) for these water facilities, the Collector has power (*G. R. 1991-13*) in special seasons when the tank, river or well runs dry or the rainfall is abnormally short to remit the whole or half of the special charge for water. He does so when, owing to scarcity of water, the special irrigated crops for which the land is assessed could not be successfully cultivated. In order to assist in the rapid determination of the water charge on each Survey Number (*G. R. 8869 of 1902*), columns (19) and (20) in Village Form I are provided. They are filled up even in the case of Inam land although here (the assessment being already reduced by the amount of the *Nalasa*) if the water rate were ordered to be remitted, then from the judi only the portion indicated by the ratio of the judi to the full assessment should be taken off.

#### RULES REGULATING DISPOSAL OF WATER VESTING IN GOVERNMENT

**Land Revenue Rule 70-A** states: No person shall without the previous permission of the Collector in writing make use of any water of a river, stream or nala which is the property of Govt. for the purpose of irrigating by a budki (or Dhekudi etc.) or a pumping plant, land other than that subject to the existing *nala-chad*. [(*Rule 70-A*); see *Appendix A for Rules*]

**Note**—*Nala chad* is explained below at p. 276.

The Collector may grant permission for the use of the water of a river, stream or nala which is the property of Govt. and for which no water rate is levied under the Bom. Irrigation Act, 1879 for the purpose of irrigating by a budki (or Dhekudi, etc.) or a pumping plant land other than that subject to the existing *nala-chad*, on payment of such water rate as he may deem fit, but not exceeding the rate per annum per acre which may have been fixed for the locality by Govt. for occasional irrigation by Pata under s. 55 of the Bom. L. R. Code, or where no such special rate has been fixed, the maximum Patasthal rate sanctioned in the current settlement for the group in which the village in which the land in question is situate may have been included. Provided that in precarious tracts irrigation by *budki* or (Dhekudi etc.) or pumping plant shall be exempt from the water rate leviable under this Rule. —[(*Rule 70, B*); *ibid.*]

Any person who, without the previous written permission of the Collector, makes use of any water of a river, stream or nala which is the property of Govt. and for which no water rate is levied under the Bom. Irrigation Act, 1879, for the purpose of irrigating by a *budki* (or Dhekudi, etc.) or a pumping plant land other than that subject to the existing *nala-chad*, shall be liable to pay such water rate as the Collector may deem fit, but not exceeding Rs. 50 per annum per acre of land so irrigated. [(*Rule 70-C*); *ibid.*]

The water-rates payable under rules 70-B and 70-C shall be recoverable as arrears of land revenue. [(*Rule 70-D*); *ibid.*]

**Explanation**—For purposes of rules 70-A, 70-B and 70-C 'budki' includes a 'dhekudi' or any similar appliance for raising water." (*B. L. C. 2537 of 1-7-31*.)

**Nala chad**—Lands situated within 5 chains of a nallah have their classification value increased upto two annas. This increase is called the Nallah Chad.

As has been described elsewhere the chief factor of value in the case of ordinary dry crop lands is that of the soil which therefore, forms the basis of classification. There are, however, dry crop lands which possess certain advantages over the ordinary class and which therefore, according to the survey principle have received a higher classification value. Such lands under the Deccan system are those—

- (1) which are situated close to a nalla or stream from which irrigation is practicable by means of a budki;
- (2) which have a deposit of silt from the overflow of rivers or streams;
- (3) which are favourably situated for receiving the drainage from higher grounds and so have a superior supply of moisture;
- (4) which, though not actually irrigated from a well, are yet clearly capable of being so irrigated;

In all these cases the "advantage" over the ordinary soils was allowed for by making an increase to the soil classification in accordance with a scale for each factor.

Lands situated within 5 chains of nalas (5 chains being considered the effective range of this kind of irrigation) which contain water till the end of December, and on which there would be no difficulty in drawing water by means of a budki or other contrivance, should have an increase added to the *bhag* (soil) annas as follows :—

Soil classification	Increase
From 16 to 10.....	One class, 2 annas
9.11 to 6.....	Half class, 1 anna
Under 6.....	No increase.

The increase so made to the soil annas was technically known as "*Nala Chad*".

#### WATER RATES AND INAMDARS

**Patasthal rates**—While the levy of occasional water rates in Inam villages under s. 55, L. R. Code, is justified by law, in practice it is inconvenient. The better alternative is to impose a combined assessment for the period of the settlement and to provide for remission when the supply of water fails. In fixing the combined assessment, the orders contained in G. R. No. 2759 of 15-3-1907 may be left out of sight. These orders granted a concession as a matter of grace and were not intended to apply to Inam villages.

2. As particular care is required in the assessment of Patasthal rates the Superintendent of Land Records should endeavour, where possible, to see the land personally."—G. O. No. 11926 of 11-11-1915.



**Water Rate (Personal Inam) (a)** The Bagayat assessment of certain personal Inam land was Rs. 40-8-0 and the quit rent at the rate of 5 annas in the rupee was fixed at subsequently, however, the Bandara ceased to hold water, and at the revision survey, the land was classed as jirayat, of which the assessment was only Rs. 8. Govt. in their Resolution No. 1850 of 27-2-1914 directed that the judi should be reduced to Rs. 2-8-0 i. e. 5/16th of Rs. 8, if the holder of the inam cultivates the land himself, or if, in case the holder does not cultivate the land, himself, the Collector is satisfied that the holder's tenants continue to receive the full benefit of the reduction in the assessment which was effected at the revision survey.

(b) At the original survey two Deshpande Inam Nos. were assessed as follows —

Water rate	Survey No.	Assessment.	
		Jirayat	Bagayat
(Deshpande Inam)	1	16	
	2	-	32

At the time of the Gordon Settlement a settlement judi at annas 6 in each rupee was levied as follows :—

Survey No.	Judi.
1	Rs. 6
2	" 12

This judi was a fixed amount on the Jirayat Assessment on Survey No. 1, and on the Bagayat Assessment on Survey No. 2. At the revision settlement the consolidated assessment on the two Nos. was as follows :—

Survey No.	Consolidated Assessment		Total
	Jirayat	Bagayat	
1	24	8	32
2	8	40 (water-rate)	48

As regards Survey No. 2, the judi was permanently fixed with reference to the original bagayat assessment of Rs. 32; and consequently the excess of Rs. 8 at the revision survey cannot affect the judi once imposed.

As regards Survey No. 1, the judi was originally fixed with regard to the jirayat assessment only; and the increase in the jirayat assessment will not affect the judi of Rs. 6. But in this case there has been a separate water rate of Rs. 8 which is newly imposed for the first time, at the revision survey, on which no judi was calculated at the Gordon Settlement. And hence Rs. 8 become a new charge for a new supply of water, which should be levied in addition to the Settlement judi of Rs. 6.—*Commissioner C. D's A. O. No. 439 of 11-6-1918.*

(c) Certain land originally held by a village servant useless to the community was commuted into personal Inam by levying a judi of 8 annas

in the rupee. The details given at the original and the Revision Survey were as follows.—

Water rate	Assessment	Judi
( Useless	1. Original Survey Rs. 8-4-0	4-2-0
( Village	2. Revision Survey „ 11-0-0	4-2-0
( Service Inam )	( Rs. 3 Jirayat	
	plus „ 8 Water rate)	

The water rate of Rs. 8 was abolished by *G. R. No. 2759 of 15-3-1907*. Thus the judi of Rs. 4-2 exceeded the jirayat assessment of Rs. 3. Government as a special case reduced the judi to Rs. 1-8-0.—*G. R. 571 of 19-1-1909*.

**Payment of water rate by Inamdars.**—The holders of Inam lands who use water for irrigation purpose from tanks constructed by Govt. are to pay water rate. *G. R. 1546 of 26-3-1878*.

Inamdars holding inam lands who use water for irrigational purposes from tanks constructed by Govt. should be called upon to pay water rates unless they can show they have a right to use the water.—[ *G. R. 1546 of 26-3-1878 p. 1146 of Standing Orders of Govt. in R. D. Vol. II (1902)* ].

**Water rate under s. 44 of the Irrigation Act.**—In the case of irrigated inam lands which were assessed and recorded as dry crop at the first survey settlement, there can be no difficulty in applying s. 44 to the levy of water rate on account of improved water supply if they now take the Govt. water. But there may be some difficulty in dealing with lands which, at the original settlement or in summary settlement sanads, were assessed and recorded as irrigated. If the supply, having formerly lasted upto the end of January, by the improvement becomes perennial, the improvement is clear and decided, but if the supply which previously lasted upto the end of January is now extended by the improvement, say, upto the middle of March, care will be necessary not to overestimate the extent of the improvement to the injury of the inamdar. In such cases Govt. in the Revenue Dept. are of opinion that the powers given by s. 44 of the Irrigation Act should be used with caution.—( *G. R. 3706 of 28-6-1881* ).

**56. Arrears of land revenue due on account of land** by any landholder shall be a paramount charge on the holding and every part thereof, failure in payment of which shall make the occupancy [a] or alienated holding together with all rights of the occupant [a] or holder over all trees, crops, buildings and things attached to the land or permanently

[a]As to the local modification of the words "occupancy" and "occupant" see para. 5 of foot-note (a) on p. 1, *supra*.

fastened to anything attached to the land, liable to forfeiture, whereupon the Collector may levy all sums in arrear by sale of the occupancy [e] or alienated holding, [f] or may otherwise dispose of such occupancy [e] or alienated holding under rules [c] made in this behalf under section 214, [d] and such occupancy or alienated holding when disposed of, whether by sale as aforesaid, or by restoration to the defaulter, or by transfer to another person or otherwise howsoever, shall, unless the Collector otherwise directs, be deemed to be freed from all tenures, rights, incumbrances and equities theretofore created in favour of any person other than Government in respect of such occupancy or holding. [d]

#### Commentary

Old Law.—S. 56 originally stood as follows:—

Arrears of land revenue due on account of land by any landholder shall be a paramount charge on the holding and every part thereof, failure in payment of which shall make the occupancy or alienated holding, together with all rights of the occupant or holder over all trees,

Land revenue to be a paramount charge on the land.

crops, buildings and things attached to the land, or permanently fastened to anything attached to the land, liable to forfeiture, whereupon the Collector may levy all sums in arrear by sale of the occupancy or alienated holding, freed from all tenures, incumbrances and rights created by the occupant or holder or any of his predecessors in title, or in anywise subsisting as against such occupant, or holder or may otherwise dispose of such occupancy or alienated holding under rules or orders made in this behalf under section 214."

Object of amendment—S. 56 is so amended as to make it clear that an occupant to whom forfeited land has been restored or transferred otherwise than by sale, will have the same rights as if he had purchased it. (Para 6 of Select Committee's Report on Bill No IV of 1901, p. 250 of B. G. G. Pt. V). In *Abdul Rehman v. Vinayak*, 29 Bom. L. R. at p. 1061 Baker

[a] As to the local modification of the words "occupancy" and "occupant" see para 5 of foot-note (a) on p. 1, *supra*.

[b] Words repealed by Bom. VI of 1901, s. 6, are omitted.

[c] Words repealed by Bom. IV of 1913, ss. 17 and 18, are omitted.

[d-d] These words were added by Bom. VI of 1901, s. 6.

J. observed that the amendment in s. 56 in 1901 was made to meet the case of a regrant on a restricted tenure to the original occupant after a forfeiture, a case which was not expressly covered by the old s. 56, and as to which there existed some doubt.

The words '*unless the Collector otherwise directs*' provide a safeguard against a fraud on the part of an occupant against his mortgagee. It is just possible that in some cases though a person may have interest in the land, he has through some oversight, not taken steps to maintain it, and if this comes to the notice of the Collector, he has the power to direct that in such a case rights shall not be extinguished by the forfeiture.—(*P. 370 of the discussion on the Bill No. IV of 1901*).

'Freed from all tenures, rights.....created in favour of any person other than Government'—This provision shows that tagavi arrears due to Govt. under the Land Improvement Loans Act, 1883 are not extinguished by a forfeiture of the land for the improvement of which tagavi was granted. Such arrears are to be recovered from the sale proceeds of the land.

For a detailed discussion see below under the head 'Recovery of tagavi' i. e. under the Land Improvement Loans Act, 1883 and the Agriculturists' Loans Act, 1884.

**Applicability of s. 56**—S. 56 of the Code does not apply where there has been no forfeiture under s. 153 of the Code.—per Scott C. J. in *Chitta Bhula v. Bai Janni*, 40 Bom. 483; 18 Bom. L. R. 445 (1916).

**Retrospective effect**—This section as amended by Bom. Act VI of 1901, has retrospective effect and empowers the Collector to transfer a forfeited occupancy freed from all liens, whether such occupancy was validly forfeited under the Code prior to the Amending Act or was forfeited in compliance with the provisions of s. 153 as amended by Bom. Act VI of 1901.—*Gagandas v. Yusuf*, 8 S. L. R. 233.

The word 'Holding' previously meant *Khata* or aggregate of all plots of land held by the same person. Now it means any single plot of land in separate occupancy. Under the revenue account system prevailing in this Presidency it is not possible (when a man hold several plots and is in arrear for less than the whole of his land revenue) to say to which plot the arrear attach. But see Rule 121 in Appendix A. See also notes under the head 'holding' at p. 24 *supra*.

The terms 'occupant' and 'occupancy' are subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach, or Panch Mahals to which the Gujarat Talukdars' Act, 1888 extends—*Vide Bom. Act VI of 1888, ss. 1 and 33*.

Forfeiture ordinarily implies the loss of a legal right by reason of some breach of obligation and thus we find it said by Blackstone in Chapter XIV of his Commentaries that "Forfeiture is a punishment annexed by law to some illegal act or negligence in the owner of lands, tenements or heredita-

ments, whereby he loses all his interest therein, and they go to the party injured as a recompense for the wrong which either he alone or the public together with him hath sustained"—per Jenkins C. J. in *Amolak v. Dhondi*, 30 Bom. at p. 465.

**Note**—In this case the High Court criticised the rulings in *Narayan v. Parshdam*, 22 Bom. 389 (1896) and *Ganparshibai v. Timnaya*, 24 Bom. 34; 1 Bom. L. R. 505 (1899); see also *G. R. 2015 of 12-3-1907*.

The consequences of forfeiture in itself are not defined in the Bom. L. R. Code, 1879. Ordinary legal signification should be given to the word "forfeiture" in s. 56. The High Court in *Amolak v. Dhondi*, 30 Bom. 460 laid down that the land remains after forfeiture and disposal otherwise than by sale subject to the control of equities arising out of the conduct of the parties to cases arising under s. 56 as per decision in *Balkrishna v. Mahadeo*, 8 Bom. 73 (1880).

**NOTE**—This was a case obviously decided before the Amending Act of 1901.

**Sale of land without forfeiture**—Where by reason of default by mortgagee to pay *tagari* dues (a charge of a public nature) accruing due in respect of the land while it was in the possession of the mortgagee, the sale of the land takes place, (without there being forfeiture in the first instance as required by s. 56) the mortgagee cannot obtain immunity from his breach of trust by reason of the extinction of his position as mortgagee through his fraudulent action as mortgagee. S. 90 of the Indian Trusts Act comes in operation.—*Chitta Bhula v. Bai Jamni*, 40 Bom. 483; 18 Bom. L. R. 439 (1916). (See also notes under the head '*Recovery of Tagari under Land Improvement Loans Act, 1883 and the Agriculturists Loans Act, 1884*.)

**Scope of ss. 56, 57, 79A, 153 and 183 of Bom. L. R. Code**.—The meaning of these sections and Rules will be clear from the following illustration.

M of Nahigao is a holder of certain survey Nos. as follows:—

Year	Survey No.	Land Revenue
1924-25	1	10
	2	15
	3	12
	4	17
		54

M's holding or Khata therefore, consists of 4 survey numbers put together as a whole. In 1920 M had mortgaged without possession survey Nos. 1 and 2 to N for Rs. 30 only. In 1924-25 M paid only Rs. 39 to Govt. and failed to pay Rs. 15 due to Govt.

The whole holding is liable to forfeiture on account of the arrear of Rs. 15 because the arrear cannot be assigned to particular survey Nos. entered in M's Ledger Account.

On 1st June 1925 the Collector served a notice on M under s. 153. In this notice all the four numbers in the holding are 'proposed' by the Collector for forfeiture on or after 20 June 1925.

On 20 June 1925 the arrears still remained unpaid and the Collector made the following order:—

"As the arrear of Rs. 15 was not paid before 20 June 1925 as required by the notice I have now to pass a final order of forfeiture. If I restrict the forfeiture to survey Nos. 1 and 2 the arrear is likely to be realised (*Rule 121*). I therefore order the forfeiture of these two survey numbers and direct, under s. 57 that they should be immediately taken into possession."

dated 25 June 1925.

Collector

In accordance with this order M was evicted from the land under s. 79A on 1st July 1925 and thereafter Government stood in the shoes of M as regards these two survey Nos.

The mere order of forfeiture did not extinguish the mortgage charge of Rs. 200 created by M in favour of N. (vide *Narayan v. Parshottam*, 22 Bom. 389.)

From the date of the order of forfeiture the two survey Nos. lay at the disposal of the Collector and the Collector may order one or other of the following four ways of disposal:—

(1) **Restoration** if M pays the arrear together with costs the Collector may in his discretion restore the lands to M under Rule 126. The burden of Rs. 200 does not exist and M will not have to pay Rs. 200 with interest to N.

**Note**—S. 56 very clearly states that forfeiture followed by disposal of the land whether by restoration to defaulter or by transfer to any person etc. shall be deemed to be freed from all incumbrances etc. Now under Rule 126 of the Bom. L. R. Rules, 1921 the Collector is empowered to restore forfeited land previous to its sale or other disposal under the L. R. Rules, 1921 to the defaulter on payment of arrears of land revenue, etc. How can it therefore be said that restoration to the defaulter does not extinguish the (mortgage) incumbrance? The ruling in *Gahinaji v. Bhickchand*, P. J. of 1893 p. 547 having been based on s. 56 before it was amended in 1901 has no bearing at all. The old section made a distinction between sale of land after forfeiture and disposal of land in any other manner (except sale) after forfeiture. No such distinction is made in the present section and on restoration the land passes to the defaulter free of incumbrances (unless of course the Collector otherwise directs.)

[**Note**.— Obviously this restoration cannot be made after any one of the following disposals is adopted (see also *Dharma Bal v. Balamiya*, 36 Bom. 91.)]

(2) **Government waste**.—The Collector may under Rule 123, enter the lands as unoccupied (called 'waste' by Revenue officers) belonging

to Govt. and then remit the arrear under Administrative order No. XLVI (see Appendix A). or,

(3) **Grant without sale.**—The Collector may order the transfer without sale to a third person L. under Rule 37 or Rule 120, or,

(4) **Sale by auction.**—The Collector may in the absence of other methods, order the lands to be sold by auction for realising the arrear of Rs. 15 under Rule 124.

When passing an order of disposal under (2), (3), or (4) the Collector may in his discretion add a direction as under:

"As M made a default with the object of defrauding the mortgagee N I direct that the mortgage burden of Rs. 200 should not be extinguished by the disposal under (2), (3), (4), or in other words Government, the grantee L, or the auction purchaser, as the case may be should pay off the mortgage N."

If no such direction is made N will lose his right as a mortgagee. If the auction purchaser offers a bid of Rs. 100 with the mortgage burden or Rs. 300 without the burden, the Collector will credit Rs. 15 plus costs to M's account and will pay the remainder to M under s. 183.

**Note.**—S. 183 allows the surplus after defraying the expenses of sale and the payment of arrears to be paid to the person whose property has been sold. In the absence of s. 183 the remainder would have gone to Government and not to M.

### MISCELLANEOUS ORDERS

**Forfeiture and subsequent disposal.**—Failure in payment of land revenue makes the occupancy liable to forfeiture (s. 56). The Collector is empowered (s. 153) to declare the occupancy forfeited at any time after the arrear is due. Forfeiture thus takes place when the Collector declares it. He can declare it at the end of the period named in the notice.—*G.R. 4990 of 31-7-1879* [p. 1207 Vol. II of *Standing Orders of Govt. in the R. D. (1902)*].

Payment of dues after the order of forfeiture does not affect the order of the Collector who is fully competent to grant the land to any one he pleases after the forfeiture.—*G. R. 1013 of 22-10-1912*.

The Collector may not sell a forfeited occupancy in realisation of arrears. Under this section he may either sell it or otherwise dispose of it under rules made in this behalf.—*G. R. 5730 of 27-10-1879 Standing Orders of Govt. in R. D. Vol. II (p. 1207) 1802*.

When a forfeited occupancy has been disposed of by grant to a new occupant it ceases to be a forfeited occupancy and the rule empowering Collector to restore it to original occupant has no application.—*Dharma v. Balamiya, 36 Bom. 91 (1911)*.

**Grant of occupancy of land to pauper cultivators.**—It is true that Collectors should exercise their discretion in this matter and though such

discretion may depend on varying circumstances of different districts but in Collectorates inhabited in parts by hillmen and tribes whom it is desired to wean from their wild life and induce to take up cultivation and a more settled mode of existence, it would be obviously impolitic to refuse land to applicants merely because they were destitute of capital.—[ *G. R. 4297 of 25-7-1881 (Standing Orders of Government in R. D. Vol. II (1902))* ]

Those who have been once defaulters should not be again allowed to take up land without the special orders of the Collector.—[ *G. R. 4297 of 25-7-1881 (Standing Orders of Govt. in R. D. Vol. II, p. 1881 (1902).)* ]

There is nothing to prevent the Collectors from disposing of forfeited lands on restricted tenure by public auction when there are several applicants merely for the same land.—*G. R. 9915 of 19-10-1906 (R. D)*

#### CASES DECIDED BEFORE AMENDMENT OF S. 56 IN 1901.

Where there was nothing to show that the land was declared to be forfeited by the Collector as contemplated by ss, 56, 57 and 153 Sargeant C. J. in *Dasharath v. Nyahalchand*, 16 Bom. 134 (1891), held that all that could be gathered from the records was that the defendant prevented proceedings under s. 56 by himself paying the arrears of assessment. This could not make the defendant's possession adverse or affect the original relationship of mortgagor and mortgagee between the plaintiff and himself. The defendant not having exercised his right to sell under the decree of 1876, the plaintiffs were entitled to redeem, the sum found due by the decree at its date being taken as *res judicata* between the parties. This was a suit for redemption of land mortgaged to the defendant in 1870 in which suit the defendant had pleaded adverse possession. In 1876 he had obtained a decree for sale which he had not executed. In 1877 the Mamlatdar being about to sell the land for arrears of assessment the defendant paid the amount and was thereupon put into possession by the Mamlatdar. He had retained possession ever since and had continued to pay the assessment. The High Court had held that the plaintiff was entitled to redeem.—*Dasharath v. Nyahalchand*, 16 Bom. 134 (1891).

**Effect of revenue sale.**—The plaintiff sued as the purchaser of land at a revenue sale held for the levy of charges incurred on account of boundary marks to recover possession of the land from the defendants who were mortgagees in possession of the occupant of the land in dispute. The question was whether the revenue sale in this case transferred merely the rights of the occupant, or extinguished those rights and also the rights of the mortgagees.

Birdwood J. held:—“The charges for the recovery of which the sale was held are such as could be assessed under s. 122 on the holders or others having interest in the boundary marks for the construction or repair of which the charges were incurred. Under s. 187 which occurs in Chap. XI, all charges payable or leviable under the Code must be levied under ‘the foregoing provisions’ of the Chapter. In s. 187 such charges are distinguish-



ad from sums due on account of land revenue, but they are recoverable under the same provisions. The charges assessed on the occupants of the land in suit, though not land-revenue were therefore recoverable under s. 150, which is one of the sections in chapter XI; and that section provides the following method of recovery among others:—viz: by forfeiture of the occupancy or alienated holding in respect of which the arrear of land revenue is due under s. 153, and by sale of the defaulter's immoveable property under s. 155. If the former method is adopted then, under s. 153 the Collector may declare the occupancy or alienated holding, in respect of which the arrear is due to be forfeited to Government, and sell or otherwise dispose of the same under the provisions of ss. 56 and 57. If the latter is adopted, then the Collector may, under s. 155, cause the right, title, and interest of the defaulter in any immoveable property, other than the land on which the arrear is due, to be sold. In the former case, the land is sold free from all incumbrances created by the occupant as provided by s. 56. In the latter case the rights of incumbrancers are not touched. The effect of s. 157 of the Code is clearly to make applicable the provisions of ss. 153 and 56 and also of s. 155, to sales for the recovery of charges assessed under s. 122."—*Venkatiah Ramkrishna v. Mhalpai*, 15 Bom. 76 (1890).

The rights of original registered occupant not destroyed where the Collector forfeits his occupancy for failure to pay assessment but allows the person actually in possession to be registered as occupant.—When a registered occupant's occupancy is forfeited under s. 56 and that forfeiture is not followed by sale of the occupancy, but the Collector allows the person actually in possession to be registered as occupant, on his paying up all arrears of Government revenue due on the lease, the lease by which the person actually in possession was holding from the former registered occupant is not destroyed by the forfeiture and the person actually in possession cannot be considered to hold the land from the date of the forfeiture free from any liability towards his landlord. Such a person is liable to pay rent to his landlord even after the date of his forfeiture, minus the Government assessment paid by him.—*Gasparshibai v. Timmaya*, 24 Bom. 34; 1 Bom. L. R. 505 (1899).

#### RULINGS AFTER AMENDMENT OF S. 56 IN 1901

Regrant of land forfeited for non-payment of revenue if free from incumbrances —Where a land vests in the original tenure-holder under a new tenure created by s. 56 of the Code as amended by Act VI of 1901, the land vested free from all incumbrances and from all previous equities. The fact that default in the payment of revenue was made is immaterial.—*Veds v. Kals*, 37 Bom. 592; 15 Bom. L. R. 827 (1913). In this case reference was made to the rulings in *Gasparshibai v. Timmaya*, 24 Bom. 34 (1899) and *Amolak v. Dhowli*, 30 Bom. 466 (1906) but they being decided under s. 56 before its amendment

in 1901 they were held to have no application to s. 56 as amended in 1901. In both those cases the forfeiture and the subsequent disposal of the occupancy were before 1901.

**Note.**—In *Narayan v. Purushottam*, 22 Bom. 389 (1896) it was held that a declaration of forfeiture under s. 153 of the Code of the interests of lessee holding under a permanent lease *not followed by a sale* but by an order transferring possession of holding to the lessor under s. 57 has not the effect of defeating prior incumbrances created by the lessee in favour of third person.

#### RULINGS IN SIND BEFORE AMENDMENT OF 1901

**Regrant to successor in title of registered owner does not deprive the real owner of his rights under s. 90, Trusts Act.**—The father of appellants relinquished in favour of the respondents his rights in certain lands which had been forfeited to Government, under the fallow rules. The appellants induced the Government authorities to regrant the "fallow-forfeited" lands to them on the strength of their father being the registered owner thereof.

The Judicial Commissioner in Sind said that there being no fresh grant but merely a restoration of the lands to them on account of their father's name appearing as the registered owner they had gained an advantage in derogation of the rights of the respondents and must be compelled to restore to the respondents what was really their property.—*Chetomal v. Sirumal*, 2 S. L. R. 88.

**Effect of regrant of lands forfeited to Government for non-payment of assessment on rights of co-owners.**—The plaintiffs who were Mahomedans sued their brother M and his vendee for partition of a piece of land alleged to have been inherited along with other property by them and their brother. The defendants *inter alia* contended that this piece of land had been forfeited to Govt. for non-payment of assessment and regranted to M and hence the plaintiffs had no share therein and that the suit was bad, being only for partial portion of property. *Held* that the plaintiffs' rights in the property in dispute had not been extinguished as there had been no sale under s. 56 of the Code the regrant to M being for the benefit of all the former co-owners.—*Tuljaram v. Chutalkhan*, 1 S. L. R. 142.

#### RULINGS IN SIND AFTER AMENDMENT OF S. 56 IN 1901

**The grant of fallow-forfeited land to only one of several co-owners of joint property subsequent to 1901 is in the absence of any other circumstances a grant to him personally and this is more so in survey numbers granted on restricted tenure.** S. 56, as amended by Act 6 of 1901 has placed fallow-forfeited land disposed of (1) (a) by sale on account of the defaulter, (b) by restoration to him of the said land, (c) by grant to strangers, and (2) by reservation as Govt. waste land on the same level. The grant of fallow forfeited land subsequent to 1901 in the absence of any other circumstances is a grant to a person personally and this is the more so in the case of survey Nos. granted to him on restricted tenure. In order to attract the applicability of s

90, Trust Act, it is incumbent on the plaintiff to allege and to prove as a fact that the said person (grantee) by availing himself of the position of a co-owner has gained an advantage in derogation of the rights of the plaintiff. If this person had intentionally allowed the survey Nos. to be forfeited in order to obtain a grant from Govt. in his own name it would have been another matter. In that case probably on the strength of the decision, in *Deomandan Prasad v. Jankisinh*, 44 Cal. 573; A. I. R. 1916 P.C.227 the plaintiff might have succeeded in getting a share therein. The grant by Government on restricted tenure was made on the grantee passing a *kabulayat* on a printed form which every grantee in ordinary course has to execute. It is for the protection of the Govt. and purports to bind the grantee and his present and future co-occupants to pay Govt. assessment and to be bound by the terms of the grant. No inference can therefore be drawn one way or the other in consequence of the *kabulayats* having been executed by the grantee that he obtained the grants on behalf of himself and the plaintiff.—*Abdul Rahman v. Haji Mahomed*, A. I. R. 1929 Sind 212.

This case was followed in *Uttamchand v. Sulmatrai*, A. I. R. 1931 Sind 27 where it was held: "The 2 survey numbers were granted to Uttamchand (appellant) personally after the amendment of s. 56, Bom. L. R. Code by Act 6 of 1901 and therefore in the absence of any circumstances to the contrary these survey numbers must be deemed to have been granted to him in his individual right as owner. If the plaintiff wished to attract the applicability of s. 90, of Trusts Act, it was incumbent on him to allege and prove that Uttamchand by availing himself of the position of a co-owner had gained an advantage in derogation of the rights of the plaintiff. On this point the first appellate Court has rightly said: "These survey numbers were resumed by Government and were granted to Uttamchand. There is nothing to show that this property was granted for the benefit of the family. Khubchand an elder brother was alive. Uttamchand therefore cannot be regarded as a trustee or managing member for the family. Therefore in no sense can it be said that these two survey numbers granted by Government were for the benefit of the whole family."—*Uttamchand v. Sulmatrai*, A. I. R. 1931 Sind 27.

#### MISCELLANEOUS RULINGS

**Limitation for instituting a suit to set aside order of forfeiture.**—The plaintiff's land was forfeited in 1911 for failure to pay arrears of assessment. Subsequently the land was disposed of by Government to others. The plaintiff applied to the Collector against the order of forfeiture in the same year. He then appealed to the Commissioner in 1913; but the appeal was returned to him for want of a copy of the order. Nothing more was done afterwards nor was any appeal preferred to Government. Eventually the plaintiff filed a suit in 1915 for a declaration that the proceedings held by the Revenue Authorities in respect of the forfeiture were illegal and *ultra vires*. Macleod C. J. held: The suit was barred by limitation under Limitation Act, art. 14 of which provides that if a party wishes to have resort to the Court in order

to get the order of the Revenue Authorities set aside, he must put his claim on the file within one year. The argument that if the party aggrieved is appealing to the Revenue Authorities, that time should be excluded, cannot be sustained in view of s. 11 of the Revenue Jurisdiction Act, 1876."—*Ganesh v. Secretary of State for India*, 44 Bom. 451; 22 Bom. L. R. p. 212 (1919).

**If evidence showed mortgagee's intention to defraud mortgagor has right to redeem**—The plaintiff's grandfather mortgaged his lands in 1872 and placed the mortgagee in possession. There was default in payment of assessment as the result of which the property was forfeited by Government under s. 56 of the Bom. L. R. Code as it stood before its amendment in 1901. Government resold the property to the mortgagee in 1884 and transferred its *Khata* from the name of mortgagor to that of the mortgagee. In 1921, the plaintiff sued to redeem the mortgage.

The High Court *held*: The right to redeem was lost owing to the forfeiture of the land under the original s. 56 of the Bom. L. R. Code; and that before the plaintiff could succeed he must show that the forfeiture and the revenue sale were due to the default of the mortgagee in not paying the assessment and that the income of the land was sufficient to pay the assessment or that in some way the mortgagor had put the mortgagee in funds wherewith to pay the assessment.—*Abdul Rehman v. Vinayak Gaywantrao*, 29 Bom. L. R. 1056 (1927).

#### RULES UNDER S. 214 PRESCRIBING PROCEDURE IN DISPOSAL OF FORFEITED LAND BY SALE OR OTHERWISE

**Disposal of forfeited land.**—Rules under this Code made by the Government of Bombay provide for the disposal of forfeited land. Rule 120 of the L. R. Rules (1921) provides for the restoration of the forfeited land to the defaulter or grant of the same to any other person on condition that without the previous sanction of the Collector it should not be transferred to another. In this case the land would be freed from all prior incumbrances (*G. R. 7440 of 1901*). The Collector however ought not to use this power in fraud of a mortgagee for value. The Commissioner can call for and revise his proceedings in this respect or in sales of land if inequitable. If a *Khata* consists of several plots of land the Collector cannot proceed to forfeit and sell any plot which he has not definitely included in the notice under s. 153. Though he may publish proclamations in other ways also [s. 166 (3)] he must not omit the methods prescribed by s. 155 (*G. R. 11876 of 1917*). When land is forfeited trees are forfeited with it even if they are separately mortgaged (*G. R. 11908 of 1916*). Land cannot be forfeited for arrears of local fund cess (*G. R. 5973/28 of 28-8-1930*). Sale expenses are levied even if arrears are paid on the day of sale. [*G. R. 9452 of 3-12-1892: 5304 of 1894. Standing orders of Govt. in R. D. Vol II, p. 1209 (1902)*].

**Note.**—Where Rule 120 is not applied resort should not be had to forfeiture of land unless it appears to the Collector that the arrears cannot be recovered by any of the other means provided by Chapter XI (*of the realisation*

of Land Revenue and other revenue demands) of the L. R. Code.—*Administrative Order No. XLV, Land Revenue Rules, 1921; See Appendix A at the end.*

**Partial forfeiture** has been provided for when arrears are due in respect of two or more survey numbers or sub-divisions or estates separately assessed etc. in Rule 121 of the L. R. Rules, 1921.—*See Appendix A for Rules.*

**Forfeited land is not to be put up for sale** (a) when on account of agricultural depression etc. there are no bidders at the sale of the land, the land may be treated as unoccupied; (b) Where the Collector finds the land to be required for purpose mentioned in s. 38 he may assign it for that purpose (*Rule 123*); (c) In the case of forfeited alienated holding the Collector may allow the land to continue in possession of its actual holder or tenant after annulling the alienation (*Rule 123*); (d) Where an inferior holding is forfeited for an arrear of rent or land revenue due to superior holder for the recovery of which the assistance is being rendered under ss. 86 and 87 the Collector may transfer the holding to the superior holder. It will be subject to such tenures, rights, incumbrances etc. as may be directed by the Collector under s. 56; (e) In any other case the intended disposal of a forfeited holding should be made with the sanction of Govt. (*Rule 123 of L. R. Rules 1921; see Appendix A for Rules.*)

**Forfeited lands are to be put up for sale** for recovery of arrears in cases not falling under Rules 120, 122, 121 and 123—*Rule 124; see Appendix A for Rules* 8. 153 provides that if a forfeited holding is sold the proceeds (after meeting the arrears and expenses) go to the defaulter. The cases where the holding is not sold are regulated by Rule 123. For rules and orders applicable to sales of forfeited land see Rule 125 in Appendix A. The sale of forfeited land may be set aside by the Collector under s. 179 of L. R. Code under the circumstances described in Rule 125 (*ibid*). No permission to occupy is needed since s. 181 of L. R. Code requires the Collector to put the purchaser in possession; but a sale certificate should be issued on impressed stamp paper. The restoration of forfeited land at any time previous to sale or other disposal is provided for in Rule 126 (*ibid*). The restoration of forfeited alienated holding which is not held for service is regulated by Rule 126 (*ibid*); similarly the restoration of forfeited alienated land held for service by a wataradar is governed by Rule 126 (*ibid*). A holding (in Rule 126) may consist of several portions of land, even perhaps held on different *inam* tenures and some unalienated. It is intended that if such an alienee defaults, and the Collector is compelled to forfeit any of his land the order of forfeiture shall apply to the whole holding (even if part is *derastan* and part is personal, and part unalienated, and so on).

**Land Revenue when remitted.**—Land revenue due on forfeited land if not sold shall ordinarily be remitted. But by Administrative Order No. 46 Government reserves the right and in special cases the Collector may with the sanction of the Commissioner enforce that right.—*See Administrative Order No. XLVI in Appendix A.*

Although proceedings would have to be stayed under ss. 164 and 169 of Bom. L. R. Code if security were given or the arrear paid, the forfeiture of a defaulter's holding would not thereby be cancelled.—*G. R. 4891 of 16-9-1880 [Standing Order of Govt. in R. D. Vol. II p. 1212 (1902)].*

When a sale of occupancy or alienated holding is made under ss. 56 and 57 the property is sold as the property of Government by reason of forfeiture, and not as the property of the defaulter. A forfeited holding can be sold by public auction as unoccupied unalienated land subject to the same rules and orders as are applicable to the sale of unoccupied unalienated land so far as they are consistent with the provisions of Ch. XI of the Bom. L. R. Code. The proclamation used for the sale of unoccupied unalienated land should be used for the sale of forfeited holdings.—*G. R. 6455 of 29-10-1881 Standing Orders of Govt. in R. D. Vol. II p. 1208. (1902).*

**Irrigation water rates** under the Bom. Irrigation Act, 1879 is not governed by s. 56. These rates are not land revenue as they are water rates only.—*G. R. 4837 of 19-5-1911.*

#### RECOVERY OF TAGAVI

**Recovery of Tagavi Loan under the Land Improvement Loans Act, 1883**—S. 7 of Act XIX of 1883 empowers the Collector to recover loans granted under the Act with interest and costs if any by following all or any of the methods mentioned below:—(a) *From the borrower*—as if they were arrears of land revenue due by him; (b) *From his surety (if any)*—as if they were arrears of land-revenue due by him (c) *out of the land for the benefit of which the loan has been granted*—as if they were arrears of land revenue due in respect of that land; (d) *out of the property comprised in the collateral security (if any)*—according to the procedure for the realization of land revenue by the sale of immoveable property other than the land on which that revenue is due:

Provided that no proceeding in respect of any land under cl. (c) shall affect any interest in that land which existed before the date of the order granting the loan, other than the interest of the borrower, and of mortgagees of, or persons having charges on, that interest, and, where the loan is granted under s. 4 with the consent of another person, the interest of that person, and of mortgagees of, or persons having charges on, that interest.

(2) When any sum due on account of any such loan, interest or costs is paid to the Collector by a surety or an owner of property comprised in any collateral security, or is recovered under sub-section (1) by the Collector from a surety or out of any such property, the Collector shall, on the application of the surety or the owner of that property (as the case may be), recover that sum on his behalf from the borrower or out of the land for the benefit of which the loan has been granted, in manner provided by sub-section (1).

(3) It shall be in the discretion of a Collector acting under this section to determine the order in which he will resort to the various modes of recovery permitted by it.

Loans are granted to Co-operative Societies and members thereof and the Co-operative Societies Land Improvement Loans Rules, 1922 provide that Societies and Co-operative Banks on whose recommendation and through which payment is made shall be responsible for due repayment of such loans to Government and they are required by Rule 6 to forward an undertaking to that effect with their applications for loans. S. 65 of the Bombay Co-operative Societies Act 1925 enables Government to recover all sums due to them from a Society or from a member etc. by following the procedure laid down for the recovery of arrears of land revenue.

**Recovery of Tagavi Loan under the Agriculturists' Loans Act, 1884—**S. 5 of the Act states that loans with interest if any and costs (if any) may be recovered from the person to whom the loan was made or from a surety as if they were arrears of land revenue due by the person to whom the loan was made or by his surety.

Loans to members of Co-operative Societies with unlimited liability may be made under this Act, and Co-operative Societies' Agricultural Loans Rules, 1922 regulate their grant. Rule 8 of the Rules provides for its recovery. It states: The Mamlatdar shall send each year to the Society a list showing the members from whom recoveries are to be made under the Act in that year, the amounts of the instalments due (principal and interest separately) and due dates for repayment. The Society shall be responsible for collecting these instalments and remitting them to the Treasury within one month or after the due date. In cases where the Society reports that it has been unable to recover the whole or part of an instalment, the Mamlatdar shall forthwith recover the amount from the borrower under the provisions of s. 5 of the Act. In the event of a deficit remaining thereafter the Mamlatdar shall report the facts of the case through the Sub-Divisional Officer to the Registrar, who shall take such further steps under s. 65 of Act VII of 1925, to require the society to make good the deficit, as may seem to him necessary, unless the Sub-Divisional Officer agrees that a case has been made out for suspending or remitting the demand.

Tagavi under Agriculturists' Loans Act is not governed by ss. 56 and 153. Such Loans are to be recovered from the persons to whom they are made and not out of the land.—*G. R. 2100 of 7-10-1910.*

Tagavi dues under the Land Improvement Loans Act are 'charges of a public nature' within the meaning of s. 76(c) of the Transfer of Property Act which must be paid by the mortgagee in possession unless there is a contract to the contrary.

**Miscellaneous orders regarding recovery of Tagavi.**—Under the Land Improvement Loans Act, 1883 tagavi can be recovered out of the land improved, whether this has been mortgaged to Government for the loan or

not. This land can be forfeited and sold [ but it cannot be forfeited without being offered for sale ( see *Chitta Bhula v. Bai Jamni*, 40 Bom. 483 ) but if no bid is made it becomes Govt. waste ] free of all prior incumbrances ( and, still more free of any subsequent incumbrance )—*Vide s. 153 infra*. But if there is any surplus after the sale, of course this belongs to the debtor, or his mortgagee ( *G. R. F. D. 1549 of 1912* ). In such cases of forfeiture the provisions of s. 80 of the Bom. L. R. Code apply ( *G. R. R. D. 2331 of 1900* ). If other methods of recovery are resorted to the rights of the other parties are protected.

Regarding the question in connection with the recovery of Tagavi from a person *i. e.* A whose land was improved with the aid of Tagavi granted to another person *i. e.* B the Remembrancer of Legal Affairs observed that A was neither the borrower nor the surety and hence A is not liable to pay any of the arrears or the Tagavi secondly, it appears that A's interest in the land ( which she inherited from her father ) existed before the loan was granted and the decree of the Court merely recognised it and placed A in possession; A did not consent to the loan but protested; therefore A's share of a land which received benefit from the loan is saved from liability by the proviso to s. 7 (1) of the Land Improvement Loans Act, 1883—*G. R. F. D. 3162 of 1930*.

Under the Land Improvement Loans Act, 1883 out of land other than improved ( if specifically mortgaged either by the borrower or his surety ) and under the Agriculturists' Loans Act, 1884 out of land mortgaged, the recovery can be made in the following two ways:—(1) As an arrear of land revenue ( *s. 105, Bom. L. R. Code* ) due by the person liable ( *i. e.* not due upon any particular land but recoverable out of any immoveable property the defaulter possesses ).

( 2 ) As by a mortgagee of the land hypothicated.

( 1 ) When it is so recovered out of the land Govt. can only put up for sale if no bid is made, it must be bought for Govt. [( *G. R. 9109 of 1910* ) as it does not become Govt. property by forfeiture ] the right, title and interest of the debtor subject to any prior incumbrance whether disclosed or not and also subsequent incumbrance which the debtor may have created after the loan. ( 2 ) But if the revenue officer has taken the precaution of also taking a mortgage under s. 69 of the Transfer of Property Act in some cases Govt. can sell the land without a preliminary of a civil suit and without resort to L. R. Code. This will enable Government to sell it without any regard for incumbrances subsequent to the mortgage, though it will still be subject to prior charges even if not disclosed at the time of the mortgage. Subsequent mortgagees should be made parties to the proceedings.—*G. R. F. D. 1549 of 1910*. See also, *G. R. F. D. 4636 of 1926*.

In a case where non-service Inam land was the security, Government allowed the cancellation of the alienation and credit of the capitalised value of the Nuksan as Tagavi as a means of recovery.—*G. R. R. D. 13544 of 1913*.



If no land is mortgaged by the borrower or the surety, even so the arrears can be recovered as arrears of land revenue from any immovable or even moveable property they may possess. But in this recovery there can be no forfeiture and setting aside of any incumbrance whatever.

If the debt is secured by joint bond then recourse can be had to the co-sureties. The whole balance can be recovered from any single one of them.

Arrears of land revenue in respect of an alienated village or a share thereof (if not recovered by any process except forfeiture), are dealt with under ss. 159 to 163. (See notes under s. 163 *infra*).

**57.** It shall be lawful for the Collector in the event of the forfeiture of a holding through any default in payment or other failure occasioning such forfeiture under the last section or any law for the time being in force, to take immediate possession of [a] such holding, and to dispose of the same by placing it in the possession of the purchaser or other person entitled to hold it according to the provisions of this Act or any other law for the time being in force.

**[a] 58. (1)** Every Revenue officer and every hereditary patel and every hereditary village accountant receiving payment of land revenue shall give a written receipt for the same.

**(2)** Every superior holder of an alienated village or of an alienated share of a village who is entitled to recover direct from an inferior holder any sum due on account of rent or land revenue shall give to such inferior holder a written receipt for the same.

**(3)** Every hereditary patel and hereditary accountant who receives, in behalf of a superior holder of an alienated village or of an alienated share of a village, any rent or land

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[a] This was substituted by Bom. I of 1910, First Schedule, Part II, serial No. 3, for the original section.

revenue from an inferior holder shall give to such inferior holder a written receipt for the same. Such receipt shall be a full discharge to such inferior holder for such rent or land revenue as against such superior holder. A copy of such receipt shall in every case be sent to the superior holder by such patel or accountant.

### Commentary

**Instructions.**—Ordinarily the proper procedure for the village accountant in collecting money is to sit at the *Chavdi* with the *Patel* and to have in front of him the Land Revenue *Daftar*. When a *rayat* tenders money the village accountant will look up Village Form VIII-B and see what is due. If the *rayat* wishes to discuss or argue the details or even expresses a wish to verify them for himself he can refer back to Village Form IV, VII and VIII-B of last year; he must show them to the *rayat* if he wishes to see them. As soon as he finds out what amount he should properly receive he should collect or as much of it as he can and should immediately fill up the receipt form on both sides, foil and counterfoil posting the amounts under the proper heads shown and the *Patel* should also sign. The first and most peremptory rule for the village-accountant is that he shall give a receipt though for some item he has forms of receipt different from Village Form IX (*e. g.*, tagavi, grazing fees, irrigation)—for every sum however large or small which he receives on behalf of Government immediately that he receives it. (*G. R. 3661 of 7-5-1884*). If the village accountant is walking from his village to Taluka and meets a *rayat* who offers him any payment, the village accountant must accept it unless he knows quite well that there is no such payment due. He should not refuse an amount because it is not the full amount due. If a *rayat* owes Rs. 20 and offers Rs. 15 the acceptance by the village accountant of Rs. 15 does not amount to an acquittance for the remaining Rs. 5 but if the village accountant has not got Village Form IX with him at the moment when money is offered, even so, it would not often be wise to refuse to receive it, because it might give the *rayat* unnecessary trouble in walking many miles on another occasion to the village or possibly he might even spend the money if it is not accepted when first offered. If then the village accountant has not got his receipt book with him he may write a provisional and '*kachha*' receipt on any piece of paper he can get subject to his replacing this by a proper receipt from Village Form IX as soon as he gets back to his office. Every receipt given under s. 58 is exempt from stamp duty; but receipts given not only by *Dumaldars* but also by any *Inamdars* to the village officers for sums paid by such officers to the *Dumaldar* or *Inamdars* on account of land revenue collections must be stamped when the sum in respect of which the receipt is given exceeds Rs. 20 (*G. R. R. D. 2641 of 27-3-1884*). But the receipts given to their tenants on '*sheri*' lands need not be stamped (*G.*

*R. 5013 of 1-95.*) As has been stated above the Patel should also sign the receipt but if he is ill or absent unavoidably a receipt signed by the village accountant is quite valid. The patel is responsible only for the cash handed to him and signed for at the day's close; but if he signs a receipt he is also responsible for the statement that amount was actually received.

**Land revenue paid in kind.**—Where the practice is of making payments in kind they should be entered in receipt books according to local measures. (*G. R. No. 229 of 12-1-1885*). This kind of payment is not now in vogue.

The village accountant is bound (s. 213) to exhibit Village Form VIII-A and VIII-B of the current and past year for the inspection of any revenue payer who wishes to see them. If he is illiterate, he can get a friend to read them to him. The village accountant should of course exhibit them in his own presence or the presence of the patel and not give any opportunity for them to be tampered with.

But if for purposes of litigation, or in order to arrange a marriage by exhibiting to the bride's family copies of his Khata or for any other purpose any Kabsdar desired to have a full copy of Village Form VIII-A or VIII-B, or both, he is entitled to have them. Prompt compliance is insisted upon: it is important to co-operative societies. If a copy of VIII-B is given before the close of the year it should be endorsed as "not yet complete" (unless dues have been paid up and it is in a condition to be closed and balanced); village accountants are provided with as many blank forms of Village Form VIII-A, called "Holding sheet" and of VIII-B as he requires. The charge to the public for one form will be 3 pies. The charge for making a copy will be 9 pies that is one anna in all for each form if the holding requires more than one. When corrections have been made in VIII-A during the five year period the copy given will be an exact copy of the struck out entries and the new entries exactly as the accounts stand in Village Accountant's books. A rayat will thus be able to get a full copy of his whole holding for one anna and also a copy of his last year's accounts for another anna if he is not satisfied with inspection of the village account books. The printed forms are issued to village accountant in lots of 20 at a time for 4 annas (*G. R. 425-16*) so that there will be no further need of paying petty collections for forms into the treasury. He will keep the copying fee (9 pies out of each anna) himself and need give no account of it. See notes to a. 135-H also.

When a Holding Sheet (*Dalhalala*) is given at the beginning, or in any year before the end, of the five year period, and the occupant's holding then increases or decreases in any later year before the five years expire, he will on presentation of his Holding Sheet be entitled to have it corrected free of charge [L. R. R. 142 (4)]. Whenever village accountant learns of a mutation which causes the deduction or addition of a plot of land in the Holding Sheet he should send for the holder; and the best possible test of the correctness of the mutation will be the holder's consent to the deduction of the plot from his holding.

No receipt is necessary for the property attached by the person attaching it.—There is nothing in the Code which renders it obligatory for the person who is actually effecting attachment to give receipt for the property attached.—*Emp. v. Gulabrai*, 83 J. C. 899; 16 S. L. R. 161.

**59.** Any person convicted of a breach of the provisions of the last preceding section after summary inquiry before the Collector shall be liable to a fine not exceeding three times the amount received for which a receipt was not duly granted, and one-half of the fine may, at the discretion of the Collector, be paid to the informer, if any. Such inquiry may at any time be instituted by the Collector of his own motion without any complaint being preferred to him.

Penalty for failure to grant receipts.

of the last preceding section after summary inquiry before the Collector shall be liable to a fine not exceeding three times

the amount received for which a receipt was not duly granted, and one-half of the fine may, at the discretion of the Collector, be paid to the informer, if any. Such inquiry may at any time be instituted by the Collector of his own motion without any complaint being preferred to him.

## CHAPTER VI.

### OF THE GRANT, USE AND RELINQUISHMENT OF UNALIENATED LAND. [a]

**[b] 60.** Any person desirous of taking up unoccupied land which has not been alienated must, previously to entering upon occupation, obtain the permission in writing of the Mamlatdar or Mahalkari.

Written permission of Mamlatdar or Mahalkari required previous to taking up unoccupied land.

#### Commentary

The heading to Chapter VI was substituted by Bom. Act IV of 1913 s. 19, for the original heading which was as follows:—Of the occupation of unalienated land and the rights of occupants."

**Note**—Ss. 60 to 67 (both inclusive) do not apply to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Taluqdars Act, 1888, extends. (See Bom. Act VI of 1888, ss. 1 and 33).

**History**—The Hon. Mr. Mandlik and other Indian members wanted the word 'Government' to be inserted after the word 'unoccupied' in line one

[a] This heading was substituted by Bom. IV of 1913, s. 19, for the original heading which was as follows:—

Of the occupation of unalienated land and the rights of occupants.

[b] As to the local repeal of section 60, see para. 5 of foot-note (a) on p. 1, *supra*.

so as to make the meaning clear. In opposing the motion it was urged on behalf of the Govt. that the High Court had decided that Govt. lands were those which were the property of Govt. ; but the term 'Government land' according to the Revenue officers meant simply lands that were liable to be assessed to the revenue of the State, and if the term 'Govt. lands' were used, it would have to be defined and a definition of the same would be apparently contrary to the decision of the High Court. Inam land was never supposed to be unoccupied and the section as worded could only refer to land liable to assessment. Lands which paid assessment to Govt. were ordinarily called Govt. lands in the revenue system. It did not mean that the proprietary rights of any person were affected in any way. In reply the Hon. Mr. Mandlik said that the explanation offered on behalf of Govt. strengthened his objection to the section if the revenue officers held that land, because it was assessed to land revenue, was not private land but Govt. Land. If it was meant that all land is Govt. land which is liable to payment of Govt. revenue then the land of all private proprietors not exempt from the payment of Govt. revenue, would be Govt. land. That is dilemma into which we should not be led if we distinguished the different classes of land. The amendment was however lost.—*Proceedings of the Council of the Governor of Bombay for 1877, Vol. XVI, pp. 135-8.*

The applicant has to give an agreement or lease in respect of the land and the permission is given in a prescribed form.

**Written permission.**—The permission in writing to be given by a Mamlatdar under a. 6) to enable intending occupant to enter upon occupation is to be in a prescribed form (*Rule, 51 see Appendix A for Rules*). No such permission is to be given until the Mamlatdar has ascertained that either a lease or agreement has been duly executed and delivered under one of the Rules 37 to 47 or 52 as the case may be. (*Administrative Order XXV*) The Mamlatdar who takes the said agreement will be responsible for exercising due care in ascertaining the identity of persons signing the same, and their fitness to be accepted as occupants responsible for the payment of land revenue notwithstanding that the agreement have been duly endorsed by witnesses.—(*Administrative Order XXVI*).

**Court Fees.**—Application for leave to extend cultivation, when presented to an officer of land revenue by a person holding under direct engagement with Govt. land of which the revenue is settled, but not permanently is exempt from Court Fees. (*Court Fees Act of 1870, s. 19 clause 11*). *Govt. of Bombay notification No. 590 of 16-9-1921 (B. G. G. Pt. 1 dated 16-9-1921)* exempts with reference to clause II s. 19 of the Court Fees Act, 1870 from Court fees application for leave to occupy land when made by a person who does not at the time of application hold the land.

The right of an Inamdar to give out unoccupied lands for cultivation in his village is not interferred with by this section.—*G. R. 5720 of 1-10-1881 and G. R. 850 of 17-2-1882 (Standing Orders of Govt. in R. D. 19/2, pp. 1009-1010)*.

Minors or Lunatics represented by their friends or relations having no legal power to act on their behalf cannot pass an agreement to the Collector.

—*G. R. 7074 of 11-10-1882 (Stalling Orders of Govt. in R. D. 1903 p. 1013).*

Commissioners have power to revise *kalulayats* under ss. 61 or 62 and there is no cause of action against Government on account of that officer having exercised his lawful powers under s. 211.—*Parapa v. Secretary of State for India, P. J. for 1891 p. 230.* While criticising the decisions in *Parapa v. The Secretary of State for India and Dattatraya v. The Secretary of State, 31 Bom. L. R. 1235 (1929).* Beaumont C. J. in *Anant v. The Secretary of State, 55 Bom. 165 (1930)* said that a title to land acquired under an order of the Collector is never secure and that there is no time limit within which the Commissioner must modify, annul or reverse the order of the Collector. He however, said that the above decisions were binding on Courts. He further observed that in view of the conduct of the Commissioner in that particular case in repudiating the order of his Collector made two and half years before or to the *bomafiles* of which no question had been raised he was not disposed to assume that if Commissioners have the wide powers, intended for, they would never exercise them unreasonably. In an appeal their Lordships of the Privy Council however, decided in *The Secretary of State v. Anant Krishnaji Nalkar, 36 Bom. L. R. 242 (1933) [P. C.]* that the order of the Collector was not a valid order inasmuch as the previous sanction of the Commissioner (the assessment on the land in question having exceeded one hundred rupees) was not obtained. Their Lordships thought that the amplitude of the powers conferred on the Commissioner by s. 211 was striking, and that he was entitled to modify, annul or reverse the order of the Collector.

[<sup>a</sup>] 61. Any person who shall unauthorisedly enter upon occupation of any land set apart for any special purpose, or any unoccupied land which has not been alienated and any person who uses or occupies any such land to the use or occupation of which by reason of any of the provisions of this Act he is not entitled or has ceased to be entitled, shall, [<sup>a</sup>]

if the land which he unauthorisedly occupies forms part of an assessed survey number, pay the assessment of the

[a—<sup>a</sup>] This paragraph was substituted for the original paragraph by Bom. III of 1921, s 2 (a).

entire number for the whole period of his [a] unauthorized occupation, and

if the land so occupied by him has not been assessed, such amount of assessment as would be leviable for the said period in the same village on the same extent of similar land [b] used for [b] the same purpose;

and shall also be liable, at the discretion of the Collector, to a fine not exceeding five rupees, or a sum equal to ten times the amount of assessment payable by him for one year, if such sum be in excess of five rupees, if he have taken up the land for purposes of cultivation, and not exceeding such limit as may be fixed in rules [c] made in this behalf under section 214, if he have [d] used it for [d] any non-agricultural purpose.

The Collector's decision as to the amount of assessment payable for the land unauthorizedly occupied shall be conclusive, and in determining its amount occupation for [e] a portion [e] of a year shall be counted as for a whole year.

The person unauthorizedly occupying any such land may be summarily evicted by the Collector, and any crop [f] raised on the land shall be liable to forfeiture, and any building or other construction [f] erected thereon shall also, if not removed by him after such written notice as the

[a] The word "unauthorized" was inserted by Bom. III of 1921, s. 2 (A).

[b—b] These words were substituted by Bom. IV of 1913, s. 20, for the original words "appropriated to."

[c] Words repealed by Bom. IV of 1913, s. 20, are omitted.

[d—d] These words were substituted by Bom. IV of 1913, s. 20, for the original words "appropriated it to."

[e—e] These words were substituted for the original words by Act XVI of 1905, Second Schedule.

[f] Words repealed by Bom. VI of 1901, s. 7, are omitted.

Collector may deem reasonable, be liable to forfeiture, [a] or to summary removal [a].

Forfeitures under this section shall be adjudged by the Collector, and any property so forfeited shall be disposed of as the Collector may direct [a] and the cost of the removal of any encroachment under this section shall be recoverable as an arrear of land revenue [a].

### Commentary

**Change in the Law**—Para 1 of s. 61 before the amendment by Act III of 1921 stood as follows:—“Any person who shall unauthorisedly occupy any land set apart for any special purpose, or any unoccupied land which has not been alienated, shall.”

**History of s. 61 before its amendment in 1921.**—This section corresponds to ss. 33 and 39 of Bom. Act I of 1865 (an Act to provide for the survey, demarcation, assessment and administration of lands held under Govt., in the districts belonging to the Bombay Presidency and for the registration of the rights and interests of the occupants of the same). It has been constructed so as to make penal the provisions and remedies common to the two cases of occupation without permission and occupation of lands set apart for a special purpose. This section provides distinctly for (1) the levy of assessment; (2) fine of five rupees or ten times the assessment; (3) eviction, and (4) forfeiture of crop. The introduction of the penalty of fine upto a fixed amount as an alternative from fine by a multiplied assessment is made to meet cases in which the extent of the unauthorised occupation is trifling, but the occupation itself mischievous, as for instance, when a land holder ploughs up and incorporates in his field the strip of land dividing him from his neighbours.—*Report of the Select Committee.*

The Hon. Mr. Maudlik and the rest of the Indian members suggested that the word ‘Government’ should be inserted after the word ‘any’ in para 1 of s. 61. The arguments urged were the same as given in s. 60. The amendment was however lost.—*Proceedings of the Council of the Governor of Bombay for 1877, Vol. XVI, p. 138.*

NOTE.—ss. 33 and 39 of Bom. Act I of 1865 are repealed by Bom. Act V of 1879.

‘Any land set apart for any special purpose’ Under s. 38 of the Code only lands which are the property of Government and not in the lawful occupation of any person can be set apart for a special purpose. Therefore if any person cultivates a cart track which is not the property of Govt. but which is entered as pot-Kharab in occupied lands and prohibited from cultivation under Rule 48 of Land Revenue Rules he cannot be dealt with under

[a—a] These words were added by Bom. II of 1919, First Schedule.



s. 61 but he may be prosecuted for breach of Rule 75 (old rule 48). However the expression 'land set apart for any special purpose' is not confined to land set apart under s. 39 only. Land which has from time immemorial been used as a public road, is none the less set apart for that purpose, though this may have taken place years before survey operations took place.—*Pranlal v. Secretary of State, P. J. for 1897 p. 366*

According to the second paragraph of this section, the survey assessment for the 'entire number' is to be charged although a very small part thereof has been unauthorisedly occupied. In the third paragraph, however, the assessment leviable for such small part only is charged if the land happens to be unassessed.

**Note**—As the penalty is already provided for in para 4 of the section, the levy of the assessment of the entire survey number for occupying only a very small part of it would not only be a second punishment, but would also be against the policy of Govt. as could be seen from the recent amendments of the Code making portions only liable to the assessment (*vide* definition of 'survey Number' in s. 3 (6) of the Code).

**Retrospective operation**—S. 61 has no retrospective effect i. e. the provision cannot be enforced in respect of anything done before the Code became law on the 17th July 1879. But when unauthorised occupation of land, which commenced before 17th July 1879 and has been since continued, unless the occupier has in the mean time acquired a complete prescriptive title to the land the Collector can take action under this section. The use of the word 'shall' in the first clause of s. 61 does not restrict the application of the section to cases of unauthorised occupation which began subsequent to Bombay Act V of 1879 coming into force although the assessment may not be leviable for a period anterior to the date of the enactment. An occupation is a continuous act, and the person so occupying is none the less unauthorisedly occupying the land in and since 1879.—*Pranlal v. Secretary of State, P. J. for 1897 p. 366*

**Occupation in the sense of the amount of area which has deteriorated for purposes of cultivation or for quarrying etc.** is the area contemplated by the Act as being occupied.—*per Madgavkar J. in Sulaman v. Secretary of State, 30 Bom. L. R. at p. 432 (1927).*

**Object of amendment of para 1 in 1921**—A man took land from Govt. for 5 years. He was paying what was an adequate rent in the beginning of the 5 years but which at the end of that term was not adequate; and Govt. proposed to lease it to other people. The land was sold by auction and was disposed to the third party. But the third party could not take possession of the land, as the original occupant refused to vacate. He was ordered by the Collector to make good to Government the loss which they had sustained by his unwillingness to give up the land, of which his lease had expired. 'Eventually the matter came before the law courts and the High Court.' They ruled that owing to an ambiguity in the wording of the then existing

s. 61 Govt. could not claim any compensation. Consequently it became necessary to amend the section. (*Bombay Legislative Council Debates Vol. I, p. 927, 15-3-1921*). In short the object of amending para 1 in 1921 is to make it clear that this section applies to a case where a person having been lawfully in occupation of land unauthorisedly continues to hold over.

**Notes.**—The original draft contained words referring to rules under the Act and conditions of agreement made with the Collector. All that had to be dropped because objection was taken by the non-official members in the Council on the ground that under s. 214 Government had the absolute power of making rules which have got the force of law and over which the legislature had no control. The only conditions are that draft notifications are published in Government Gazette and that they should not be inconsistent with the provisions of the Act. It is entirely in the discretion of Government whether to accept or reject any suggestions from the public. They do not come before the Council and it is very difficult to decide whether they are inconsistent with the Act. It was further objected that giving the Collector authority to summarily evict and to summarily fine by his own interpretation of an agreement etc. is to place the other party entirely at the mercy of the executive authority. No doubt under Act X of 1876 an appeal lies to the Commissioner in Sind or to the Local Government, but it is no secret that appeals to these authorities are often replied to in a printed form "we see no reason to interfere." People refuse to be satisfied by these drastic executive orders until their cases and their evidence are heard in a Court of law in whom they have far more confidence. Therefore it is clear that the most important privilege of His Majesty's subjects, namely recourse to civil courts should not be interfered with by an amendment of the Land Revenue Code. That is a precious privilege which should not be allowed to be taken away.

It was further objected that s. 214 is followed by s. 215 in the Code. S. 214 enables the Governor in Council to frame rules under the L. R. Code. They are absolutely within the power of Government to frame and they are published only in the Bombay Govt. Gazette. They are first published as proposed draft and subsequently as final. Govt. may or may not take into consideration any objections of public. Once the rules are published finally they are considered to be known to the people concerned and they become part of the law. And under those sections any person who is guilty of the breach of any of those rules is liable to be punished under s. 215.—*Bombay Legislative Council Debates, Vol. I p. 932, 15-3-1921.*

#### PUBLIC ROADS

Under s. 37 of the Bom. L. R. Code all public roads are the property of the Govt. (i. e. of the public—*Ardeshir v. Aimai*, 31 Bom. L. R. 104) and must be taken to be in possession of the local Govt. officers on behalf of Govt. Hence a person who encroaches on such a road is guilty of criminal trespass, if the encroachment is made with such intent as is contemplated in s. 441 of the I. P. Code—*Queen Empress v. Fakirgavda*, C. R. 49 of 1888 p. 393.

The complainant built a wall obstructing a public way. Immediately after this, the accused who were members of the public, in the bona fide exercise of their right of way pulled down the wall: Held, that the accused were not guilty either of rioting or of mischief or of criminal trespass (ss.147, 426 and 447 of the I. P. Code). 39 Mad. p. 57.

Roads which are the property of Govt. in unalienated villages or unalienated portions of villages are governed by s. 61 and not roads of alienated villages unless the right of Govt. to the ownership of such roads has been reserved.—*G. O. 3199 of 12-11-1920.*

**Public Road**—There is nothing in s. 61 to exclude the public road strictly or called from its operation but the rights which the public are entitled to exercise over such road may well render it impossible for the Collector to put in force its provisions, S. 133 of the Criminal Procedure Code affords the appropriate remedy when the rights of the public over a public place or way are interfered with by an individual.—*Pranlal v. Secretary of State, P. J. for 1897, p. 366.*

**Public street**.—The practice of making encroachments on public streets to which many of the people are so much addicted should be rigidly repressed.—*G. R. 4456 of 7-8-1915 Standing Orders of Govt. in R. D. Vol. II p. 1185 (1902).*

**Survey of village sites, open spaces, roads and streets**.—The open spaces, principal roads and streets where encroachment is likely to occur should be surveyed when opportunity occurs in the principal villages in talukas.—*G. R. 4964 of 21-5-1906.*

In order to afford some check on the numerous encroachments which at present escape undetected it is desirable to execute an accurate survey of the village sites. It should however be remembered that it is necessary to allow cultivators plenty of space for stacking grass, tethering cattle and similar purposes.

The village site should be mapped out accurately showing all plots actually in the possession of private individuals while all persons claiming sites should be called on to produce evidence of title. The claims which Govt. cannot be certain of disproving should as far as possible be compromised by leasing the land for a nominal occupancy price and reasonable ground rent. Such leases of grants should be noted in the record.—*G. R. 4954 of 13-4-1911.*

It is not the intention of Govt. that their claims should be asserted over any land which is or has recently been built over, but it will be of considerable advantage to obtain an up-to-date record of all permissive uses in villages and of the actual area at present occupied by buildings or clearly shown by the presence of old foundations to have been so occupied in the past.—*G. R. 1663 of 12-3-1903.*

Where open space or portion of open ground which cannot be reasonably claimed as forming part of public road *G. R. 5965 of 20-8-1886 [Standing Orders*

of Govt. in *R. D. Vol II p. 958 (1902)*] does not apply. If it is found inexpedient to oust a person who has taken possession of land unauthorisedly the occupancy should be recognised to be his on his giving usual occupant's *Kabulayat* and paying the usual occupancy price.—*G. R. 3815 of 23-8-1887 Standing Orders of Govt. in R. D. Vol. II p. 973 (1902)*.

Open space between two bastions of an old castle-like building presumably belongs to the owner of the building. The Collector however should decide each case on its merits, under s. 37 and declare whether such open space forms part of the road or the building.

The location of a boundary under Ch. IX may not necessarily exempt a person from penalty of unauthorised occupation of land within it, if encroachment before the location could be distinctly proved. However it may not be expedient to apply s. 61 to land which had been included in an occupied number at an original or revision survey and the more so where the survey took place many years ago and the said land has been in occupation ever since.—*G. R. 3630 of 13-5-1897*.

**Village and Taluka officials are responsible for protection of public property.** In most of the taluka headquarter towns there are municipalities and the Collectors and Commissioners should see that Mamlatdars and other officials perform this duty with promptitude and efficiency.—*G. R. 3789 of 11-6-1888, Standing Orders in Govt. in R. D. Vol. II p. 978 (1902)*.

The penalty for encroachment on Govt. land including roads, as prescribed under s. 61 if promptly and fully enforced will be sufficiently deterrent.—*G. R. 44 of 4-1-1900*.

**Instructions.**—Encroachment on Govt. land within the village site can be prevented only by constant supervision and control of village officers.—*G. R. R. D. 954 of 31-1-1896*.

**Easements rights against Govt.**—The commonest easements are:—

- (1) a right of way through Govt. Land.
- (2) a right to take water from a well, nala or spring in Govt. land.
- (3) a right to take cattle to water at a well or tank or water channel in Govt. land.
- (4) a right to conduct water to one's own field through Govt. land.
- (5) a right to graze cattle in Govt. land.
- (6) a right to cut wood or gather rub on Govt. land.
- (7) a right to take earth, stones, murum, &c., from Govt. land.

To these may be added rights of light and air (*i. e.* 'ancient light,') over Govt. plots which if acquired might preclude the disposal of the Govt. land, also the right to enjoy trees which project over neighbours' land.

The interest of Govt. would suffer if local officers allowed the practices described above to grow by prescription into absolute rights without taking proper steps to prevent them.

**Easements over Govt. lands** may not be granted except (1) with the express sanction of the Govt. or (2) according to an authorising rule or order. Licenses for culverts and approaches over road land are discussed in *G. R. 2264/24 of 2-3-1924*.

**Balcony**—The Act of putting up a balcony so as to project over land lying below amounts to occupation of such land within the meaning of s. 61—*G. O. R. D. 3141 of 26-3-1919*. Collectors can permit projection of balconies on Govt. land on payment of rent—*G. R. 1834/24 of 20-4-1925*. The form of license approved in *G. R. 1834/24 of 20-4-1925* shall be used in all cases of projection of balconies over Govt. land. This form shall also be used in respect of other kinds of projections with suitable modifications. A form of license to be used by municipalities in cases of projection over municipal lands is laid down by *G. R. 1834/24 of 4-5-1927*. The cost of measurement and correction of records in cases of encroachment under s. 61 is to be borne by Govt. Where encroachments have actually been detected the fines or occupancy prices levied would cover the cost.

**Telephone poles on Govt. land**—With a view to preserving rights over Government land on which telephone poles have been erected a nominal rent at the rate of one anna per pole per annum shall be levied on telephone companies which shall be required to pay the aggregate rent due on 1st April every year.—*G. R. 2538/24 of 14th March 1929*.

**Underground pipes in Govt. land.**—Collectors are also empowered to grant permission to lay underground pipes in Govt. land for carrying water from one occupied survey number to another for agricultural purposes. An agreement in the form prescribed should be taken from the occupant.—*G. R. 7521/23 of 5-2-1912*.

**Under the Indian Electricity Act** a licensee can have only a right of use over the lands made use of by him and he cannot acquire any adverse right against Govt. If the owner of the land is a local authority and not Govt. even then it does not seem to make any difference. Having regard to the provisions of the Indian Electricity Act, the criterion to be applied to each case, in order to see whether a rent may be levied or not is to determine whether in particular case the land is dedicated to public use or not. Land utilised for roads is land dedicated to the public use and no rent is leviable. For all other land including Govt. land not only is a rent leviable for its use but also such other conditions as the owner of the land may choose to lay down may be imposed.—*G. R. ( P. W. D. ) 3989/37 of 6th May 1930*.

**Fishermen**—No charge should be levied from fishermen for the use of Govt. sea foreshore for the purpose of drying fish or nets, but a small rental should be charged if sheds or huts are erected for trade or residential purposes.—*G. R. 3003/28 of 17th March 1930*.

Silt deposited on canal banks in Sind does not amount to occupying the land within the meaning of s. 61. The depositor may be held liable to damages for trespass on land or may be prosecuted under s. 61 of Bom. Irrigation Act or s. 425 of I. P. Code.—*G. R. 5359 of 4-9-1926*.

**Planting of sheveri trees** or making of any artificial construction in the beds of rivers or nallas which form the common boundary between the British territory and an Indian State so as to prevent the current of water is an encroachment and can be dealt with under s. 61.—*G. R. 656-B of 6-2-1922.*

**Lands in possession of G. I. P. Railway and the B. B. & C. I. Railway** being Govt. property an encroachment on it can be dealt with under ss. 61 and 202.—*G. O. R. D. Nos. 1754 of 12-6-1920, 633 of 22-1-1919, 2198 of 19-3-1904, 6068 of 9-3-1904 and G. R. No. B-254 of 31-10-1921.*

**Summary eviction.**—Where the Collector is satisfied that an encroachment has taken place on portions of public roads s. 202 should be applied. Where a building has been erected on land encroached upon a notice under s. 202 should be served containing a specific instruction to remove the said building and vacate the land by a specified date which the Collector may think reasonable under the circumstances (*cf. cl. 6 of s. 61 and cl. 2 of s. 202*)—[(*G. R. 1697 of 13-3-1888; Standing Orders in R. D. Vol. II p. 976 (1902)*)].

**Proof sufficient to evict.**—When executive officers intend to evict persons in unauthorised possession they must be prepared to give evidence of Govt. title (a) documentary from the words or (b) oral that the land in dispute has been at some time or other within 60 years unoccupied, that is not in the juridical possession of any private person. Stacking of wood or grass is not tantamount to juridical possession.—*G. R. 9661 of 1-12-1896.*

**Enjoyment for a considerable time raises a presumption of ownership**—Govt. concurred in the following opinion of the Advocate General, who said as follows:—

“The decision of *Ismail Sariff v. Mahomed (those)*, (L. R. 20, I. A. 99) has no application to suits for restoration of possession brought against Government by person who has been evicted under the Land Revenue Code. But if the person evicted proves that he was in possession and enjoyment for a considerable time, a presumption of full ownership arises, which throws upon Govt. the onus of showing that the land was not private property (*vide s. 110, Indian Evidence Act*) and it would not be sufficient to rely upon the words of s. 37 (*vide Re Antaji Keshao Tambe, 18 Bom. 674 and Secretary of State v. Jaitabhai Validas, 17 Bom. 299*). It would not be necessary for the person suing to show a title of possession for 60 years.

“But in cases where the possession is not long, the state of the land before possession was taken, and the circumstances under which the possession was taken would in most cases, even where there is no entry in Govt. records be sufficient to show whether the land was private property or not;”—(*G. R. 1873, of 27-2-1896*) but see the ruling in *Vatsa v. Secretary of State, 23 Bom. L. R. 238* below.

**Sixty years of continuous possession** in the open assertion of an adverse title would, therefore, be necessary to bar the Secretary of State in Council

from recovery of possession.—“*G. R. No. 728 of 28-1-1891 Standing Orders of Govt. in R. D. Vol. II p. 978 (1892) and G. R. No. 3274 of 12-5-1891.*”

Peaceable enjoyment without interruption for sixty years may convert such practices into rights as against Government.—(*G. R. 1376 of 24-2-1892) Standing Orders of Govt. in R. D. Vol. II p. 1274.*

**Burden of proof**—A gabhan (house site) which was waste or vacant came into the possession of the plff. in 1898, who immediately afterwards built a house upon it. In 1915 the Govt. claiming the gabhan as theirs ordered the plff. to pay the rent local fund cess and fine; he was also ordered to pass a lease or to give up possession of the gabhan. After having appealed unsuccessfully to the revenue authorities the plaintiff filed a suit in 1917 for a declaration that the site was of his ownership, and that the orders passed by Government officers might be cancelled. The trial judge having dismissed the suit he appealed to the High Court. Macleod C. J. following the decision in *Secretary of State for India v. Chellikani Ramarao*, 39 Mad. 617 (1916) *Acik*: In the Madras case their Lordships of the Privy Council said “Nothing was better settled than that the onus of establishing title to property by reason of possession for a certain requisite period lies upon the person asserting such possession. It is too late in the day to suggest the contrary of this proposition. If it were not correct it would be open to the possessor for a year or a day to say ‘I am here; be your title to the property ever so good, you cannot turn me out until you have demonstrated that the possession of myself and my predecessors was not long enough to fulfil all the legal conditions.’ Therefore it seems to me that there is no force in the argument that s. 110 of Indian Evidence Act must be applied and that because the plaintiff showed he had been in possession for a period of twenty years, the onus was then thrown on the Secretary of State of proving that the plaintiff was not owner. That would be, as far as I can see, going directly against the dictum of the Privy Council I have just referred to. The Secretary of State is able to show by the general law that he is the owner of the land in question and in order to oust him the plaintiff in this case has to prove that either he has got a title better than the title of the Secretary of State or that he has obtained a title by adverse possession, that is to say, by possession for sixty years.—*Vasta v. Secretary of State*, 23 Bom. L. R. 238 (1920) see this case at p. 125 ante.

Collectors and Assistants and Dy. Collectors when dealing with cases of unauthorised cultivation may remit such portion of the assessment chargeable as may appear to them in view of the circumstances to be reasonable and desirable.—*G. R. 1635 of 30-3-1889; Standing Orders of Govt. in R. D. Vol. p. 967 (1892).*

Crops are liable to forfeiture under s. 61 so long as they are standing on the land and their value cannot be recovered after their removal from the land.

The assessment leviable under s. 61 (s. 33 of the Survey Act) is liable to the one anna cess but not the excess which may be imposed as a fine.—*G. R. 1007 of 1-3-1871.*

**Limit of fine under s. 61.**—The limit of fine to be levied under s. 61 when land is unauthorisedly occupied and used for any non-agricultural purpose shall be double the amount of the fine that would be leviable under s. 66 and rule 100 if the same land being in lawful occupation had been used by the holder for the same purpose without the permission of the Collector. Provided that a fine upto Rs. 100 may be levied in any such case irrespective of the area of the land involved.—*Rule 103 (see Appendix A for Rules).*

**The fine to be levied under s. 61 depends on area of unauthorised occupation.**—Where the plaintiffs held a plot of land measuring about 40 or 50 acres bearing a certain s. number for agricultural purposes and where they had dug pits in an area of 4 to 9 acres of that survey number and had quarried lime stones without the permission of Govt. the District Deputy Collector having held an ex-parte enquiry and having imposed a fine (which the Collector reduced on appeal) the plffs. filed a suit for a declaration that they were not liable to pay the fine imposed upon the land and for an injunction restraining the Secretary of State from recovering the amount of the fine from them. The trial Court having held that it had no jurisdiction to entertain the suit as regards the amount of assessment and that the suit was barred under Art. 14 of the Indian Limitation Act Madgavkar J. ruled in appeal as follows: 'As regards the area it appears that out of 40 to 60 acres. of which the Gaucharan consists the amount of fine has been assessed on 14 acres 15 gunthas. As to the actual area of the pits the evidence varies from 4 acres to about 9 acres. The real question really is as to the area of unauthorised occupation. On the one hand, it need not be confined to the bare area of the pits nor, on the other, can it be extended to the entire area of the survey number. Occupation in the sense of the amount of area which has deteriorated for purposes of cultivation or for quarrying is the area contemplated by the Act as being occupied. In the present case there was undoubtedly unauthorised excavation in what was admittedly Govt. land we do not think that it can be said, as was said in *Vasta v. Secretary of State*, 23 Bom. L. R. 238 (1920) that the basic elements necessary for an order under s. 61 of the L. R. Code were wanting or that the Collector was acting *ultra-vires* or illegally. The suit was barred under Art. 14 and the appeal was dismissed.—*Sulleman v. the Secretary of State for India*, 30 Bom. L. R. 434 (1927).

**Remission of fine**—The Collectors have full discretion to remit fine under this section.—*G. R. 4347 of 25-6-1092.*

**Fines how to be credited**—Forests, Municipalities, Railway Companies, Public Depts. and all other Departments cannot claim credit for fines whenever they invoke the assistance of the Revenue Dept. under s. 61 to deal with encroachments and invasions of their land. Therefore, it is not necessary to



credit the fines to the various departments in the interest of which the action was taken when an unauthorised occupation is dealt with under s. 61 by fine. (usually accompanied by eviction.) but the fine should be credited to miscellaneous land revenue.—*G. O. 7957 (R. D.) of 12-7 1919. See Civil Account Code Vol. II Appendix P.*

**When is a suit against Govt. before expiry of two months from the date of notice valid**—The plaintiff owned a house in front of which there was an open piece of ground. He erected padvi (a covered verandah) over the land. The Assistant Collector thereupon gave a notice to the plaintiff under s. 202 of the L. R. Code to demolish the padvi alleging that the land belonged to Govt. The plaintiff gave notice of suit under s. 80 of Civil P. Code. Soon after this the Mamladar threatened to demolish the padvi. The plaintiff thereupon filed a suit against the Secretary of State praying for a declaration that the piece of land belonged to him, and for a perpetual injunction restraining the defendant from interfering with his enjoyment. The Lower Court having decided in favour of the plaintiff an appeal was lodged by the Secretary of State to the High Court. Batchelor J. held: It was not incumbent on the plaintiff who had sued for a declaration to pray also that the order made by the Assistant Collector under s. 202 should be set aside for the reason that the said order was made without jurisdiction and was in law and in fact a nullity if the land was as is held by us the private property of the plaintiff. [see the case of *Surraana Devappa Hegde v. Secretary of State for India*, 24 Bom. 485 (1900) and the observations of Mr. Justice Batty in the case of *Bulwant Ramchandra v. Secretary of State for India*, 29 Bom. 480 (1905)]. On the question whether the suit was bad for want of due legal notice the High Court held in the negative and observed: "The object of s. 80 is to enable the Secretary of State who necessarily acts usually through agents, time and opportunity to reconsider his legal position when position is challenged by persons alleging that some official order has been illegally made to their prejudice (See the observations in *Nagindal v. the official assignee, Bombay*, 37, Bom. 243 (1912)). If, then, that is the object of the section which in terms allows a private litigant to sue the Secretary of State for redress, it appears to me undesirable to extend the meaning and scope of the section so as to produce this result, that although a private person is empowered to sue the Secretary of State after two months' notice, yet the Secretary of State's agent during the currency of two months is to be permitted to destroy the material object which is the very subject matter of the suit. In my opinion to place this construction upon s. 80 is to attribute to the legislature an inconsistency which ought to be avoided. In reading the section as I now read it, it appears to me that full effect is given to its object and intent, while the opposite construction leads directly to inconsistency and injustice. It is small gain to private person to enact that he may have redress against a defendant after two months' notice if, during the currency of two months, the defendant is allowed to make redress impossible. The right of suit, which is expressly granted by the Legislature, cannot, in reason, be deferred until

its exercise has become illusory. This view has the support of the observations recorded by Mr. Justice Chandavarkar and Mr. Justice Heaton in the case of *Secretary of State v. Gajanan Krishnarao*, 13 Bom. L. R. 273 (1911); 35 Bom. 362, 365.—*Secretary of State v. Gulam Rusul*, 40 Bom. 392; 18 Bom. L. R. 243 (1916).

### RIGHTS OF GOVT. AS AGAINST MUNICIPALITY

**Beds or banks of public streams** within municipal limits if encroach upon can be dealt with under s. 61. The reason is that though under s. 50 (2) (b) of the Bombay District Municipal Act, 1901 and s. 63 (2) (b) of Bom Act XVIII of 1925 all public streams and tanks are vested in the municipality, as a stream means a current of water 'public streams' do not include either the banks or beds of such streams.

'Public tanks' however include the beds and any adjacent land appertaining to the tanks—(*G. R. 6111 of 9-9-1887*) and under s. 17 of Bom. Act VI of 1873 (now s. 50 (2) (b) of Bombay Act III of 1901 and s. 63 (2) (b) of Bom. Act XVIII of 1925) they vest in and belong to the Municipality and such beds or land are not liable to assessment when cultivated or otherwise used.—*G. R. 6111 of 9-9-1887*.

**Roads** within Municipal limits which are made over to a Municipality are not governed by s. 61.—*G. R. 447 of 17-1-1912*.

**Note**—For a full discussion of the rights of Municipalities as against Govt. see notes under s. 37 supra at pp. 127-130.

### SCOPE OF S. 61 AND ALIENATED LANDS OR VILLAGES

**S. 61 does not apply to alienated villages or lands.**—*G. R. 10386 of 16-11-1910*.

**The rights of an Inamdar**—When land has been transferred in so far as the rights of Govt. to payment of rent or land revenue are concerned wholly or partially to the ownership of any person the Collector cannot interfere to protect the rights of the transferee by evicting the unauthorised occupier summarily under s. 61. But the effect of this provision of the law is only to exclude the interference of the Collector in cases where the rights encroached upon have been transferred to an individual, who may enforce them, or make other arrangements with the trespasser. The alienee must, if he wishes to enforce those rights proceed by civil suit, for even under s. 88 of the L. R. Code no power can be conferred upon him to exercise the powers of a Collector under s. 61 though s. 88 enables powers under ss. 65 and 66 to be conferred by Commission, *expressio unius est exclusio alterius*. The powers of summary eviction conferred by s. 61 on the Collector extends not only to unalienated lands, but also to land set apart for any special purpose, whether it be alienated or not. That is to say, the Collector cannot interfere summarily to protect the interests of an individual; but he can do so in the interests of the public to preserve from unauthorised occupation land appro-

printed to special purposes. Land can only be 'set apart', under the Code for certain purposes in unalienated villages, when it is the property of Govt. and unoccupied. The wording of s. 61 'set apart for any special purpose' is not limited in its application to assignments under the Code for the special purposes enumerated in s. 39, but would give the Collector the power to protect against unauthorised occupation of any land lawfully set apart whether under the Code or not for any special purpose.—*G. R. 3225 of 25-6-55.*

**Rights of Inamdar and roads, by-ways, etc.**—Land which prior to the alienation of a village had been dedicated by the State as high road would certainly not pass to the alienee by a subsequent grant even of the soil of the village, but the dedication would survive for the benefit of the public. Unauthorised occupation, even by the alienee of land so set apart, could be dealt with by the Collector under s. 61, notwithstanding that the village including all the lands thereof were alienated. But whether or no an encroachment on a road in existence prior to the alienation could be dealt with by the Collector under s. 61 of the Bom. L. R. Code, there can be not the slightest room for doubt that it could be dealt with under s. 133, Criminal Procedure Code, if it amount to an unlawful obstruction of a way, which is, or may be, lawfully used by the public.

A public road forming part of the general system of communication is a matter of imperial interest, and is therefore protected by imperial legislation and no one has a right to obstruct any part of that system. But, before taking any magisterial action under the Criminal Procedure Code, it would be necessary to ascertain that the road in question was really a public road and not merely a private way, or a cart track, the use of which might be permissive only, or limited only to a section of the public resident in the neighbourhood.

If the road is unquestionably a public road, that is dedicated to the use of the public the date of its dedication would, for the purposes of s. 133, Criminal Procedure Code, be immaterial.

If it is a road which pre-existed the grant of the village, the Collector could take action under s. 61 to protect it from unauthorised occupation as land set apart.

But if it is only a by-way used for village traffic alone and only since the alienation of the village, then action could not be taken under s. 133 of the Criminal Procedure Code, and certainly not under s. 61 of the Bom. Land Revenue Code.

The mere fact that the Inamdar was not owner of the soil of the village would not preclude him, or any one with his permission from occupying, without waiting for authority under s. 60, any land in the village on which the public had not a superior claim for special purposes.—*G. R. 3337 of 3-6-1890.*

In cases of encroachment on Gurcharam or lands assigned for special purposes in alienated villages the Collector cannot take steps under this

section inasmuch as s. 61. is not applicable to alienated villages or lands, However the Inamdar may proceed in a Civil Court.—*G. R. 5205 of 25-6-1885. Standing Orders of Govt. in R. D. Vol. II p. 979. (1902)*

**The rights of an Inamdar how far affected by ss. 61 and 38.**—The plaintiffs, who were the Inamdars of certain land, sued for a declaration of their ownership in and of their right to cultivate (a) two plots of land which (they alleged) formed part of their Inam, (b) the bed of a stream which flowed through their land. It was contended for the defendant as to these two plots of land that the plaintiffs had no right to cultivate them, as they had been made a part of a village site, and on that understanding they had not been numbered at the survey in 1863 and had been exempted from assessment for twenty years. As to the bed of the stream it was contended that the stream was a public stream, and that the bed of the stream as it dried up belonged to Government and not to the plaintiffs.

It was held by the lower appellate Court that s. 61 of the Bom. L. R. Code, 1879 applied; that Government were competent to sell apart a portion of the lands comprised in the sanad of the plaintiffs for a village site, and that as these lands had not been numbered at the survey of 1863, and had been exempt from assessment for more than 20 years, the plaintiffs had lost their right to cultivate them.

On appeal the High Court, *held*, (reversing the decree of the lower Court) that the plaintiffs were entitled to the declaration prayed for.

*held*, also (1) that s. 61 the Bom. L. R. Code did not apply. That section relates back to s. 38 and both refer only to lands the property of Govt. in unalienated villages or unalienated portions of villages. They do not empower the Govt. to confiscate any land belonging to an Inamdar and to confer it on the persons living in his village.

(2) That the mere omission to number the plots of land could not have the effect of turning them into a part of the village site, or take away the right of the plaintiffs. Nor did the omission of Government to assess these lands deprive the plaintiffs of them or make them the property of Govt.

(3) That the bed of the stream was the property of the plaintiffs, who owned the land upon its banks.—*Vinayakrao v. Secretary of State, 23 Bom. 39 (1897).*

[a] 62. It shall be lawful for the Collector subject to such rules as may from time to time be made by the Governor in Council in this behalf, to require the payment of a price

Unoccupied land may be granted on conditions.

[a] As to the local repeal of sections 62 and 63, see para. 5 of footnote [a] on p. 1, *supra*.

Sections 62 and 63 were substituted by Bom. IV of 1913, ss. 21 and 22, respectively, for the original sections.

for unalienated land or to sell the same by auction, and to annex such conditions to the grant as he may deem fit, before permission to occupy is given under section 60. The price (if any) paid for such land shall include the price of the Government right to all trees not specially reserved under the provisions of section 40, and shall be recoverable as an arrear of land revenue.

### Commentary

Lands may be granted without payment of occupancy price to *kolis* and other wild tribes in jungle tracts of Khandesh, Nasik, Amedabad, Surat and Konkan, on condition that the grantee shall not transfer the same to another person.—*G. R. 6210 of 22-8-1883 and 1944 of 1875; G. R. 6907 of 1887.*

Lands given out on non-transferable tenure should be mentioned by the district officers in Administrative Reports.—*G. R. 1697 of 12-3-1907.*

Grants of land revenue free to Govt. servants should be made sparingly and only in cases of exceptional services or very special hardships.—*G. R. 9524 of 6-12-1921.* Also in the case of grants free of occupancy price.—*G. R. 9524 of 9-1-1924.*

A brief summary of Rules providing for disposal of Govt. land is given under s. 37 at pp. 144 to 147. The Rules are given in full at the end in Appendix A. However the following rules made regarding grant of lands for different purposes are important:—

Rule 32 states that land may be given free of price and free of revenue in perpetuity or for a term for certain purposes by certain authorities stated therein.

Rule 33 enables the Collector to sell lands revenue free within certain value to a private person for a private purpose and in certain cases with the sanction of the Govt. of India.

Rule 34 describes grants made in the Dharwar district to Shet-Sanadis for remuneration.

Under Rule 35 the Collector may exempt from payment of land revenue lands used for sites of hospitals, schools etc.

Rule 37 states that an unoccupied survey number not assigned for any special purpose may be disposed of by the Collector either by public auction or otherwise as he may deem fit.

Rule 38 states that such survey number (described under Rule 37) if not already assessed should be assessed before it is disposed of.

Rule 39 empowers the Collector to grant such survey number revenue free for a certain term or at reduced assessment.

Rule 40 deals with the grant of salt-marsh lands for reclamation.

Lands in beds of rivers may be leased by the Collector annually by auction under rule 41.

Grant of land for non-agricultural purposes such as building purposes for a certain price etc. and the conditions of grants of building and for land intended for future building sites and in hill stations or for establishment of entirely new village sites or for substitution of new village sites for old ones are described in Rules 42, 43, 45A, 44, 45, 46 and 47. Special Rules are made for certain city surveyed areas. They are Rules 48 to 54.

Building sites on restricted tenures in suitable cases may be granted.—*G. R. 2682 of 15-3-1909.*

Govt. think it desirable under G. R. 8708 of 28-9-1910 that the power to grant permission to holders of land on unalienated tenure to lease or mortgage the same, should remain entirely in the hands of Collectors and such Sub-Divisional officers as they may think fit to exercise it.—rarely, if ever should the authority be dedicated to Mamlatdars. Under the same G. R. (*No. 8708 of 28-9-1910*) Govt. have directed that in the case of more intelligent classes to whom lands are granted on non-alienated tenure but where restrictions on alienations seem unnecessary they may be removed on application of the individual concerned and on payment of the difference if any between the price actually paid for occupancy on the non-alienable tenure and the amount that could in the Collector's opinion, be a reasonable price for occupancy on ordinary tenure.—*G. R. 8708 of 28-9-1910.*

In the case of grant of lands to criminal tribes for agricultural purposes and for building sites revised forms of leases given in the Appendix should be used.—*G. R. 4702/24 of 15-2-32.*

In the matter of military rewards in the forms of grants of lands or assignments of land revenue the Govt. of India has directed as follows:—

It was the intention of G. R. in *M. D. 867-B of 27-2-1893* that a grant of land to Indian officers for distinguished military services should be subject to the payment of full assessment from the time the grantee is put in the possession, subject only to the limitation that the maximum annual value is Rs. 400 clear. ('annual value' means clear annual income when the land is developed upto the standard of similar land in the neighbourhood. 'Clear annual income' in its term means the estimated cultivating profits from such land as is retained by grantee in his own hands and is not let out to tenants.) While the Govt of India prefer the rule that land grants should be subject from the first to the payment of the full revenue assessment as possessing the desirable element of finality and freedom from complications they see no objection to the grant of land free of revenue or at a reduced assessment in case where such a course is considered desirable, provided that the following conditions are observed:—

- (a) The amount of the revenue concession is included in the annual value of the grant.

(b) that the period of the revenue concession is limited; this period should be the life time of the grantees or 20 years whichever is longer.

(c) that if the grantees alienate the land, it, or the part alienated, shall immediately become liable to the full revenue demand.

No modification should be made in any grants which may have already been made on terms not in accordance with these principles.—*G. O. R. D. 2918 of 12-10-1920.*

Concession in the matter of grant of lands to recruits should not be given except under orders of Govt.—*G. O. 179 of 18-1-1921.* Grant of waste land to depressed classes for cultivation and building purposes may be liberally made under *G. R. 2087/24 of 24-8-1924.*

Grant of land to Indian soldier or Military pensioner involving concessions could only be made with the approval of Govt. and provided that the Govt. of India compensates the local Govt. for the concessions. The Collector should previously ascertain from Military authorities concerned whether the Govt. of India would be prepared to compensate the local Govt. in that particular respect (*G. S. 1413/24 of 13-3-1925*). Jangi inam grantees should not be allowed to sell, mortgage or otherwise permanently alienate the lands given to them as inam. These grantees may however be permitted to lease their lands for a period not exceeding ten years.—*G. R. 1234/28 of 23-11-1928.*

Co-operative societies may be granted land free of occupancy price when a public purpose is to be fulfilled.—*G. R. 2249/24 of 24-4-1925.*

When land is granted on lease a fixed amount as rent should be mentioned and the amount of local fund dues should be calculated on it. To insert in the lease a clause that the rent will be levied from time to time on the basis of assessment may be void for uncertainty (*cf. 11-Mad. 20*)—*G. R. 4702/24 of 4-1-1927.*

The communities of a particular place or Hindu castes in India have been recognised by Courts as capable of acquiring rights to property as if the members thereof had formed a corporation owning civil rights Properties are purchased for them and by them.—*Cf. G. R. 2014/24 of 4-1-1927.*

Grant on impartible tenure—Government have approved the principle of granting Govt. waste lands on impartible tenure in the Presidency proper and Sind (Barrage and non-Barrage areas). However these orders do not apply to grants of lands for non agricultural purposes or to lands in village sites.—*G. R. 4702/24-III, of 12-3-1931 and 6-10-1931.*

Land granted on impartible tenure for agricultural purposes may subsequently be converted to non-agricultural use. When such conversion is allowed the portion used non-agriculturally should be formed into a separate survey number and freed from the condition of impartibility.—*G. R. 4702/24-III, of 19-9-1931.*

Intimation to Railway administration.—In the case of Govt. waste land situate within 50 feet of a transmission line owned and operated by a Railway administration prior intimation of any proposal to dispose of the land should be given to that administration so as to allow it an opportunity to acquire the land if it so desires.—*G. R. 1396/28 of 15-4-1929.*

Whether Commissioner can insist on payment of occupancy price when the Collector by an invalid grant gave unoccupied land free from occupancy price.—Capt. Nulkar had rendered certain war service, and in 1919 he applied to the Govt. for a grant of certain lands. On May 21, 1919 the Collector of the District of East Khandesh, made an order, granting him the lands in question, subject to conditions. These were (a) that the lands should be held free from payment of occupancy price, and (b) that the lands should be free of assessment till they were brought under cultivation. The lands were Govt. lands within the meaning of s. 35 of the Code. Capt. Nulkar

kar duly entered into possession of them and spent money in developing the land. On December 6, 1921, the Commissioner made an order, directing that the proper occupancy price according to the full market value of the lands on the date when the grant was originally made—*vis.*, May 21, 1919,—should be recovered from Capt. Nulkar, and that the ordinary land revenue (consolidated) should be recovered from the year 1919-20. Capt. Nulkar paid the assessments, but not the occupancy price: and in consequence the Assistant Collector, on August 29, 1922 made an order forfeiting the occupancy holding of Capt. Nulkar. He was evicted from the lands on Sept. 11, 1922. The Govt. thereupon resumed possession of them, and made a fresh grant of the occupancy rights in the lands to one Abdul Razak, on November 1, 1922. It falls to be added, that, on July 26, 1929, Capt. Nulkar had made a gift of the lands in suit to his deceased wife. On August 27, 1923, Capt. Nulkar and his wife instituted a suit before the District Judge of Khandesh against the Secretary of State for India. Their plaint *inter alia* contained a claim to recover from Government possession of the lands in dispute. That plaint manifestly postulated a title in them to these lands. The District Judge decided in favour of the Secretary of State and dismissed Capt. Nulkar's suit. He held that that the Collector's order was *ultra vires*, and that the Commissioner had under a 211 of the Code, power to revise the order. On appeal the High Court of Bombay were equally divided that Beaumont C. J. being of opinion that the appeal succeeded and Baker J. being of opinion that the appeal failed. Thereupon they referred to the third Judge (Blackwell J.) the following questions for decision:—(1) Whether the order of the Commissioner of December 6, 1921, was valid? and (2) Whether the order of the Assistant Collector, dated August 29, 1922, was valid? The learned Judge answered both questions in the negative. He decided in favour of Capt. Nulkar and pronounced a decree to that effect. Against that decree an appeal was taken to the Privy Council.

Their Lordships of the Privy Council thought that the controversy between the parties could be solved once the following question was answered:—Was the order of the Collector dated May 29, 1919 a valid order? There could be no doubt that the title of the respondents—and, indeed, their sole title to the lands in suit—depended on the validity of the order. The reference to Blackwell J. entirely ignored the validity or otherwise of the Collector's order. Their Lordships observed: "The grant was admittedly made under the Ben. L. R. Code. Rule 19 of that Code which was in force at the time, and which corresponds to Rule 30, (*see Appendix A for Rules*) which is now in force admittedly governed the transaction. That Rule it will be observed, requires, as a condition of the lawfulness of the grant by the Collector, that the previous sanction of the Commissioner should be obtained, provided that, as is the case here, the assessment on the land in the grant exceeds Rs. 100. Now, no one pretends that sanction was in this instance obtained. It would seem inevitably to follow that the grant made by the Collector was an invalid grant. Their Lordships find it impossible to accede to the view that the grant was partially bad and partially good—that is to say, that it was bad as regards freedom from assessment, but good as regards occupancy price. In their Lordships' opinion, the grant must be treated as a whole, and, if a part is bad, the whole is bad. Thus the respondent's (Capt. Nulkar's) title to the lands disappears.

That is, in their Lordships' opinion, sufficient for the determination of the appeal. But, as they have formed a clear opinion on a second contention by the appellants, they do not hesitate to express that opinion. That contention is of this nature. The appellants point out that the Commissioner, under a 211 of the Code, was entitled to modify, annul or reverse the order of the Collector. The relevant part of that section is in these terms:—



"If in any case it shall appear to the Governor in Council, or to such officer aforesaid (the officer includes the Commissioner) that any decision, or order, or proceedings so called for should be modified, annulled, or revised, he may pass such order thereon as he deems fit." The amplitude of the powers conferred on the Commissioner by that section is striking. Now, the order of the Commissioner purported to modify the order of the Collector. In their Lordships' opinion, it effectively did so. The order *inter alia* directed "that the proper occupancy price according to the full market value of the land on the date on which the grant was originally made—should be recovered from Capt Nulkar, and the ordinary land revenue (consolidated) should be recovered from the year 1919-20". The Collector had given the first respondent the lands in suit, on certain conditions. The Commissioner decreed that the first respondent should continue to occupy the lands, but he varied the terms of occupation. If this be not a modification of the Collector's order, their Lordships are at a loss to apprehend the import of what the Commissioner did. Their Lordships entertain no doubt that the Commissioner's order fell within the powers conferred upon him by s. 211. Accordingly, even if contrary to their Lordships' opinion—the Collector's order was valid, it was competently modified by the order of the Commissioner. In this view, the first respondent, therefore, who failed to implement the Commissioner's order and who was subsequently evicted from the lands, had no right to claim the possession which his plaint postulates. In short, their Lordships are of opinion that the respondents have failed to qualify such a title as would enable them to maintain this suit. On this ground also the case for respondents, in their Lordships' opinion, fails."—*The Secretary of State for India v. Anant Krishnaji Nulkar*, 36 Bom. L. R. 242 (1933) [P. C.]

[s] 63. When it appears to the Collector that any alluvial land, which vests under any law Grant of alluvial land vesting in Government. for the time being in force in Government, may with due regard to the interests of the public revenue be disposed of, he shall offer the same to the occupant (if any) of the bank or shore on which such alluvial land has formed.

The price of the land so offered shall not exceed three times the annual assessment thereof.

If the said occupant shall refuse the offer, the Collector may dispose of the land without any restrictions as to the price to be asked.

For the purposes of this section, notwithstanding anything contained in section 3, if the bank or shore has been

[a] As to the local repeal of sections 62 and 63 see para. 5 of foot-note (a) on p. 1. *supra*.

Sections 62 and 63 were substituted, by Bom. IV of 1913, ss. 21 and 22, respectively, for the original sections.

mortgaged with possession, the mortgagor shall be deemed to be the occupant thereof.

### Commentary

**History**—According to the old law whenever there was some lawful accretion, it became at once attached to that portion of the property to which it was an increment. The law as laid down in 1879 recognised that it would be advantageous that the accretion should become a part of the original property. But then it would be liable for payment of price. It should be given over to the person to whose property the accretion has taken place. It would be the proper principle to minimise the conditions under which the land is severed from the original plot.

**Effect of amendment**—The last paragraph *i. e.* the words "for the purposes of this section.....to be the occupant thereof" were added by the Amending Act of 1913. The exact effect of that is that for the purposes of s. 63 *i. e.*, for the disposal of the alluvial land in accordance with the terms of that section, notwithstanding the definition of occupant which comes in s. 3 (16) if the bank or shore is mortgaged the mortgagor shall be deemed to be the occupant. He therefore has the right of first bid; the effect of that will be that the mortgagor, if he wishes can take possession of the land; then if he wishes, he can proceed to mortgage it again to the mortgagee in possession. The spot he will take and retain it in his own possession until he has redeemed the property which he has already mortgaged.

**Tenant whether permanent or otherwise**—It is the occupant [s. 3 (16)] and not the tenant who is entitled to alluvial land under s. 63. A permanent tenant is merely a tenant and not an occupant. In *Kouli v. Vithalrao*, 28 Bom. L. R. 424 (1925) it was made clear that a permanent tenant is a tenant and not an occupant.—*G. R. 8268/28 of 25 2-1932.*

**Scope**—This section provides for the disposal of the occupancy of such alluvial or water-forsaken lands as under the provisions of the Code (s. 37) vest in Govt. The object of this section is to secure to the neighbouring landholder, in consideration of the river frontage he would otherwise lose, right to purchase occupancy of the new land at a price not exceeding three times its annual assessment. (*Report of the Select Committee on the Land Revenue Code Bill*).

"Under any law for the time being in force,"—These words occurring in ss. 63, 46 and 37 are vague, since so far as is known there is no such law in force except the case law and some special Municipal and Port Trust enactments outside Bombay island.

**Alluvion** means strictly gradual, slow and imperceptible (imperceptible day by day as it occurs but of course perceptible enough in the long run — *Halsbury's Laws of England*, Vol. 28 p. 362) accretion by deposit of fresh soil by water upon existing riparian land.—(*Justinian and 3 Beng.*

*L. R. p. 325 (1870)*]. Sand blown by the wind or a mass of shingle suddenly flung up after a storm or new land left bare by a receding sea or a diverted river is not alluvion but derelict land. Nor would the deposits in a river bed which raise their surfaces above the hot-weather water-level be treated as alluvion in respect of a holding terminating on the upper edge of the steep bank of a river high above the deposit. There is physical connection between them to which the term 'accretion' would be applicable.—*Narendra v. Achhobar* 27 All. 655; *Ritraj Kunwar v. Sarfarez Kunwar*, 28 All. 647. This condition of gradual change does not attach to diluvion.

In the case of alluvion there is a limit (in the case of unalienated land) of one acre to his right of free enjoyment and no limit of his right of occupation of alluvion subject to the payment of revenue. Conversely this seems to imply no title to exemption from revenue when the extension is alluvial. In the case of an alienated riparian holding, it has first to be decided whether the alluvion or abandoned shore or river bed, or new island, does vest legally in the Inamdar. It has been (7 Bom. L. R. 872) held not so to vest unless his original grant had covered the area now reformed or reappeared (since such grants are construed strictly against the grantee). Again *G. R. 744 of 1919* rejects the view that the alluvion formed in place of old diluvion on the site of an Inam grant, becomes Inam: but no reasons are given and the order has not been confirmed by any legal decision. S. 46 does not confer any proprietary right on the Inamdar, but simply refers us to the general law. New islands not 'formed on any bank or shore' and other alluvion not proved to vest in an Inamdar would fall under s. 63. Abandoned river (creek or sea) beds if not vesting in an Inamdar would also vest in Government on becoming dry under s. 37 not as the "bed of the sea, etc." "but as all lands etc." Such lands or any alluvion for which no riparian rights [for rights of fishing in the sea, see *Buban v. Napa*, 2 Bom. 19(1876) for the enjoyment of water by riparian owners see *Assistant Collector of Nasik v. Shanji* 7 Bom. 209; but all riparian lands are not assessed for water advantages] are asserted or desired to be retained of course become Government unoccupied land and are dealt with under the rules for such land. The Code gives no power to frame rules for alluvion but only for diluvion; and does not deal with the proprietary right but only with the liability to pay land revenue (or quit rent and salami, if alienated). It was held in *G. R. 8011 of 1912* that alluvion artificially formed upon alienated land cannot be granted as Inam. This seems to conflict with *G. R. 12383 of 1919*.

SS. 63 and 64 are rather restrictions or limitations on the rights of occupants under the general law of alluvion.—It is sometimes assumed that alluvial accretions *prima facie* vest in the crown (*i. e.* in the public) and that ss. 46, 63 and 64 of Bom. L. R. Code provide for mere concessions allowed to land holders. On the strength of such assumption it is often urged that the landholders should not be allowed to take advantage of an unearned increment.

Alluvion, however, or the mode of acquiring property by means of accretion has been generally recognized in all systems of law in civilized countries (40 Mad. 1099 at p. 1099). It has been well settled in England that alluvial accretions belong to the owners of the land to which they adjoin. In tidal and navigable waters, however, if such formations are on the bed of the river or the shore of the sea which vest in the Crown, they would belong to Government (39 Mad. 617), while in non-tidal and non-navigable rivers they belong to the riparian owner (13 Mad. 369, 41 Mad. 840). The necessary condition for the acquisition of property by alluvion is that it must be by gradual, slow and imperceptible degrees. The same principle has been followed in India, although in application thereof physical and geographical conditions prevailing here have been taken into account (13 Mad. 369). Accordingly it has been held that the recognition of title by alluvial accretion is largely governed in this country by the fact that the accretion is due to the normal action of physical forces. In the English rule, *viz.*, that it must be gradual, slow and imperceptible, the two last words are only the qualifications of the word 'gradual' (45 Mad. 207). The principle of alluvion has been also made part of the written law in this country. (*viz.*, Bengal Regulation IX of 1825, and said Alluvion and Diluvion Rules.) It was also the basic principle on which Sir Whitlay Stokes framed his Alluvion and Diluvion Bill (I of 1878), which never passed into law. The ordinary principle of alluvion has been well recognized by the framers of the Land Revenue Code. Section 46 is framed on the assumption that alluvial land, etc., vests in the holder of alienated land, and provides for its liability to land revenue. The words 'under any law for the time being in force' are no doubt vague and probably had reference to Stokes' Alluvion and Diluvion Bill (I of 1878) which was before the Government of India when the Land Revenue Code was passed. As stated above, the said Bill was based on the general principle of the Law of Alluvion by which an adjoining owner is *prima facie* entitled to the accretion in preference to others. S. 63 which provides for the grants of alluvial land is limited to such alluvion as vests in Government. The only statutory provision of law which gives Government any right to alluvion is s. 64. It refers back to s. 63 and both the sections read together refer to alluvial land adjoining unalienated land. The use of word 'occupant' in both the sections shows that they relate to alluvion subtending unalienated land.

There is, however, nothing to show that an occupant would not have been entitled under the general law to alluvial accretion to his occupancy. An occupant under the Land Revenue Code no doubt is not the full or absolute owner of the land, but nevertheless has permanent, transferable and heritable right in his occupancy. This is sufficient to entitle him to claim alluvial rights. A copy-holder in England is entitled to alluvial accretion to his copyhold estate (*Coulson and Forbes on Waters*, p. 101). The same principle has been followed in India, and it has been laid down that the person who holds interest of same permanent nature in the land and who is not merely a tenant is entitled to alluvial accretion (*Ghose's Law of Alluvion*, pp. 245-255).

The fact that occupancies under the Land Revenue Code are surveyed and hence their boundaries fixed and defined will not be material (40 *Mad.* 1083 at p. 1197). It therefore appears that ss. 63 and 64 are in the nature of limitations or restrictions on the general law of alluvion, and do not grant any concession to which an occupant would not have been entitled under the general law. The Courts, therefore, would be inclined to view ss. 63 and 64 as restrictions or limitations on the rights of occupants under the general law so far as formations in non-tidal and non-navigable waters are concerned and would probably construe the sections more favourably to them.

*V. B.*—The law of alluvion is discussed under s. 46 at pp. 201-204.

**Alluvial accretion**—1. Whether a particular accretion is alluvial or not is a question of fact in each case. Certain general propositions, however may be stated for the determination of this question—

(1) In order that an accretion may be alluvial it must be slow and gradual and not caused by sudden alteration of the course of the river or by violent avulsion (1915 *A. C.* p. 599 as interpreted in 40 *Mad.* 1083; 27 *All.* 647).

(2) It is immaterial whether the accretion is produced or accelerated by artificial means, provided—

(a) The artificial means are lawfully employed by the owner (13 *Mad.* 369); and

(b) the artificial means are not employed solely for the purpose of causing accretion (1915 *A. C.* p. 599 at pp. 615-616; 13 *Mad.* 369 at pp. 377 and 378).

(2) A gradual and imperceptible accretion brought about by the operation of nature is a natural accretion (alluvion strictly so called) even though it has been *unintentionally* assisted by and would never have taken place but for the erection of groynes provided for the purpose of protecting shores from erosion (1924 *I Ch.* 399). The principle of accretion therefore applies to all changes caused by natural means or artificial means lawfully employed, for the rule applies to the result and not to the manner of their production (29 *Halsbury* p. 363).—(7. *R.* 3018; 28, of 10-10-1929.)

**Notes.**—This section refers to alluvion formed on unalienated land. For alluvion lands formed on alienated lands see notes to s. 46 *supra*. The difference between alluvial land and abandoned river bed is that the former is bounded on one side by the water of a river or spring while the latter is bounded by both sides by other lands. Land artificially formed by obstructing flow of water is not alluvial land (naturally formed) as contemplated by this section. However this does not mean that the character of alluvial land is changed by the fact that the riparian owner assisted in its formation.—*G. O.* 12333, *R. D.* 18-11-1919. Beds of rivers or streams which are occasionally under water in the rains should not be treated as alluvial land or should not be permanently disposed of. A recognised foot-path of long standing adjoining alluvial land which puts a limit to the riparian owner's property may perhaps be sufficient to extinguish his riparian rights.

**Trees included**—The word 'land' in s. 63 includes trees standing thereon. Therefore when any alluvial land is sold to the occupant of the bank or shore on which the land has formed no sum in addition to three times the annual assessment can be claimed on account of trees standing thereon.—*G. R. 7533/28 of 19-9-31.*

**The annual assessment** referred to in this section should not be fixed arbitrarily but in accordance with the rules.—*G. R. 7533/28 of 19-9-1931.*

**Notice in a newspaper**—Where a notice was given to the Collector in a newspaper that within two months the occupancy of the number named (to which s. 63 was applicable) should be given to him on his paying the occupancy price otherwise he would institute a civil suit it was considered that the Collector may not accept it as sufficient for the purposes of Civil Procedure Code being a notice published in a newspaper.—*G. R. 4803 of 8-6-1892.*

Ss. 63 and 64 and the rules regarding alluvial lands do not apply to such land formed by the silting up of a nalla near a P. W. D. dam. The proceeds of the land when disposal of by the Collector may be credited to the Irrigation Department.—*G. R. 6201 of 31-7-1905.*

The revenue from alluvial lands formed by increased storage of water caused by dam constructed by the Irrigation Department should be credited to the Irrigation Dept.—*G. R. 5770 of 28 10-1879.*

**Diluvion and subsequent Alluvion**—Where a portion of survey number was lost by diluvion and where consequently the assessment on the land was reduced and where later on new land was added to the original land by alluvion the occupant's prayer that the alluvial land may be restored to him on payment of the ordinary assessment was not granted and three times the revenue assessment of the alluvial land was levied from him.—*G. O. 744 of 24-1-1919.*

**Rules regarding Alluvion and Diluvion.**—Rule 71 allows the holders of land with shifting boundaries to occupy and use the land upto the bank or shore of the river, creek, nalla or the sea.

**Suit by adjacent owner for declaration that disposal of land by Collector under section 37 was contrary to s. 63 and for recovery of possession from alienees not maintainable**—In 1911 the Collector sold to deft. no. 2 the land in dispute under s. 37, holding that it was not alluvial land but marsh land which had vested in Govt. In 1923, the plaintiffs who owned lands adjacent to the said lands filed a suit for declaration that the Collector's order was null and void, that the plaintiffs were entitled to the occupancy and for recovery of possession of the same from deft. 2. They contended that as the land was alluvial they were entitled to the first offer of occupancy under s. 63. Following *Surannann v. Secretary of State, 24 Bom. 435 (1900)* the High Court held: (1) Assuming that the land was alluvial, the plaintiffs were not entitled to the relief as to possession as the Collector had not expressed any view under s. 63 as to whether the land could be properly disposed of, having regard to the interests of the public revenue.

(2) All that the plaintiffs could get was a declaration that the case fell within s. 63 and an injunction restraining the Collector from dealing with the land in derogation of his rights. Such an action would be governed by Art. 129 Indian Limitation Act.—*Damodar v. Secretary of State*, 33 Bom. L. R. 772. (See this case under s. 37 at p. 127 *supra*).

**Landlord entitled to charge proportionate rent to the tenant for alluvion**—The defendant M took certain lands from one V on Mulgeni lease. He took another piece on a similar lease from one S. Subsequently V and S sold their malki by two separate deeds to the plaintiff, including in the areas sold the alluvion, accretions also. Before the plaintiff purchased the land the District Deputy Collector had passed an order under s. 63 by which certain alluvial land had been offered to the plaintiff's vendor for a certain price together with payment of annual assessment. The plaintiff having sued to recover arrears of rent and proper rent and profit for the accretions in the suit holding with future interest, the defendant contended that he was not bound under the leases to pay the plaintiff any proportionate rent for alluvion. The Lower Courts having decided that he must pay a certain sum to the plaintiff in respect of the alluvion M appealed to the High Court. Macleod C. J. held: "The first defendant has relied on his lease according to which the rent fixed was not to be increased. Neither the lessors nor their descendants were to claim for an increase or decrease of the rent on any ground whatever. If the assessment due in respect of that plot would be enhanced in future then the defendant was to pay the enhancement. This alluvion, in the circumstances of the case, must be dealt with as a separate piece of land. As long as the alluvion does not exceed an acre the occupant is entitled to the temporary use thereof. It is only when the area of alluvion goes beyond that extent that it shall be at the disposal of the Collector, subject to the provisions of s. 63. The Collector under that section can offer it to the occupant, and if the occupant refuses the offer, the Collector may dispose of it. This alluvion, therefore, must be treated, since ss. 63 and 64 of the Bombay L. R. Code were put into operation with regard to it, as an entirely separate piece of land, and the tenant would no longer be able to cultivate it as part of his original holding. The landlord in my opinion was entitled, as he had to pay a certain price for it and the assessment to Government, to demand a proportionate rent from the tenant. The tenant can say "this is not a part of my original holding and I do not want to cultivate the extra land." But if he insists on cultivating the extra land then he is bound to pay a proportionate rent. He cannot say "I shall remain in occupation of this land as an accretion to my holding without paying any further rent. In my opinion, therefore, the decision of the Appellate Court was right and the appeal must be dismissed with costs."—*Manjaya v. Tamnaya*, 28 Bom. L. R. p. 520 (1924).

**Rules regarding alluvion and diluvion**—Rule 71 allows the holder of land bounded on any side by the bank or shore of a river, creek or nala or of the sea, to use the land upto such bank or shore notwithstanding that its position may shift from time to time. It will be subject to provisions of ss. 46, 47, 63 and 64 of Bom. L. R. Code.

Rule 72 (b) states: The village officers should ascertain and record the increase due to alluvion from time to time in holdings subject to such changes. They have to report to the Mamlatdar for orders when such area exceeds the prescribed limits. (*See Appendix A for Rules.*)

[a] 64. When alluvial land forms on any bank or shore, the occupant, if any, of such bank or shore shall be entitled to the temporary use [b] thereof unless or until the area of the same exceeds [c] one acre [b]. When the area of the alluvial land exceeds the said extent, it shall be at the disposal of the Collector, subject to the provisions of the last preceding section. [b]

Temporary right to alluvial lands of small extent.

#### Commentary

**Old law**—Before the amendment of this section by Amending Act IV of 1913 the section stood thus: When alluvial land forms on any bank or shore, the occupant, if any, of such bank or shore shall be entitled to the temporary use *and occupation thereof*, unless or until the area of the same exceeds *half an acre, and also exceeds one tenth of the area of his holding*. When the area of the alluvial land exceeds the said extent, it shall be at the disposal of the Collector, subject to the provisions of the last preceding section. *The word "holding" in this section shall be deemed to mean a survey member, or any division of land on which a distinct or aggregate assessment has been fixed.*"

**Notes**—The amendment by Act IV of 1913 has resulted in the removal of the concession in accordance with which the riparian owner was entitled to the temporary use of alluvial land until the area of the same exceeded one tenth of the area of his holding. As some compensation for the loss of that concession the area of alluvial land has been doubled, to the temporary enjoyment of which the riparian owner will be entitled.—*Report of Select Committee, B. G. G. pt. VII of 20-2-1913.*

**Scope**—Under s. 64, before its amendment by Bom. Act IV of 1913 an occupant was entitled to the use of alluvial land adjoining his occupancy, unless and until the area thereof exceeded half an acre and also exceeded one-tenth of the area of the holding. When the area exceeded this limit

[a] As to the local repeal of sections 64 and 65, see para. 5 of footnote (a) on p. 1, *supra*.

[b] Words and paragraph repealed by Bom. IV of 1913, s. 23, are omitted.

[c] This word was substituted by Bom. IV of 1913, s. 23, for the original words "half an".



or extent, it was at the disposal of the Collector under s. 63. The provisions of the section as they stood before 1913 therefore prescribed a double test or twofold restriction for the right of an occupant to the enjoyment of alluvial accretion to his occupancy. It was provided that (1) the area of alluvial accretion ought not to exceed 1/2 acre and (2) it must also be less than 1/10 of the area of the holding to which it adjoined. Whatever may have been the extent of the aggregate area of the alluvial formation, each occupant was entitled to the temporary use of the portion subtending his holding, provided it was not more than 1/2 acre in area and also did not exceed one-tenth of his holding. S. 64, was amended by Bombay Act IV of 1913. According to the provisions of the section as it stands now (after its amendment in 1913) an occupant is entitled to the temporary use of the alluvial land unless and until the area of the same exceeds one acre. The double test or two-fold restriction prescribed by the old section was done away with. Under the present section it is immaterial whether the alluvial formation does or does not exceed one-tenth the area of the occupancy to which it adjoins or subtends. The restriction with reference to the area of the occupancy to which the alluvion is an accretion has been dropped. There is, however, nothing to show that the object of the amendment in 1913 was to deprive an occupant of the enjoyment of the area subtending his occupancy, if such area formed portion of an aggregate area of one acre in extent, although the portion subtending his own occupancy did not exceed the said limit. The Statement of Objects and Reasons and the Report of the Select Committee do not indicate that it was the intention of the legislature to enlarge the restrictions already placed upon the right of an occupant to alluvial accretion. On the other hand, the intention appears to have been to reduce such restrictions. It is clear from the Statement of Objects and Reasons that main ground on which s. 64 was amended was the change introduced in the meaning of the term, 'holding'. Owing to the alteration made in the meaning of the said term para. 2 of s. 64 which defined the said term was dropped. This point has been made clear by the remarks of the Select Committee in cl. 23 of the Bill. These are points which could not be cited in a Court of law; but they show what in fact was the object of the Select Committee. It was not therefore, it seems, the intention of the legislature to enable the Collector to intervene and deprive an occupant of the temporary use of the alluvial land as soon as he found that the aggregate area of such alluvial accretion on the whole of the bank exceed one acre, irrespective of the fact that the portion subtending each occupancy did not exceed the said limit.

The use of the word 'occupant' in singular and the provision that each occupant of such bank or shore is entitled to alluvial land forming on his bank or shore shows that the meaning of the section is that the occupant is not to be deprived of the alluvial accretion to his occupancy till the limit of one acre is exceeded.

Alluvial formation so long as it is in the temporary use of an occupant under s. 64 is entitled to the free use thereof.—Ss. 46, 47 and 64 have

been framed on the principle *Deminimus non curat lex*. It is no doubt true that s. 46 expressly stated that no revenue is to be charged till the alluvion exceeded the limit promised therein. No such words are used in 64. But s. 64 states that till alluvion reaches that limit, the occupant is to have merely the temporary use thereof and after that the alluvion is to be at the disposal of the Collector. Alluvial land attached to unalienated land is neither the holding nor the occupancy of an occupant. The person who is entitled to the temporary use thereof is not liable to land revenue under s. 136 of the Code, nor any land revenue can be made to be a charge thereon. In this connection it is desirable to compare the provisions of s. 47 which provides that in the case of diluvion, unless the limit stated therein is exceeded, an occupant is not entitled to any remission. So also an occupant should not be liable to any increase in assessment when the alluvion does not exceed the prescribed area. As s. 64 provides that the occupant is merely entitled to the temporary use of the alluvion, it was not thought necessary to make express provision for its non-liability from assessment till it exceeded a particular limit in extent. S. 64 corresponds to s. 123-E of the old Bill I of 1875, as revised in 1877. In the Select Committee's Report it was stated that in conformity with provisions relating to alienated land and dereliction, in the case of unalienated land too no charge was to be made for the alluvial accretion to it, till it exceeded the prescribed limit. It therefore, follows that an occupant is entitled to the free use of alluvion when he is in temporary use thereof under s. 64 of L. R. Code. (*see also G. R. 3910*)<sup>24</sup> of 11-9-1925).

Alluvial land attached to unalienated land is neither a holding nor the occupancy of an occupant. The person who is entitled to the temporary use thereof is not liable to land revenue nor any land revenue can be made a charge thereon.—*G. R. 3010*)<sup>24</sup> of 11-9-1925.

**Alluvial land**—The bed of a public navigable river is the property of Govt. though the banks may be the subject of private ownership. If there be slow accretion to the land on either side, due, for instance, to the gradual accumulation of silt, this forms part of the estate of the riparian owner to whose bank the accretion has been made: (Bengal Reg. II of 1825). If private property be submerged and subsequently again left bare by the water, it belongs to the original owner.—*Haradas Achariya Shoudhuri v. Secretary of State*, 20 Bom. L. R. 49.

**Non-riparian owner's Right to water.** The plaintiff who owned non-riparian lands, used from times immemorial to irrigate his lands by river water which he took through the paddy fields belonging to defendants. The water did not flow in a definite channel but spread over the whole of the defendant's lands till it overflowed into the plaintiff's lands. The defendants having obstructed the passage of water through their lands, the plaintiff sued to establish his right to the enjoyment of the river water. *Held*, that the plaintiff having acquired the right and enjoyed it from time immemorial was not prevented from enforcing it by any provision of the Ease-

ments Act by virtue of s. 2 (c) of the Act.—*Janardhan v. Ravji*, 2o Bom. L. R. 398, 42 Bom. 288.

Suit by adjacent owner for declaration that disposal of land by Collector under s. 37 was contrary to s. 63 and for recovery of possession from alienees not maintainable—In 1911 the Collector sold to deft. no. 2 the land in dispute under s. 37, holding that it was not alluvial land but marsh land which had vested in Govt. In 1923, the plaintiffs who owned lands adjacent to the said land, filed a suit for declaration that the Collector's order was null and void; that the plffs. were entitled to the occupancy and for recovery of possession of the same from deft. 2. They contended that as the land was alluvial they were entitled to the first offer of occupancy under s. 63. Following *Surannanna v. Secretary of State*, 24 Bom. 435 (1900) the High Court held; (1) assuming that the land was alluvial, the plffs. were not entitled to the relief as to possession as the Collector had not expressed any view under s. 63 as to whether the land would be properly disposed of, having regard to the interest of the public revenue; (2) all that the plaintiffs could get was a declaration that the case fell within s. 63 and an injunction restraining the Collector from dealing with the land in derogation of his rights. Such an action would be governed by Art. 129 of Indian Limitation Act.—*Damodar v. Secretary of State*, 33 Bom. L. R. 772 (1930).

Rule 72 (b) makes it incumbent on the village officers (in khoti villages on village accountants or japtidars or Circle Inspectors and in Talukdari villages japtidars or Bandkarkuns) to ascertain and record the increase due to alluvion and losses due to diluvion on every holding subject to such changes. Where the area of a newly formed alluvial land or island, or of any abandoned river bed, or land lost by diluvion exceeds the limit prescribed in ss. 46, 47 and 64, they should report to the Mamaltdar for orders as provided by Rule 72 (b). (For Rules see Appendix A.)

[<sup>a</sup>] 65. An occupant of land [<sup>b</sup>] assessed or held for the

<p>Uses to which occupant of land for purposes of agriculture may put his land.</p>	<p>purpose of agriculture [<sup>b</sup>] is entitled by himself, his servants, tenants, agents, or other legal representatives, to erect farm-buildings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land, or its more convenient [<sup>c</sup>] use for the purpose aforesaid. [<sup>c</sup>]</p>
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[a] As to the local repeal of sections 64 & 65, see para. 5 of footnote (a) on p. 1 supra.

[b—b] These words were substituted by Bom IV of 1913, s. 24 (a), for the original words "appropriated for the purposes of agriculture."

[c—c] These words were substituted by Bom. IV of 1913, s. 24 (a) for the original words "occupation for the purposes aforesaid."

But, if any occupant [a] wishes to use his holding or any part thereof for any other purpose [a] the Collector's permission shall in the first place be applied for by the [b] occupant.

Procedure if occupant wishes to apply his land to any other purpose.

[c] The Collector, on receipt of such application,

(a) shall send to the applicant a written acknowledgment of its receipt, and

(b) may, after due enquiry, either grant or refuse the permission applied for :

Provided that, where the Collector fails to inform the applicant of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted; such period shall, if the Collector sends a written acknowledgment within seven days from the date of receipt of the application, be reckoned from the date of the acknowledgment, but in any other case it shall be reckoned from the date of receipt of the application. [c]

Unless the Collector shall in particular instances otherwise direct, no such application shall be recognized except it be made by the [b] occupant.

When any such land is thus [d] permitted to be used for

Fine to be levied for such use in addition to special assessment.

any purpose unconnected with agriculture [d] it shall be lawful for the Collector, subject to the general orders of Government,

[a-a] These words were substituted by Bom. IV of 1913, s. 24 (a), for the original words "wishes to appropriate his holding or any part thereof to any other purpose."

[b] The word "registered" was repealed by Bom. IV of 1913, s. 24 (b).

[c-c] This was substituted by Bom. I of 1910, Schedule I, Part II, Serial No. 4, for the original paragraph.

[d-d] These words were substituted by Bom. IV of 1913, s. 24 (a) for the original words "appropriated to any purpose unconnected with agri-

to require the payment of a fine in addition to any new assessment which may be leviable under the provisions of section 48.

### Commentary

**Early History**—Act I of 1855 in its s. 35 provided: "It is hereby declared that an occupant of any Govt. land is entitled, in virtue of his occupancy, to erect farm-buildings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land. But if an occupant wishes to appropriate the land in his occupancy to any purpose unconnected with agriculture so as to destroy or injure it for cultivation, he shall first obtain the Collector's permission, which shall be given on payment of a fine fixed according to such rules as may from time to time be prescribed under the orders of the Governor in Council, and on entering into a written agreement to pay, in addition to such fine, the annual assessment which may have been fixed on such land at the settlement then current, and which shall remain liable to revision at any future settlement of the district."

**Note**—It seems clear from this that Govt. land (i. e. land of which Govt. was proprietor) in the occupancy of a person was intended for agricultural purpose only. If the said land was used so as to destroy or injure for cultivation by the occupant Govt. by way of compensation for the loss which may result in the matter of agricultural produce wanted to inflict some fine in addition to the usual assessment. The object of fine is also stated in G. R. 4285 of 6-6-1904 to be to discourage the destruction or injury of land for the purpose of cultivation. From this it seems that the theory of unearned increment and the share of the State in profits which is now advanced on behalf of Govt. has suggested itself to Govt. officials only recently.

**Objections**—The Hon. Mr. Mandlik and the rest of the Indian members proposed that the word 'Govt.' should be inserted before the word 'land' and that the words 'of such lands' after the word 'occupant' in paragraph 2 of the said section. He submitted that the section enacted a law which might be sought to be enforced in regard to private lands, as well as what the High Court held or would hold to be strictly Govt. lands; and he maintained that in respect of private land which were the property of individuals, though the Govt. had the right to levy an assessment on them, there should be no such restriction. In a recent Thana case, in which it was sought to levy a fine on the owner of a cocconut cart because he had built some houses on the land in his cocconut cart, the High Court had held that the man had a right to build on his land, and that Govt. could only take the assessment. He did not see why such a right should now be infringed upon, and he therefore proposed to describe the lands subject to this section as Govt. lands.—*Proceedings of the Council of the Governor of Bombay for the year 1877, Vol. XVI, p. 136.*

**Amendment suggested**—S. 65 should be so amended as to make it obligatory that applications under para 2 should be submitted in a specified form which will set forth the applicant's title and details regarding his application.—*G. R. 3511* [24 of 8-1-1927; *G. R. 4999* [24 of 10-1-1927].

**'Particular instances'**—This term means that the Collector can use his discretion as to the cases in which he may waive the condition that the occupant should himself make an application. A portion of patilki Inam was not allowed to be converted into building sites as only occupants as defined by s. 3 (16) were considered to be entitled to ask and obtain permission under s. 65. A portion of that land had to be converted into Gavthan and another piece of land had to be exchanged for Patilki inam for this purpose.—*G. R. 1148* of 23-5-1885.

**'Any such land'**—These words in s. 66 must be given the same meaning as the same words 'any such land' in the concluding paragraph of s. 65 that takes us back to the second paragraph of s. 65, *viz.*, 'his holding or any part thereof.' Thus s. 66 applies to the holding or such part thereof as has been used for non-agricultural purposes. *User* is therefor the test whether, for the whole land or only a part. This construction of s. 66 is borne out by the provision that the Collector may eject from "the land so used," and also from the entire holding or survey number of which that particular portion forms part.—Per Marten C. J. in *Secretary of State v. Abdul Husen*, 34 Bom. L.R. 1350 at p. 1354 (1927).

No fine is ordinarily imposed when permission of the Collector is obtained.—(Rule 99, *see Appendix A for Rules*).

The original conception of a fine for such uses was that it should act as penalty. (see p. 329 *supra*). Subsequently the idea was converted into that of a premium upon a change in tenure capitalizing the future unearned rents. Finally the fines disappeared altogether.—(*G. R. 2117* of 1903 and *G. R. 4283* of 1904). They are retained only as a penalty for unauthorised diversions of use and for certain commercial non-residential uses, like brick-making where annual levy of the rental share is difficult.

As regards new assessment leviable under s. 48 referred to in this section *vide* notes under s. 48 and the Rules given thereunder.

**Ss. 65 and 66 do not apply to land not assessed for agriculture or to land not regarded by Govt. as land to be used for purpose of agriculture**—In 1907 the District Collector ordered the Mamlatdar to cause the building and the wood to be removed forthwith from a graveyard of which plaintiff had been in possession for 50 years without assessment and the order was confirmed on appeal by the Commissioner in April 1909. On the 22nd February 1910 the plaintiffs sued the Secretary of State for a declaration that they were the owners of the land; for a cancellation of the order and for a permanent injunction. The High Court *held*, that as the land in dispute was not used for the purpose of agriculture, neither this section nor s. 66 applied to the case

and that in view of the long and undisturbed possession of the plaintiffs, the order of eviction was *ultra vires*.—*Rasulkhan v. Secretary of State*, 39 Bom. 494; 17 Bom. L. R. 513 (1915).

**Farm buildings.**—Buildings erected for the storage of agricultural implements or for sheltering the cattle used in the cultivation of the land as well as houses occupied by the occupants who themselves cultivate survey number on which they stand or by tenants who do the same, or by servants of such occupants or tenants who are actually employed in the cultivation of the same land are held to be farm buildings.—*B. G. G. Pt. VII for 1911 p. 195*.

**Farm buildings in Kanara.**—Owing to absence of village sites throughout the greater part of Kanara the dwelling houses of the cultivator whether occupants or tenants—are usually built on lands appropriated for purposes of agriculture. Many of these houses, partly for climatic reasons and partly because the cultivators who inhabit them are of a superior class, are more substantial and commodious structures than are generally required by cultivators in other parts of the presidency. Such houses may fairly be considered to be farm buildings within the meaning of s. 65, so long as they are occupied and bonafide used as farm buildings by occupants or tenants of the survey numbers on which they stand, or by servants of such occupants or tenants employed in the cultivation of the land aforesaid.—*G. R. 1637 of J-3-1891. Standing Orders of Govt. in R. D. Vol. II p. 897 (1902)*.

**Farm buildings meaning the residence of a cultivator or his tenants, and his barns and cattle sheds etc.** [*Bhau Mahadu v. Vithal Dattaraya*, 44 Bom. 609 (1919)] or even of a landlord for the purpose of cultivating or supervising the cultivation of his land, water-lifts and granaries and all that is inseparable from cultivation are agricultural uses.—*G. R. 3053 of 1853*. The popular idea that the style or cost of the building should be considered is altogether erroneous. In many countries cultivating farmers live in substantial and even imposing residences and it is much to be hoped that the same thing will also soon be seen in India. The point is that the buildings must be on the holders' own land and form an integral part of his cultivating arrangements. Agriculture means ploughing, sowing and reaping of some crop or produce for profit. Letting a few trees or flowers grow for pleasure is not agriculture. There are some (market) gardens in which roses etc. can be seen cultivated for the market which is certainly agriculture. A dairy farm was held to be agricultural in *G. R. 7307 of 1917*. Subletting land for storage of manure is agricultural purpose (*G. R. 7702 of 1899*). Cane crushing and Gul boiling are essential to cane cultivation and are agricultural uses.—*G. R. 5321 of 1922*.

**Note.**—For a discussion as to what is meant by 'agriculture, agricultural use' and 'agricultural purpose' see the Commentary on the Dekkhan Agriculturists' Relief Act 1879 by the writer.

**Co-operative dairy is non-agricultural.**—Where a co-operative dairy society for Gaolis was organised bringing them into one place, securing some land for them, putting up shed for the cattle and arranging for the joint purchase

for feeding stuff and the joint marketing of the milk, it was thought that non-agricultural assessment was properly levied by the Collector. As a general rule however Govt. thought that in the case of enterprises closely connected with agriculture the rule regarding the levy of non-agricultural assessment should be liberally interpreted.—*G. O. R. D. 10108 of 29-9-1919.*

**Powers of granting permission for non-agricultural use**—For purposes of levying non-agricultural assessment villages are divided into two classes (*Rule 81*). Subject to certain reservations, the power of granting permission for the non-agricultural use of land in the villages in class I is left ordinarily to Assistant and Deputy Collectors in charge of talukas and that in the villages in class II to Mamlatdars and Mahalkaris.—*G. R. 3459 of 2-4-1908; 5295 of 1-11-1911, and 6406/28 of 11-11-1931.*

**Procedure**—Under this section the Collector, on receiving an application, must first send a written acknowledgment of its receipt, and secondly, may, after due enquiry, either grant or refuse the permission applied for, provided that where the Collector fails to inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted; such period shall, if the Collector sends a written acknowledgment within seven days from the date of the receipt of the application, be reckoned from the date of the acknowledgment, but in any other case it shall be reckoned from the date of receipt of the application.—*Shivpalsing v. Secretary of State, 26 Bom. L. R. 371.*

**Instructions to Collector**—It is incumbent on the Collector to fulfil punctually his statutory obligation to furnish immediately to applicants for permission under s. 65 an acknowledgment of their applications. Any failure so to do may involve Govt. in troublesome and expensive litigation.—*G. R. 8053 of 11-11-1899.*

**Permission to build cannot be cancelled**—The Collector, after fixing the rate of building assessment, granted the applicant a sanad enabling him to convert certain agricultural land into building sites. For these reasons a high price was paid by other persons for the land. It was held that since an equitable right had grown up after the permission was granted the permission granted by the Collector cannot be cancelled. (*Cf. Dadoba v. The Collector of Bombay, 25 Bom. 714 and Municipal Corporation of Bombay v. Secretary of State, 29 Bom; 580*).—*G. O. 2652 R. D. of 17-9-1920.*

**A purely arbitrary refusal in order to get indefinite extension of statutory period for decision should not be construed as refusal of permission within the meaning of this section.**—Where the Collector received an application and (in order to give time) issued a reply that "permission is refused; it may be granted after the enquiry which will now be made" the High Court ruled that the applicant was justified in proceeding with his building; because s. 65 cl. (3) (b) with its proviso, contemplates enquiry and reply to be completed within three months. What is required under this section is a proper decision after due enquiry, and that if he does not receive such permission within three months he will be entitled to be allowed



to act as if permission has been granted to build according to the terms of his application.—*Shirpalasing v. Secretary of State*, 26 Bom. L. R. at p. 374 (1924).

**Fine for non-agricultural appropriation of rent-free land.**—Where a *sadhu* held certain lands in Chorasī taluka rent-free on ordinary survey tenure it was considered to be land assessed for agricultural purposes and he was held to have full occupancy rights over it so as to enable him to sell it. The same not being alienated land nor land set apart for special purpose *e. g.* temple or math, Govt. was inclined to hold that s. 65 was applicable and the occupant was liable to pay a fine for using it for non-agricultural purpose, if a portion of the same was sold to a third person who has built upon it.—*G. R. 4583 of 30-5-1892; Standing Orders of Govt. in R. D. Vol. II p. 295 (1902).*

**Quarrying.**—Where there is a keen demand for quarrying in occupied lands for purposes of trade altered assessment under this section should be levied.—*G. R. 10424 of 27-8-1917.*

**Royalty.**—The altered assessment in respect of minor minerals should be termed royalty.—*G. R. 6032 of 25-9-1922.*

**Govt. sanction.**—The remission of premium and the remission or reduction of the enhanced assessment as an act of grace in special cases requires the sanction of Govt.—*G. R. R. D. 476 of 24-1-1903.*

**A Municipality is not entitled to any concession as regards fine and altered assessment when they acquire agricultural land for non-agricultural purposes where such acquisition is remunerative.**—*G. R. 5633 of 3-11-1892.*

**Town planning Scheme.**—In respect of a town planning scheme sanctioned finally, the permission of the Collector to build on plots included in the scheme is not required in individual cases, but the Collector is required to notify that such permission is granted on condition of payment of the standard assessment as fixed under s. 48 and the Rules.—*G. O. 3037 of 27-10-1920; see also G. R. G. D. 2844 of 30-6-1924.*

**Village Panchayats constituted under the Village Panchayats Act may be given the concession of removing stones for public purposes from Govt. forest, on the recommendation of the Collector.**—*G. R. 8478/24 of 27-6-1930.*

**Use of land for water storage purposes.**—Collectors should see that before permission is granted to any individual or body for the use of any land for water storage purposes of any magnitude, it is ascertained from Govt. in the Revenue Department or Public Works Department whether any special conditions as regards the right of supervision and inspection should be imposed.—*G. C. 4854/84 of 26-2-1926.*

**Erection of buildings near a Railway Station.**—In the case of applications for permission to build on land in the vicinity of railway stations, the Collector should give one month's notice to the railway authorities to put in their objections, if any. The statutory period of three months for the disposal of the applications should not however be exceeded.

When an application to build upon land within 35 feet of a transmission line owned and operated by a Railway Administration is made to the Collector and it is proposed to grant permission, intimation of this should be given to the Railway Administration concerned so as to allow that administration an opportunity to acquire the land if it so desires. These orders apply in the case of unalienated agricultural lands but not to occupied lands in village sites or to lands for which permission for non-agricultural use has already been obtained.—*G. R. 1996/28, of 18-4-1929 and 4999/24 of 2-6-1930.*

**Kouli Katuban Tenure of Malwan** in the Ratnagiri District is governed by ss. 65 and 66. The Collector should evict under s. 66, take formal possession and then grant to each present occupant non-agricultural occupancy at non-agricultural rates under Bom. L. R. Code allowing them to build on the lands.—*G. R. 1483/28 of 16-11-1928.*

### INAM LANDS

**S. 65 is not applicable to Inam lands.** S. 65 does not apply to buildings on alienated lands.—*G. O. R. D. 8581 of 20-8-1918.*

Surveyed alienated villages are governed by Rules 92-98 (*See Appendix A for Rules*).

Where permission to build a factory on a Deshpande land belonging to another person was asked for it was argued that s. 65 was inapplicable to that land. It was further observed that the alienation of land forming part of a district hereditary officer's vatan was illegal under s. 5 of *Bom. Act III of 1874* as amended by s. 1 of *Bom. Act V of 1888* without the sanction of Govt. The sanction of Govt. did not appear necessary merely to permit the applicant to build a factory.—*G. R. 3181 of 23-5-1887.*

In a surveyed alienated village local fund cess cannot be levied on assessment made by the Collector. The reasons are that under s. 7 of *Bom. Act III of 1869* local fund cess in a surveyed and assessed alienated village is to be levied on the total annual assessment of the village as made by the survey officers who are defined in s. 3 (2). The Collector is not included therein as such and any non-agricultural and altered assessment fixed by the Collector under s. 65 (in accordance with the rules) in an Inam village would not be covered by the expression 'as made by the survey officers'—*G. O. R. D. 2353 of 7-8-1920.*

### RULES REGULATING CONVERSION OF AGRICULTURAL LAND TO NON-AGRICULTURAL USE

**History**—In the old orders practically no trace of any rules regarding the conversion of land which is already occupied for agriculture to non-agricultural use is found. But it appears that all farm buildings were exempted from non-agricultural taxation from the earliest times by the British Govern-

ment. In 1853 the Bombay Government ruled that conversion to building could be made without permission but if assessment was desired to be remitted then permission should be got.—*G. R. 3053 of 1853*. Similarly whenever an occupant used any of his land for building any Dharmashala, temple or any other public building the agricultural assessment was removed and nothing was charged. (*ibid*).

§. 35 of Act I of 1865 (Survey Act) prescribed the need of permission and the payment of a fine and a written agreement to the assessment (agricultural ?) for the settlement period and there after as revised. If permission was not obtained then the occupant had to pay such special assessment and accept such conditions as might be agreed with the Collector; thus the original idea of a fine was that it should act as penalty.

In Sir T. Hope's Rules of 1867 it was required that on such conversions an occupancy price or premium should be levied as though the occupancy were being newly granted. The fines were a sort of premium on transfer of tenure. It was urged that the fines were sort of premium upon a change in tenure capitalising the future unearned rents. Gradually Government inclined to the view that this urban development was only a natural ground for revision of assessment and that instead of fines non-agricultural assessments should be imposed.

Rules under the amended Act I of 1865 were made in 1877 and remained in force till 1881 when they were superseded by the rules framed under Act V of 1879 (Land Revenue Code) which remained little changed till 1921. They provided for altered assessments within certain multiples of the agricultural assessment or within certain prescribed maxima whichever be the greater. But in places where there was a keen demand for building sites or special reasons apply, Government might order that the assessment be altered in proportion to the situation value (as estimated by the Collector) or Government might prescribe standard rates of assessment.

The Land Revenue Rules of 1921 as amended up-to-date seem to abandon the multiples of the agricultural assessment, and also abandon the 'situation value' (difference between full market and agricultural value) and adopt "full market value" as the basis of assessment. These new Rules prescribe a uniform period of 30 years for revision of assessment (*Rule 57*) and make some distinction between residential and industrial uses. These Rules abolish fines except as penalty for conversion without permission (*Rule 99*).

Within a surveyed city land is exempt from City Survey so long as its use is agricultural. As soon as it changes its use and becomes non-agricultural land, it then falls under the city survey. Its assessment is then altered under Rule 81 or 82 as the case may be. The altered assessment is fixed for 30 years. This land then becomes liable to be measured, mapped and to pay sanad fees.

Rules providing for restrictions on use of land—Rule 76 prohibits the occupant of unalienated land from using the same for manufacture of salt without the permission of the Collector of Salt revenue and the Collector of

the district. The Collector of the district while granting permission may either require the occupant to relinquish his rights of occupation and enter into an agreement with the authorities of the Salt Department, or grant such permission after levying some fine and requiring the occupant to execute an agreement that he will pay in lieu of assessment such amount or rent as may be fixed by the Salt Department. Except as provided by s. 65, etc., removal of earth, stone, etc. from land assessed or held for purposes of agriculture is prohibited by Rule 77 if the Collector thinks it injurious to cultivation or where such material is to be used for purposes of trade or profit or such other purposes. Under Rule 79 excavation of unalienated land within site of village, town or city is prohibited except for foundation of building, sinking of wells and the making of grain pits, without the permission of the Collector who may grant it on certain conditions.

**Summary of Rules regulating alteration of assessment in case of unalienated land**—Rule 80 empowers the Collector to levy altered assessment when unalienated land assessed or held for agricultural purposes is used for non-agricultural purposes. Such altered assessment may not exceed the limit of two pies per square yard in the case of 1st class lands and one pie per square yard in the case of 2nd class land, while the agricultural assessment is considered to be the minimum rate (*Rule 81*). However, Rule 82 states that in an area where there is keen demand of building sites Govt. may by notification in official gazette order the levy of special rates of altered assessment as described in clauses I to VI of Rule 82. In case of lands used for the manufacture of bricks, in addition to the annual assessment of Rs.40 per acre on such land an additional rate of Rs.2½ for every lakh of bricks manufactured in a year should be levied under Rule 82-A. Grant of permission under s. 65 in hill stations and such other localities is governed by Rule 84. Rule 85 states that altered assessment should be levied ordinarily upon the land within the compound of the building. Rule 86 states the time from which altered assessment should be levied. Revision of altered assessment is to be made ordinarily after thirty years, unless otherwise specially directed in the Sanad (*Rule 87*). Where such altered assessment does not exceed one rupee Rule 88 allows the occupant with the consent of the Collector to commute the same for a lump payment for the residual term at a rate of interest stated in the said Rule. Rule 89 makes it incumbent on the Collector to maintain a map showing altered assessment as corrected up-to-date which is to be kept open to public inspection free of charge. The same Rule requires the Mamlatdar to maintain a similar map of his taluka. Where land assessed for a non-agricultural purpose other than building is used with the Collector's permission for residential building Rule 90 states that the Collector should levy the rate of assessment imposed on other lands used for a similar purpose in the locality. The Collector under Rule 91 is authorised to reimpose agricultural assessment where a holding assessed for non-agricultural use is used for agriculture only.

**Summary of Rules applicable in the case of surveyed and settled alienated villages**—Where agricultural land is used for non-agricultural purpose

assessment may be altered in accordance with Rules 81 to 87 inclusive (*Rule 82*). The holders of alienated village with commission conferring powers of Collector under ss. 65 and 66 may exercise in this connection certain powers of Collector (*Rule 92*). Fines leviable under a. 66 may be inflicted as provided in Rules 93 to 102. In this connection the holder of alienated village holding commission may exercise the powers of Collector in accordance with Rules 93 to 102 (*Rule 93*). Rule 94 lays down the procedure to be followed by the Collector on receipt of application under a. 65 for permission to use for other purposes land assessed for purposes of agriculture only. Rule 95 provides for steps to be taken by Collector when information of use for non-agricultural purposes is received. The orders of the Collector or the holder of the alienated village are to be communicated to the Mamlatdar who in his turn should communicate such orders to the applicant, etc., directing village officers to levy altered assessment or fine so ordered (*Rule 98*). Such altered assessment or fine is to be levied in the same manner as other land revenue (*Rule 96*). Kadim and shert lands are exempted by Rule 97 from Rules 92 to 95. The actual holder etc. should be considered as holder of alienated village for the purposes of Rules 92 to 97 (*Rule 95*).

Rules providing for permission for non-agricultural use and fines in cases of unauthorised use—When agricultural land is used for non-agricultural purpose with the permission of the Collector ordinarily no fine is to be imposed under a. 65 (*Rule 99*). The fine imposed under a. 66 by the Collector should not exceed ten times the altered assessment (*Rule 100*). Under Rule 101 double the rate prescribed in Rule 100 as maximum fine may be levied for unauthorised use for building, brick-making, etc., or for any other non-agricultural purpose. In cases deemed exceptional or unusual Collector should impose fine under a. 65 or a. 66 at rates fixed by Govt. (*Rule 102*).

[<sup>a</sup>] 66. If any such land be so [<sup>b</sup>] used without the permission of the Collector being first obtained, or before the expiry of [<sup>c</sup>] the period prescribed by section 65 [<sup>c</sup>], the occupant and any tenant, or other person holding under or through him, shall be liable to be summarily evicted by the Collector from the land so [<sup>b</sup>] used and from the entire field or survey number of which it may form a part,

[a] As to the local repeal of section 66, see para. 5 of foot-note (a) on p. 1, *supra*.

[b] This word was substituted by Bom. IV of 1913, s. 25 (a) for the original word "appropriated".

[c—c] These words were substituted by Bom. I of 1910, Schedule 1, Part II, Serial No. 1, for the original words.

and the [a] occupant shall also be liable to pay, in addition to the new assessment which may be leviable under the provisions of section 48 for the period during which the said land has been so [b] used, such fine as the Collector may, subject to the general orders of Government, direct.

Any [c] tenant of any occupant or any other person holding under or through an occupant, who shall without the [d] occupant's consent [e] use any such land for [e] any such purpose, and thereby render the said [d] occupant liable to the penalties aforesaid, shall be responsible to the said [d] occupant in damages.

Tenant responsible to occupant in damages.

#### Commentary

**Scope.**—S. 66 is evidently so drafted as to prevent any one legally invested with rights which he has every possible means of fully protecting for himself, from screening himself under the pretext of helplessness and ignorance from liability for such appropriation connived at or unresisted by him.

S. 66 empowers the Collector to turn all those persons out who unauthorisedly use land whether they are occupants, tenants or others holding through or under the occupant if any such land be so used irrespective of the persons by whom the use was made and to fine the occupant, providing further that the occupant may recover damages from any one lawfully invested with the right to possession, etc. (i. e., co-occupants and their tenants etc.) who may have so used the land without the occupant's consent. But no provision is made giving the occupant a similar right to damages from persons not legally invested with the right to possession who unauthorisedly use without such occupant's consent because the ordinary law gives such right against trespassers. Therefore s. 66 makes all who are legally invested with the right to possession of unalienated land responsible for its preservation from unauthorised use and liable to forfeit all their rights if they neglected

[a] The word "registered" was repealed by Bom. IV of 1913, s. 25 (b).

[b] This word was substituted by Bom. IV of 1913, s. 25 (a), for the original word "appropriated".

[c] The words "co-occupant or any" were repealed by Bom. IV of 1913, s. 25 (b).

[d] The word "registered" was repealed by Bom. IV of 1913, s. 25 (b).

[e—e] These words were substituted by Bom. IV of 1913, s. 25 (a), for the original words "appropriate any such land to".

their responsibility. The legislature has expressly provided the summary and cheap procedure in the Mamlatdars' Court Act (Bom. II of 1906) and all those who may so choose to do protect their rights by recourse to the ordinary course of law. It is neither necessary nor desirable that revenue authority should be called on to assume the functions of a court for the recovery of such possession on behalf of a private individual. In the case of occupants it is open to Govt. to exercise clemency which seems to have been expressly contemplated in s. 67, or the restoration of the occupancy after eviction.

*Notes.*—This section supplies an instance of resumption on account of the use of agricultural land to other purposes without the permission of the Collector.

But now that fine is only levied as a penalty for not getting permission and thereby evading the Collector's control over industrial and building uses the severity of the fine should apparently depend on the degree of harm done and the bad example set and not upon any fiscal considerations.

*N. B.*—This section should be read along with notes under s. 65 *ante*.

'Any such land'—See notes under that heading in s. 65 *ante*.

S. 66 has no retrospective effect because no fines could be legally imposed under Bom. Act I of 1865.

Building fine is to be levied only on area built upon—"S. 66 lays down reading it with s. 65 that if any land assessed or held for purposes of agriculture be used without the permission of the Collector for any other purpose than that of agriculture, then the person so using the land shall be liable to be summarily evicted by the Collector from the land so used and from the entire survey number and shall also be liable to pay in addition to the new assessment which may be leviable under the provisions of s. 48 such fine as the Collector, subject to the general orders of Govt. may direct. S. 66 contemplates plainly a survey number and a portion of a survey number which has been diverted from an agricultural purpose to some other purpose. But it does not say in terms that the penalty leviable under the section can be levied with reference to the whole of the survey number. Therefore, it would be in each case a question, of fact to be determined, what area has been used for any purpose unconnected with agriculture. The facts as disclosed in the present case are that except for the area covered by the building, no use has been made of the rest of the land with the exception that occasionally vegetables are grown upon it. It is thus impossible to say that anything except the site has been diverted to a non-agricultural purpose. The fact that it has remained to a large extent unused for agriculture does not touch the matter, for the holder is not bound to cultivate the land. He can, if he likes, leave it uncultivated. Therefore it is clear that only the actual site is chargeable with fine" observed Cramp J. in *the Secretary of State v. Abdul Husen Dosaji*, 34 Bom. L. R. 1350 (1927) where the facts briefly were as follows: Abdul Husen, the plaintiff purchased certain plot numbers in survey No. 119 at Santa Cruz and after his purchase he erected upon a portion of the total area a building covering

146 square yards without the permission of the Collector. The exact area of the whole land was very much larger than that and it was only a small portion that was covered by the building. The Collector thereupon levied a building fine with reference to the whole holding. The plaintiff filed a suit to seek refund of the fine imposed on the area not built upon. The trial Court decreed the suit. The Secretary of State for India having appealed the High Court while dismissing the appeal further observed, "S. 148 has no application to this case. That section deals with failure to pay instalments of land revenue within the prescribed time, and referring back to s. 146 where these land revenue instalments are introduced for the first time in the Act it is clear that what is meant by instalments of land revenue are those instalments of the total land revenue payable for the year which have to be paid at dates fixed from time to time by Govt. The question in this case was whether a fine is leviable under the provisions of s. 66 and it cannot be regarded in the light of an instalment of land revenue within the meaning of s. 146."—*Secretary of State v. Abdul Husen Dosaji*. 34 Bom. L. R. 1350 (1927).

Rule 100 as amended by *G. R. 1890/28 of 15-5-1931* states that any fine imposed by the Collector under s. 66 shall be fixed by him at his discretion subject to Rule 101 shall not exceed ten times the altered assessment imposed under Ch. XIV (the use of land for any purpose other than that for which it has been assessed) of the Land Revenue Rules, 1921. (*For Rules see Appendix A*).

'Land so used' These words in Rule 80 show that altered assessment is to be levied only on that portion of land which is used for purposes unconnected with agriculture. Moreover there is nothing in s. 48 to suggest that altered assessment may be levied on the whole survey number and subdivision of a survey number only a portion of which is used for non-agricultural purposes. The Wadia (Raymond) Woolen Mills, Thana, occupied 55 acres, but non-agricultural assessment was levied only on 22 acres while the remaining 33 acres were classed as agricultural land.—*G. R. 6887/24 of 7-6-1928*.

**Note**—For a further discussion see notes under s. 48 at p. 234 *ante*.

Rules regulating fines to be imposed under s. 66 are given under s. 65 at pp. 334-337 *supra*.

### MISCELLANEOUS INSTRUCTIONS

Where the settlement showed the land built upon as *pot kharab* (appropriation being after the Code) and the remainder was assessed as agricultural land and period of twelve years passed before the appropriation was noticed *G. R. 6629 of 30-8-1895* stated that the power to impose a fine has not been taken away but the period of appropriation being long the occupant should be informed of their liability under s. 66, but special terms should be offered under s. 67.

*G. R. 6482 of 2-8-1894* suggested that where the levy of a fine at a uniform rate would press heavily an agreement under s. 67 might be negotiated.



Such an agreement would not ordinarily affect occupancy rights. Neither the orders nor a. 67 require the relinquishment of such a right as a condition of the new agreement.—*G. R. 4533 of 28-6-1897.*

While giving permission local officers should so use their discretion as to leave a liberal margin to cover risks and expenses of enterprises which make for the health and prosperity of the people.—*G. R. 6505 of 16-10-1900.*

Where there were legal occupants in perpetuity who stood in the relation of tenants to Govt. and where third persons had unauthorisedly encroached on the lands of the tenancy the course recommended by Govt. under there No. 30 of 6-1-1896, was that Collector should issue notice to the occupants to show cause (within three months) why they should not be dealt with under a. 66 in respect of those unauthorised misappropriations, and if within that time they did not take any steps to have the encroachments repelled and the trespassers evicted by process of law, the Collector may assume that the trespassers were there with the consent and in the capacity of sub-tenants and should then take steps as provided by a. 66.

Trespassers evicted and occupants served with notices.—Trespassers who unauthorisedly misappropriate agricultural land and use it for purpose other than agriculture may be summarily evicted. In such cases the occupant should be given notice to show cause why he should not be made to pay altered assessment leviable under a. 48 as well as fine.—*G. R. 5202/23 of 23-6-1890.*

[a] 67. Nothing in the last two preceding sections shall

Permission may be prevent the granting of the permission granted on terms. aforesaid [b] on such terms [c] or conditions [c] as may be [d] prescribed by the Collector, subject to any rules made in this behalf by the Governor in Council [d].

### Commentary

Application of the section—This section should be generally applied in towns and at hill stations and such like places, and permission should not be granted unless such conditions as are considered desirable regarding the style of the building, the time within which it should be constructed and the observance of Municipal or other sanitary regulations are agreed to.—*G. R. 127 of 6-1-1891.*

[a] As to the local repeal of section 67, see para. 5 of foot-note [a] on p. 1 *supra*.

[b] The words "in special cases" were repealed by Bom. VI of 1913, a. 26.

[c—c] These words were inserted in a. 67 by Bom VI of 1901, a. 8 (1).

[d—d] These words were substituted by Bom. IV of 1913, a. 26 for the original words "agreed on between Government and the registered occupant."

**‘Subject to any rules made in this behalf by the Governor in Council’—**No rules have yet been framed under s. 67 by Government.

**Instructions.**—Collectors are authorised (*cf. G. R. 1188 of 13-2-1904 and Form B*) to enter into agreement under s. 67 in cases in which land has been appropriated to building purposes without permission. This authorization extends to all such cases whether the Salsette Rules or orders similar to those rules apply to them or not. The effect of orders in *G. R. 1188 of 13-2-1904* and *G. R. 4283 of 6-6-1904* is that in cases in which conversion has taken place without permission the Collector should judge each case on its merits; if he thinks proper he may offer to the occupant an agreement; if the occupant refuses it, or if the Collector does not think proper to offer it fine under s. 66 should be levied. Form B attached to *G. R. 1188 of 13-2-1904* should be adopted as far as possible in all such cases and unless it is desired to make any material departure from the terms embodied in the Form no reference to Govt. is necessary. Similar agreements in Forms A and C should be offered in cases where they are prescribed. The orders of Govt. are not necessary unless some material divergence from the terms of those agreements is deemed desirable.—*G. R. 5504 of 18-7-1904.*

**Registration.**—The agreements executed under *G. R. 6411 of 16-9-1903* and *1188 of 13-2-1904* not being leases within the meaning of s. 105 of the T. P. Act and not coming within s. 90 (d) of the Indian Registration Act require registration and payment of the usual fees.—*G. R. 2926 of 23-3-1909.*

Where permission is given under s. 67 in return for an agreement by the occupant to give up some land or any other similar thing the whole document being an agreement requires registration.—*Cf. G. R. 10868 of 9-11-1909.*

Sub-divisions of land are not allowed by agreements under this section.—*G. R. 2101 of 23-2-1916.*

**Lessee of Govt. land may determine lease by surrender.**—A lessee holding a short term lease of Government land for 7 years applied for the cancellation of the lease and refund of the rent paid to the Government on the ground that the Municipality refused him permission to build thereon and subsequently filed a civil suit against him claiming the land as Municipal property. Government were advised that it was open to parties to determine a lease by express surrender (*cf. s. 111 (e) of the Transfer of Property Act, 1882*), but Government were not bound to refund the rent already recovered.—*G. R. 5074/28 of 23-5-1930.*

**Collector may impose a condition for forfeiture of occupancy.**—It is lawful for the Collector to grant permission for the non-agricultural use of the land, on such conditions as he chooses to impose, subject to the rules made by the Governor in Council in this behalf. As no rules have been made under s. 67 it is competent for the Collector to impose a condition for the forfeiture of occupancy under certain circumstances.—*G. R. 143/28 of 14-3-1929.*

**Condition to erect building within stated time.**—When no condition of forfeiture of occupancy is imposed, land cannot be forfeited for breach of

condition requiring the occupant to erect a building thereon within a stated time, as this is not a condition attached to the tenure of the land.—*G. R. 143/29, of 16-3-1931.*

Agreements are to be entered into in prescribed forms.—*G. Rs. 1188 of 13-2-1904; 1254 of 11-2-1910 and 5124 of 26-4-1918.*

**Rules**—Rule 84 states: "In hill stations and such other localities as Govt. may direct permission shall not be granted under s. 65 except on such conditions as are considered desirable regarding the style of building, the period for construction and the observance of Municipal or sanitary regulations. Such conditions shall be embodied in the Sanad."

**Bricks**—Rule 82-A states: Notwithstanding anything in Rules 81 and 82 in any area to which Govt. may by notification in the official Gazette direct that this rule shall be applied an additional rate of Rs. 2½ for every lakh of bricks manufactured in any one year shall be levied in addition to the annual assessment of Rs. 40 per acre on land used for the manufacture of brick; Provided that where exact accounts of manufacture are not available, the Collector shall be at liberty to fix the number according to the known capacity of kiln, and his decision shall be final.

**Notes**—The Form in Appendix to the L. R. Code should be used and not form N to the Land Revenue Rules, 1921 in cases of application for permission to use land for the manufacture of bricks. The additional condition in the form of agreement should be as follows: (d) the applicant shall not excavate earth within a margin of 10 feet along and inside the perimeter of a survey number.—*G. R. 1417/24 of 6-1-1927.*

**Brick digging in Sind**—In Sind there are sometimes Kalar or mounds of earth and it is often desirable to lower the land to bring it under cultivation to obtain a flow supply. Where it is done for improvement of land even when there is added profit from the bricks and also where digging is done to remove the materials but incidently the occupant sells them by making bricks for whatever they may fetch, no formal permission seems necessary but where the purpose in view is the profit derived from the sale of the materials then if the Collector thinks it for any reason undesirable *e. g.* it means the creation of a rice swamp which would be objectionable on sanitary or other grounds, may refuse permission. The Collector should enter into agreements on behalf of Govt. under s. 67 which is to be sanctioned by Govt.—*G. R. 4018 of 19-4-1907.* Probably the agreement is obsolete after the amendment to the Code in 1913. Penalties and enhanced assessments for such brick making were authorised in *G. R. 6383 of 1935.*

**Municipality**—The control of the Collector under s. 67 so far as building operations are concerned, is withdrawn in municipal districts where bye-laws have been framed with the sanction of Govt. under s. 48 (a), (o), (p), (q), (r), and (s) of the Bombay District Municipal Act, 1901 (*G. R. No. L. C.—412 of 14-7-1923 and G. R. L. C. 412 of 19-11-1925*). These orders do not apply to town municipalities whose bye-laws are not sanctioned by Govt. but by the

Commissioner, nor to City Municipalities whose bye-laws though sanctioned by Govt. have not been framed under all the clauses of s. 48 of the District Municipal Act mentioned in *G. R. L. C. 412 of 14-7-1923—G. R. L. C.—412 of 10-4-1924.*

In all areas notified under s. 67 of the Bombay District Municipal Act, 1901 revised regulations sanctioned in G. R. G. D. 3543 of 15-6-1906 should be adopted with such modifications as the Committees may make. In all places outside the notified areas, where the grant of permission is made conditional on passing agreements under s. 67, Collectors should attach to such agreements building regulations, conforming so far as they may consider necessary to those (*vide* Appendix IX) published for Salsette (*G. R. 3543 of 15-6-1906*) or where they consider such regulations unnecessary, should omit the last sub-clause of condition (5) in all the three forms of agreements sanctioned in *G. R. 1188 of 13-2-1904.* The revised regulations do not affect the agreements prescribed in the above G. R. which will remain valid where entered into whether within the limits of notified areas or not, during the remainder of the currency of the leases, unless the revised regulations are in any cases substituted by consent.—*G. R. 7496 of 6-8-1906.*

[<sup>a</sup>] 68 An occupant [<sup>b</sup>] is entitled to the use and occupation of his land for the period, if any, to which his [<sup>c</sup>] tenure is limited, or if the period is unlimited, or a survey settlement has been extended to the land in perpetuity conditionally on the payment of the amounts due on account of the land revenue for the same, according to the provisions of this Act, or of any rules made under this Act, or of any other law, for the time being in force, and on the fulfilment of any other terms [<sup>d</sup>] or conditions [<sup>d</sup>] lawfully annexed to his [<sup>e</sup>] tenure.

[<sup>e</sup>] Provided that nothing in this or any other section shall make it, or shall be deemed ever to have made it, unlawful for the Collector

[a] As to the local repeal of section 68 see para. 5 of foot-note (a) on p. 1 *supra.*

[b] As to the local modification of the word "occupant", see para. 5 of foot-note (a) on p. 1, *supra.*

[c] This word was substituted for the original word "occupancy" by Bom. IV of 1913, s. 27.

[d—d] These words were inserted in section 68 by Bom. VI of 1901, s. 8 (1).

[e] This word was substituted for the original word "occupancy" by Bom. IV of 1913, s. 27.

[e] This proviso to section 68 was added by Bom. VI of 1901, s. 8 (2).

at any time to grant permission to any person to occupy any unalienated unoccupied land, for such period and on such conditions as he may, subject to [a] rules made by the Governor in Council in this behalf [a] prescribe, and in any such case the occupancy shall, whether a survey settlement has been extended to the land or not, be held only for the period and subject to the conditions so prescribed.

### Commentary

**Object of amendment.**—The proviso was added by Bombay Act VI of 1901, section 8 (2). It enables the Collector to allow lands to be taken up on short leases and special terms which may include a restriction of transferability, whether by private contract or by attachment and sale under the orders of a Civil Court, notwithstanding that a survey settlement may have been extended to those lands, while s. 73A provides for the lands into which a survey settlement has not been introduced.—*Para 3 of Statement of Objects and Reasons of Bill IV of 1901; B. G. G. pt. V. p. 246*).

The so-called New or "Restricted" tenure was originated in the year 1901. It was introduced into the law by the insertion of a new proviso to s. 68 of the Bom. L. R. Code, by the amendment of s. 73 and by the enactment of a new section 73A of the Code. The result of this addition to the law was to produce a variant of the old survey tenure consisting in a restriction upon the power of alienation. ( For origin of this tenure and other details regarding it see notes to s. 73 and s. 73A *infra* ).

**Note.**—This section does not apply to any village in the district of Ratnagiri or the district of Kolaba to which the Khoti Settlement Act, 1860, extends ( Bom. Act I of 1860, ss. 1 and 39 ).

**Scope.**—Ss. 68 and 73 both in their original and amended form affect only unalienated land.—*G. R. 5/24 of 21-3-1912*.

**Merely intention or attempt to transfer land (occupancy) granted on unalienable tenure does not amount to breach of condition leading to forfeiture.**—Where a grant of occupancy was made to the plaintiff subject to restrictions prohibiting alienation and a few years afterwards, he made an application for transfer of the occupancy to the 2nd defendant, *held*: that the application amounted at most to an attempt to transfer which was never carried into effect, that there was no alienation and no breach of the conditions of the grant, that the order of the District Deputy Collector for summarily evicting the plaintiff was a nullity and that the officer cannot be said to have acted in his official capacity.—*Dhanji Jainam v. Secretary of State*, 45 Bom. 920; 23 Bom. L. R. 279 (1920).

[a—a] These words were substituted by Bom. IV of 1913, s. 27, for the original words " the orders of Government ".

**Miscellaneous instructions.**—Lands may not be given out on annual leases except in special cases where a permanent tenure is unsuitable or impracticable.—*G. R. 7873 of 8-11-1901.*

Agreements in one or other of the prescribed forms must be executed in all cases in which occupancies are granted in perpetuity, whether with or without free power of transfer, if no other special terms are attached. If an occupancy is granted for a fixed period, a lease should be executed in accordance with Rule 31. (now Rule 56; *See Appendix A for Rules*).

Where sanction is needed by the agreement for lease, mortgage, sale or other encumbrance the Collector should take into consideration whether or not the occupant can continue to cultivate efficiently without borrowing and whether the transfer or encumbrance is desirable in his interests. Transfer or lease from one agriculturist to another for cultivation by the latter in person may be freely allowed.—*G. R. 8610 of 11-12-1901.*

**Mamlatdars and Mahalkaries** may grant Govt. waste land for one year for temporary cultivation.—*G. R. 5295 of 1-6-1911.*

**In the case of Companies** unless it is registered under the Indian Companies Act, 1913 names of all partners should be recited in the lease for building purposes, as executoes. Such leases should be stamped and registered.

**Where Inam lands and Gavthans** are absorbed in town planning schemes, the original holders cannot be granted lands in exchange on the above mentioned tenures without the sanction of the Govt.—*G. R. G D, 3027 of 9-7-1923.*

**Stamp duty.**—Leases of agricultural land for the period exceeding a year are not exempted from Stamp duty.—*Art 35 of schedule 1 of Indian Stamp Act II of 1899*

Lease of agricultural land for a period exceeding a year containing provisions subsidiary to the main purposes of the lease do not fall under s. 5 of the Indian Stamp Act, II of 1922.—*G. R. 2780/21 of 1-5-1925.*

Where lands were transferred to a Municipality between 1877-78 on certain conditions and where the Municipality had granted building leases for long period say 99 years to private owners opinion was expressed that the lands do not cease to belong to the Municipality nor have they passed out of its possession. They can be resumed by Govt. on payment of compensation if they are required for the purposes mentioned in the rules relating to the grant.—*Cy. G. R. 2032 of 13-11-1926.*

**Re-grant of confiscated lands.**—The order of regrant should be cancelled either when the land has been granted for improper reasons and when hardship or injustice has been caused to the former occupant. In the case of cancellation it will be necessary to refund at the cost of Govt. the amount paid by the person evicted and such proved expenditure as may not reasonably be held to have been recouped but in the event of the latter having resulted in improvement of the land, it may be reasonable to require payment of it as a condition of restoration to the former occupant.

The conditions prescribed in G. R. 5621 of 8-8-1901, are based on instructions given by Govt. of India and should be fully carried out. They were

mainly intended for cases in which there existed mortgages without possession; so as to avoid increase of encumbrances.—*G. R. 4503 of 2-7-1902.*

**69. The right of Government to mines and mineral**

Reservation of right of Government to mines and mineral products.

products in all unalienated land is and is hereby declared to be expressly reserved:

Provided that nothing in this section shall be deemed to affect any subsisting rights of any occupant [a] of such land in respect of such mines or mineral products.

**Commentary**

**History**—This section has been imported from the Land Revenue Code of British Burma of 1876. It was pointed out by Hon. Mr. V. N. Mandlik that that Act under which holders have very limited rights cannot be a law which should be introduced into this Presidency where it had already been established that the ryot shall not be disturbed in the occupation of his hereditary holding, which comes to him by right of inheritance so long as he pays the Govt. revenue.—*Proceedings of Hon. Leg. Council, for 1877.*

The object of this section is to reserve the rights of Govt. to all mines, mineral products, and buried treasures with full liberty to work, and search for the same, paying to the occupant only compensation for surface damage as estimated by the Collector.—*Report of the Select Committee.*

In the case of the words "mines" and "mineral products" regard must be had to the statute as things reserved. Similarly regarding the owner's purpose for which the occupancy is granted. The word *minere* is a Latin word of the lower ages, *minere*, signifying a subterranean cavity or passage, especially a pit or excavation from which metallic ores or other mineral substances are obtained by digging. It is distinguished from the pits from which stones are quarried, and which are called quarries.

The section includes everything except the vegetable surface, or every thing except the mere surface, which is used for agricultural purposes. Where land is transferred to the ownership of any person so as to come within the meaning of term 'alienated' [s. 3 (19)] the rights of Govt. and the minerals in that behalf to the minerals ought to be expressly reserved as this would not apply in such a case.—*G. R. 6658 of 15-12-1879; Standing Order of Govt. in R. D. Vol. II p. 1023 (1902).*

As the occupant possesses no rights to mines and minerals in the lands which are granted from Govt. on payment of Jama. Govt. have no objection to the

As to the local modification of the word "occupant" see para. 5 of the note [a] on p. 1, supra.

disposal by the Talukdars of minor products such as stone and kankar, occurring in their lands. When such products are required for a public purpose Talukdar's permission should be obtained.—*G. R. 5096 of 6-8-1898.*

Kankar, stone and laterite quarries are exempted from the operations of the Indian Mines Act (VIII of 1901)—*G. N. 4231 of 19-6-1901.*

Slate, lime and clay and such other minor minerals are not governed by mining rules. Therefore, the provisions of the Bom. L. R. Code and the rules made thereunder should be applied.—*G. R. 9405 of 21-11-1905.*

**Right of occupants to mines or minerals**—The plaintiff was the proprietor of an 'alienated village' and was granted a commission under s. 88 by Govt. Survey Settlement was introduced into the village about the year 1867-68. The defendants were the holders of the disputed land which was varkas and the khatas of that land stood in the name of defendants' grand-father since 1865. In 1910 the defendants commenced working a stone mine in that land. The plaintiff claimed to be the full owner of the land and to be entitled to all the minerals situated therein and filed a suit for injunction to restrain the defendants from working or opening any mines therein. The High Court approved the view taken by the Lower Appellate Court that the plaintiff by s. 69 which reserves the right of Govt. to mines and states that occupants of unalienated lands have no right to the mines or the minerals in the land, is entitled to the injunction sought for.—*Mukund v. Chabildas, (Appeal No. 733 of 1913 (Umretd.))*

## RULES

**Rule 30 (a)** states that the right of Govt. to mines and mineral products which is reserved by s. 69 shall not be disposed of under sanction of Govt., and in all grants of land the right to mine mineral products and full liberty of access for the purpose of working the same shall be deemed to be reserved unless granted building and unless such right and liberty are expressly granted or expressed the

**Notes**—Without a stipulation in the lease or grant or have they passed on or doubted. *G. R. 6706 of 1900; G. Rs. 3504/24 of 25-5-20, 21-5-20, 4524/24 of 22-9-1926; G. R. 711/24 of 31-1-27* all deal with rules relating to licenses to prospect for minerals and of mining leases in British India.

**Charges for quarrying are levied as altered assessment on occupied lands**—It is important to note that in occupied lands charges for quarrying, etc., are levied not as 'stone and mineral and sand fees from Govt. land' but are altered assessments under ss. 48 and 65. Such altered assessment is not assigned to or to be paid to Local Boards.—*G. R. 10424/17; G. R. 5428/22.*

**Rule 77** prohibits an occupant of land assessed or held for the purposes of agriculture only and the person claiming under or acting by authority of any such occupant, from excavating or removing earth, stone, other than loose surface stones, Kankar, sand, murum or any other material of the soil thereof, or make any other use of the land, (a) so as, in the opinion of the Collec-



tor, thereby to destroy or materially injure the land for cultivation or (b) for purposes of trade or profit, or any other purpose except his own domestic or agricultural purposes.

Rule 78 states: "No holder of land assessed or held as a building site, or lease-holder of a building site, in a hill station, and no person claiming under any such holder or lease holder, shall, subject to any special provision in the conditions annexed to his holding under s. 62, s. 67 or otherwise, or prescribed by his lease, excavate, or remove for any purpose whatever earth, stone other than loose surface, stones, kankar, sand, murum, or any other material of the soil thereof, except with the previous permission in writing of the Collector and in accordance with such terms (including the payment of fees for any such excavation or removal) as the Collector in each case thinks fit to prescribe."

The Collector can remit quarry fees when stone etc. is wanted for religious or charitable purposes.—*G. R. 5295 (115)-1911.*

Rule 79 prohibits excavation of unalienated land within site of village, town or city without permission except for certain purposes such as laying of foundations for buildings, etc.

Disposal of earth, stone, kankar, sand, murum, etc. which is Govt. property (i. e. obviously from unoccupied land) is regulated by Rule 66.

Rule 67 allows villagers to remove earth, stone, etc. for their own use from unassessed waste land and from beds of rivers etc. within the limits of their village without fee.

Rules 68, 69, and 70 govern the removal of stones, excavation of soil, and removal of earth, etc. from village tanks. (*See Appendix A for Rules.*)

#### INAM LANDS

In the case of Dewasthan and Personal Inam lands of the rights to mines and minerals do not vest in Government. They vest in the Dewasthan or in the owner of the Personal Inam land.—*G. R. 7629 of 6-10-1904; 1889 of 6-3-1905 and 5758 of 8-6-1907.*

70. [\*] In any case where [b] an occupancy [b] is not transferable without the previous sanction of the Collector, and such sanction has not been granted to [c] a transfer [c] which has been made or [d] ordered by a Civil Court [d] or on which the Court's decree or order is founded,

[a] Words repealed by Bom. IV of 1913, s. 28 (a), are omitted.

[b-b] These words were substituted for the original words "the occupancy or interest of the occupant in the land", by Bom. IV of 1913, s. 28 (b).

[c-c] These words were substituted for the original words "the transfer" by Bom. IV of 1913, s. 28 (b).

[d-d] These words were substituted for the original words "ordered by the Court" by Bom. IV of 1913, s. 28 (b).

(a) such occupancy [a] shall not be liable to the process of any Court, and such transfer shall be null and void, and

(b) the Court, on receipt of a certificate under the hand and seal of the Collector, to the effect that any such occupancy [a] is not transferable without his previous sanction and that such sanction has not been granted, shall remove any attachment or other process placed on or set aside any sale of, or affecting, such occupancy [a].

#### Commentary

**Old law**—The first portion of this section which was repealed by s. 28 (a) of Bom. IV of 1913 stood thus: "If by a decree or order of a competent court it shall be adjudged that the occupant is an inferior holder under another person, or that the occupancy is vested in another person, or if, in the execution of such a decree or order the interest of the occupant in the land have been transferred by sale or otherwise to another person, such other person shall, on producing a certified copy of the decree or order or the court's certificate of the sale or other transfer, be deemed to be the occupant and be dealt with accordingly, and, on written application being made to the Collector for the purpose, such change shall be made in the entry of the registered occupant's name as the circumstances require."

**Note**—So far as this portion referred to registered occupants it had no application owing to the amendments made by Bom IV of 1913. So far as it referred to occupants it is covered by the Record of Rights chapter.—*Report on the proposed amendment of the Bom. L. R. Code by G. D. French, 1911.*

**Delegation of power to Mamlatdar, etc.**—Administrative Order VIII states that the Collector may delegate all his powers under s. 70 to Mamlatdars.—*G. R. 4347 (17) of 1902.*

#### 71. Repealed by Bom. IV of 1913, s. 29.

**Note**—This section had provided that the name of the heir should be registered in the Govt. records when the registered occupant dies.

[b] 72. If an occupant [c] who is either a Hindu, a Mahomedan or a Buddhist dies intestate and without known heirs, the Collector shall dispose of his occupancy [c] by sale, subject to the provisions of this Act or of any other law at

Intestate occupancy or holding to be sold.

[a] Words repealed by Bom. IV of 1913, s. 28 (c), are omitted.

[b] As to the local repeal of section 72, see para. 4 of foot-note (a) on p. 1, *supra*.

[c] As to the local modification of the words "occupant" and "occupancy," see para. 5 of foot-note (a) on p. 1, *supra*.

the time in force for the sale of forfeited occupancies in realization of the land revenue, and the law at the time in force concerning property left by Hindus, Mahomedans or Buddhists dying intestate and without known heirs shall not be deemed to apply to the said occupancy [\*] but only to the proceeds of such sale after deducting all arrears of land revenue due by the deceased to Government and all expenses of the said sale.

### Commentary

The ordinary law regarding the property of a person who dies intestate and without known heirs is that contained in s. 10 of Bom. Reg. VIII of 1827 (*A regulation to provide for the formal recognition of heirs, executors and administrators and for the appointment of administrators and managers of property by the Courts*). Under this law the Distt. Court appoints an administrator for the management of the property and after he has taken charge of it for about two years it is sold under the orders of the High Court and the proceeds are deposited in the public treasury for the eventual benefit of all concerned. S. 10 states; *First*.—Whenever any person dies intestate, and without known heirs leaving property, the Judge, within whose jurisdiction the property is, shall appoint an administrator for the management thereof, and shall issue a proclamation in the form contained in Appendix C, calling upon the heir of the deceased or any person entitled to receive charge of the property, to attend and prefer his claim.

*Second*.—The proclamation shall be published.....and if the deceased was a native of any district or country without the limits of the Court's jurisdiction and the property is of the value of rupees one thousand (1,000) ..... or upwards, the proclamation shall also be published in the Government newspaper.

*Third*.—If any person appears and satisfies the Judge of his right to the possession of the property or any part of it as heir, executor, administrator, or otherwise, it shall be delivered up to him, after deducting the necessary expenses of management.

*Fourth*.—But, if no person appears and establishes his right, the Judge on the 31st December next after the completion of twelve months from the appointment of the administrator, shall make a report of the circumstances of the case, to the Sadar Diwani Adalat, accompanied by an inventory and valuation of the property; and it shall be lawful for the Sadar Diwani Adalat either to direct the property to continue for a further period under the management of the administrator, or to be sold by him under the autho-

[\*] As to the local modification of the words "occupant" and "occupancy," see para. 5 of foot-note (a) on p. 1, *supra*.

riety of the Court, and the proceeds to be deposited in the public treasury for the eventual benefit of all concerned".

The object of the section is to enable the Collector to dispose of the occupancy of an occupant dying intestate and to stay the operation of the law regarding the property left by persons dying intestate until the occupancy has been sold and arrears due to Govt. secured.—*Report of the Select Committee on the Revenue Code Bill of 1-5-1877.*

S. 72 excepts occupancies belonging to Hindus, Mahomedans or Buddhists from the general law and directs that in their case the occupancy shall be disposed of by the Collector by sale subject to the.....for the sale of forfeited occupancies in realisation of the land revenue and that the net proceeds only shall be subject to the provisions of the ordinary law regarding intestate property. The effect of the section is that the occupancy of a Hindu, Mahomedan or Buddhist who dies intestate and without known heirs instead of being managed and eventually sold by the nazirs of the District Court (who is generally the administrator appointed under s. 10 of Bom. Reg. VIII of 1827) is sold by the Collector and the net proceeds are made over by the latter to the Nazir for credit to the deceased's estate. In short the intention is to prevent the occupancies of persons dying intestate coming under the management of the Distt. Court's administrator.

Scope.—The words in s. 72 'subject to the provisions.....in force for the sale of forfeited occupancies in realisation of the land revenue' do not appear to mean more than that an intestate occupant's occupancy should be sold, subject to the same rules for regulating the sale as a forfeited occupancy, and this construction of them is consistent with the apparent purpose of the section. There is no reason to think that the legislature contemplated attaching the same penal consequences to an occupant dying intestate and without known heirs as to the failure of a living occupant to pay the land revenue due on his occupancy. Such a provision would be unjust and whenever the language of an enactment admits of two constructions according to one of which the enactment would be unjust.....and according to the other it would be reasonable and wholesome, it is obvious that the latter must be adopted as that which the legislature intended.—*Marwell on Interpretation of Statutes.* Thus all that the Collector sells is the right, title and interest of the deceased occupant and that subordinate rights are not affected by such a sale. The words 'the Collector shall dispose of the occupancy by sale' in s. 72 leave the Collector no option. The right, title and interest of the deceased must be sold for what it will fetch. The reason is that the Collector so far as regards these occupancy rights of persons dying intestate, takes the place of the administrator appointed by the District Court under Reg. VIII and just as it was formerly the duty of the administrator to sell such rights for whatever they might fetch 'for the eventual benefit of all concerned', so is it now the Collector's duty to realise by the sale of the deceased's right, title and interest whatever he can for the benefit of the estate.—See *G. R. 783 of 27-1-1885.* When an occupant dies

without heirs, his occupancy does not lapse or become forfeited or liable to resumption by Govt. but the case is provided for in the Code by s. 72.

**S. 72 is not applicable to alienated holdings**—The word occupant cannot be held to include a holder of alienated land, and the Collector should not therefore attempt to take action under this section in the case of alienated holdings.—*G. R. 3812 of 13-5-1885.*

**Unclaimed property**—Property left by a person who dies intestate and without known heirs is 'unclaimed property' within the meaning of s. 19 of the Bom. Village Police Act (VIII of 1867), and if in addition to some moveable property the intestate has left some lands inquiry will soon enable the Magistrate to determine whether the deceased was an occupant and whether, therefore, the Collector should take action under s. 72.—*G. R. 3813 of 13-5-1885.*

**Property passing to Crown by escheat**—Wherethere is no heir, assignee, or other person claiming through the deceased intestate the property lapses to the Crown by escheat, and not by virtue of Reg. VIII of 1827. The Collector may receive charge of such property on behalf of the Crown and if any heir subsequently appears Govt. would be responsible to him. But there is no necessity for a sale by the Court, nor can the property be sold if the Collector claimed that he was entitled to receive charge of the property on behalf of the Crown. However to be safe the High Court might be moved to direct under s. 10, clause 4 (of the said Regulation), that such property should continue under the management of an administrator, until such period had elapsed as would render the chance of any claim being preferred infinitesimally small, and Government might then, through the Collector, put in their claim to the property as having passed to His Majesty by escheat.—*G. R. 8407 of 15-12-1888.*

**Entry in Collector's books does not of itself establish a person's title**—Collector's books are kept for purposes of revenue and not purposes of title. The fact therefore, of a person's name being entered in the Collector's book as an occupant of land does not of itself establish that person's title or defeat the title of any person.—*Bhujaji v. Bapuji, 13 Bom. 74 (1889), Collector of Poona v. Bhasurao, 10 Bom. 192; Saajapa v. Bhimangowda, 10 Bom. 194. G. R. 8488 of 27-11-1889* states that it is an error to regard the entries in the revenue record as evidence of title. They do no more than indicate the person responsible for Govt. assessment and invested with the privilege of the registered occupants. In contested cases under s. 71 the Collector has no legal authority to thrust the burden of investigation upon the Civil Court and is bound to hold himself such an enquiry as may be necessary. His decision is no award, and the aggrieved party has his remedy of a suit in a Civil Court.

**Sub-Divisional Officers can pass orders under this section.**—*G. R. 3295 of 1-6-1911.*

[<sup>a</sup>] 73. [<sup>b</sup>] [<sup>c</sup>] An occupancy [<sup>c</sup>] [<sup>d</sup>] shall, subject to the provisions contained in section 56, and to any conditions lawfully annexed to the [<sup>e</sup>] tenure, and save as otherwise prescribed by law, be deemed an heritable and transferable property.

Occupancy to be transferable and heritable.

### Commentary

**Scope**—This section and s. 68 both in their original and amended form affect only unalienated land.—*G. R. 502A of 21-7-1902.*

**Old law**—Previous to its amendments by Bom. VI of 1901 s. 73 ran as follows:—"The right of occupancy shall be deemed an heritable and transferable property, subject to the provisions contained in s.56 (*re* the payment of Land Revenue ) or otherwise prescribed by law and shall immediately pass to the person whose agreement to become occupant shall have been accepted by the Collector."

The so-called **New or Restricted tenure** was originated in the year 1901. It was introduced into the law by the insertion of a new proviso to s. 68 of the Bom. L. R. Code, by the amendment of s. 73 and by the enactment of a new s. 73A of the Code.

The result of this addition to the law was to produce a variant of the old survey tenure consisting in a restriction upon the power of alienation.

**Origin of the new tenure**—The proximate cause which led to this amendment of the law was the doubt which had arisen as to the power of the Collector under the Land Revenue Code to grant an occupancy for a limited period in land to which Survey Settlement had been applied or to impose a condition in the grant of the occupancy of any land that might not be alienated.

Previous to the year 1901 the existence of this power had been taken for granted, and Collectors had been accustomed to give out lands both for short periods and on conditions comprising the restriction of the power of alienation. Leases of this last type had been granted chiefly to wild tribes in Thana, Kanara and Khandesh, with the object of safeguarding their lands against falling into the hands of the *savkar*—a result which would inevitably have followed had freedom of transfer been allowed.

[a] As to the local repeal of section 73, see para. 4 of foot-note (a) on p. 1, *supra*.

[b] This section was substituted for the original section 73 by Bom. VI of 1901, s. 10.

[c-c] These words were substituted for the original words "the right of occupancy" by Bom. IV of 1913, s. 30.

[d] As to the local modification of the words "occupant" and "occupancy", see para. 5 of foot-note (a) on p. 1, *supra*.

[e] This word was substituted for the original word "occupancy" by Bom. IV of 1913, s. 30.

The law officers of Government had, however, expressed the opinion that leases on conditions other than those under the full survey tenure—which included the power of free transfer were illegal, as there was no provision under the law by which they could be granted. It, therefore, became necessary to legalize the leases already granted and to make provision allowing such action to be taken in the future. Further, in view of the fact that, as is explained in the "Statement of Objects and Reasons" "in certain tracts to which the Survey Settlement has not yet been extended, the cultivating classes are so imperfectly civilized as to be incapable of protecting their own interests," the additional power was taken of notifying tracts or villages, at the time of Original Settlement, within which occupancies might be declared to be inalienable, though without restricting the heritable rights of the occupants.

Its employment as a measure of economic reform—Owing, however, to peculiar circumstances, the introduction of the Bill at this particular time assumed an aspect of great importance. The years 1900-1901 covered the period of perhaps the worst famine that the Presidency has experienced in modern times. The arrears of Land Revenue in Gujarat averaged about 50 per cent. of the total demand, while in Poona, Bijapur, Sholapur, Satara and Nasik they ranged from 20 to 40 per cent. Under the provisions of the Land Revenue Code, the lands for which assessment could not be paid were liable to forfeiture on account of the arrears, upon which they would become Govt. property and at the disposal of Government. Such lands would, of course, at the close of the famine period, be leased out again to occupants for the purpose of cultivation. But, under the existing law, such leases could only be granted on the old Survey tenure which comprised as one of its conditions the power of unrestricted alienation. Government, therefore, determined to seize the opportunity afforded by the amendment of the law at this particular time "of taking an important step towards the solution of that momentous problem of a remedy for agricultural indebtedness."

As the Honourable Member, explained in his speech introducing the Bill "the recent trend of official opinion has been towards the conclusion that the grant of unrestricted property in land, subject to the payment of assessment, has been the main cause of embarrassment and that the remedy most likely to be effectual is a restriction on the transfer of land."

The power of alienation, as he showed, was not an innovation due to the British Government, since *miras* land in the Deccan was always considered to be transferable as well as a heritable property, but it was only under the British Government that the questions connected with alienation became a serious social problem. This was due to two chief causes, viz., the difference in legal procedure, and the large increase in the value of land. With regard to the first cause, under the Indian Government's payment of a debt was seldom enforced by the State, whereas "now unfortunately our Courts are largely occupied with ordering the sale of land in execution of decrees." At the same time, the large increase in the value of land had made it a desira-

able object of acquisition to the *sarkar*, with the result that year after year more of the agricultural land was passing into the hands of people "who use their capital to get possession of the land; they use none for the improvement of it."

In these circumstances Government determined to forfeit the lands on which there were arrears and to regrant them to occupants, subject to the condition that the occupancy would lapse if the lands were alienated without permission. In adherence to this policy, large regrants of forfeited lands were made in the districts affected.

**Administration of the new tenure**—With regard to the general administration of the new tenure the principles to be observed were laid down in Government Resolutions No. 3875, of 22-4-1909 and No. 599, of 19-1-1912, and may be summarised as follows:—

(1) The new tenure is generally suitable to the backward classes of cultivators only and not to the more advanced classes.

(2) It is necessary to note carefully that the basis upon which the new tenure stands is essentially different (a) in areas which have been notified under s. 73 (1) of the L. R. Code and (b) other areas.

(a) **Areas notified under section 73 (1)**—In these areas the condition of non-transferability becomes attached automatically to *all* occupancies on the publication of the notification. The only way by which any class of occupancies can be exempted from this condition is by the special orders of Government granting the exemption, either to special tracts or to classes of persons or to individuals.

In these areas the character of the tenure follows the status of the holder, *i e.*, land authorizedly transferred from a non-exempt to an exempt person automatically becomes free from the condition of non-transferability, but when transferred from an exempt to a non-exempt person the condition is automatically imposed.

Similarly with respect to the grant of new occupancies by the Collector if the grantee is non-exempt, the condition is *ipso facto* attached, but, if exempt, the grant is free of the condition.

(b) **Other areas**—In other areas the condition can only be attached to new occupancies granted by the Collector and cannot be imposed on existing occupancies. It must only be imposed in the case of the backward classes and the Collector is precluded from attaching it to a grant made to a member of the intelligent classes.

It may be added that suggestions have at times been made for the relaxation of the terms of grants on the new tenure with the object of allowing a restricted power of alienation on certain conditions, but Government have consistently refused to agree to such proposals as a matter of principle (*vide* Government Resolution No. 8709, of 23-9-1910). It has, however, been ruled that sanction to reasonable alienations should be readily given (*vide para 9 of G. R. 7760 of 19-8-1912*).



[**°**] 73A. (1) Notwithstanding anything in the foregoing section, in any tract or village to which Government may, by Notification published before the introduction therein of an original survey settlement under section 103, declare the provisions of this section applicable, [**°**] occupancies shall not after the date of such Notification be transferable without the previous sanction of the Collector.

(2) Government may, by Notification in the *Bombay Government Gazette*, from time to time exempt any part of such tract or village or any person or class of persons from the operation of this section.

#### Commentary

**History and Object**—“There were large areas in Sind which, owing to the variances of the Indus, were not suitable for permanent occupation and the practice of giving them out on annual tenancies had been followed with profit to both the cultivators and the State. Alluvial lands on the banks of rivers in the Presidency proper had been dealt with in the same manner. Members of the wild tribes in Thana had similarly been allowed a temporary occupation of land which had been relinquished and some had been allotted plots in forests on condition of their not being alienated. Members of hill tribes in Kanara and other districts who have not means of regular cultivation were allowed to grow crops in rotation on patches of forest land among the ashes of bushes which they cut and burn, and also to cultivate temporarily high-lying lands on which they could burn branches. Leases had been granted to Bilis in West Khandesh with a stipulation that the land should be held so long as they were not sold or otherwise disposed of without the Collector's permission. There were also lands called sheri or Crown land in the Ratnagiri which had been leased for a period of 30 years on special terms. The Law Officers had held that every person who was legally invested with a right of possession and enjoyment in any form, of land was an occupant and as such had under s. 73 an heritable and transferable right in it. If a survey settlement had been extended the occupant was entitled to the use and occupation in perpetuity; otherwise the right was limited to the term for which the occupancy was granted, but within that term it was heritable and transferable. It was not however always easy to say whether a survey settlement had been extended to cer-

[a] Section 73A was inserted by Bom VI of 1901, s. 11.

[b] This word was substituted for the original words “the occupancy or interest of the occupant in the land” by Bom. IV of 1913, s. 31.

tain lands or not. It might reasonably be held that forest lands which were measured but entered in the survey papers as unassessed came under the survey settlement, and it was at any rate obviously undesirable that a Worli who would sell his last rag for liquor should be able to dispose of the right which had been granted even if the right lasted only for a year. As the law before 1901 was interpreted Govt. could not even grant permission to a man to stack fuel on its land without at the same time conferring a transferable right. In no other part of India was the State precluded from dealing with unoccupied land which was its absolute property, as it deemed fit. The provision proposed to be made was for the special purpose of protecting holders of wild tribes who might be in possession of land to which it was desirable to extend a Survey Settlement. It was to apply in particular to parts of Western Khandesh in which cultivation had hitherto been carried on by Bhils. As already stated, some of them had held under leases which contained a stipulation that the land should not be disposed of without the permission of the Collector. If the settlement were applied so that these people would hold under ordinary tenure, it was practically certain that the lands would soon pass out of their hands. So far as the development of the resources of the tracts for which in the circumstances a special low assessment was proposed this would probably not have been disadvantageous; but it was thought that it was incumbent on Govt. to give such people an opportunity of raising themselves in the scale of civilisation instead of being pushed down to lower depths by the operation of the usual economic forces.

**Objection**—The legislation proposed to be introduced in 1901 to (Bom. Act VI of 1901) was opposed by the elected members of the Bombay Council, on the ground that the Bill when passed into Law might be worked so as to increase the Revenue of Government. The Hon'ble Sir P. Mehta said that the intention of Govt. in bringing the Bill was to make a declaratory Act establishing the absolute right of the State as sole landlord of all the soil in the Presidency. The Hon'ble Mr. G. K. Gokhale said that the Bill constituted an emphatic assertion of the theory of State Landlordism and that this was bound to have far reaching consequences. The Bill meant the Nationalisation of forfeited lands, which altered completely the character of land tenure in the Presidency. Hon'ble Mr. Gokhale criticised it by pointing out that the D. A. R. Act Commission of 1891 had discussed the question in their Report whether Govt. might not buy land themselves instead of letting Savkars securing them and then regrant them to agriculturists as tenants of State without of course the power of alienation. They pronounced the proposal a good one if it could be carried out. But they considered that the cost would be prohibitive and that there were other difficulties in the way. He accused Govt. by saying that what the D. A. R. Commission thus considered unattainable by reason of its excessive cost Govt. then proposed to achieve by foregoing merely a year's assessment when the average price of the land according to the official testimony was twenty five times the assessment. The Hon. Mr. Gokhale further said:

"The wide discretionary powers which Govt. propose to take under the Bill, will enable them whenever they like to grant short leases or take land for public purposes without any compensation or allot it to whomsoever they please. This is a real danger because the tendency of the revenue officers generally is to put the widest possible interpretation on the powers of Govt. for the purpose of enhancing the Govt. revenue in every possible way. Take for instance the question of building fines and assessment. Who would have thought before 1865 when there were neither building fines nor special assessment for building sites that in a few years Govt. would advance their claim from point to point in such a manner as to end by claiming for themselves the entire non-agricultural market value of unalienated land ?

In no other Province has the Executive the power of transferring land from one kind of tenure to another in the exercise of its own discretion. Waste lands, to which the survey settlement has been extended as also forfeited relinquished lands are at present in this presidency under the survey tenure, *i. e.* they can be granted to occupants only in perpetuity and with full power of alienation. Under this Bill, Govt. seek to obtain the power to change the tenure of those lands whenever and wherever they please.

So far as the present law as to the disposal of forfeited lands is concerned, forfeited lands are sold to the highest bidder except in certain exceptional cases such as a combination not to buy the land at a fair price; and when these sales take place the proceeds after deducting the arrears of land revenue and the expenses of sale are credited to a defaulting occupant. It is only in those exceptional cases where sales cannot take place for certain specified reasons, that the Collector has the power to dispose of land in any other way, of course without changing the character of the tenure under which it is held."

*N. B.*—See also notes to ss. 68 and 73 for further discussion regarding the restricted tenure. *The Amending Act VI of 1901* by adding this section makes it competent to Government to publish a declaration that the occupancy or the interest of the occupant shall not, after the declaration, be transferable without the previous sanction of the Collector. But this can only be in a tract or village in which the original survey settlement might be introduced after the passing of Bom. Act VI of 1901 and by a notification published before the introduction of the original survey settlement. The Amending Act of 1901 does not affect the right of transfer existing in occupants before the Act came into force.

*Notes.*—The power reserved by Govt. under cl. (2) of this section does not take away the Collector's power under the last sentence of clause 1 to transfer any particular occupancy from the new to the old tenure.

Ordinary tenure should not be converted into restricted tenure without publication of notices and investigation into the circumstances with a view to protecting creditors against fraud.—*B. G. G. Pt. VIII for 1905, p. 11.*

**Transfer of trees apart from land** is not prohibited by this section. It was so decided by the High Court in *Bapu Vithal v. Secretary of State*, 34 Bom. L. R. at p. 780 (1931). Though the question was decided with reference to the L. R. Code as it stood before 1913 yet the principle can be said to be true even now.

A sale of trees in an occupancy does not mean a transfer of occupancy and is therefore, not subject to the restrictions of s. 73A.

**Notification declaring this section applicable to certain villages**—Cl. 1 of this section has been made applicable to the following villages in the district of the West Khandesh by notification mentioned opposite:

The District of West Khandesh

(a) 79 villages in Nandurbar Taluka	}	G. N. 1116 A
		of 18-2-1902
(b) 66 villages in Navapur Taluka	}	G. N. 5348 of
		2-8-1932
		G. N. 6279 of
(c) 17 villages in Shirpur Taluka	}	14-7-1910
		G. N. 1116 B.
(d) 42 villages in Taloda Taluka	}	of 18-2-1902
		G. N. 1116 C.
(e) 11 villages in Shahada Taluka	}	of 18-2-1902
		G. N. 1116 D.
		of 18-2-1902
(f) Sakri Taluka	}	G. N. 296 of
		10-1-1908
(g) Akrani Mahal	}	G. N. 1116 E
		of 18-2-1902
		G. N. 9383 of
		7-1-1926

**Classes of persons exempted under clause (2) of the section:—**

(a) All Brahmins and Banias (Vanis) holding lands in the villages of Nandurbar and Navapur Talukas to which the provisions of s. 73A (1) have been declared applicable. G. N. 10363 A of 22-10-1907

(b) All Brahmins and Banias (Vanis) holding lands in the villages of the Shirpur Taluka to which the provisions of s. 73A (1) have been declared applicable. G. N. 11559 of 13-11-1908

(c) All Marwadis, Khentris, Prabhus, Bhoris, and Parsis in the villages in the Shirpur Taluka to which the provisions of s. 73A (1) have been declared applicable. G. N. 3875 of 22-4-1909  
G. N. 355 of 11-1-1916

(f) All Marwadia, Khatria, Prabhus, Bhoris and Parsis holding lands in the villages of the Nandurbar, Taloda, Shahada and Sakri Talukas and the Navapur Taluka of the West Khandesh District.	G. N. 9147 of 21-9-1909 G. N. 355 of 11-1-1916
(e) All Brahmins and Banias (Vanis) holding lands in the villages of the Taloda, Shahada and Sakri Talukas of the West Khandesh District.	G. N. 9147A of 21-9-1909
(f) All Brahmins and Banias (Vanis) of the villages of Velavad, Pimpalod, Natavad, Umarada, Kotli, Kothda, and Gherajgaon of Nandurbar Taluka, Dist. West Khandesh, and to those of the Gujars and Vanjaris and other non-aboriginal castes of the advanced agricultural classes and fitted to exercise right of transfer.	G. R. R. D. No. 6747 of 13-7-1906

**Procedure for personal exemptions.**—The Collector should consider the application of the person belonging to a class which has not been exempted by notification under cl. (2) of s. 73A and after due enquiry should submit the applicant's name for exemption by notification in the B. G. Gazette [s. 73A (2)] or should refuse the application in his discretion. Such exemption if granted will continue only during the life time of the grantee.

The effect of relinquishment of the non-transferable occupancy by person holding an occupancy declared non-transferable under s. 73A would not be to enable the Collector to regrant it to him on the ordinary tenure for otherwise the Collector would be exercising the power of exemption reserved to Govt. alone by s. 73A (2).

A non-exempted person cannot transfer land to which s. 74A (1) applies without the Collector's consent, whoever may have been the previous holder (even where the previous holder is a person exempted from non-transferable tenure) and whatever may have been the terms under which the non-exempted person acquired the land.

The Collector may attach the condition of non-transferability in areas which had not been notified under s. 73A (1) in the case of backward classes only and not in the case of the more intelligent classes, and where the Collector gives the permission to transfer, the condition of non-transferability without his previous sanction will continue to apply to that occupancy unless it is cancelled.

In any existing occupancies in area not notified under s. 73A (1) the Collector cannot attach the condition of non-transferability; he can only accept relinquishments of such occupancies, and grant fresh occupancies subject to that condition.

In the case of areas which have not been notified under s. 73A the restrictive condition if imposed may be removed at the discretion of the Collector guided by the executive orders of Govt. In cases of notified areas under s. 73A the restrictive conditions apply to all occupancies by the force of

the notification and can be removed in particular instances only by a further notification under s. 73A (2).—*G. R. 3875 of 22-4-1909.*

The word 'Bhogavta' in the Kabulayat taken from a Bhil who was given land gratis was held to show that the tenure was a restricted one.—*Dhabu v. Harsing, P. J. 1894 p. 152.*

Collector in giving sanction for transfer has to see if it is desirable so to do.—In sanctioning the transfer of an occupancy held under a restricted tenure the Collector has to bear in mind if the particular transfer is desirable having regard to the character and status of the transferee on whose behalf the application for sanction is made. Thus, the sanction given by the Collector under this section does not mean that the character of restricted tenure impressed upon the land is so completely removed as to render it transferable at will.—per Desouza A. J. C. in *Ismail Khan Mir Azam Khan v. The Official Receiver, A. I. R. 1928, Sind 63.*

S. 73A includes transfer of interest in restricted occupancy tenure—The prohibition contained in s. 73A is not confined to an absolute and an out and out transfer of an occupancy but that it includes the transfer of an interest in the occupancy without the sanction of the Collector. A mortgage, therefore, of a share in land held on restricted tenure in Sind, without the sanction of the Collector, is void and conveys no rights to the mortgagee.—*Dharamdas v. Doranji and others, A. I. R. 1930, Sind 75.*

Sale of land held on restricted tenure in Sind is voidable and not void. The person holding the land has right to sell with the sanction of the Collector. It cannot be said that he had absolutely no right under any circumstances to convey the property. The sale could have been effected with such sanction previously obtained or made effective by sanction subsequently secured.—*Abdul Rahim v. Kadu, A. I. R. 1930 Sind 12.*

#### MISCELLANEOUS INSTRUCTIONS

Sub-Divisional officers can pass orders under this section.—*G. R. 5295 of 1-6-1911.*

Security for tagavi loans.—Mukhtyars in Sind are vested with the powers of the Collector to accept lands held on restricted tenure as security by way of mortgage in cases of loans given out by them under the Land Improvement Loans Act or the Agriculturists' Loans Act.—*G. R. 435124 of 4-4-1924.*

Land on restricted tenure should be sold on restricted tenure only.—*G. R. 5964 of 23-6-1911.*

Members of Agricultural Co-operative Societies holding lands on restricted tenure may be permitted by Collector to alienate them to those societies. When such land passes into the possession of a society by default of its debtor member it should be sold by auction on restricted tenure only with the sanction of the Collector, and that such lands should pass into the possession of a person who can hold land on restricted tenure in the district.—*G. R. A-501 of 23-11-1921.*

**Backward classes.**—It is a sound policy generally to grant land on restricted tenure to backward classes.—*G. R. 4089/24 of 30-11-1925.*

**A pardanahin woman** is the most unsuitable person to exempt from the operation of clause 2 of s. 73A.

**Inam villages.**—The grant of land on restricted tenure in Inam villages is not authorised by the provisions of the Bom. L. R. Code.

[\*]74. The occupant may relinquish his land, that is, Relinquishment. resign it in favour of Government, but subject to any rights, tenures, incumbrances or equities lawfully subsisting in favour of any person (other than Government or the occupant), by giving notice in writing to the Mamlatdar or Mahalkari before the 31st March in any year or before such other date as may from time to time be prescribed in this behalf by the Governor in Council, and such relinquishment shall have effect from the close of the current year:

Provided that no portion of land which is less in extent than a whole survey number or sub-division of a survey number may be relinquished. [\*]

#### Commentary

There is now (Amending Act IV of 1913) no such thing as 'relinquishment in favour of a specified person.' Such relinquishment means principally a relinquishment of liability for revenue and, generally a release of liabilities and rights under the Code: It has no reference to the title to the land. But under the new Amending Bom. Act IV of 1913 liability for revenue changes automatically with change of possession and thus there is no separate relinquishment of liabilities and rights. Again if the occupant holds under a written agreement with Govt. that agreement will be his title deed and will be transferred when a transfer of the land is effected, as in the case of other title deeds; no new agreement between Govt. and the transferee is required. The words 'subject to any rights.....(other than Govt. or the occupant)' have been inserted by the Amending Act 1913 as it was found that though they were implied in the section (before it was amended in 1913) the principle they embodied was frequently forgotten by revenue officers. Relinquishment hereafter means absolute relinquishment, and to this kind of relinquishment alone the principle of co-responsibility for the

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[a—s] This section was substituted by Bom. IV of 1913, s. 32, for the original section.

assessment of sub-divisions will apply (s. 117B).—*Cf. Report on the proposed Amendment of Bom. L. R. Code by G. D. French, 1911.*

**Rules.**—Rule 74 states that every notice given under s. 74 shall be in form L (see below) and the declaration below the notice shall be subscribed by two respectable witnesses. The same rule states that the Mamlatdar who receives any such notice will be held responsible for exercising due care in ascertaining the identity of the person who has signed the same, notwithstanding that such notice has been duly endorsed as herein before required. (*See Appendix A for Rules*).

Such notices are required to be written by village accountant without fee, if so requested by any occupant etc. (*Rule 134*). If the notice is prepared by village accountant he should affix his signature beneath the words 'written by' on the lower left-hand corner of such notice. (*Rule 134*).

Notice under this section is exempted from Court-fee under *Govt. of India notification 4650 published at p. 307 of B. G. G. of 19-9-1890*. It is also exempt from stamp duty (*vide B. G. G. p. 1384 of 28-7-1909*). Such notices are also exempt from registration under s. 90 (e) of the *Indian Registration Act, 1908*. Thus, Rajinama notices by occupants of unalienated land or by holders from Govt. of alienated lands relinquishing the occupancy are exempt from registration under s. 90 (1) (e).—*Motibhai v. Desai*, 41 Bom. 170; 18 Bom. L. R. 976. So also are Rajinama-notices by inferior holders of alienated lands to the superior holders exempt from registration provided survey settlement has been introduced in such lands and the superior holders are authorised under s. 88 (e) Bombay Land Revenue Code, 1879, to receive such Rajinama notices,—*Shidraj Bhojraj Desai v. Dari Santram Mali*, 45 Bom. 898; 23 Bom. L. R. 272.

Since the introduction of Record of Rights in which all transfers are fully recorded the necessity of the relinquishment form known as the *moadla* has disappeared. A relinquishment must be complete and cannot retain wells or trees.—*G. R. 7152 of 1890*. However, the custom of obliging the rayat who threw up a field, to relinquish at the same time the house attached to that field was abolished.—*G. R. 5512 of 3-8-1888*.

**Note.**—This is interpreted in L. R. Rules by Anderson at p. 73 to mean a separate house (*i. e.* not in the resigned land but held in association with it in some other land). This seems to be far-fetched. There is no reference in the section to anything outside the particular land relinquished.

Rajinamas may be executed before a Forest Settlement Officer.—(*G. R. 1708 of 1886*) and then transmitted to the Mamlatdar and before Aval karkuns when the Mamlatdar is absent.—*G. R. 1733 of 1889 and G. R. 7428 of 1905*.

In **Khoti villages**, if a Dharekari, quasi-dharekari, or tenant-at-will resigns land, it comes to the possession of Khot; and he is responsible for it. He cannot resign single holdings. This does not apply to Talukdari lands also.



**Instructions**—All notices received under s. 74 shall be kept in the record of the village accountant until the expiry of one year after the end of the year in which they were given and afterwards in the records of the Mamlatdar for at least 12 years. Entry will at once be made in the Diary of Mutations and certified in due course: this will ensure sufficient record.—*Administrators Order No. XXVII: (See Appendix A for Rules and Orders).*

#### ALIENATED VILLAGES

It is only when a survey settlement has been introduced into an alienated village that s. 74 applies and relinquishments should be made to the Mamlatdar or Mahalkari or to the Inamdar if invested with power to receive them under s. 88 (e)—*G. R. 3439 of 15-6-1881, Standing Orders of Govt. in R. D. Vol. II p. 1009 (1902)*. Such authorisation to the Inamdar will avoid interference with Inamdars in their right to give out unoccupied lands in their villages or holding for cultivation or accepting the relinquishment of the same from the occupant.—*G. Rs. 5730 of 1-10-1881; 7045 of 23-11-1881 Standing Orders of Govt. in R. D. Vol. II, p. 1009 (1902)*.

So far as rajinamas in alienated villages are concerned it should be noted that in unsurveyed alienated villages the old practice is to continue because s. 74 does not apply to such villages. Where the alienated villages are surveyed Inamdars may be invested with powers under s. 83. In the case of agreements executed by persons taking up new lands it should be noted that s. 60 does not apply to alienated land and the power of Inamdars in respect of such agreements is unrestricted whether in surveyed or unsurveyed villages.—*G. R. 950 of 10-2-1882, Standing Orders of Govt. in R. D. Vol II p. 1010 (1902)*.

**In the case of miners or lunatics** Collectors should not accept a notice of relinquishment from friends or relatives who are not legally constituted administrators or managers of their estates.—*G. R. 7074 of 11-10-1882, Standing Orders of Govt. in R. D. Vol. II, p. 1013 (1902)*.

Where there are two or more co-holders of alienated land and where one of them resigns it is doubtful whether such a resignation by him even though his name be entered in Collector's books would legally bind his co-holders. If one of the co-holders relinquishes but if the Collector's records do not bear his name and if the Collector declines to record the relinquishment or transfer of his individual interest in the holding s. 79 cannot operate against him or his transferee.—*Cf. G. R. 5019 of 19-6-1885 and Govt. Memo. 7559 of 15-11-1886*.

**A Forest Settlement Officer** accepting a notice of relinquishment should ask the occupant to sign the notice in his presence and he should then write an endorsement on it that he has satisfied himself as to the identity of the person and should send the notice to the Mamlatdar who may accept it without further enquiry.—*G. R. 1081 of 10-2-1886, Standing Orders of Govt. in R. D. Vol. II p. 1015 (1902), and G. R. 1708 of 4-3-1888 (i bid)*.

Aval harkuns may accept notices of relinquishments under this section in the absence of Mamlatdars from Headquarters, and Mamlatdars may accept

them without further enquiry.—*G. R. 1743 of 2-3-1889, Standing Orders of Govt. in R. D. Vol. II, p. 1015 (1902).*

**Tenant remaining in occupation after passing Rajinama.**—The first and second deft. were sub-tenants of the third deft. who had certain land which was part of the Inam village of D. In 1883 the third deft. executed a Rajinama in the following terms, which he gave to the receiver who had been appointed by the Court to manage the village “up to the present time my father and I have been cultivating the land, but the land belongs to the Inamdar. I have no title over it, and the Inamdar can give it for cultivation to anyone he pleases.” Shortly after the date of this Rajinama the Inamdar gave the land to the plaintiff, who now sued to obtain it from the defendants who had remained in possession. *Held*, that the plaintiff was entitled to the land. The Rajinama operated as a relinquishment of the tenancy by defendant No. 3 under this section. *Held*, also that the plaintiff was entitled to sue in ejectment, although he had not been put in possession of the land.—*Bhutia v. Ambo, 13 Bom. 294 (1889).*

**Rajinama.**—Rajinama is the notice of the relinquishment given by the (registered) occupant. It is to be given to the Mamlatdar or Mahalkari and when the Mamlatdar is absent from his head-quarters it should be given to the Aval karkun.

**Note**—There is no relinquishment in favour of a ‘person’ now. See notes at the beginning of this section.

The execution of a rajinama and a kabuliyat does not by itself amount to transfer of property. The transfer can be rebutted by evidence regarding the manner in which the parties concerned dealt with the property. Each case, however, must necessarily depend upon its own facts.—*Chandanmal v. Bhaskar, 22 Bom. L. R. 140.*

**Talukdar relinquishing land held under him rent-free and without payment of assessment and local fund.**—The plaintiffs held for a number of years past certain lands, forming part of Talukdari lands, not only rent-free but without payment of assessment and local fund; the latter two were paid by the Talukdar to Govt. in the form of ‘Jama’. In 1911 the Talukdar relinquished the land in favour of Govt., and since then the Collector recovered the assessment and local fund for the land direct from the plffs. The plffs. having sued to claim exemption from the payment of assessment and local fund Kemp Ag: C. J. observed: “Prior to the Gujarat Talukdars’ Act (*Bom. Act VI of 1888*) the Talukdars were a kind of superior lease holders but by s.33 cl. 2 (m) of that Act a Talukdar was made an occupant within the meaning of the L. R. Code. Although the Amending Act of 1913 provided for relinquishment to Govt., that was merely legislative recognition of what happened in these cases, *viz.*, that one occupier under old s. 74 merely relinquished to another occupier with whom Govt. made the new agreement. The amended s. 74 merely expressed this by calling the relinquishment as to Govt. The Talukdar could in 1913 therefore relinquish his talukdari or a survey number in it to Govt. and where he did so no rights against the

Talukdar were preserved to the alienation of lands against Govt. Moreover there is no equity at all in permitting exemption from payment of land revenue. Under ss. 74 and 75 which were in force in 1912, when the Collector sanctioned the relinquishment the occupant may with the consent of the Collector relinquish his occupancy provided that such relinquishment applies to the whole survey number. S. 74 has since been amended and s. 75 repealed by Bom. Act IV of 1913. The plaintiffs' contention that the relinquishment in favour of Govt. must be subject to any rights etc. lawfully subsisting in favour of any person is untenable for that qualification was introduced by the amending Act of 1913 and we are concerned here with the effects of the relinquishment in 1912. The liability to revenue is applied to all land under s. 45 except such land as may be wholly exempted under the provisions of any special contract with Govt. or any law for the time being in force. In the present case there is no special contract with Govt. and the only law on which the plaintiffs rely for exemption is s. 3 of the Summary Settlement Act of 1863. (S. 3 refers to the management of villages, being resumed by Govt. and not to relinquishment by the Talukdar). But it does not apply to a case of voluntary relinquishment and it cannot be read as inferring that where the management of part of a village is resumed the legislature intended to exempt that part from payment of land revenue. The plaintiffs have acquired no rights against Govt. and nor can the acts or omissions of the talukdar be regarded as the acts or omissions of a properly authorised Govt. agent to deal with the plaintiff—*Nathuram v. Secretary of State*, 32 Bom. L. R. 907 (1929).

**The legal effect of Rajinama**—The question whether rajinama extinguishes the interest of the occupant in a land and the effect of the kabulayat passed by the subsequent occupant is whether he comes in by agreement with Govt. as an occupant in his own right was discussed in *Motibhai v. Desai-Mai*, 18 Bom. L. R. 976 (1916). In that case Scott C. J. had to consider the legal effect of a Rajinama on the occupancy holding of a person who has not created any equitable interests in any third party. He observed that the relinquishment is an abandonment by the khatedar of his claim to hold the property, subject to the payment of revenue, and, therefore *prima facie* his interest is extinguished. That view obtains support from the fact that relinquishments under s. 74 are expressly mentioned in the Registration Act, s. 90, whereby they are exempt from registration. They are specifically exempt from registration because *prima facie* they extinguish the right of relinquishing khatedar to hold the occupancy as against Govt., subject to the payment of revenue. Of course it may often be that equitable interests are reserved by the relinquishing khatedar by arrangement with the incoming khatedar who takes his place. The method of relinquishment is a particular method provided by law (s. 74) for the relinquishment of the occupancy, namely the giving up, the annihilation in fact, so far as the occupant is concerned, of his occupancy rights.

**Note.**—In this case rajinama was passed in 1904 relinquishing the lands to another person who appeared before the Mamlatdar the same day and

executed a kabulayat for the lands agreeing to pay Govt. assessment and prayed that his name should be registered as the khatedar of the lands in the Govt. records. Under s. 74 previous to the amendment which took place in 1913 an occupant could relinquish his occupancy in favour of a specified person and if the person or persons in whose favour the said occupancy is relinquished entered into written agreement to become the registered occupant, the revenue authorities concerned had no alternative but to substitute his name in the records. S. 74 as remodelled in 1913 allows an occupant to relinquish his land in favour of Govt. only (subject to any rights, tenure, incumbrances or equity lawfully subsisting). Obviously therefore, after 1913 if relinquishment takes place the relinquishing occupant would have no right over that land which will be treated as Govt. land (subject to any rights, tenurs, etc. lawfully subsisting) and the Govt. will be at liberty to dispose them off.

75. *Repealed by Bom. IV of 1913, section 33 (1).*

76. [a]The provisions of [b] the last section [b] shall apply, as far as may be, to the holders of alienated land: provided that,

Relinquishment of land described in paragraph 1 of section 49.

(a) it shall not be lawful to relinquish, as aforesaid, any portion of any land held wholly or partially exempt under the circumstances described in the first paragraph of section 49 until the commuted assessment payable in respect of such portion of land has been determined under the provisions of the said section; and that

(b) if any person relinquish land on which, under the circumstances described in section 51, a larger revenue is levied than would ordinarily be leviable on such land, he shall be deemed to have relinquished also the land held with it which is wholly or partially exempt from payment of revenue.

[a] As to the local repeal of section 76, see para. 5 of foot-note (a) on p. 1 *supra*.

[b—b] These words were substituted for the original words "the two last sections" by Bom. IV of 1913, s. 33 (2).

### Commentary

There is no accurate definition of 'Holders of land' in alienated villages.—According to Meekleod C. J. in the case of *Shidhraj v. Dari*, 23 Bom. L. R. 272 (1920) the meaning varies according to the context, that in s. 217 the word "holders" refers to inferior holders, in s. 88 it refers to superior holders, and in s. 76 also to superior holders. According to the Fawcett J. it refers in s. 76 also to a holder of small inams who is neither a superior nor an inferior holder. It is desirable that the legislature should express its intention clearly as to the effect of the introduction of survey settlement in ordinary and Sharakati inam villages on the rights of different kinds of holders and tenants in alienated villages paying either stipulated rent or old assessment.

Under s. 76 the provisions of s. 74 have been made applicable to holders of alienated lands. But it was held by Fawcett J., in *Shidhraj v. Dari*, 23 Bom. L. R. 272 (1920) that the expression "holders of alienated land" in s. 76 would ordinarily mean superior holders as inamdars or may include holders of small inams, but it would not include tenants under the inamdars, and in the opinion of Fawcett J., s. 88 clearly shows the intention of the legislature that the holder of an alienated village or a group of alienated lands shall not receive relinquishments from his inferior holders as if he were a Mamlatdar or Mahalkari receiving relinquishments from occupants under s. 74 unless his village or lands have been surveyed and he has been specially authorised to receive such relinquishments.

The proviso to s. 88 of the Bom. L. R. Code indicates that the power under s. 88, cl. (c) shall be conferred only on the inamdars, i. e. holders of lands to which a survey settlement has been intended under provisions of s. 216. There must, therefore, be introduction of survey settlement and conferment of power under s. 88 (c) on the inamdar to receive notices of relinquishment.—Per Patkar J. in *Nilaji v. Nagindas*, 35 Bom. L. R. 150 (1932).

77. If any person relinquishes land, the way to which  
 Right of way to lies through other land which he retains,  
 relinquished land. the right of way through the land so  
 retained shall continue to the future holder of the land  
 relinquished.

78. Nothing in [°] section 74 [°] shall affect—  
 [°]the validity of the terms or conditions  
 Saving of operation of section 74 in certain cases. of any lease or other express instrument  
 under which land is, or may hereafter  
 be, held from Government.

[a—s] These words were substituted for the original words "sections 75 and 76" by Bom. IV of 1913, s. 34.

[b] Clause (a) and the letter "b" repealed by Bom. IV of 1913, s. 34 are omitted.

**79. Repealed by Bom. IV of 1913, s. 35.**

[<sup>a</sup>] 79A. Any person unauthoriz-  
 edly occupying or  
 Summary eviction of person unauthoriz-  
 edly occupying land. wrongfully in possession of, any land  
 [<sup>b</sup>] (*a*) to the use or occupation of which  
 by reason of any of the provisions of this  
 Act he is not entitled or has ceased to be entitled, or

(*b*) [<sup>c</sup>] which is not transferable without previous sanction  
 under section 73A or by virtue of any condition lawfully  
 [<sup>d</sup>] annexed to the tenure [<sup>d</sup>] under the provisions of section  
 62, 67 or 68,

may be summarily evicted by the Collector.

**Commentary**

**Object.**—S. 79A was specially enacted in order to provide for breach of agreements such as those referred to in s. 67.

The object of amending clause (*a*) by Bom. Act III of 1921 is to provide for the eviction not only of a person whose right to occupancy has ceased under the provisions of this Act, but also of a person whose right to occupancy has ceased under the rules or any condition of an agreement.

**Scope of this section.**—This section refers to unauthorized occupation or wrongful possession of land. The question is whether the person was in wrongful occupation of land at the date of notice.—*Bhaji Ishwardas Shah v. Talukdari Settlement Officer*, 22 Bom. L. R. 906.

**Possession under decree of Civil Court.**—The powers given to the Collector by this section can be exercised only in cases of wrongful possession. It does not extend to cases where possession is obtained under the decree of a Civil Court. The Collector has, for the exercise of the power, to form his own opinion and decide whether in any particular case the possession is wrongful; but there is no provision in the Code which gives finality to the Collector's order of eviction so as to exclude the jurisdiction of a Civil Court to decide that the person evicted by that order was

[<sup>a</sup>] Section 79A was inserted by Bom. VI of 1901, s. 12. As to its local modification, see foot-note [<sup>a</sup>] on p. 1, *supra*.

[<sup>b</sup>] This clause was substituted for the original clause by Bom. III of 1921, s. 3.

[<sup>c</sup>] This word was substituted for the original words "of which the occupancy right" by Bom. IV of 1913, s. 36.

[<sup>d</sup>—<sup>d</sup>] These words were substituted for the original words "annexed to the occupancy" by Bom. IV of 1913, s. 36.

in rightful occupation.—*The Talukdari Settlement officer v. Umishankar*, 53 Bom. 72.

**Interference of the Collector.**—Under this section supplemented by s. 33 (2), cl. (cc) of the Gujarat Talukdars Act, the Collector can interfere only where the occupation is wrongful or in contravention of the provisions of the Act.—*Talukdari Settlement officer v. Rekhards*, 15 Bom. L. R. 378.

**Notice of Suit.**—The Collector, holding the powers the Talukdari Settlement Officer and acting under this section served upon the plaintiff a notice asking him to vacate certain land which he was declared to have held illegally without any right. The plaintiff was also warned that, if he did not comply with the notice, steps would be taken to evict him. The plaintiff sued for an injunction to restrain the Collector from taking possession summarily of the land. No notice of suit required by s. 80 of C. P. Code, 1908 was given. *Held*, that the declaration and the notice were distinct acts on the part of the Collector and notice by the plaintiff was necessary under s. 80 of the C. P. Code as a condition precedent to the maintenance of the suit.—*Talukdari Settlement Officer v. Bhaijibi*, 14 Bom. L. R. 577.

**Summary eviction under this Section can be only from Talukdari lands**—The power of the Talukdari Settlement Officer under this section, read with s. 33 (2), cl. (cc) of the Gujarat Talukdari tenure and not to all property of any kind of the individual Talukdar.—*Shankarblai v. Raisingi*, 19 Bom L. R. 855.

**Notice of eviction.**—A Talukdar and his son mortgaged a portion of Talukdari estate. After the death of the Talukdar his son sold the property to the mortgagee. The Talukdari Settlement Officer having issued a notice, under s. 79A of the Bom. L. R. Code to summarily evict the mortgagee from possession of the property, the latter sued for a declaration that he was entitled to remain in possession. *Held*, that the notice of eviction under s. 79A was valid.—*Bhaiji v. Talukdari Settlement officer*, 22 Bom. L. R. 906.

**Delegation of power to Mamlatdar etc.**—Administrative Order VIII states that the Collector may delegate the power to sign eviction notices approved by the Assistant or Deputy Collector under s. 79A to Mamlatdars.—*G. R. 5295 (47) of 1911*.

## 80. In order to prevent the forfeiture of an occupancy

To prevent forfeiture of occupancy certain persons other than the occupant may pay the land revenue.

[<sup>a</sup>] under the provisions of section 56 or of any other law for the time being in force, through non-payment by the [<sup>b</sup>] occupant [<sup>a</sup>] of the land revenue due on

[<sup>a</sup>] As to the local modification of the words "occupancy" and "occupant," see para. 5 of foot-note (a) on p. 1, *supra*.

[<sup>b</sup>] Words repealed by Bom. IV of 1913, s. 37, are omitted.

account thereof, it shall be lawful for any [a] person interested [a] to pay on behalf of such [b] occupant [c] all sums due on account of land revenue, and [d] the Collector shall on due tender thereof [d] receive the same. And in any such case the Collector may [e] under section 86 [e] give to the person who has paid the land revenue as aforesaid [f] aid for the recovery of any portion of such land revenue [f] which he may consider to be properly payable by other persons [b]:

Provided that nothing authorized or done under the provisions of this section shall affect the rights of the parties interested as the same may be established in any suit between such parties in a Court of competent jurisdiction.

Proviso.

#### Commentary

**Delegation of power to Mamlatdar, etc.**—Administrative Order VIII states that the Collector may delegate all his powers under s. 80 to Mamlatdars. *G. Rs. of 31-3-1888 and 602A of 1883 and G. R. 9901 of 1906*, Mukhtyarkars in Sind included.—*G. R. 8048 of 1908*.

Mahalkaris are authorised to exercise powers under this section by *G. R. 602A of 15-8-83*.

**81.** *Repealed by Bom. IV of 1913, s. 38.*

[e] **82.** It shall be lawful for the Governor in Council by Notification in the *Bombay Government Gazette* from time to time: Governor in Council empowered to suspend operation of section 60 or 74.

[a—a] These words were substituted for the original words "co-occupant, tenant, mortgage or other person interested in the continuance of the occupancy" by Bom. IV of 1913, s. 37 (a).

[b] Words repealed by Bom. IV of 1913, s. 37 are omitted.

[c] As to the local modification of the words "occupancy" and "occupant", see para. 5 of foot-note (a) on page 1, *supra*.

[d—d] These words were substituted for the original words by Bom. IV of 1905, First Schedule.

[e—e] These words were inserted by Bom IV of 1913, s. 37 (b).

[f—f] These words were substituted for the original words "such aid for the recovery of the proportional amounts" by Bom. IV of 1913, s 37 (c).

[g] As to the local repeal of section 82, see para. 5 of foot-note (a) on p. 1, *supra*.



(a) to suspend the operation of section 60 or 74, or of both within any prescribed local area, either generally, or in respect of cultivators or occupants of a particular class or classes, and

(b) to cancel any such notification.

During the period for which any notification under the above clause (a) is in force within any local area, such rules shall be substituted for the provisions of which the operation is suspended as the Commissioner shall from time to time direct.

## CHAPTER VII.

### OF SUPERIOR AND INFERIOR HOLDERS.

83. A person placed, as tenant, in possession of land by another, or, in that capacity, holding, Amount of rent payable by tenant. taking, or retaining possession of land permissively from or by sufferance of another, shall be regarded as holding the same at the rent, or for the services agreed upon between them; or in the absence of satisfactory evidence of such agreement; at the rent payable or services renderable by the usage of the locality, or, if there be no such agreement or usage, shall be presumed to hold at such rent as, having regard to all of the circumstances of the case, shall be just and reasonable.

And where by reason of the antiquity of a tenancy, no Duration of tenancy. satisfactory evidence of its commencement is forthcoming, and there is not any such evidence of the period of its intended duration, if any, agreed upon between the landlord and tenant, or those under whom they respectively claim title, or any usage of the locality as to duration of such tenancy, it shall, as against the immediate landlord of the tenant,

be presumed to be co-extensive with the duration of the tenure of such landlord and of those who derive title under him.

And where there is no satisfactory evidence of the capacity in which a person in possession of land in respect of which he renders service or pays rent to the landlord, received, holds or retains possession of the same, it shall be presumed that he is in possession as tenant.

Presumption as to tenure.

Nothing contained in this section shall affect the right of the landlord (if he have the same either by virtue of agreement, usage, or otherwise), to enhance the rent payable, or services renderable by the tenant, or to evict the tenant for non-payment of the rent or non-rendition of the services, either respectively originally fixed or duly enhanced as aforesaid.

Saving clause.

### Commentary

**History**—The Hon. Mr. Chapman in introducing the Bombay Revenue Officers and Land Revenue Code (Bill No. 1 of 1875) said: "When owing to lapse of years there is no evidence to show when an ordinary tenant first obtained possession, then the period of duration of the tenancy may be presumed to be co-extensive with the duration of the period of the landlord. It must not be forgotten that this presumption is not to override a contract or usage at variance with it. Legislation of this limited extent is likely to be of much value in protecting those whose status is far different from that of the ordinary tenants in the English sense of the term and it will be in conformity with the usage and Indian opinion."

**Object of the section**.—When the Bill was introduced, which afterwards became Bombay Act V of 1879, it was not asserted that the section now under consideration (s. 134 in the Bill) merely enunciated the law as established by a series of decisions. On the contrary it seems to have been understood that a new tenant law was being enacted. In the Statement of Objects and Reasons it was remarked: "In s. 134 some provisions have been introduced with a view of facilitating the determination of the status of tenants and their liability to the payment of rent. The principles therein laid down will, it is believed, tend to the settlement upon an equitable basis of all questions arising between landlords and tenants when, owing to the antiquity of the tenancy, no satisfactory evidence can be produced with regard to its origin."

**Rent** is defined in s. 106 of the Transfer of Property Act (IV of 1882). In brief, it is money payable by a tenant to a landlord under a contract between them. In s. 83 the tenant is described as one who is placed in possession of land by another or in that capacity holds, takes or retains possession of the land permissively from or by sufferance of another. The payment of money or services made by such a person is called rent, and its amount is determined by contract or custom.—Per Ranade J. in *Sadasiva v. Ramkrishna*, 25 Bom. 556.

**Rent and land revenue distinguished.**—The term 'rent' is used in the Code only with reference to those superior and inferior holders between whom the relationship of landlord and tenant subsists, and not with reference to those superior and inferior holders between whom the relationship does not exist. Whenever the Code refers to alienated villages it always describes the payment made by inferior holders as being either rent or land revenue, while in the case of Government villages it always speaks of the payment as land revenue only. This alternative form of expression is obviously used, because the superior holder in an alienated village may have both tenants and inferior holders under him.—*Sadasiva v. Ramkrishna*, 25 Bom. 556.

**A tenant and an inferior holder.**—S. 83 of the Act comprehends every possible kind of tenancy to which the Act can relate. The use of the word "tenant" is essential in it because the section settles the general relationship existing between landlord and tenant for the purposes of the Act and includes certain tenancies in respect of which there is a presumption as to tenure.

There is thus really no distinction between a tenant and an inferior holder except in the use of terms, the one to express derivatory right from the landlord, the other to express a liability to pay rent to the landlord.—*G. R. Sadas*, of 30-10-1880.

**Mirastadar.**—This word is used in two senses. It is used somewhat incorrectly, to mean a permanent tenant. It is also used correctly perhaps to mean 'a person who has the occupancy rights of lands' that is to say who is an occupant and not a tenant. As per Heaton J. in *Vyasacharya v. Vishnu*, 22 Bom. L. R. 717 (1919).

**Construction of cl. (2) of s. 83.**—Obviously the legislature intended to lay down a general rule in view of the existence of two sets of facts at the time of the commencement and to a large extent now. Permanent tenancy very often exists particularly in Gujarat and Kathiawar, without a document. But on the other hand an annual tenant is often allowed to hold over without the original rent-note being renewed. To exclude the latter class of cases and to include the former, presumably s. 83 (2) was enacted in its present form.—Per Madgaokar J. in *Mansukh v. Trikambhai*, 31 Bom. L. R. at p. 1286 (1929).

**'Co-extensive with the duration of the tenure of landlord.'**—This means that the tenant cannot be turned out as long as the landlord's tenure

continues.—Per Macleod C. J. in *Sidhanath v. Chikko*, 23 Bom. L. R. 533 (1921).

**As to the duration of such tenancy.**—These words appear to contemplate the production of evidence to prove the duration of a tenancy which is still in existence and of which the origin is uncertain.—Per Barlee J. in *Sursingji v. Manilal*, 32 Bom. L. R. p. 1685 (1930).

**The question as to the existence of a custom** is a mixed custom of law and fact and it is within the jurisdiction of High Court in Second Appeal to interfere with a finding as to the custom contrary to the findings of the lower Courts.—Per Patkar J. in *Sursingji v. Manilal*, 32 Bom. L. R. p. 1683 (1930).

### COMMENCEMENT OF TENANCY

**“ Commencement ”**—The question is whether the word ‘commencement’ in the second clause must be taken to mean a definite point of time or whether it can be extended to a longer period, which might even be twenty or thirty years, or whether if the landlord proves the commencement of his own title and the tenant admits holding as tenant of that landlord, because the tenancy has necessarily commenced after the date of the landlord’s title that evidence suffices to defeat the presumption as to the permanent duration of the tenancy. It was held in *Hari v. Tukaram*, P. J. for 1893 p. 323 that the mere fact that the tenancy came into existence since the beginning of landlord’s tenure does not prevent the application of s. 83 of the Code in cases in which owing to the antiquity of the tenancy no satisfactory evidence of its commencement is forthcoming. That was a case of a grant in 1724 of an unoccupied land by a Miras Patra, the tenant having been in actual cultivation for a period of 90 years. Similarly, the tenant was entitled to the benefit of s.83 in *Ramchandra v. Anant*, 18 Bom. 433 (1893). Some doubt, however, was cast on the last case and it was explained by Macleod C. J. sitting singly in *Sidhanath v. Chikko*, 23 Bom. L. R. 533 (1921) where, however, the tenancy was held to have commenced in the year 1905. In appeal it was held by Shah and Pratt JJ. in *Chikko v. Sidhanath*, 24 Bom. L. R. 226 (1921) that the fact that the tenancy commenced after a definite date after the landlord’s title began was sufficient to defeat the presumption under s. 83 a view not easy to reconcile with the earlier two judgments stated above. To the same effect is the judgment of Pratt and Fawcett JJ. in *Narayan v. Pandurang*, 24 Bom. L. R. 831 (1922) where the difficulty was elaborated by Fawcett J. as also in *Ramchandra v. Dattu*, 27 Bom. L. R. 1258 (1925). The question no doubt presents some difficulty but Madgaokar J. in *Mansukh v. Trikambhai*, 31 Bom. L. R. at p. 1286 (1929) said: “Where, as in the case of *Hari v. Takaram* P. J. for 1893 p. 323 the tenant has been in occupation for a period of nearly a century without disturbance or enhancement of rent, the presumption that he is a permanent tenant can hardly be defeated from the simple fact that the owner is able to produce his own title-deeds, which may be years before, as in that case. On the other hand

in the absence of documentary evidence, difficult to procure in the case of ancient tenancy, it is not enough if the landlord proves that the tenancy notwithstanding its long duration commenced at a definite date, meaning thereby not the day, month and year, but at least an approximate period when it began and not merely large period such as 25 years or 30 years between which it began. Such an approximate point of commencement might be sufficient to defeat the presumption of a permanent tenancy which might otherwise be made.

The phraseology of the second paragraph of s. 83 is somewhat vague and there are two opposite views that can be taken of the exact meaning to be put on the word 'commencement'. One is that it necessitates satisfactory evidence that the tenancy commenced in a particular year. The other view is that it suffices to show a particular period of time beyond which the tenancy certainly did not go. Dealing with the first view Fawcett J. said that logically there was no good ground for saying that a particular year was the real test contemplated by the Legislature. The presumption operates when owing to the antiquity of the tenancy no particular point or period of time as that at which or within which the tenancy commenced could be fixed. Once a particular time is got, say the years 1830 to 1850, then there is a commencement within "certain period shown which bars the presumption arising. When you get a case where the tenancy does not go back into obscurity but is bounded by a definite time or period then there is satisfactory evidence of the commencement of the tenancy within the meaning of s.83, and the presumption in favour of the tenant does not arise.—Per Fawcett J. in *Narayan v. Panalurany*, 24 Bom. L. R. at p. 831.

*Note.*—But see *Mansukh v. Trikambhai*, 31 Bom. L. R. 1286 and *Janardhan v. Lakshman*, 33 Bom. L. R. 551 *infra*.

#### ANTIQUITY OF TENANCY

*Antiquity of tenancy.*—Where it was shown that the names of defendants or their ancestors appeared in plaintiffs' books in 1877 and where it was shown from some of the earlier books produced by the parties that prior to that date *viz.* in 1869 the defendants' names or those of their predecessors appeared amongst the patils who were then cultivating the land according to the plaintiffs' accounts the High Court *held*: that the facts fell within s. 83 and that the Court was entitled to presume the tenancy of the defendants to be a permanent one. In this connection Marten J. said: "No doubt the witnesses have put forward the origin of it to the foundation of the village. But, if one follows that argument out, one might say that a tenancy in a particular case must have begun by say the year 1200 in a particular town because one knows that prior to that date no such town or village existed whatever. It seems to me that it does not follow that because the defendants trace their origin and connection with this land back to the foundation of the village, that it necessarily follows that their particular tenancy or that of their ancestors began on that particular definite date. On the contrary, then

one goes back, as in the present case, to such a distant date as over 250 years ago. one certainly gets the intiquity contemplated by s. 83. And I think on the facts of the present case there is quite enough uncertainty as to the commencement of the tenancy, and also as to its terms, to justify the presumption under s. 83.

"Nor can I accept the argument that was put forward in the alternative, *viz.*, that if you do not fix the commencement of the tenancy definitely at the foundation of the village, then no commencement of the tenancy is shown before 1876 or some such time. That would be to neglect amongst other things the oral evidence of the defendants as to the possession of this land by themselves or their ancestors. It would also be to ignore the admissions of the plaintiffs themselves that they are unable to account for the original possession of this land by the defendants and their ancestors. In other words we get exactly a class of case where the origin of a particular right of an occupier or tenant is lost in antiquity.—*Amersingji v. Ranchhod*, 27 Bom. L. R. at p. 271 (1924).

The plaintiff was in possession of certain Wanta lands [it represents the portion (which is usually the 1/4) which was left in possession of the Rajput Thakors by the Mahomedan invaders of the Gujarat] for which he paid a fixed quit rent or Salami of Rs. 5 per year. He relied on title-deeds, the earliest of which was dated 1835 A. D., and described the land as Pasaita (land given in charity to Brahmans, temples, etc.). His father purchased the land in 1876. That being so the necessary antiquity for the origin of the tenancy to allow a presumption to be made under s. 83 is there, for no one can say how long prior to 1835 it was originally created. In particular the witnesses of the defendant are quite unable to point any definite date for its commencement.—*Jivansingji v. Dola chhala*, 27 Bom. L. R. 890 (1924).

To claim the benefit of the presumption contained in s. 83 of the Code it is not sufficient that there should be no satisfactory evidence of the commencement of the tenancy, but the absence of that satisfactory evidence must be by reason of the antiquity of the tenancy.—*Per Jenkins C. J. in Vishwanath v. Tatya*, 6 Bom. L. R. 645 (1904).

#### PRESUMPTION AS TO PERMANENT TENANCY

**Presumption as to permanent tenancy.**—"Where a tenancy is shown to have originated at some time between 1758 and 1857 a presumption can arise under s. 83 that the tenancy is permanent. The period of a century is too long and indefinite a period to constitute satisfactory evidence of the commencement of the tenancy within the meaning of s. 83," said Patkar J. in *Shripad v. Rama*, 29 Bom. L. R. at p. 276 (1926). Explaining *Ranachandra v. Anant*, 18 Bom. 433 where it was held that "the mere fact that a tenancy has commenced subsequently to the commencement of the landlord's tenure, does not prevent the application of s. 83 in cases where by reason of the antiquity of the tenancy, no satisfactory evidence of its commencement is forthcoming." The same view was taken in *Hari v. Tukaram*, P. J. for

1893 p. 323. In *Sidhanath v. Chikko*, 23 Bom. L. R. 533 (1921). Macleod C. J. held 'but if he can show that he has been on the land so long that the commencement of his tenancy cannot be ascertained, then the presumption under para 2 of s. 83 arises, and it was held in *Ranchandra v. Anant* that even although it was proved that the origin of the tenancy was of a later date than the lessor's tenure, still the presumption would arise provided, as I take it, that the actual date of the origin was not known". (The case of *Ranchandra v. Anant* was criticised on another point, namely, that the words 'origin of the tenancy' did not mean the terms under which the tenant commenced to hold). Fawcett J. in the case of *Narayan v. Pandurang*, 24 Bom. L. R. 831, says "I agree with my learned brother that there is no reason to differ from the view taken in *Ranchandra v. Anant* that the mere fact of a tenancy having commenced subsequently to the landlord's tenancy does not prevent the application of s. 83 because there may be cases where in spite of that the commencement of the tenancy is in obscurity."

Fawcett J., "The tenancy in question can certainly to be of antiquity in view of the fact that it may have gone back to the year 1758 if not earlier, and it is in consequence of that antiquity that I think there is an obscurity as to the commencement of the tenancy. It may be that a period of 100 years falls within the view taken in *Narayan v. Pandurang*, 24 Bom. L. R. 831, but as there mentioned, some reasonable limits must be applied and I think that, at any rate, a period of 100 years is too long to satisfy condition."—*Shripalhat v. Rama*, 29 Bom. L. R. at p. 280 (1926).

This case was followed in *Janardhan v. Laxman*, 33 Bom. L. R. 551 (1930) where the facts were these:—The plaintiff's family held the suit-land as their watan since A. D. 1606. In 1758 there was a tenant on the land named Kasi Ghadge through whom the defendants did not claim. The ancestor of the defendants was shown to have been in possession in 1800. But there was no evidence to show who was in possession between A. D. 1758 and 1800. On these facts the question was whether it could be said that there was no satisfactory evidence of the commencement of the defendants' tenancy within the meaning of s. 83 of the Bom. L. R. Code. The High Court held—"Under s. 83 of the Bom. L. R. Code the landlord must give satisfactory evidence of the commencement of the tenancy; and where by reason of antiquity of tenancy, there is no satisfactory evidence of the period of its intended duration, if any, agreed upon between the landlord and tenant, or those under whom they respectively claim title, or any usage of the locality as to duration of such tenancy, it shall, as against the immediate landlord of the tenant, be presumed to be co-extensive with the duration of the tenure of such landlord and of those who derive title under him. Ordinarily the landlord must prove the commencement of the tenancy by proving the particular day, month and year on which the tenancy commenced by production of the lease or a rent-note. It was, however, held in *Narayan v. Pandurang*, 24 Bom. L. R. 831 (1922) that the absence of proof of the commencement of the tenancy in a particular year a definite period from

1830 to 1850 might be considered to be sufficient to show the commencement of the tenancy in order to counteract the presumption under s. 83. In *Shripadbhat v. Rama* a period of one hundred years was considered to be too long a period to satisfy the condition laid down by s. 83 to denote the commencement of the tenancy. According to the view of Fawcett J. in *Shripadbhat v. Rama*, 29 Bom. L. R. 274, 280 (1926) some reasonable limits must be attached to the period sought to be proved on behalf of the landlord to denote the commencement of the tenancy. We think that in the present case the plaintiffs have failed by satisfactory evidence to prove the commencement of the tenancy, and that by reason of the antiquity of the tenancy satisfactory evidence of its commencement is not forthcoming. There is neither any evidence of the period of its intended duration, if any, agreed upon between the landlord and tenants nor is there any evidence of any usage of the locality as to the duration of such tenancy. We think, therefore, that the presumption under s. 83 arises in the circumstances of the present case."—*Janardhan v. Lakshman*, 33 Bom. L. R. 551 (1930).

#### MISCELLANEOUS RULINGS REGARDING PRESUMPTION AS TO PERMANENT TENANCY.

**Presumption as to permanent tenancy.**—Where on the one side there was a Deputy Inamdar whose superior title to the land was beyond dispute and where there was an occupant whose family had been in possession of the land for about a century, the High Court held that there being no satisfactory evidence of the commencement of the tenancy by reason of its antiquity nor any evidence of the period of its duration, nor of any usage as laid down in *Daulata v. Sukharam*, P. J. for 1889 p. 363 the duration is to be presumed as co-extensive with the duration of the tenure of the landlord.—*Jairishna v. Lakshmanrao*, P. J. 1890 179.

Where there was a tenancy, but when it began and how it began was not known and could not be ascertained because of the length of time that had passed since its beginning, the High Court held that that was precisely the case to which s. 83 applied.—*Vyasacharya v. Vishnu*, 22 Bom. L. R. 717 (1919).

Where there is no evidence of the origin of the title of the landlord, nor of the commencement and intended duration of the tenancy of the tenant and the tenancy is shown to be nearly a hundred years old prior to the suit, and there is no demand throughout the period for enhancement of rent and no attempt to eject the tenant or put in any other tenant has been made, the High Court following *Maneklal v. Bai Amba*, 22 Bom. L. R. 1394 (1920), held that a presumption of permanent tenancy under the second clause of s. 83 of the Code can be made.—*Mansukh v. Trikambhai*, 31 Bom. L. R. 1279.

The plaintiff sued to evict the defendant from the house in suit on the ground that she was his tenant. The defendant contended that she was a permanent tenant and held under one Ghurye who was a permanent tenant of



the plaintiff. It was found that the commencement of the tenancy could not be traced but a witness of the age of eighty-three stated that the first tenant that he could remember in possession of the house in suit was a Sonar and that the Sonar transferred his tenancy to one Banavalkar which fact was corroborated by other independent evidence. There was no doubt that the tenancy thus traced to the defendant was the same tenancy as was traced back by the witness above-mentioned to at least eighty-three years ago. The High Court held: "The fact that the commencement of the tenancy could not be determined coupled with the presumption of continuation of the tenancy, and coupled also with the fact that a permanent building has been erected on the land at least as far back as the witness mentioned above could remember raises a strong presumption that the tenancy is permanent."—*Rukmani v. Bapuji*, 26 Bom. L. R. 675 (1924).

**Presumption of permanent tenancy not destroyed merely because tenancy commenced subsequently to the landlord's tenure.**—G. held certain lands as a tenant under M. as Inamdar. The lands continued in G's family for nearly 80 years. It was found that owing to the antiquity of tenancy, its commencement or duration could not be satisfactorily established by evidence. The question before the High Court was when there was satisfactory evidence that the tenancy commenced subsequently to the tenure of the landlord could it be said that there was no satisfactory evidence of the commencement of the tenancy. The High Court held: "The mere fact that a tenancy has commenced subsequently to the commencement of the landlord's tenure, does not prevent the application of s. 83 in cases where by reason of the antiquity of the tenancy no satisfactory evidence of its commencement is forthcoming."—*Ramchandra v. Anant*, 18 Bom. 433 (1893).

But if the tenant can show that he has been on the land so long that the commencement of his tenancy cannot be ascertained then the presumption under para 2 of s. 83 arises and it was held in *Ramchandra v. Anant*, 18 Bom. 433 (1894) that even although it was proved that the origin of the tenancy was of a later date than that of lessor's tenure still the presumption would arise, provided that the actual date of the origin was not known.—*Sulthamsh v. Chilla*, 23 Bom. L. R. (532).

**No stated number of years is required to draw the presumption under s. 83.**—Where the lower Court was of opinion that unless proof was given that a tenancy had existed for more than 40 years the presumption contemplated in s. 83 of the Code could not arise the High Court held that that opinion so far as any stated number of years is required was not correct. It is not possible to lay down any one rule; each case will have to be decided according to the facts found to exist. Moreover the words of the section themselves show that that presumption will arise whenever by reason of the antiquity of tenancy, no satisfactory evidence of its commencement is forthcoming, etc. etc.—*Narayan v. Rayachandrabharya*, 2 Bom. L. R. 281 (1900).

**Permanent tenancy may not be inconsistent with the absence of fixity of rent & of the landlord's right to enhance the rent by agreement, usage etc.**—There was a record of the Savantwadi State showing in serial order

the fields forming the Sheri or private (Khajgi) property of the State in Vengurla and other villages, together with the name of the tenant of each field, his residence, the name of his surety for the due payment of the Jamabandi with the dates of the instalments, and the signatures of the tenants and sureties. This record was prepared by officials of the State. And it is only natural that they should work it in a way to exalt the dignity of the Sarkar. Then there were other documents namely Kabulayats passed for the years 1855-56 and 1856-57. The object of these documents was clearly to ensure the due payment of the Jamabandi for the years in question on account of the lands which the executant held on a tenure antecedent to that time. No doubt a clause contained the words "I have got the Makta fixed for the current year. As soon as the period is over, I will make over the plots to the Sarkar." Such an expression in isolated document is not enough to prove yearly tenancy, when all the circumstances connected with the tenancy are taken into consideration, as also the fact that the land never was given up—(cf. the remarks of this Court in *Gangaji v. Sakharam*, P. J. for 1889 p. 156.)

Then there was a document a Kabulayat passed in 1842 by one, said to be the defendant's predecessor which was simply an agreement to pay that year i. e. for the year, the assessment of Phikan. It did not purport to create any tenancy or fix its duration and merely dealt with the rent payable. The High Court relying upon *Gangji v. Sakharam*, P. J. for 1889 p. 156 where it was decided that questions of that class could not be determined by a clause such as the one mentioned above, but that the matter must be judged in the light of the actual facts, *held*; "If the documents in the case be excluded then there can be no doubt that the facts are such as to attract the presumption mentioned in s. 83 of the Bom. L. R. Code 1879, so that it shall be presumed that as against the plaintiff the defendant's tenancy is co-extensive with the duration of the landlord's tenure. The words of the section are imperative, and we have a clue to their effect in s. 4 of the Evidence Act, "the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved." The only question, therefore, is whether in the documents there is anything to disprove the permanent tenancy. The presumption in its favour arises out of the antiquity of the tenancy, and the absence of satisfactory evidence (a) of the commencement of the tenancy and (b) of the period of its intended duration. Before approaching the documents, I would call attention to the ultimate and saving clause of the s. 83 which provides:—

"Nothing contained in this section shall affect the right of the landlord, (if he have the same either by virtue of agreement, usage or otherwise to enhance the rent payable, or services renderable, by tenant, or to evict the tenant for non-payment of the rent or non-rendition of the services, either respectively originally fixed or duly enhanced as aforesaid."

From this clause it appears that though a tenancy may be co-extensive with the duration of the tenure of the landlord and of those who derive title under him, still the landlord may have the right to enhance the rent. In other words, this relative permanency of tenure is not inconsistent with the absence

of fixity in rent. Next, the clause seems to contemplate that though the commencement and duration of the tenancy may be lost in the obscurity of antiquity, still there may be vested in the landlord a right by agreement to enhance rent and evict for its non-payment. It is therefore, obvious that the permanency of the tenancy and the fixity of rent are distinct, and that the latter may be the subject of agreement without touching the former.—*Rajkumath v. Lakshman*, 2 Bom. L. R. 93 (1899).

The mere passing of a *kabulayat* which purports to be in terms an agreement for an annual tenancy is not sufficient to displace the advantage the tenant has obtained from his long holding subsequent to that *Kabulayat*—The plaintiff sued for possession of the plaint land from the defendant and for Ra. 16 as rent for the season of Samvat 1972, alleging that the defendant was cultivating the plaint land, that he had passed a rent-note for the same for Samvat 1939, and that he was holding over on the expiration of that year. The defendant pleaded that his ancestors were permanent tenants on the land so he was the permanent tenant. Macleod C. J. relied upon *Rajkumath v. Laxman*, 2 Bom. L. R. 93, 95 (1899).—(There it was held that if the documents in the case were excluded, then there could be no doubt that the facts were such as to attract the presumption mentioned in s. 83 of the Code) and observed: "In this case also apart from any documents all the facts are such as to attract that presumption. It has therefore got to be considered if there is anything in the documents which rebuts the presumption. The only document which plaintiff relied upon is the rent-note executed by the defendant for the season 1939. The plaintiff relied upon the words of the rent-notes and especially the final words on which the defendant agreed to clear out and deliver the land in the possession of the plaintiff at the end of the season of 1939. There was a similar document in *Rajkumath v. Lakshman*. There the document was: "I have got the *Makta* (contract) for a lump sum fixed for the current year. As soon as the period was over I will make over the plots to the *Sirkar*" (of Savantwadi) and Sir Lawrence Jenkin said with regard to that document: "No doubt the stipulation taken by itself strongly favours the plaintiff's contention, and but for the authority of the case of *Ganaji v. Salharam*, P. J. for 1889 p. 156 I should have felt greater difficulty in dealing with the argument (founded on this clause). That case.....decided that questions of this class cannot be determined by a clause such as the present, but that the matter must be judged in the light of the actual facts. There the determining point was the fact that the tenant still continued to hold and that is what has happened here." So also that has happened in this case. After 1882 the defendant continued to occupy the land and pay the same rent until the suit was filed. The rent mentioned in the rent note is Ra. 45. But that appears to be explained by the plaintiff in his plaint where he claims Ra. 16 out of the Ra. 45 and says the balance Ra. 29 was paid to Government for assessment. In the absence of any evidence on the point and there being nothing to the contrary in the defendant's written statement it must be taken to be admitted that the

defendant paid Rs. 29 for assessment and paid Rs. 16 to the landlord. There is, therefore, nothing in the case to rebut the presumption which arises from the antiquity of the defendant's tenancy.—*Rama v. Abdul Rahim*, 22 Bom. L. R. 1216 (1920). Again in *Vijbhukhandas v. Ishwardas*, 25 Bom. L. R. 431 (1923) Macleod C. J. observed:

“No doubt, when it has been proved that a tenant has been in occupation of certain land for so long that one cannot ascertain the commencement of the tenancy, the mere fact that during the currency of his holding he has signed a *Kabulayat* which purports to be in terms an agreement for an annual tenancy, may not be sufficient to displace the advantage he has obtained from his long holding, if he continues in possession for many years after he had signed the *Kabulayat*, on the same rent. But each case of this class must stand entirely on its own facts. At first, the tenant claiming to hold as a permanent tenant must establish the facts which would entitle him to the presumption of s. 83. But that can be rebutted by the landlord by the production of a *Kabulayat*. Again the effect of the *Kabulayat* can be destroyed by further evidence on the part of the tenant. The fact of the signing of the *Kabulayat* as merely an isolated instance in the midst of a long holding at the same rent, will not necessarily prevent the tenant from succeeding.”

Note:—However in *Vijabhukhan v. Ishwardas*, 25 Bom. L. R. at 434, Macleod C. J. took into consideration the several circumstances under which the plaintiffs in that case obtained the *Kabulayat* from the defendants and came to the conclusion that the signing of the *Kabulayat* at once destroys any presumption that might have arisen from the previous holding of the defendants of the suit lands and there being nothing that has occurred since which would leave one to suppose that the signing of a *Kabulayat* was a mere accident, which on the continuance of the holding on old terms could be treated as nullity in consequence of the later possession he held that the defendants were not permanent tenants.

**Presumption as to previous possession**—The lands in dispute had been granted in *inam* to the plaintiff's predecessor in title in 1780 A. D. The possession of the defendants could be traced as far back as 1812 A. D. and it did not appear that they were put in possession first at the time. The High Court held: “Under these circumstances the presumption arises from the proof that the defendants were in possession in 1812 that “when the state of possession for a long period of years has been satisfactorily proved, in the absence of evidence to the contrary *praesumitur retro*”—[*Anangamanjari v. Tripura Sandari*, 14 I. A. 101 (110)]. As no satisfactory evidence of the commencement of this tenancy appears on the record by reason of the antiquity of the tenancy the second clause of s. 83 of the Code applies so that the burden of proof lies on the plaintiff.—*Daulata Bin Bahirji v. Sakharam Gangadhar*, 14 Bom. 392.

#### NO PRESUMPTION AS TO PERMANENT TENANCY

**Presumption of permanent tenancy is destroyed where tenant executes *Kabulayat* agreeing to give up possession according to terms in the docu-**

ment—The plaintiffs were put in possession in 1892 as Court purchasers. Prior to that time the land had been managed by the Collector and as soon as the plaintiffs got into possession they determined to establish their rights to the village lands. They filed suits against different occupants for possession and the suits ended in decrees for plaintiffs. They were even taken up to the High Court. Thereafter plaintiffs began taking Kabulayats from the tenants of which there were a large number on record of the suit, covering a period from 1902 to 1909. The purpose the plaintiffs had in taking those was perfectly clear. Macleod C. J. held "It has been proved that the Kabulayat from the tenant was taken by the landlord for a definite purpose and it is clear that the tenants in occupation of the village lands must have known what the plaintiffs had in their minds. The tenants must have known that the plaintiffs were asking for Kabulayats; that they were asserting their rights against any claims of the tenants to hold as permanent tenants and that many of the tenants were signing those Kabulayats. This at once destroyed any presumption that might have arisen from the previous holding of the defendants of the suit lands.—*Vijbhankar v. Isharadas*, 25 Bom. L. R. 431 (1923).

When tenancy is not more than forty years old.—Where the evidence showed that the tenancy was not more, at the most, than forty years old, and afforded no reason for supposing that the evidence as to its commencement or duration was not forthcoming on that account, the High Court held that s. 83 would not apply.—*Kalidas v. Bhajinarayan*, 16 Bom. 646.

This case was referred to in *Lakshuman v. Vitto*, 18 Bom. 221 (1893) and Sargent C. J. held that it would be wrong to apply s. 83 simply because the tenancy commenced between 25 and 40 years ago but not more than forty.

Where the tenancy commenced in or after 1895 and where in spite of the fact that it was found that thereafter the tenants were in possession of the land on payment of a fixed sum of Rs. 8 either by way of assessment or rent, the High Court held that as the commencement of the tenancy was traced s. 83 did not apply. The High Court criticised the case of *Ranchandra v. Anant*, 18 Bom. 433 (1893) saying that the observations in that case must be taken to have been made with reference to the facts of that particular case and could not be so read as practically to modify the terms of the section.—*Chillo v. Shidmath*, 24 Bom. L. R. 226 (1921).

Note.—But see *Mawukh v. Trilanthai*, 31 Bom. L. R. 1286 and *Janardhan v. Laxman*, 33 Bom. L. R. 551 *supra* at p. 380.

The presumption applies only when the time *i. e.* rather the date of the period of the commencement of the tenancy is not proved by satisfactory evidence. Where the period is proved to have been between 1830 and 1850 that seems to be sufficient to negative the presumption. Directly it is shown that the tenancy commenced from a particular period the ordinary presumption has to be drawn namely that the tenant is an annual tenant as laid down in *Rampy v. Sullimayappa*, P. J. for 1898 p. 82 —Per Pratt J. in *Narayan v. Pandurang*, 24 Bom. L. R. 831.

**Note.**—But see *Mavsulik v. Trikambhai*, 31 Bom. L. R. 1286 and *Janardhan v. Lakshman*, 33 Bom. L. R. 551 *supra* at p. 390.

Where certain land was shown to have been waste land belonging to the landlord's ancestor in or about the year 1851 and the ancestor of the tenant probably first cultivating some years later *i. e.* in 1855 the tenancy was held not entitled to the presumption mentioned in s. 83 of the Code. Here there was the definite period of fourteen years in which the defendant's tenancy commenced. In this connection Fawcett J. said: "I can see no logical basis for saying that you are justified in taking a number of months, but not justified in taking a number of years as sufficient. There is nothing in s. 83 to confine it to the case of annual tenancies. In both the judgments, namely, *Narayan v. Pamburay*, 24 Bom. L. R. 831 and *Chikka v. Sidhanath*, 24 Bom. L. R. 226 the main reason for holding that the presumption could not be drawn was that a certain period was proved within which the tenancy must have commenced, and that there was no good ground for saying that a particular year was outside the unit contemplated by the legislature in s. 83 in regard to proof of commencement of a tenancy.—*Ramchandra v. Dattu*, 27 Bom. L. R. 1258 (1925).

**Annual tenancy may continue for a century or even more of a fixed rent** and it does not imply permanent tenancy in the absence of satisfactory evidence to the contrary. Where there was a lease under which the tenants had held for more than a century and where the words in the lease were "You must pay every year Government dues, and enjoy the fields along with the garden lands, without disturbance (Sukhrup Rahane), besides the fixed amount there will be no oppression on account of cesses". The High Court held that these words did not create a permanent tenancy; that there was nothing said in the document itself nor was there any extrinsic evidence as to the circumstances under which, or consideration for which, the lease was granted, to render it probable that a permanent tenancy was intended to be created. No doubt the tenancy has, in fact, continued for a very long time; but there is nothing to prevent a tenancy from year to year continuing for a century or even longer if neither the landlord nor the tenant chose to put an end to it.—*Gangabai v. Kalaba*, 9 Bom. 419 (1885).

This case was followed in *Gangalhar v. Mahadu*, P. J. 1889 p. 321. In this the lower Court had decided that defendant could only be ejected by the plaintiff in default to pay the rent because it found that the defendant was a permanent tenant. As the correctness of the finding depended on the legal effect of a document of 1857 under which the lower Court found that the defoultant held and as the lower Court seemed to have been mainly influenced by the occurrence of the word 'Nehami, (always) in the documents of 1875 the High Court referred to *Gangabai v. Kalaba*, 9 Bom. 419 in which it was held that a provision in the lease that the tenant is to pay every year Government dues, and enjoy the fields along with the garden lands without disturbance and that besides the fixed amount there will be

no oppression on account of cesses does not create a permanent tenancy. For, as the Court there remarked though 'no doubt the tenancy has in fact continued for a very long time, there is nothing to prevent tenancy from year to year continuing a century or even longer, if neither the landlord nor the tenant chose to put an end to it. The High Court after considering the several clauses of the lease awarded the plaintiffs the possession for which they asked.—*Ganguihar v. Mahadu*, P. J. 1889 p. 391.

Both these cases were referred to in *Ramabai v. Babaji*, 15 Bom. 704. There in connection with a lease which was relied by the defendant as creating a perpetual tenancy the High Court observed that the mere fact of long possession could not create a permanent tenancy. The lease did not contain any provision with respect to the heirs of the lessee. It did not provide that the lessee should enjoy the land 'from generation to generation' or 'Nirantar' (in perpetuity) etc. Under the terms of the lease the lessee was merely to enjoy the land on payment of rent from year to year. Under these circumstances the High Court held that the rule in *Gangulal v. Kallappa*, 9 Bom. 419 followed in *Ganguihar v. Mahadu*, P. J. for 1889 p. 321 was applicable, inasmuch as the terms of the lease, on which the defendants held the lands claimed, did not appear to create a perpetual tenancy. There are also no circumstances in the evidence from which the Court ought to infer that the intention was to create a perpetual tenancy.—*Ramabai Sahib Patwardhan v. Babaji*, 15 Bom. 704 (1891).

#### BURDEN OF PROOF

**Burden of proof in the first instance is on tenant.** It is the tenant who alleges that he is a permanent tenant who in the first instance has to prove that, and if he has got no document which gives him a right on the land as a permanent tenant, the presumption is that he is an annual tenant.—*Siddhanath v. Chikto*, 23 Bom. L. R. 533 (1921).

**Burden of Proof is on the tenant in the first instance.**—In a suit for ejection the plaintiff landlord has not prove that the tenancy is an annual one. The presumption is that tenant is an annual tenant and the onus lies upon him to prove he is something more. A defendant who wishes to prove he is a permanent tenant must prove first of all, if he has not got a document of permanent tenancy, the antiquity of his tenure. Where the antiquity of the tenancy at a uniform rate is established, it is for the landlord to prove that there is evidence of the intended duration of the tenancy either by agreement or by usage. In absence of this a presumption arises that the tenancy is co-extensive with the duration of the tenure of the landlord.—*Mamallal v. Bai Amba*, 22 Bom. L. R. 1394 (1920). However Patkar J. in *Janardhan v. Lakshman*, 33 Bom. L. R. at p. 553, observed: "Under s. 83 of the Bom. L. R. Code the landlord must give satisfactory evidence of the commencement of tenancy and where by reason of the antiquity of a tenancy, no satisfactory evidence of its commencement is forthcoming, and there is not any such evidence of the period of its intended duration, if any

agreed upon between the landlord and tenant, or those under whom they respectively claim title, or any usage of the locality as to duration of such tenancy, it shall, as against the immediate landlord of the tenant, be presumed to be co-extensive with the duration of the tenure of such landlord and of those who derive title under him. Ordinarily the landlord must prove the commencement of the tenancy by proving the particular day, month and year on which the tenancy commenced by production of the lease of a rent-note."

#### ENHANCEMENT OF RENT

**Enhancement of rent in the case of permanent tenants.**—In the case of permanent tenants, under this section, the Court allowed the ordinary landlord to enhance rent to the extent of three times the assessment. Where a permanent tenant improves the demised land by growing fruit trees, and the assessment on the land is consequently increased, the landlord is entitled to get rent based on the assessment but he cannot claim in addition rent for the fruit trees.—*Gangaram v. Ganesh*, 27 Bom. L. R. 1340 (1925).

If a tenant proves that he has fixity of tenure then he is entitled to fixity of rent, unless the landlord can prove either by agreement, usage or otherwise that he has a right to enhance the rent. Where it has been proved that he has such a right, then the question of the extent of the enhancement must be left to the Court as the final arbiter. In the districts where the usage exists it is common knowledge that Inamdars get what they can from their tenants and there is no fixed rate of enhancement, but varies very largely. It is therefore for the Court to decide what should be a reasonable enhancement of the original rent.—*Giriappa v. Govindrao*, 27 Bom L. R. 1336 (1925).

Per Madgaokar J.: Once the permanent tenancy is proved the concluding clause of s. 83 clearly places the onus on the landlord of proving his right to enhance the rent.—(*ibid*).

#### RIGHTS OF PERMANENT TENANTS

**A permanent tenant has a right to cut trees planted by him on the land.**—The plaintiff was found to be owner of the lands, but the tenants upon the principle stated in s. 83 were found to be the permanent tenants, that is to say, the origin of their tenancy was lost in antiquity. It was found that the tenants had planted certain trees on the land. The question before the High Court was whether the permanent tenants had a right to cut trees upon the lands demised. On the principles stated in s. 108 (h) of the Transfer of Property Act the High Court observed that there was nothing to preclude a permanent tenant who has planted trees upon his lands from cutting them down and making use of them.—*Sitabai v. Shambhu*, 38 Bom. 716; 16 Bom. L. R. 595.

**Note.**—S. 108 of the Transfer of Property Act, 1832 is not applicable to agricultural leases, ( See s. 117 of T. P. Act ) yet the principles of this section ought to be followed in the case of such leases as embodying the rules



of justice, equity and good conscience.—See *Sitalai v. Shambhu*, 16 Bom. L. R. at p. 598.

§ 104 (h) of the Transfer of Property Act, 1882, as amended in 1929 runs thus. "The lessee may even after the determination of the lease, remove, at any time whilst he is in possession of the property leased but not afterwards, all things which he has attached to the earth; provided he leaves the property in the state in which he received it".—

There is nothing to prevent a permanent tenant of agricultural land from building on it a house for himself to live in.—The defendants had become permanent tenants of the land under the presumption arising from s. 83 of the Code. On the land there was previously a thatched hut or *Chhappar*. There were also *Kachha* huts which were put by the predecessors of the defendants for the better cultivation of the land. The defendants pulled down the thatched hut or *chappar* and erected a new building on the site and also on a few feet of additional ground. The plaintiff sued to get a declaration that the property in suit belonged to him, and that the defendants had no right to build on it and prayed that the defendants might be ordered to remove their building on the suit property and in default he might be allowed to remove the same. The High Court observed: "Speaking generally agriculture is facilitated by residence on or near to the land which is cultivated. It can be better conducted by a farmer who lives in that way than by one who lives at a considerable distance away in the village site. Moreover there is nothing to suggest that this substantial structure which the defendant put up was put up not in order that he might live there and conduct his agricultural work from there but for some other purposes of profit. Therefore to hold that for a farmer to build the dwelling house on a portion of his agricultural land for his own residence, and in such a way to facilitate his agricultural work, is necessarily contrary to the intention of an agricultural tenancy is to come to a very remarkable and unreasonable decision.—*Bhas v. Vittal*, 22 Bom. L. R. 793 (1919).

Annual tenant building a substantial house on the land leased with the knowledge of the landlord may not be evicted without compensation for the building.—The tenant had been in possession of the land for a considerable number of years, but it was admitted that he was not a permanent tenant under s. 83 of the Code. Between 1878 and 1885 the tenant built a substantial storied house on a part of the land at a cost of Rs. 3000; it was built with the knowledge of the plaintiff landlord. In 1914 the plaintiff sued for possession of the land in dispute which was agricultural land and that it might be realoted to him by removing the defendant's building. Under these circumstances the High Court held that although there was no specific agreement yet the circumstances showed that it would be very unjust to evict the defendant without awarding him compensation.—*Ramchandra v. Vishva*, 22 Bom. L. R. 948 (1920).

Importance of the evidence of conduct of the tenants and of the landlords.—There were sale-deeds and mortgages effected by tenants and also

sales in execution of the decree and there was evidence to show that the landlord (Talukdar in this case) had recognized the rights of the purchasers, the mortgagees and auction purchasers and received rents from them. Thus on the one hand where there was evidence of conduct of the tenants and of the landlord (the Talukdar) and where on the other hand there was a report (selection from the record of the Government of Bombay New Series No. 106) by a Government officer drawn up in 1879 which contained a statement that it was then (in 1876) universally admitted that the Talukdars' tenants were tenants from year to year, the High Court relying upon *Nawakumari v. Behari Lal*, 9 Bom. L. R. 846 (1907) P. C. (in this case there was a difference between the landlord and the tenant as to the nature of the tenancy and the tenant contended that he was a permanent tenant whereas landlord contended that the tenant was a tenant at will their Lordships of the Privy Council held that the recognition by the landlord of the rights of the purchasers as tenants was evidenced from which the Court might presume that the tenancy was permanent. The material point relied upon in this case was the receipt of the rent of the holding from the transferees in their own names) accepted the former and observed: "The evidence of conduct of the tenants and of the landlord is an important piece of evidence showing the nature of the tenure and would be cogent evidence of usage in the locality as regards duration of the tenancy".—*Sursangji v. Manilal*, 32 Bom. L. R. 1683 (1930).

**The evidence of conduct of the tenants and of the landlord is an important piece of evidence showing the nature of the tenure and would be cogent evidence of usage in the locality as regards the duration of the tenancy.**—*Sursingji v. Manilal*, 32 Bom. L. R. p. 1683 (1930).

**Payment of rent for years even under alleged mistake raises presumption of title in favour of recipient.**—In 1898 the plaintiff brought this suit against the Secretary of State and the Collector of Salt Revenue to recover possession of certain land which had for many years been in actual possession of the Customs Officials of Government and for which these officials had paid rent to the plaintiff and his predecessor. In their written statement the defendants claimed that the land belonged to Govt. and pleaded that although it was true that they had paid rent for some years to the plaintiff yet that such payments had been made by mistake. *Held*: that the admission by the defendants that they had paid rent to the plaintiff was sufficient in law to raise a *prima facie* presumption of title in the plaintiff's favour and to throw the *onus* upon the defendants of proving that the land belonged to Govt. and that the rent had been paid under a mistake.—*Vithaldas v. Secretary of State*, 26 Bom. 410.

#### DENIAL OF LANDLORD'S TITLE

**What amounts to denial of landlord's title?**—The plaintiff sued to recover possession of certain fees, etc. claiming to be "full owner and complained that the defendant landlord interfered with his possession. He had pur-

chase the fields from the tenants. The defendant pleaded that the plaintiff's vendors had no right of ownership. The plea and the way in which the plaintiff's case was conducted, amounted to a denial of the lessor's title. The High Court distinguished the case of *Vithoo v. Dhondi*, 15 Bom. 407 on the ground that in that case the claims brought by the landlord plaintiff were founded on the alleged notices to quit which were held to be invalid, and thus there had been no legal determination of the tenancy. The foundation of the claims failed. Here there could be no plea with regard to notice, for the form of the tenancy rendered such a plea wholly irrelevant. Accordingly no such plea was in fact put forward and the question of the rights of the parties on the footing of the tenancy having been one from year to year was not raised or tried. The plaintiff having come into the court alleges himself to be "owner" which the subsequent conduct of the case shows was intended to be permanent tenant. Thus the plaintiff could not recover, inasmuch as his plea and the conduct of his case amounted to a denial of his landlord's (defendant's) title. In his suit the plaintiff claimed to be full owner, and he could not afterwards claim to be restored to possession on the ground that he was a yearly tenant entitled to notice to quit, which was not given.—*Lala v. Baimotan*, 17 Bom. 631, (1892)

A tenant repudiating the title under which he entered becomes liable to immediate eviction at the option of the landlord.—In 1871 Gopal filed an ejectment suit against Balaji and Gyanu and one Hari, alleging that he had become owner of the land by operation of the above clause, and that he had subsequently let it to Hari, who now in collusion with the other two defendants, (the mortgagors), denied his title. The ejectment suit was subsequently converted into one for a declaration of Gopal's title as owner as against the mortgagors, Balaji and Gyanu, who claimed a right to redeem. A decree was passed in 1872 ordering Balaji and Gyanu to pay Rs. 100 to Gopal within one month, or, in default, to deliver up to him possession of the land. The money was not paid, and Vishnu, as purchaser from Gopal, got possession in execution of the above decree in August, 1873.

In September, 1885, the plaintiff, as Balaji's heir and legal representative, filed a suit against Gopal and Vishnu to redeem the property. The Court of first instance dismissed the suit, holding that the plaintiff's claim was repudiated by virtue of the decree passed in 1872, and that the right to redeem was lost. In appeal, the Court reversed this decision and passed a decree for redemption on payment of Rs. 100 by the plaintiff within six months. The defendant Vishnu then applied to the High Court under its extraordinary Jurisdiction. The High Court ruled as follows:

"A tenant, repudiating the title under which he entered, becomes liable to immediate eviction at the option of the landlord."—*Vishnu v. Balaji*, 12 Bom. 352 (1887).

The setting up of permanent tenancy by yearly tenant is not tantamount to disclaimer of the landlord's title and such a tenant is therefore entitled to a notice to quit before he can be evicted by the landlord. Where the

plaintiff sued for possession of the plaint land from the defendant alleging that the defendant was cultivating the plaint land; that he had passed a rent note for the same for Samvat 1939 and that he was holding over on the expiration of that year and where the defendant pleaded that he was a permanent tenant the High Court relying upon the Judgment of the Privy Council in *Maharaja of Jeypur v. Rukmini*, 42 Mad. 589 said: "It is conclusive on the points that a mere claim to be a permanent tenant is not a denial of the landlord's title such as to work a forfeiture and that the doctrine of English Law regarding the ejection of an annual tenant in *Vivian v. Moat*, 16 Ch. D. 730 (1881) is not applicable to Indian tenures such as the one in that case. As explained in the Judgment of the Privy Council, the denial or disclaimer does not work a forfeiture in that case, but is construed as rendering a notice to quit unnecessary. This could not apply possibly in the present case for under s. 111 clause (h) of the Transfer of Property Act in order to determine a lease there must be notice duly given by one party to the other, and secondly in the case of an agricultural lease such as the present s. 84 of the L. R. Code lays down that in the absence of any special agreement in writing to the contrary an annual tenancy shall require for its termination a notice given in writing in a certain form. Therefore, even where there has been a disclaimer of the landlord's title, such notice is necessary to determine an agricultural tenancy in the Bombay Presidency. This is already laid down in the cases of *Vithu v. Dhondi*, 15 Bom. 407 (1890) and *Ochhaval v. Gopal*, 32 Bom. 78 (1907)"—*Rama v. Abdul Rahim*, 22 Bom. L. R. 1215 (1920)

Note:—In *Baba v. Vishvanath*, 8 Bom. 228 (1883) West J. had held when the defendant did not admit a yearly tenancy, he could not claim the notice due only to a yearly tenant—*Shahabakan v. Balya*, P. J. for 1873 p.66 Setting up a right to hold at a customary rent in answer to a claim for increased rent is a repudiation of the landlord's title, which dispenses him from giving notice to quit—*Vivian v. Moat*, 16 L. R. Ch. Div. 730, citing *Doe d. v. Stanion, & v. 702* and *Doe d. Calvert v. Frowd*, 4 Bing. 560. The land being as between a landlord and tenant, originally the landlord's property, he has a right to possession, except so far as the tenant makes out a right in derogation of that. Here the right sought to be made out was one of permanent occupancy independently of the landlord's will. When the proof of this failed, there was nothing left to stand between the landlord and the recovery of his possession.

**A tenant is liable to pay cess imposed by an Act subsequently to the lease.**—The defendant was a permanent tenant (Mula-gaindar) of certain lands situated in the village in the district of Kanara at a fixed rent from the superior holder (Mula-Vargadar) the plaintiff. The plaintiff sued to recover from the defendant the enhanced assessment levied on the land by Government and the local cess. The High Court observed that the plaintiff could not recover from the defendant any more than the rent reserved in the lease in respect of the land but held that the cess is distinct from rent, and, not having been in existence at the time when the lease was made, it is of course not provided for in the lease. In the absence of any contract

to the contrary it is equitable and in accordance with the intention of the Legislature, as shown in s. 8 of Bombay Act III of 1869 that the cess should be ultimately paid by the tenant.—*Ranga v. Suba Hegde*, 4 Bom. 473 (1880).

This case was followed in *Ram Tukoji v. Gopal Dhanli*, 17 Bom. 64 (1892) where the defendant held certain lands at a fixed rent per annum under a permanent lease granted by the plaintiff's father and where the plaintiff sued to recover local fund cess in respect of those lands from the defendant the High Court held: "The difficulty of construing s. 8 of Bombay Act III of 1869, as imposing a duty on the inferior holder or lessee to pay the cess, arises from the want of explicit statement such as may be expected in a law imposing a new tax, especially when this section is compared with s. 50 of Bombay Act V of 1879. On the other hand, s. 8 of the Act of 1869 makes the provisions of the law relative to assistance applicable to all superior holders. The question is one of general importance, and we have taken time to consider it. On the whole, we think s. 8 is open to the construction put upon it, in *Ranga v. Suba Hegde*, 4 Bom. 473 (1880) by Westropp C. J. and Melville J., and though that interpretation is not perhaps the necessary meaning of the words, we think we ought to lean to it, in order to avoid the unsettling of titles which might arise if we departed from what those eminent Judges have laid down.

#### INAMDARS, SARANJAMDARS, WATANDARS, ETC

**S. 83 does not exclude watan lands from its operation.**—The tenancy of the defendant commenced somewhere within a period of 150 years between 1700 and 1827. The lands were watan lands, which first became alienable on the passing of Regulation XVI of 1827. In 1898, the defendant passed a rent-note to the landlord-inamdar agreeing to vacate the land at the end of any agricultural year when called upon by the inamdar to do so. A question having arisen whether the tenancy became permanent by virtue of the presumption contained in s. 83 of the Bombay Land Revenue Code, 1879:

*Held:* (1) that having regard to the fact that s. 83 of the Bombay Land Revenue Code did not exclude watan lands from its operation and to the fact that the onus was on the landlord to show the commencement of the tenancy the Court should presume that the tenancy of the defendant was in existence even prior to 1827;

(2) that the tenancy of the defendant having commenced somewhere between the years 1700 and 1827, it should be presumed, in the absence of an evidence to the contrary, that the tenancy commenced at a time when the watan lands were alienable under the law prevailing before Regulation XVI of 1827 came into force;

(3) that, therefore, the statutory presumption of permanent tenancy arose under s. 83 of the Bombay Land Revenue Code, 1879.—*Ramchandra v. Adicappa, Visappa*, 34 Bom. L. R. 1131 (1932)

**Inam lands.**—Where Survey Settlement under Act I of 1855 was introduced into the Inam lands s. 69 of the L. R. Code does not apply in determin-

ing whether the defendants were permanent tenants or not. S. 83 is applicable to this case *Khanderao v. Baslinga*, P. J. 1889 p. 19.

**Resumption of Saranjam or Inam**—Trimbakrao alias Appasaheb, Chief of Kagwad, Jahagirdar and Inamdar died in 1857 leaving no male issue. His widow Parwatibai adopted Trimbakrao the plaintiff in 1868. The plaintiff in 1881 sued the defendant to recover possession of certain lands let to the defendant under a twelve years' lease dated 12th June 1857. The plaintiff alleged that the said lands were the Sheri Kuran lands (private arable land of a Chief cultivated by his tenants) of his adoptive father. The defendant contended that the lands belonged to the State of Kagwad which was resumed on the death of Trimbakrao by the British Government, which refused to sanction the plaintiff's alleged adoption and that the plaintiff's claim was barred by the Law of Limitation. Sargent C. J. held that no distinction could be drawn between the public and private property of an absolute Chief which Appasaheb was; that in the absence of a contrary intention, the resumption by British Government of a Saranjam or Inam leaves the occupancy rights of the Saranjamdar or Inamdar untouched; that a Saranjamdar or Inamdar may acquire occupancy rights during the continuance of a Saranjam or Inam. Held also that the fact that the Revenue Officer placed the defendant's name in the Government Book as the occupant paying assessment, did not make the defendant's possession adverse, and could not prejudice the plaintiff's rights as landlord.—*Ganpatrao v. Ganesh Baji Bhat*, 10 Bom. 112 (1885).

**The relationship of landlord and tenant continues the same even though the Inam land is resumed by Government.**—When an Inam is resumed the Inamdar's right to exemption from the payment of the Government assessment ceases. He therefore becomes liable to pay such assessment. But all his other rights remain unaffected. Those who were his tenants before the resumption do not thereby cease to be such. The relationship of landlord and tenant continues the same as before. If, therefore, the nature of the tenancy be such that the plaintiff would have been entitled to eject the defendant under certain circumstances, had no resumption of the Inam taken place, such her (Inamdar's) right is in no way affected by the resumption.

The defendants had not been disturbed since 1862 nor was there any evidence to show that the plaintiff had within 12 years derived any profit from the land. The High Court held: "If the defendants were tenants before 1862, the presumption is that they have continued in possession as such, and the mere non-payment of rent to the landlord has not rendered their possession adverse so as to bar the suit against them. It is argued, however, that in 1858, after the death of the mortgagee's widow Gajrabai, the defendant's father applied to the Mamlatdar to transfer the Khata to his name, alleging he was the owner under a permanent lease, and that, that being an assertion of an adverse title, the suit is now barred by limitation. But we are not referred to any thing in the record which shows that that assertion, assuming it to be one of an adverse title, was made to the knowledge of the plain-

tiff or of her brother Krishnaji. It appears that Krishnaji had applied to have the Khata entered in his name, and that that was done in 1862. This suit therefore is not barred by the law of limitation.—*Gangabai v. Kalapa*, 9 Bom. 419 (1885).

**A permanent tenant in alienated village is liable to pay enhanced rent on introduction of survey settlement**—A person holding lauds in an alienated village as a permanent tenant under s. 83, becomes on the introduction of the Survey Settlement into the village entitled to the rights and affected with the responsibilities of a holder in an unalienated village by virtue of s. 216 of the Code. The rulings in *Nasabhai v. Collector of Kaira*, 12 Bom. L. R. 707; 34 Bom. 686 (1910) and *Jhaku v. Dindur*, 20 Bom. L. R. 887; 43 Bom. 77 have no application because after the date of those decisions s. 217 was amended, and the words 'holders of land' were substituted for the original word 'occupants' by Bombay Act IV of 1913. The introduction of a Survey Settlement into the village does not confer on the permanent tenant the rights which belong to an 'occupant' in an unalienated village. In other words he remains what he ever was a tenant and does not become an occupant. That being so he is liable to pay enhanced rent to his landlord.—*Koshi v. Vishalrao*, 28 Bom. L. R. 424 (1925).

**Permanent tenant's rights in Bhagdari land**—There is nothing in the Bhagdari Act (Bom. Act V of 1862) to prevent a permanent tenant of a bhagdar from alienating the fruit of the trees on the land of which he is a tenant, in the same way as he could alienate the crops or grass upon such land.

The position of a tenant of a Bhagdari land who is presumed to be a permanent tenant under s. 83 of the L. R. Code 1879, is not affected in any way by the prohibition contained in the Bhagdari Act against alienation.—*Nabachandi v. Arshakere*, 9 Bom. L. R. 50 (1906).

**Enhancement of rent should be just and reasonable**.—A grant to an Inamdar may be either of the Royal share of revenue or of the soil; but ordinarily it is of the former description and the burden rests on the Inamdar to show that he is an alienee of the soil.

Where an Inamdar is alienee only of the land revenue, then his relations towards those who hold land within the area of the Inam grant vary according to certain well-recognized principles. If the holding was created prior to the grant of the Inam, then the Inamdar as such can only claim land revenue or assessment; for he has no interest in the soil in respect of which rent would be paid; but if the holding be later in its origin than the Inam grant, then the lands comprised in such holding would be the Sheri lands of the Inamdar and he would be entitled to place tenants in possession of them even if only a grantee of revenue. With respect to the latter class of holding, direct contractual relations would be established between the Inamdar and the holder. If no such contract can be proved, recourse must be had to section 83 of the L. R. Code (Bom. Act V of 1879). In the absence of satisfactory evidence of agreement, the rent is that payable by the usage of the

locality and failing that, such rent as, having regard to all the circumstances of the case, shall be just and reasonable.

In a suit by an Inamdar to enhance rent of Miras land, it must be determined whether what was paid was rent and whether the Inamdar has a right to enhance as against one who holds on the same terms as the defendant does; the test is whether there has been any and what enhancement according to the usage of the locality in respect of land of the same description held on the same tenure.—*Rajya v. Balakrishna*, 29 Bom. 416 (1905); 7 Bom. L. R. 439.

Unless the terms of his inam grant so authorized an Inamdar merely by virtue of his being an Inamdar cannot enclose a piece of pasture if used immemorially by the inhabitants of the Inam village. An Inamdar cannot except according to the terms of his grant have a 'perfect right to bring under cultivation such lands as he likes, without causing inconvenience to other people.' He might have this right, but he might be subject to rights of common. In the present case the plot of land which he had enclosed had been immemorially used as pasture ground of the villagers, especially valuable because of the access it afforded to drinking water. This is *prima facie* proof of a right which there is nothing to rebut, save unascertained rights of the defendant as an Inamdar, which is a term of very loose and varying import. It has never been held that every Inamdar without regard to the terms of his grant may enclose at will, and if every sub-sharer of the Inam may do so, there would obviously very soon be no pasture lands left in the village at all.—*Fishnawak v. Mahadji*, 3 Bom. 147; P. J. 1879 p. 3.

An Inamdar is liable to pay Local Fund cess.—The plaintiff was an Inamdar of a village. He sued to recover back the amount which he paid to the Collector under protest as the remuneration of the village officers for collecting local fund cess in Inam village. The defendant (the Secretary of State for India) pleaded that the plaintiff as inamdar was liable to pay the cost of collecting the cess. The District Judge held that the plaintiff was a superior holder and as such was not liable under Bombay Acts III of 1869 (Local Funds Act) and V of 1879 (L. R. Code) to pay any remuneration to the village officers for collecting cess. He therefore awarded the plaintiff's claim. The matter went up to the High Court. *Jardine J. held*: Sec. 6 and 7 of Bombay Act III of 1869 (the Local Funds Act) impose the duty of paying the cess on the Inamdar, in the first instance, as a charge on the aggregate village assessment and thus upon the land. S. 8 requires that the cess be levied in the same manner and under the same provisions of law as the ordinary land revenue. The Inamdar is a "superior holder" within the definitions of Reg. XVII of 1827, s. 3, Bombay Act I of 1865, s. 2 cl. (k), and Bombay Act V of 1879, s. 3 cl. 13, and was under Reg. XVII of 1827, s. 30, and is under Bombay Act V of 1879, s. 136, the person primarily responsible for the payment of land revenue. We think, therefore, s. 8 of the Act of 1869 justifies the levy of the cess from him, and we may refer to *Ranga v. Suba Hoque*, 4 Bom. 473 and *Ram Tukaji v. Gopal* 17 Bom. 54 as showing that this view has been accepted by this Court.



It is also contended, that the plaintiff as a mere intermediary of the Government is entitled to charge for expenses in collecting the cess. There is no provision of law so entitling him; and as he is primarily liable to pay the cess we are not aware of any reason, equitable or otherwise, which would impose on the Government the burden of paying him any expenses which he may incur under the legislative permission to him to recover the amount of the cess for his own benefit from his tenants.—*The Secretary of State v. Balcast*, 17 Bom. 422 (1892).

A permanent tenancy under s. 83 can be held to be established with reference to Talukdari Estates because if the intention of legislature was otherwise i. e. there could not arise a permanent tenancy by virtue of s. 83 in Talukdari Estates it would have been so expressly enacted and s. 83 would have been made applicable to Talukdari Estates. S. 83 is not included in s. 33 of the Gujarat Talukdar's Act, 1888 among the sections of the L. R. Code which are inapplicable to Talukdari Estates. In *Amarasingji v. Raschhai*, 27 Bom. L. R. 267 (1924) and *Jucansingji v. Dola Chhita*, 27 Bom. L. R. 890 s. 83 was applied to Talukdari Estates. The first case expressly refers to Talukdari Estate and the second case refers to a laud which was given in gift as panna. These two cases give rise to the inference that so far as Talukdari Estates cases are concerned there is no prohibition of a presumption being raised under s. 83 of the L. R. Code.—*Surasangi v. Mamiah*, 32 Bom. L. R. p. 1613 (1930)

Right of inamdar of fields in non-inam villages to enhance rent in case of permanent tenants.—It is common knowledge that in unalienated villages there may be many cases of grants of certain fields by Government to be held on certain terms either absolutely free from payment of revenue or merely on payment of a portion of revenue and such lands are not intended to be brought within the purview of s. 216 of the Code. Therefore, in an unalienated village to which the survey has been extended and where the defendants are proved to be permanent tenants, owing to the presumption arising under s. 83 of the Code, the question whether the plaintiffs have a right to enhance what had previously been paid by the defendants for the privilege of holding these lands will depend on evidence in the particular case, with regard to the usage or otherwise of the particular district and also of the particular usage in regard to the land in the suit.—*Sitaran v. Tabaran*, 23 Bom. L. R. 397.

A tenant of Watan lands cannot acquire a right by adverse possession to fixity of rents against the watanar.—The defendants admitted that the lands were walaq inam lands; but they contended that the lands belonged to them as their ancestral property; that they were in possession from ancient times; that the ancestors of the plaintiff had got the right to recover only the Govt. assessment from them; that they were not annual tenants; that the father of the plaintiff had instituted a suit in 1891 against their ancestors, that in that suit their ancestors had claimed the lands as of their ownership; and that since then they were in possession adversely to the plaintiff and his father for

more than 12 years. The High Court distinguished the case of *Radhabai v. Ananta*, 9 Bom. 198 F. B. (1885) on the ground that the contest in that case was between an entire stranger holding adverse possession of the watan lands on the one hand and the watandars on the other, while in the present case it was between a tenant already in possession of the watan land as a tenant and the watandar. Macleod C. J. following the decision in *Madhavrao v. Ragnath*, 47 Bom. 789 (1923) said: "If then a person who is in possession of the watan lands as a tenant of the watandar cannot acquire title to a permanent tenancy, that is to say, to fixity of tenure, it is difficult to see how such tenant can acquire a right by adverse possession to fixity of rent. It may be that, as was held in *Gopalrao v. Mahadevrao*, 21 Bom. 394 (1896) a tenant can acquire a right of fixity of rent as against the immediate holder of the watan, but that would not prevail against the next holder, and in this case the suit having been filed within twelve years of the plaintiff succeeding to the watan, it is not barred. Therefore, following the decision of the Privy Council, we hold that the right of the plaintiff to enhance the rent exists.—*Vishnu v. Tukaram*, 27 Bom. L.R. 449. The case of *Madhavrao v. Ragnath*, 47 Bom. 798 was distinguished in *Govind v. Vithal*, 33 Bom. L.R. 210 (1930) on the ground that the former case proceeded on the basis that the grant of permanent tenancy was subsequent to the Bom. Reg. XVI of 1827. In *Govind v. Vithal* the Bom. Reg. XVI of 1827, ss. 19 and 20 of which prohibited alienation of service (Deshpande) watan lands was applied to the Satara District in 1862. The defendants were in possession of watan lands in Satara district as tenants long prior to 1863, when watan lands were alienable. The watandars filed a suit to eject the defendants. They (defendants) relied on the presumption of permanent tenancy under s. 83. The High Court without going into the general question as to whether the presumption under s. 83 does or does not apply to watan lands observed: "Before the passing of Reg. XVI of 1827 a watandar could, apparently without the sanction of the Government, assign or mortgage his service watan lands and could grant a permanent lease of them. The effect of ss. 19 and 20 of that Regulation was to prohibit in the interests of State all such watandars from alienating in any way the service watan lands which they held as watandars: *Vide Madhavrao Waman v. Raghunath Venkatesh*. In the present case *Govind v. Vithal* which comes from Satara, the Regulation of 1827 did not apply. It was only in 1863 that the Regulation was applied to Satara. The commencement of the tenancy in the present case was long prior to that, and appears to have been even prior to 1827. In these circumstances, at the time when the tenancy commenced, there was no prohibition of alienation by a watandar. Therefore, Madhavrao's case has no application. In these circumstances the presumption arising under s. 83 of the Bom. L.R. Code applies.—*Govind v. Vithal*, 33 Bom. L. R. 210 (1930);

**Rights of Khata tenants of an Inamdar.**—In a suit for ejectment for non-payment of enhanced rent by an Inamdar the defendants pleaded (1) that they were permanent tenants (2) that the plaintiff had no power to enhance (3) that the enhancement by the plaintiff was unreasonable. The Lower Courts held that the defendants were permanent tenants but were bound to

pay a reasonable rent. Their decision was not based on evidence given in the case, but on what was termed a "well-known distinction between the Sheri or private lands of an Inamdar and the Khata or Rayatwar lands held by recognised tenants." The exercise of certain rights of transfer or inheritance etc. was regarded as evidence of fixity of tenure at a reasonable rent. The High Court remarked that "the distinction drawn by the District Judge between Sheri and Khata lands and the rights and privileges assigned by him to the latter, were intended by him to apply solely to those Khata tenancies in which there is no express contract between landlord and tenant. Under s. 85 of the Code, it is incumbent on every superior holder of an alienated village in which there exists an hereditary Patel and village accountant to receive his dues on account of rent or land revenue from the inferior holders through the said village officers. By s. 3 the 'inferior holder' signifies a holder liable to pay the rent or land revenue to a superior holder, and 'tenant' signifies a person who holds by a right derived from a superior holder called his landlord. Thus a tenant is an inferior holder, whose superior holder is his landlord. Now it is easy to conceive a case of land of which tenant-rights have lapsed to the Inamdar, but which he does not wish to cultivate by his farm servants; accordingly he leases it, say, on a lease for five years to a tenant with power of re-entry at the expiration of the term. It would be absurd to say that this tenant is a permanent tenant whose rent could never be enhanced beyond a reasonable rate. And yet the land would be 'Khata or Rayatwar land held by a recognised tenant;' 'the tenant's name is recorded as Khatedar as in Government villages;' it is a 'registered tenancy;' the landlord is prohibited from collecting the rent otherwise than through the village officers. In the same way the landlord may, by a permanent lease, have expressly bound himself never to enhance the rent. Therefore when it is said that the holders of Khata lands as such have rights of alienation, transfer, and inheritance, the reference must be solely to those Khata tenants who do not hold under express contract.

In determining the rights of Khata tenants there comes the important question whether Khata tenants who hold under no express contract reserving or limiting the right of the landlord have possessed and exercised the rights of mortgages transferring and alienating their land to other people, the holdings being hereditary, and the inamdar never challenging those rights or interfering with their exercise. The best evidence, no doubt, if procurable, would be evidence of custom in this particular village; but evidence as to similar tenants in similar villages must not be excluded. As was said in *Prataprao Gujar v. Baraji*, 3 Bom. 141 does the tenure by which the lands are held impose, according to the customary law of the district, any and what limits upon the power of a grantee from the Government in inam to enhance the rent or assessment payable on account of the said land? In *Baba v. Viskramath*, 8 Bom. 228 the plaintiff was the same plaintiff as in the present case; but the defendant pleaded that he was not bound ever to pay anything beyond the fixed rent of Rs. 11. He did not plead (as here) that

he was willing to pay a reasonable rent, and the important question of local usage was not raised.

We may remark here that we do not agree with the Subordinate Judge that, if the lands were leased to the tenants at a time before the inamdar had accepted the provisions of the summary settlement, the tenants must necessarily be presumed to have entered on their tenancy under a belief that should the Inam lapse to Government, their rent would not be enhanced beyond a reasonable rate, and, therefore, the present inamdar is bound to give effect to that understanding. The defendants raised no such plea, nor apparently was it accepted by the District Judge. Nor do we agree with the Subordinate Judge that mirasdars in an inam village can always claim to hold at a fixed rent. As stated in *Lakshman v. Ganpatrar*, 3 Bom. 145, an inamdar can enhance the rents of mirasdars within the limits of custom. In the present cases the tenants, though found not to be mirasdars, claim the same right.—*Vishwanath Bikaji v. Dhondappa*, 17 Bom. 475. (1892).

**84.** An annual tenancy shall, in the absence of proof to the contrary, be presumed to run from the end of one cultivating season to the end of the next. The cultivating season may be presumed to end on the 31st March.

An annual tenancy shall [a] in the absence of any special agreement in writing to the contrary, [a] require for its termination a notice given in writing by the landlord to the tenant, or by the tenant to the landlord, at least three months before the end of the year of tenancy at the end of which it is intimated that the tenancy is to cease. Such notice may be in the form of Schedule E, or the like effect.

#### Commentary

The object of s. 84 is to define the nature of the contract creating an annual tenancy, which it is to be remarked may be for agricultural or other purposes both as regards the period during which it runs and the landlord's power of determining it.—Per Sargent C.J. in *Venkaji v. Lakshman*, 20 Bom. 354, (F. B.) (1895).

In the absence of any special agreement in writing to the contrary.—These words were inserted to allow an annual tenancy to be terminated

[a—a]. These words were inserted by Bom. VII of 1914, s. 2.

without notice when there was repudiation of the landlord's title. For want of a saving clause to that effect Courts were obliged to pass orders which were 'dead against the equities of the case'. It was stated in *G. R. 5400 of 11-8-1882* that the intention of the 2nd clause of s. 84 was as if the words "in the absence of any special agreement to the contrary" were inserted in that clause. This however was not supported by the actual language of the clause. The point was also discussed in *Ochharlal v. Gopal*, 9 Bom. L. R. 1332 (1909).—*Statement of Objects & Reasons to the amending Bom. Act VII of 1914*. In moving the first reading of the Bill (Act VII 1914) it was said that the intention of the legislature was that the annual tenancy should require a notice of termination only in those cases in which it was not already provided for by the terms of the contract between landlord and the tenant. That had been stated in more than one *G. R.*, but as the Courts of Justice had pointed, *G. Rs* could not alter the terms of an enactment, nor could the Courts interpret the terms of an Act in terms of a *G. R.* They had to apply the Act as it was actually enacted. The amendment would have the effect of removing what had been found in the past to be a source of decisions which the Courts themselves had regarded as inequitable. They were bound by the terms of the Act to insist that there must have been a notice even in writing by the landlord and that when notice was lacking, even though in terms of agreement the parties contemplated a termination, nevertheless the tenancy had not terminated because the notice required by the Act had not been given. Of course the amendment has nothing to do with the Govt. and with the survey occupant holding directly under Govt. It affects only the relations between the landlord and the tenant. It was suggested in the Select Committee by Mr. Parekh that provision should be made for a landlord to enter into possession at once on a tenant repudiating his title. It was decided however by the Select Committee that in view of s. 116 of the Indian Evidence Act and s. 111(g) (2) of the Transfer of Property Act, 1882 that it was unnecessary to make provision for this contingency. The Hon. Mr. Parekh while moving an amendment pointed out that under the general law when a tenant repudiated his tenancy he could not afterwards stand upon the position of a tenant and claim any right under the tenancy. This deprived him of all right of claiming benefit as a tenant from the landlord. That being a case, provision to terminate the tenancy would not be applicable to persons who had repudiated the tenancy and they were not entitled to say when the landlord wished to eject them that they were entitled to notice under this section. This is the provision of the general law. However the Council thought that it was quite unnecessary and therefore rejected the motion.—*Discussion in the Bombay Legislative Council, B. G. G. Pt. VII 1-10-1914, p. 934*.

*Note.*—The provisions of the ordinary law are contained in s. 116 of the Indian Evidence Act and ss. 111 and 112 of the Transfer of Property Act, 1882. They are as follows:—

No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny

that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property, (S. 116 of the Indian Evidence Act).

A lease of immoveable property determines by forfeiture, that is to say in case the lessee renounces his character as such by setting up a title in a third person, or by claiming title in himself. [S. 111 (g)(2) of the Transfer of Property Act, 1882].

A forfeiture under s. 111 c. G is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting.

Provided that the lessor is aware that the forfeiture has been incurred.

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver. (S. 113 of the Transfer of Property Act, 1882).

Notice to quit must be something like that referred to in the Form—The plaintiffs called on the defendants by notice to quit to pay an increased rent and to sign a writing to that effect, and that in default they were to give up possession. This was to be done within 10 days. The words of the particular notice in this case were; "You are hereby given notice that within ten days from the date of the receipt hereof you should pay over to us rent of the last year and you should give in writing a *Kabulayat* to pay rent for the lands you cultivate, failing which you should hand over to us the lands which you cultivate, and in default steps will be taken against you to take over possession from you or obtain any other remedy according to law." The High Court held that it cannot be implied that the notice to quit was to quit at the termination of the cultivating season and that it did not comply with this section. It held, further, that though the form of notice referred to in this section was not imperative, it still indicates the class of notice which the Indian Legislature had in mind, and that notice would be very much what would be required under English law and the notice in the present case was not a valid notice to quit.—*Amarsingji v. Rauldook*, 27 Bom. L. R. 267.

Notice to quit must be given three months before the time when the yearly tenancy was terminable.—The appellants brought a suit to eject the respondent from the tenancy of certain lands belonging to the appellants, and also claimed Rs. 20 for rent. The notice terminating the tenancy was dated June 22, 1921, and *inter alia* stated that the year of cultivation would terminate in the month of Ashwin i. e. October 31, and that possession of the property along with Rs. 20 for rent should be then given. The first Court found in favour of the appellants, and granted them a decree in ejectment as well as a decree for Rs. 20 for rent. The appellate Court held that the appellants had failed to prove that the yearly tenancy was terminable on October 31, in each year. The rent-note of 1897 which

was advanced in evidence, showed that the tenancy began in July 1897, and ended in May 1899. There was no evidence to show that there was any fresh contract between the parties or their predecessors-in-title that the year of tenancy should end in Ashwin or October. The lower Court, relying on a 94 of the Bom. L. R. Code, held that the notice did not in law terminate the tenancy. The High Court agreed with the view of the lower Court.—*Fakhral v. Arifian*, 39 Bom. L. R. 1662 (1928).

Notice to pay an enhanced rent or to quit in default of so doing must be given at least 3 months before the end of the year of tenancy.—Where the plaintiff sought by notice of the 17th March 1887 to enhance the amount or rent payable to him by the defendants for the year 1887-88 and where the plaintiff called on the defendants to pay the enhanced rent for 1887-88 or to quit the lands the High Court held that the notice was one to quit the lands on or before the 31st March 1887 and was one of 14 days only; and the notice was clearly insufficient. The tenancy must be presumed to be annual, and a notice to pay an enhanced rent or to quit in default of so doing must be given at least 3 months before the end of the year of tenancy at the end of which it is intimated that the tenancy is to cease.—*Babun v. Vinograd*, P. J. for 1882, p. 298.

A tenant under Khaki Settlement Act is entitled to notice prescribed by a 94 of the Code.—The plaintiff Yaboo was the Khaki of the land. The land was at first held by Soda as occupancy tenant. Soda died in 1894. On his death the land was taken possession of by Lakha (Defendant No. 1) who was Soda's mother's brother's son. One Bhasan a first cousin of Soda claimed as his nearest heir to be entitled to the holding; and the Revenue Authorities entered it in his name. Rull Lakha occupied in possession. In 1914 Babu relinquished the holding in favour of the plaintiff and executed a *Baynam*. The plaintiff sued in 1915 to recover possession of the property from Lakha. Lakha alleged that he was occupancy tenant as heir of Soda who died in 1894 and as he had been in possession for over 18 years any right of Babu had been extinguished. The High Court held that the defendant No. 1 was entitled to 3 months' notice prescribed by a 94. The High Court referred to *Yasur Rane v. Sallawa Goyal*, 39 Bom. 239; 7 Bom. L. R. 941 (1905) where it was held that the Court could not claim to treat the person in possession under a right derived from the occupancy tenant either as a tenant or even as a yearly tenant, so long as the privileged occupant's rights remain undisturbed by resignation, lapse or duly certified forfeiture. Here, however, there has been a resignation by the rightful occupant tenant, and the most that defendant No. 1 can claim is to be a tenant under a 94 of the Khaki Settlement Act. Under the provisions of that section, in the absence of any specific agreement between himself and the Khaki, he must be held to be a yearly tenant liable to pay rent to the Khaki at the rates prescribed and accordingly he is entitled to the notice prescribed in the case of yearly tenants under a 94 of the Bombay L. R. Code.—*Yadav v. Datta*, 23 Bom. L. R. 411 (1920).

**Notice to quit must be given by landlord to the tenant.** The Court cannot give such notice. The plaintiff, sued to eject the defendants from certain land. The defendants pleaded that they were permanent tenants under a lease granted to their ancestor by the plaintiff's grandfather in 1805. The Court of first instance awarded the plaintiff's claim. On appeal, the District Judge held that the lease on which the defendants relied was one determinable on the grantee's death, but as the grantee's heirs (the defendants) had continued in possession paying the stipulated rent, they were entitled to a reasonable notice to quit. The District Judge accordingly passed a decree, directing the defendants to vacate the land at the expiry of six months from the date of the decree. The High Court held that the District Judge could not, in his judgment, give the notice which the plaintiff was bound to give to his tenants. Plaintiff's suit must fail for want of notice.—*Abu Bakur v. Venkatramana*, 18 Bom. 107 (1893).

**Notice to quit is not necessary in the case of sub-tenants.**—A sub-lease differs from the assignment of a lease in that it creates no privity of contract between the sub-tenant and the landlord. The landlord has to deal with his lessee and not with the sub-tenants of the latter. A landlord putting an end by proper notice to the tenancy of his tenant thereby determines the estate of the under-tenants of latter. The question before the High Court was whether a different rule should be applied in the Bombay Presidency by reason of the provisions of s. 84 of the Code. The High Court held that the provisions of s. 84 in directing that a landlord must give the notice therein required to his tenants, and making no reference to the sub-tenants of the latter, rather imply the contrary, and convenience points in the same direction. The landlord in many cases knows nothing about the sub-tenants of his lessee and when he has given due notice to and terminated the tenancy of the latter, and it may be, has resorted to legal measures to evict him it would be a hardship on him to find that he had to begin proceedings all over against the sub-tenants. An assignee of a lease is of course in a different position, for he is brought by his assignment into direct relations with the landlord. The surrender of a lease by the lessee gives rise to different considerations.—*Timmappa v. Rama Venkanna*, 21 Bom. 311. (1895).

**Note.**—Under s. 108 (j) of the Transfer of Property Act, 1882 'The lessee may transfer absolutely, or by way of mortgage or sub-lease, the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease;

Nothing in this clause shall be deemed to authorize a tenant, having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer, or lessee;

Again s. 111 of the same Act states that a lease of immoveable property terminates (a) by forfeiture, that is to say—(1) in case the lessee breaks an



express condition which provides that, on breach thereof the lessor may re-enter \* \* \* ; or (2) in case the lessee renounces his character as such by setting up a title in a third person, or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease; (b) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other. But s. 115 of the same Act states as follows:

'The surrender, express or implied, of a lease of immoveable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to, and enforceable, by the lessor'.

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by the lessor in fraud of the under-lessee, or relief against the forfeiture is granted under section 114.

Setting up of permanent tenancy is not a repudiation of the landlord's title—Plaintiffs sued to recover possession of the land in suit alleging that their predecessor had let out the land to defendant's predecessor under a lease dated the 26th June 1848; that the defendant continued to hold the land under the terms of the original lease; that one of the conditions of the lease was that if default be made in the payment of rent on a particular day in the month of Chaitra every year it was open to the landlord to eject the defendant; that defendant having made default for four years, it was open to the plaintiffs to eject him without previous notice to quit and that notwithstanding the default the plaintiff had sent notices to the defendant to vacate by registered post, but he refused to accept them. Hence the suit.

The defendant admitted the lease referred to in the plaint and answered that the plaintiffs had no right to expect payment of rent on a fixed date; that according to the course of dealings between the parties rent was allowed to fall into arrears from three to four years; that he had tendered the rent for the years in suit to the plaintiffs, but they declined to accept it, and that the allegation with respect to notices to vacate was not true. The defendant further contended that he was a permanent tenant under the terms of the lease; that the plaintiffs had no right to sue in ejectment; and that if the non-payment of rent on the due date be held to have worked a forfeiture of his tenancy, the same should be relieved against. The High Court held that there was no repudiation of the relationship of landlord and tenant and that the tenancy being an annual one it can only be determined by notice in writing by the landlord.—*Ochharal v. Gopal*, 32 Bom. 78 (1907); 9 Bom. L. R. 1332 (1907).

## NOTICE TO QUIT WHEN NOT NECESSARY

**Denial of landlord's title prior to suit** is a sufficient cause of action to enable the lessor to recover the possession without notice to quit in the case of an annual tenant to which s. 84 applies. S. 84 defines the nature of contract creating the annual tenancy both as regards the period during which it runs and the landlord's power of determining it. The landlord's right of forfeiture, however, arising from disclaimer of his title, although it is treated as determining the tenancy at his election, is no part of the contract of tenancy, but is a right which the law implies in all cases from the relationship of landlord and tenants: Had it been the intention of Legislature to exclude the right of forfeiture in the case of an annual tenancy we should have expected to find it expressly provided for.—*Fenkaji v. Lakshman*, 20 **Bom. 344 (F. B.) (1895)**.

This case was referred to in *Vidyavardha Sangh Co. v. Ayyappa*, 27 **Bom. L. R. 1152**. There Ayyappa and others (plaintiffs) let out certain land before 1878 to Pampaya (father of defendant No. 2), the latter agreeing to look after the existing trees, to plant more trees and to pay rent equal to the assessment. In 1909 Sangya (defendant No. 3) made a gift of the land to his daughter Gursangawa (defendant No. 4). In 1921 Gursangawa gifted it away to Vidyavardhak Sangha Company (defendant No. 1). Subsequently the plaintiffs sued to recover possession of the land from the defendants in Civil Court, on the ground that in the course of the proceedings before the Mamlatdar, the defendant No. 3 had denied plaintiff's title to the land in 1909. The plaintiffs contended that they were entitled to take possession without giving any notice. The High Court referred to *Fenkaji v. Lakshman*, 20 **Bom. 344 (1895)** and held that no notice was required to determine the tenancy once the tenant had disclaimed the landlord's title.—*Vidyavardha Sangh Company v. Ayyappa*, 27 **Bom. L. R. 1152 (1925)**.

**Note.**—In *Rama v. Sayad Abdul*, 22 **Bom. L. R. at p. 1220 (1920)** Fawcett J. has observed that even where there has been a disclaimer of landlord's title a notice to quit is necessary to determine an annual agricultural tenancy in the Bombay Presidency. In support of this he has relied upon the cases of *Vithu v. Dhondi*, 15 **Bom. 407** and *Ochhavelal v. Gopal*, 35 **Bom. 78**. Now in *Ochhavelal v. Gopal* Jenkins C. J. found as a matter of fact that in that case there was no repudiation of the relation of landlord and tenant. He has not decided in that case that a notice to quit is necessary even when there is disclaimer of title. In *Vithu v. Dhondi* Telang J. after the consideration of the matters before him was of opinion that it was doubtful whether there was anything in the defendants' written statement in that case which could be fairly treated as a disclaimer of the landlord's title. He further said that even if there had been any disclaimer, its occurrence after the institution of the suit, prevented the plaintiff from succeeding in that case without proof of legal notice to quit. In both these cases the main issue was whether setting up of the plea of permanent tenancy amounted to a denial of landlord's title and the Courts came to the conclusion in the

negative. Thus there is nothing to support the view adopted by Fawcett J. in *Rama v. Sugul Ahal*. We therefore, are unable to agree with his remarks in that case.

[**§ 84A** (1) Whenever from any cause the payment of the whole or any part of the land revenue payable to Government by a superior holder in respect of any land is suspended or remitted, the Collector, acting under the general or special orders of Government, may suspend or remit, as the case may be, the payment to such superior holder of the rent or land revenue of such land by the inferior holder or holders to an amount which—

Order granting suspensions or remissions to inferior holders.

(a) in the case of land in respect of which full assessment is payable to Government, shall not exceed double the amount of the land revenue of which the payment by such superior holder has been suspended or remitted by Government, and

(b) in the case of land in respect of which land revenue less than the full assessment is payable to Government, shall not exceed double the amount which, in the opinion of the Collector, would have been suspended or remitted by Government in favour of the superior holder if the full assessment had been payable to Government in respect of such land.

(2) In the case of land in respect of which no land revenue is payable to Government by a superior holder, whenever from any cause the payment of the whole or any part of the land revenue payable to Government in respect of any other land in the same neighbourhood has been suspended or remitted, the Collector, acting under the general or special orders of Government, may suspend or remit, as the case may be, the payment to such superior

[a] This section was inserted by Bom. VII of 1914, s. 3.

holder of the rent or land revenue of the first mentioned land by the inferior holder or holders to an amount which shall not exceed double the amount which, in the opinion of the Collector, would have been suspended or remitted by Government in favour of the superior holder if the full assessment had been payable to Government in respect of such land.

(3) An order passed under sub-section (1) or under sub-section (2) shall not be questioned in any Court.

Such order not to be questioned in any Court.

(4) If the superior holder collects any rent or land revenue of which the payment has been remitted, or before the expiration of the period of suspension collects any rent or land revenue of which the payment has been suspended in favour of an inferior holder or holders, the whole of the land revenue remitted or suspended in favour of such superior holder shall, without prejudice to the rights of the inferior holder or holders to recover the rent or land revenue so collected, become immediately payable by the superior holder.

Consequences following on such order.

(5) No application for assistance under sections 86 and 87 shall be entertained, no suit shall lie, and no decree of a Civil Court shall be executed, for the recovery by a superior holder of any rent or land revenue of which the payment has been remitted, or, during the period of suspension, of any rent or land revenue of which the payment has been suspended in favour of an inferior holder or holders; but, where the payment of rent or land revenue by an inferior holder or holders has been suspended, the period during which the suspension has continued shall be excluded from the period of limitation prescribed for a suit for the recovery of such rent or land revenue.

(6) Nothing in this section shall make it unlawful for the superior holder to take the crop-share fixed by custom or agreement in respect of any land on which rent is payable in whole or in part in the form of a share of the crop.

(7) Explanation—

Meaning of assessment. In respect of land which has not been assessed under the provisions of Chapter VIII or under any survey settlement confirmed by section 112, the term assessment, for the purposes of this section, includes the rent or land revenue payable by custom or by the usage of the locality.

(8) Nothing in this section shall apply to any land situated in the Province of Sind.

### Commentary

**History.**—S. 84A as mentioned in the Statement of Objects and Reasons is on the line of certain sections in the Tenancy Acts of some other provinces, viz. that of the United Provinces Act of 1901, the Punjab Tenancy Act of 1907, and the Central Provinces Tenancy Act of 1908. In this Presidency it has not been found necessary to enact any separate Tenancy Act. It has been found sufficient from time to time to amend the Land Revenue Code for improving the conditions of the relationship between landlord and tenant. The Government of India in expressing their consent to the introduction of the Bombay Land Revenue Code Amendment Bill ( Bom. Act. VII of 1914) indicated that the Bombay Government was not quite so strict, quite so drastic even as the legislatures of other provinces have been in respect of this identical matter. The consequence of the provisions of the Act in force in Central Provinces is that a landlord levying commuted or suspended rent is liable, on the application of the tenant, to a penalty not exceeding Rs. 500 or double the amount of the rent if that exceeds Rs. 500 such penalty being awarded to the tenant as compensation. In the Punjab, the maximum penalty which may be imposed by a Revenue Officer of his own motion is double the amount of the rent collected and this is refunded to the tenant.—*Debates in the Bombay Legislative Council on the Bombay Land Revenue Code Amendment Bill (Act VII of 1914).*

It was pointed out by Sir Richard Lamb the mover of the Bill that as regards Govt. the proposed enactment was not exactly a paying proposition. Govt. stood to lose a certain amount by enactment of s. 84A. In an alternative

nated village there are a number of subordinate Inamdars, subordinate in the sense that they are entirely apart from the Inamdar, the holder of the alienated village. They have their right from a time anterior to the grant of the village to the Inamdar, and they are known by the name Kadim (old) Inamdars. Now, suppose there is an Inam village with a gross revenue of a thousand rupees, and suppose on that thousand rupees the village Inamdar pays to Govt. Judi, that is to say, a quit-rent, of Rs. 150, and that the Kadim Inamdars are entitled to receive Rs. 200, which leaves Rs. 650 to go to the Inamdar of the Village. Now, suppose a suspension is granted to the village Inamdar of half the land revenue payable by him to Govt. Then he, instead of paying Rs. 150 will have to pay Rs. 75, only. But the Kadim Inamdars are, under the terms of their Sanad, entitled to receive the whole of the Rs. 200 which is due to them on their Kadim Inams. That amount would have to be paid by Government, whatever suspension or remission may be granted to the Village Inamdar. Well, if the suspension is one-half, then the revenue or rent payable by the rayats to the beneficiaries will be cut down to Rs. 425. But the Kadim Inamdars' share of Rs. 200 has got to be paid, and the Inamdar's share of Rs. 325 to which he is entitled, has also got to be paid. The Kadim Inamdars' claim will have to be paid in full viz. Rs. 200 and the Inamdar will be entitled to Rs. 325, that is to say, one-half of his share of the revenue of the village. Thus the total to be paid is Rs. 525. Out of this Rs. 525 we shall recover Rs. 425 only from the cultivators of the village and the balance of Rs. 100 will have to come out of the coffers of Govt. It is estimated roughly by the Commissioners that by this enactment Government stands to lose about Rs. 20,000 in a year.

The Object is to secure for tenants and other inferior holders a share in the concessions granted by Government under Rules for the suspension and remission of land revenue. The chief difficulty experienced in carrying out the policy of liberal suspensions and remissions is that though Government may grant a remission or suspension to the superior holder, the latter can recover the whole of the rent or land revenue at once from the inferior holder. The new section (84A) will remedy this defect in the Act. The conditions of Sind being different, it is not necessary that the section should apply to that province.—*B. G. G. for 1914 pt. VII p. 192*. In Sind they have under their irrigational system a perfectly distinct system of remissions which is not used in the Presidency and which is suitable to Sind only. See also notes under s. 94A (*infra*).

Before s. 84A was passed in 1914, an Inamdar had to give a guarantee to the cultivating occupants or tenants for a corresponding suspension or remission of land revenue, or rent payable to him before he applied for suspension or remission of the dues payable by him to Govt. S. 84A empowers the Collector first to grant suspension or remission to an Inamdar and then to extend the concession to his inferior holders.

The explanation is added to make it clear that the provisions apply to unsurveyed as well as to surveyed villages.—*Report of the Select Committee (Amending Act VII of 1914 B. G. G. pt. VII p. 534 (1914)*.

(Cl. 6) Crop-share fixed by custom or agreement is not affected. The reason is this. Where the landlord levies his rent in the form of a share of the crop he must continue to take that share, whatever the suspension or remission that he may get in respect of the cash payment he has to make to Govt. on account of the land revenue. When the year is a bad year, he continues to take his one-half or one-third or one-quarter whatever it may be, but the year being a bad one, his share is very much less in amount, than it would be in a normal year. Therefore, it is not possible to provide that the landlord's proportional share of the crop shall be reduced in the years in which suspension or remission is granted to him—*Proceedings of the Hon. Leg. Council B. G. G. pt. VII 1914 p. 344.*

**Period of Limitation**—Article 110 of Schedule I to the Indian Limitation Act of 1908 provides that the period of limitation in the case of civil suit runs from the date when the arrears become due.

New applications for assistance under s. 86 are admitted not on the first day of revenue year for which the land revenue is due under a.139 but within the revenue year or the year of tenancy in which the rent or land revenue becomes payable. Thus it will be seen that suspensions do not affect the wording of the proviso to s.86 as suspended arrears become payable after the period of suspension, and consequently there was no necessity of making special provision for extending the period of limitation, in cl. (5) of s. 84A as regards applications for assistance as in the case of civil suits.

'Payable to Government by Superior Holder':—The Collector can remit only such amounts as are payable to Government by the Inamdar or the Superior holder, but under *G. R. R. D. 1911 of 143-150* stated that the following amounts are recoverable directly from the revenues of the village without any remission.

(A) Kadiin cash allowances including Judi.

(B) Latimrar Judi in respect of which no remissions are to be granted on account of blight or failure of crops.

Therefore, these amounts not being payable to Government by superior holder (*Inamdar*) are not governed by cl. (1) of this section.

Payment for water as part of land revenue where compulsory, whether it is brought to account under the separate heads of water and dry crop assessment or not should be held as land revenue.—*G. R. 1508 of 23-3-1910.*

Land revenue payable to Government so long as the taking of water from any source of Irrigation and payment for the same are optional with the cultivator the payment cannot be looked upon as land revenue payable to Government.

Judi or quit-rent is land revenue.—In the case of Service Watan settled under the Gordon Settlement Judi or quit-rent cannot legally be recoverable as an arrear of land revenue under a. 187. Judi or Quit-rent is still land revenue in the general sense of the term as defined in the revenue Jurisdiction Act, 1908.—*G. R. 5323 of 13-6-1915.*

**Government can grant remission to an inamdar, who is the superior holder, in respect of the patasthal assessment not only for any particular year but also for the remainder of the guaranteed period of settlement of the inam village concerned. The fraction of the judi to be remitted should be equal to the proportion which half the water share of the assessment which it is proposed to remit bears to the total assessment of the village. Thus if the total land revenue assessment of the village is Rs. 1,000, the water share Rs. 250 and the judi Rs. 300 and it is desired to remit the full water share on certain survey numbers amounting to Rs. 200, while the total assessment thereon is Rs. 400, the judi which should be remitted will be:—**

$$\frac{1}{2} \times \frac{200}{1000} \times 300 = 30$$

After having granted remission to the inamdar, it is open to Govt. under s. 84A (1) (b) to remit the desired amount of the water share due from the inferior holder to the inamdar, without the latter's consent."—*G. R. 5506/24 of 6-3-1931.*

**Local fund cess**—In the system of Revenue Accounts since 1915 Land Revenue and Local Fund Cess are 'consolidated' and therefore the demand, collection, suspension, remission, and credit of all items is consolidated so that no distinction is made in spite of the Local Boards Act of 1930. Govt. refused separation of Land Revenue and Local Fund in their accounts.—(*cf.*) *G. R. 6843/24 of 29-10-1929.*

### SUSPENSIONS AND REMISSIONS

**Administrative Orders relating to Suspensions and Remissions of Land Revenue and Local fund cess.**—Whenever the consolidated demand is ordered to be half suspended or half remitted, the division shall be so made that no fraction less than a whole anna shall be taken in the portion to be suspended or remitted.—*Administrative Order No. XXVIII, (See appendix A for Rules and Orders.)*

**Consolidated**—See notes under the head 'Local Fund Cess' (*supra*).

Whenever an amount is suspended, the suspension shall always be conditional upon the payment of the amount which is not suspended. When, for instance, half the revenue is suspended, but any revenue-payer defaults in respect of any remaining unsuspended revenue the suspension shall be cancelled so that the suspended amount also becomes 'due for the current year.'—*Administrative Order XXIX, (See Appendix A for Rules and Orders)*

#### SUSPENSIONS OF CONSOLIDATED LAND REVENUE

(*G. R. 4966/24 of 1-5-1929*)

When the Collector has ascertained by local inquiries that owing to a partial or total failure or destruction of the crops throughout any tract on account of drought or any other cause, it will be necessary to suspend the collection of land revenue (or judi under the Gordon and Pedder settlements) assessed for agriculture in any area, he is authorised, especially when the



tract is already impoverished or the previous harvests have been poor, to grant suspensions according to the scale given below to all occupants, agriculturist and non-agriculturists alike and to superior holders of alienated land without inquiry into the circumstances of individuals.—*G. R. 8402-19.*

classification of crops.	Amount of assessment to be suspended.
4 Annas and under. . . . .	The whole.
Over 4 annas under 6 annas. . . . .	Half.
6 annas and over. . . . .	None.

The normal crop, or average of satisfactory seasons is reckoned at 12 annas — *Administrative Order XXX.*

**Consolidate 1**—See notes under the head 'Local Fund Cess' (*supra*).

For the purposes of the suspension of revenue, annewari is required only when there is doubt as to whether the season is below 6 annas, or, if there are suspended arrears, when there is doubt as to whether the season is below 8 or 11 annas according as the amount of arrears to be collected is half or the whole of one year's assessment.

The procedure for making the anna valuation is thus laid down in Government Resolution No L. C. 1145-B, of 24-6-1927:

(i) A Committee shall be formed for every village for which an anna valuation is to be prepared consisting of the Circle Inspector (as Chairman), the Ta'athl, the Patil and two representative agriculturists selected by the Circle Inspector.

(ii) The Circle Inspector shall those give not less than 3 clear days' notice of his visit.

(iii) The Committee shall meet in the month preceding the harvesting of the main crops and record its opinion as to what the anna valuation should be for each of them.

(iv) This opinion shall be signed by each member who (if the Committee is not unanimous) shall record his opinion over his own signature or mark.

(v) The opinion or opinions thus recorded shall be forwarded by the Circle Inspector to the Mamlatdar, who shall proceed to make a provisional decision.

(vi) The Mamlatdar shall fix a date by which the opinion or opinions referred to in section (v) above shall reach him.

(vii) If the opinion or opinions are not received by that date, he shall make his provisional decision on such other data as may be available.

(viii) The Mamlatdar shall publish his provisional decisions in the taluka kacheri and in the chawdis of all the villages concerned.

(ix) any objection to the provisional decision of the Mamlatdar shall be made within 15 days from the date of its publication, and he shall take into account all objections which have been submitted to his superior officers, in person or by petition.

(x) Unless the Mamlatdar, on a consideration of the objections or for any other reason, sees fit to amend his provisional decision, such decision shall stand as his final decision. In any case where he amends his provisionale decision, the amended decision shall be published in the same manner.

(xi) If the Collector revises the Mamlatdar's decision, this further decision similarly shall be published.

(xii) The Collector may select any field in any village for a crop test with a view of checking the accuracy of any anna valuation.—*Administrative Order No. XXX-A.*

(xiii) The Collector or the Mamlatdar as the case may be should supply to the public on payment of the copying fees, information relating to the anna valuation of the crops of a village embodied in the following documents:

- (1) the opinion of the Village Committee as to the anna valuation of each of the main crops,
- (2) the provisional decision of the Mamlatdar,
- (3) the final decision of the Mamlatdar, if any,
- (4) the Collector's decision.

Where possible the Mamlatdar's decision should contain the area as well as the anna valuation of each of the main crop of a village. The information should be furnished in the form appended to *R. 4966/24 of 19-6-1930.*

Where the area affected is homogeneous or whole villages are more or less uniformly affected, the suspensions should be announced for such tract or villages without detailed inspection.—*Administrative Order No. XXXI.*

The Collector shall cause the occupants and superior holders of alienated land whose revenue is suspended to understand distinctly that such suspension is provisional only, and that it shall be decided subsequently whether the revenue suspended shall be ultimately remitted or collected.—*Administrative Order No. XXXII.*

#### REMISSION OF LAND REVENUE

Remissions should be granted to occupants and to superior holders of alienated land in the manner explained below; there should be no inquiry into the circumstances of individuals.

(i) Except as provided in sub-paragraph (ii), the grant of remission should depend on the character of the three seasons following that in which the assessment is suspended. The oldest arrears shall be remitted first. Suspended revenue should be collected to the extent permissible under the table given below. In accordance with this table, all suspended arrears which either (a) in Gujarat and the Konkan are in excess of one year's revenue or (b) in the Deccan are in excess of two years' revenue or (c) are more than three years old should ordinarily be remitted by the Collector:—

Anna classification of crop	Proportion of assessment the collection of which would be justified.	
	current.	Suspended arrears.
11 Annas and over. ...	1	1
8 annas and under 11 annas. ...	1	$\frac{1}{2}$
6 annas and under 8 annas. ...	1	"
Over 4 annas and under 6 annas. ...	$\frac{1}{2}$	"
4 annas and under ...	"	"

(ii) In the tracts noted below, the grant of remission should depend on the character of the four seasons following that in which the assessment is suspended. In other respects the instructions in sub-paragraph (i) will apply except that the suspended arrears shall not be due for remission until they are more than four years old.

Bholapur District, Bijapur District, Ahmednagar District (excluding Akola, Kopargaoon and Sangamner talukas), Indapur and Bhimthadi talukas and Birur and D'Long Petas of Poona District, Gadag, Ron and Naval-gund talukas and Mundargi and Nargund Petas of Dharwar District.

(iii) The amount of suspended revenue to be collected with any particular instalment should be fixed by the Collector and announced before the Collection of the instalment begins.

(iv) Cases in which owing to the impoverishment of a tract by a succession of bad seasons, or for any special reasons, it appears to the Collector desirable to remit or to collect suspended revenue otherwise than in accordance with the ordinary rule, should be reported through the Commissioner for the orders of Government.—*Administrative Order XXXIII.*

When the assessment includes a separated rate for water-advantages then, if the water fails to such an extent that no irrigated crop, or an irrigated crop not exceeding 4/8 annas can be grown, the <sup>whole</sup>/<sub>half</sub> of the portion of the assessment which represents the water-rate should in the case of all occupants and superior holders be remitted without suspension. If such remissions are extensive, the Collector should first consult the Irrigation Officer of the district, and in case of difference of opinion should refer the case to the Commissioner.—*Administrative Order XXXIV.*

When much land which would ordinarily be sown is left unsown because present or recent calamity renders sowing impossible, the case is identical with that of failure of crops and should be similarly treated.—*Administrative Order, XXXV.*

Suspensions may be granted to superior holders [including mewasdars in accordance with the orders and the provision of s. 84A of the Bom. L. R. Code. Such grant entails the suspension and remission of rent (other than crop share) payable by the inferior holders or tenants to the extent provided by that section, under which the Collector must also record his order.—*Administrative Order XXXVI.*

**Local Calamities.**—Relief on the occasion of local calamities, including the loss by fire or flood of harvested crops or other property should be determined by the investigation of individual cases. Before relief is granted the resources of the owner should be taken into account.

When the damage amounts to total or nearly total loss of crops, immediate remission is preferable to suspension.—*Administrative Order XXXVII.*

#### GENERAL

In order to carry out these rules it is essential that each autumn, not later than 1st October, each Sub-divisional Officer should obtain from each Mamlatdar a list of the villages in the taluka (printed lists should be available). This list should show against each village the full normal year's demand of fixed consolidated revenue in round figures, omitting annas. The next column should show the total amount of suspended revenue in each village. When these suspensions are given uniformly to all occupants this fact should be made clear, together with the proportion (half, whole or more than one year's demand) which stands suspended. The next column should show the Mamlatdar's Final anna valuation for the village. For orders as to methods of valuation see R. 3750-09, 7392-11, and 7760-12, para 2, and 7773-B. 27. A duplicate of these statements must also be sent to the Collector.—*Administrative Order XXXVIII.*

Upon this information the Remission and Suspension Rules can be applied. If there is no suspended revenue, no orders about its collection will be needed. If the crops are plainly well above 6 annas there will be no suspension for the current year. If they are unmistakably above 11 annas, the collection of the current revenue together with one full year's demand of suspended revenue could be ordered without further enquiry. But when the reported anna-valuation is close to one of the critical figures.—say  $5\frac{1}{2}$  to  $6\frac{1}{2}$ , so that perhaps suspensions may be needed in the current year, or  $10\frac{1}{2}$  annas, so that it is doubtful whether two years' dues can be demanded, then a careful test of the valuation must be made. For this purpose the Sub-Divisional Officer will, if necessary, go out on inspection in October. It is imperative that the crops should be seen before they are reaped, and the Sub-Divisional Officer must ensure that the list reaches him in time for this to be done and should call for and proceed to act on the Mamlatdar's provisional estimates should there be danger of his final estimates being received too late. He will select villages for test from the list so as to take a fair sample of average condition of the taluka and should specially select villages or which the figures are critical.—*Administrative Order XXXIX.*

Reports of the extent and result of this test must be submitted weekly to the Collector, Duplicates of the original lists have been sent to the Collector, so that as he receives the results of the tests he can modify his estimate of the effect upon the probable demand and collections for the year. He can also see that proper progress is made in the tests. The Collector must see that reports required by Order *XLIII* below are submitted promptly. He must not wait until the last tests have been taken and the conditions of both kharif and rabi crops ascertained. If this first estimate requires material modification, he should intimate the revised figures later. These estimates can be made upon the schedules showing the normal demands (or indeed upon the District Returns up to the end of July which will exhibit by Talukas the exact suspended revenue). He should not attempt accuracy to a single rupee and not delay while figures are collected, a task that should not be placed upon the subordinate establishment.—*Administrative Order XL*.

Only in cases where some special remission of water-revenue, or collection of the full revenue from irrigated holdings while other holdings are granted suspensions, has been ordered, will it be necessary to collect estimates (or actual figures) of the financial effect in detail from the villages concerned. The general intention of these orders is that the village should be the unit, not the aggregate 'Khata' or the single field.—*Administrative Order XLI*.

The lists of suspensions and remissions should be published in the following manner. As soon as the statement for any village is sanctioned, the Mamlatdar should cause a copy to be sent to the village officers, who should be required to read and explain the orders to all the villagers and to post the copy in a conspicuous place in the village chavdi, if any, or otherwise in some building to which the villagers resort. The Collector's orders, if any, under s. 84A should be published and explained in the same manner. The village officers should be required at the same time to enter in the rayat's ledger (village form VIII-B) the remissions and suspensions which have been sanctioned, and in due course to note in the rent column of the Tenancy Register (Form XII) for each hissa concerned the suspension or remission granted by the Collector's orders under s. 84A unless these orders are of a general character, when they may be recorded in a remark at the end of the Register. All Revenue Officers from Circle Inspectors upwards should satisfy themselves (by personal observation) that the publication has been made as directed and that any torn or defaced notice has been replaced and (by direct inquiry) that the remissions and suspensions and the Collector's orders under section 84A have been read and explained to the villagers. The Circle Inspectors and other Taluka Officers must examine not less than 25 per cent. of the rayats receipts and of the entries in the tenancy register within three months after the remissions and suspensions have been declared, giving special attention to receipts and entries affected by the orders. The District Officers should pay special attention to ensure that this examination has been properly carried out.

In alienated villages the same procedure should be followed throughout as far as practicable, and in those in which forms VIII-A and B and the

Tenancy Register or corresponding forms do not exist, the Inamdar should be invited to provide every inferior holder who is entitled to remission or suspension and whose dues are not collected through the village officers with a combined demand and receipt form showing the remission or suspension sanctioned for each and the balance due for payment.—*Administrative Order XLII.*

The Collector, as soon as he issues his orders, should report to the Commissioner his proceedings as regards both suspension and remission of land revenue, stating fully the reasons for these orders and the extent of their application, with other relevant particulars.—*Administrative Order XLIII.*

[<sup>a</sup>] 85. (1) Every superior holder of an alienated village or of an alienated share of a village, in which there are a hereditary patel and a hereditary village accountant, shall receive his dues on account of rent or land revenue from the inferior holders through such patel and accountant.

(2) Where such patel and accountant fail to recover in behalf of such superior holder any sum due and payable to him on account of rent or land revenue, such superior holder shall, with the previous consent of the Collector, be entitled to recover his dues direct from the inferior holders.

(3) Where any such patel or accountant has recovered any sum in behalf of such superior holder and fails to account to him for the same, the Collector shall, on written application from the superior holder, recover such sum from such patel or accountant as an arrear of land revenue.

(4) Where any such superior holder demands or receives any rent or land revenue from any inferior holder otherwise than through such patel or accountant, he shall, on conviction in a summary enquiry before the Collector, be liable to a fine not exceeding three times the amount of the sum so demanded or received.

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[a] This section was substituted by Bom. I of 1910, First Schedule, Part II, Serial No. 6, for the original section. As to the local repeal of this section, see para. 5 of foot-note (a) on p. 1, *supra*.

### Commentary

The main purpose of the section is to protect the tenants. It is not the purpose of the section to provide as to how the dues are to be recovered when the inferior holder fails to pay. When an inferior holder fails to pay, the dues the remedy for the recovery thereof is as provided by ss. 86 & 86 of the Code. But they show that it is a special remedy and the proviso to s. 87 shows that the remedy is of a limited character. It is not an exclusive remedy and it does not prevent the parties to have recourse to Civil Courts.—*Vishwanath v. Kowlaji*, 42 Bom. 40; 19 Bom. L. R. 820.

**Scope.**—This section is only meant to apply to the holders of entire villages and shares, which have been alienated as shares *i. e.* of definite shares such as one-half and two-third.—*G. R. 7484 of 19-9-1884*.

This section should continue to be interpreted as at present *i. e.* that an Inamdar is prohibited from collecting direct when both the Patel and Village Accountant are hereditary.—*G. R. 1485 of 5-2-1913*.

ss. 86 & 87 of the Code do not make it compulsory on the Inamdar (or his assignee), to ask for the assistance of the Collector to recover enhanced rent from the tenants. If the Inamdar (or his assignee) had made a demand on the tenants for the enhanced rent through the hereditary patel, or village Accountant, as required by s. 85, and they had refused, he would become at once entitled to his ordinary civil remedy.—*Gowindroo v. Balu bin Monappa*, 16 Bom. 586.

Not being rent or land revenue Local Fund Cess may be received by the superior holder from his tenants or superior holders without the intervention of the village officer.—*G. R. 3761 of 10-8-1892*.

Large Inamdars who customarily receive at their houses the dues in kind may continue the practice and give a receipt for such payments under s. 58 (2) of the Code.—*G. R. 6020 of 15-8-1883*.

"Holder of an alienated share of a village" means a holder who shares with Government either singly or jointly with other holders the revenue of an alienated village. The expression does not denote the holder of an isolated piece of an Inam land either in Khalsa or in an alienated village.—*G. R. 6037 of 26-7-1884*.

The expression 'the holder of an alienated share of a village' does not apply to a person holding an isolated piece of inam land or number in a Government village.—(*ibid*).

A Talati is not a hereditary village accountant.—The commutation of the Kulkarni watan in inam villages cannot be forced upon the inamdar against his wish. If the inamdar withholds his consent, the appointment of a talati has to be made as kulkarni of the village on behalf of Government.—*G. R. 8402 of 1919*.

The talati, so appointed as kulkarni of a commuted inam village by Government on its behalf cannot be considered a hereditary village officer within the meaning of s. 85 of Bom. L. R. Code. The Inamdar will, therefore, not

be bound to recover his land revenue through such talati as he is not a hereditary kulkarni within the meaning of s. 85 of the Code. He can make recoveries direct.—*G. R. 6650 of 10-1-1923.*

The registration of an inamdars' name for a particular share confers on him no right to receive any fixed proportion of the revenue, and Government cannot adjudicate in quarrels between share-holders and rival claimants.—*G. R. 6206 of 14-9-1887.*

It is improper for an inamdar to accept a bond or promissory note on account of arrears of land revenue. Such an inamdar is liable to a fine under s. 85 (4)—*G. R. 3265 of 24-8-1909.* The taking of a mortgage bond or a promissory note by the superior holder from an inferior holder for the land revenue does not absolve the superior holder from the necessity of complying with the provisions of s. 85. Village officer's signature or attestation on the mortgage bond or promissory note is not equivalent to a receipt of revenue through such village officers.

This Section does not apply to Sheri lands in alienated village.—An inamdar of an alienated village who holds himself land in the village and lets out to a tenant is not governed by this section. The rent due for that land is not obviously due to him as the superior holder of an alienated village.—*G. R. 1425 of 5-9-1915.*

A superior holder, who seeks to recover his dues through a Civil Court does not recover them directly from tenant or the inferior holder within the meaning of s. 85. The right and remedy of the superior holders to recover their dues from the inferior holders who have failed to pay the same are not affected by s. 85.—Per Shah J. in *Vishenath v. Kondaji*, 19 Bom. L. R. at p. 823 (1917). In this connection Shah J. referred to the observations of Sargent C. J. in *Govimrao v. Bals bin Manapa*, 16 Bom. 586, that "if the inamdar or his assignee, had made a demand on the payments for the enhanced rent through the hereditary patel or village accountant, as required by s. 85, and they had refused he would become at once entitled to his ordinary civil remedy." Thus it is clear that s. 85 does not bar the jurisdiction of civil courts. He further said:

"The main purpose of this section is to protect the tenants. The chapter in which this section occurs relates to superior and inferior holders, and the group of sections including s. 85 relates to tenants' rights. This section renders it incumbent upon the superior holders to receive payments from the inferior holders through the hereditary patel and village-accountant, and it entitles the superior holders to recover dues directly from the inferior holders with the previous consent of the Collector in case the hereditary patel or village-accountant, whose duty it is to recover the dues and to account for the same to the superior holders, fails to do so. The section does not provide, and in my opinion it is not the purpose of the section to provide, as to how, the dues are to be recovered when the inferior holders fail to pay. The section restricts the liberty of the superior holders to receive payments directly from the inferior holders, even though the latter may be willing



to pay, in alienated village, in which there exists an hereditary Patel and a village-accountant."—*Patilrao v. Kondeji*, 10 Bom. L. R. 826 (1917).

**Procedure.**—Any formal requisition regarding the collection of revenue which an inamdar may have to make should be addressed to the village officers of his village.—*G. R. 1507 of 5-8-1912*.

**Limitation.**—In a suit by inamdar of a village to recover arrears of assessment of five years before suit held that the defendants not being tenants (they were not placed in possession of lands either by the inamdar or his predecessor-in-title under any agreement) the dues claimed were not rent but they being land revenue the suit is governed by Art. 120 of the Limitation Act.—*Sabharwal v. Ramkrishna*, 25 Bom. 556.

**Enhancement of rent.**—A grant to an Inamdar may be either of the Royal share of Revenue, or of soil, but ordinarily it is of the former description. The burden rests on the inamdar to show that he is an alienee of the soil. Where an inamdar is an alienee only of the land revenue, then his relations towards those who hold land within the area of the Inam grant, vary according to certain well-recognized conditions. If the holding was created prior to the grant of the Inam, then the inamdar as such can only claim land revenue or assessment, for he has no interest in the soil, in respect of which rent would be paid. If the holding is later in its origin than the inam grant, the inamdar even if only a grantee of revenue, would be entitled to place tenants in possession of the sheri lands, not by virtue of any interest in the soil, but as being entitled to make the most he can out of them by way of revenue. The difference between the two classes of holdings is obvious; in the last, direct contractual relations would be established between the inamdar and the holder. If these contractual relations are defined by an express contract of which there is evidence, then the rights of the parties must be determined by that contract. If no such contract can be proved, then Court must have recourse to the criteria prescribed by law for determining their rights.—*Raja v. Balkrishna*, 29 Bom. 415.

**Payment of rent to co-landlord.**—S. 85 imposes a penalty on superior holders of an alienated village demanding or receiving payment from their inferior holders otherwise than through the village officers; but there is no corresponding penalty or duty imposed on the inferior holders. Under the law the payment of rent to one co-landlord by the tenant is a valid discharge *Krishna Rao v. Namji*, 11 Bom. H. C. R. 106. Therefore if the tenants paid rent to the co-landlord of an alienated village and if the other co-landlord obtained an order for assistance under s. 86 the Code on the strength of his name being registered in revenue account books as representing Yastandar in place of his late predecessor, they can maintain a suit in the Civil Court for an injunction to restrain the other co-landlord from recovering the rents and to avoid the order for assistance.—*Sankha v. Karalrao*, 22 Bom. 794.

**86.** Superior holders shall, upon written application to the Collector, be entitled to assistance, by the use of precautionary and other measures, for the recovery of rent or land revenue payable to them by inferior holders, or by co-sharers in their holdings under the same rules, except that contained in section 137, and in the same manner as prescribed in Chapter XI [a] for the realization of land revenue by Government:

Superior holders entitled to assistance in recovery of dues from inferior holders, etc.

But application must be made within the revenue year or within the year of tenancy.

Provided that such application be made within the revenue year or within the year of tenancy in which the said rent or land revenue became payable.

### Commentary

**Note.**—See notes under s. 87 *infra*.

**Application must be made within the revenue year or within the year of tenancy.**—The ordinary and natural sense of this condition is that the applicant is allowed the benefit of whichever of the two periods mentioned (*viz.*, the revenue year or the year of tenancy) may give him the longest period of limitation within which to make his application. Thus where a year of tenancy ran from 29th April 1891 to 28th April 1892 the period of limitation would differ according as the rent became payable in 1891-92 or 1892-93. In the first case the longest period is the expiry of the tenancy, in the second, 31st July 1892. If the year of tenancy expires on 28th February 1892, the rent not being payable within the year if the same tenancy continues another year the longest period will be on or before 28th February 1893. In such a case the applicant is not bound to make his application before 31st July.—*G. R. 3617 of 23-5-1899.*

**Suspensions and Remissions.**—In the case of suspended revenue the application for assistance should reach the revenue authority within the year to which the payment has been postponed by order under the suspension and remission rules.—*G. R. 4349 of 17-5-1906.* (See the orders relating to *Suspensions and Remissions of Land Revenue and Local Fund cess* under s. 84A at p. 412 *supra*).

**Delegation of power to Mamlatdar, etc.**—Administrative Order VIII states that the Collector may delegate all his powers under s. 86 to Mamlatdars.—*G. R. 2598 of 31-3-1883 and 6024 of 1883 and G. R. 9901 of 1900.* Mukhtyarkars in Sind are included.—*G. R. 8043 (1) of 1905.*

[a] Words repealed by Bom. III of 1886 are omitted.

Mahalkaris are authorised to exercise powers under this Section by *G. R. 6024 of 15-8-1882*.

Assistance to be rendered in recovering revenue paid by person interested to prevent forfeiture—S. 80 of the Bom. L. R. Code provides that a person interested may pay land revenue on behalf of the occupant in order to prevent forfeiture and assistance may be rendered to such person under s. 86 for the recovery of such amount as may be considered to be properly payable by the person against whom assistance is prayed for.

The provisions of law relative to the assistance to be given to superior holders and owners of water courses for the recovery of their dues from their tenants and occupants under them, or from persons authorised to use their water courses, shall be applicable to all superior holders, whether of alienated or unalienated land, and to all owners of water courses in respect of the recovery of the cesses from their tenants, occupants or persons authorised to use their water courses and shall be applicable also to occupants of land under the Bom. L. R. Code, 1879 for the recovery of the said cesses from their tenants or joint occupants.—(s. 97 of the *Bombay District Local Boards Act, 1923*).

Order in assistance suit is not decree and suit to set aside the order is not necessary—The order passed on an application under s. 86 of the Bom. L. R. Code by the lessee of a Jagir for dues claimed against an inferior holder is not a decree nor has it the force of a decree. There is no necessity for seeking to set aside such an order. The party dissatisfied with the order may file a suit in the Civil Court not to set aside the order but, if he is the superior holder, to recover such amount as he may think to be still due or if he is the inferior holder to obtain a refund of the amount levied from him in excess of what was due. The latter's suit is one for the recovery of money had and received and such a suit will lie after he has been made to pay the excess amount. A suit praying the setting aside of the Mamlatdar's order will not lie—*Hot Khan v. Phalunai*, 17 S. L. R. 82; A. I. R. 1924 Sind 87.

Municipality deemed to be a superior holder:—A Municipality is deemed to be superior holder within the meaning of this and the following section [*Rule s. 168 of the Bombay District Municipal Act (III of 1901)*].

[\*] 87. (1) On application being made under section 86 to the Collector, he shall cause a written notice thereof to be served on the inferior holder or co-sharer fixing a day for inquiry into the case.

The Collector how to proceed on such application being made.

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[a] These sub-sections were originally paragraphs of section 87. They are numbered as sub-sections by Bom. VI of 1913, s. 39.

[<sup>a</sup>] (2) On the day so fixed he shall hold a summary inquiry, and shall pass an order for rendering assistance to the superior holder for the recovery of such amount, if any, of rent or land revenue as appears to him upon the evidence before him to be lawfully due.

[<sup>a</sup>] (3) But if it appears to the Collector that the question at issue between the parties is of complicated or difficult nature, he may in his discretion either refuse the assistance asked for, or, if the land to which the dispute relates, has been assessed under the provisions of Chapter VIII [<sup>b</sup>] or any survey settlement confirmed by section 112, grant assistance to the extent only for the assessment so fixed upon the said land.

[<sup>a</sup>] (4) Nothing in this section shall prevent either party from having recourse to the Civil Courts to recover from the other such amount as he may deem to be still due to him, or to have been levied from him in excess of what was due, as the case may be.

[<sup>c</sup>] (5) One appeal only shall lie from any order passed under this section.

#### Commentary

**Object.**—The provisions of ss. 86 and 87 of the Code contain the rent-law of this Presidency. Their object is to enable the persons entitled to receive rents to recover them summarily and inexpensively when their title is clear, but otherwise to require them to have recourse to the ordinary Courts unless they can come to terms privately. *G. R. 3778 of 10-5-1884*. It is probably for this reason that verification and personal appearance required in Civil Courts are dispensed with.—*G. R. 8027 of 12-11-1890*.

**“He shall hold summary inquiry, and shall pass an order for rendering assistance to the superior holder” etc.**—These words occurring in s. 87 leave the Collector no discretion as to withholding assistance for the recovery of

[a] These sub-sections were originally paragraphs of Section 87. They were Numbered as sub-sections by Bom. VI of 1913, s. 39.

[b] Words repealed by Bom. III of 1886 are omitted.

[c] This sub-section was added by Bom. IV of 1913, s. 39.

rent or land revenue which after a summary inquiry he may find to be lawfully due. In these enquiries the Collector exercises in a summary way the jurisdiction of a Civil Court and he should not go behind the liability and listen to appeals *ad misericordiam*.—*G. R. 5402 of 25-10-1884*.

**Scope.**—The object of ss. 86 and 87 of the Code is to enable superior holders to recover rent or land revenue expeditiously when their title is clear by giving application to the Collector but the orders passed on such applications are neither decrees nor have they the force of decree. Such an order is an executive order and under s. 87 (4) the party dissatisfied with it can file a suit in the Civil Court not to set aside his order but the superior holder may sue to recover such amount as may be still due to him, and the inferior holder to recover the amount 'levied' from him in excess of what was due. The latter's suit therefore becomes one 'for the recovery of moneys had and received and his cause of action arises when a sum in excess of what he contends is due is levied. It is only at this permissible to him to have recourse to the Civil Courts not for cancelling or amending the order of the Revenue Officer but for the refund of the amount levied from him in excess of what was actually due.—*Hot Khan v. Pahlumal*, A.I.R. 1924, Sind 87

There is really no distinction between a tenant and inferior holder except in the use of terms, the one to express derivatory rights from the landlord, the other to express liability to pay rent to landlord.

- Occupants of unalienated lands and holders of alienated lands are included in the term 'superior holders' and are alike entitled to assistance for the recovery of rent or revenue due to them under ss. 86 & 87.—*G. R. 3904 of 17-6-1888*.

### PROCEDURE

Superior holder may put as many cases as he can in one application for assistance to collect rent from his tenants provided the total amount of rent for the recovery of which the application is made is sufficiently covered by the stamp.—*G. R. 2319 of 4-6-1874*; *G. R. 5721 of 23-12-1887*.

Applications for assistance may be sent by post.—The Code merely requires from a superior holder an application that is written; neither presentation in person, verification, nor examination of the applicant is required as a condition precedent to the issue of a notice by the Collector or the Mamlatdar as directed in s. 87. This obviously does away with necessity of the personal attendance of the applicant. The Legislature in dispensing with the verification required for a civil plaint (Civil Procedure Code, 1908 Rule 15 of Or. 6 of schedule I) seems to have regarded an application in writing as a sufficient guarantee of good faith to justify action in the first instance. Against persons who knowing that they have no title cause the Collector to harass cultivators unnecessarily s. 182 of the Indian Penal Code affords adequate protection.

The object of ss. 86 and 87 is to avoid delay by providing a summary and inexpensive procedure for recovery and it is probably for this reason that

verification and personal appearance required in Civil Court are dispensed with.

Inquiries under ss. 86 and 87 are deemed to be judicial proceedings only for the purposes of ss. 193, 219 and 228 of the Indian Penal Code as laid down in s. 196 of the L. R. Code.

Departmental and public inconvenience might arise from the detention of applicants till their identity and status could be ascertained, and questions of title are clearly to be postponed till they can be inquired into in the presence of the opponent.—*G. R. 8027 of 12-11-1890.*

Mamlatdars and Mahalkaris may be delegated the powers of receiving applications and issuing orders under ss. 86 and 87.—*Cf. G. R. 2598 of 31-3-1883; G. R. 6924 of 15-8-1883; and G. R. 8616 of 12-12-1891.*

In the case of Mahalkari the Assistant Collector (The District Deputy Collector) in charge of the Taluka should be made the immediate superior for the purposes of appeal under s. 203 of the Code.—*G. R. 8616 of 12-12-1891.*

Special Head Karkuns may be appointed under s. 13 to be Mahalkaris of talukas excluding the headquarter stations and may be assigned by the Collector within their local limits the power to hear and dispose of applications under ss. 86 and 87 and the duties and powers contemplated in ss. 71 and 154 of the Code.—*G. R. 8269 of 11-10-1906.*

Pecuniary limit in the case of Head Karkuns and Awal Karkuns to try rent suits is at present fixed at Rs. 100—*G. R. 208 of 21-1-1921; Administrative Order No XI.*

Mukhtiarkars in Sind may be delegated the powers under ss. 86 and 87 by the Collectors and Deputy Collectors.—*Cf. G. R. 8046 of 7-8-1908.*

Treasury Head Karkuns selected for the purpose may be delegated the power to try assistance suits.—*G. R. L. C. 541 of 22-11-1923; Administrative Order No XI.*

Temporary clerks for assistance suits may be appointed by Collector with approval of Government provided that the expenditure is recovered from the process fees.—*G. R. 2515/24 of 29-1-1925.*

Territorial limits of the Mamlatdar and the special head karkun need not be defined.—*G. R. 7780 of 1-11-1899.*

Unless the Mamlatdar is delegated the authority to try assistance suits under ss. 86 and 87 his order under these sections is ultra vires and an order to distrain the goods, grain, etc., of the inferior holder if resisted no conviction under s. 183 of the Indian Penal Code can stand against the tenant.—*Emperor v. Yeshwant Hari, Cri. R. 13 of 24-2-1887.*

Certified copy of record of rights is not compulsorily required to be annexed to an application under ss. 86 and 87 of the Code because Government have not notified under s. 135H of the Code that the provisions of s. 135H (which make it compulsory for the applicant to annex to his application a certified copy of an entry in the record of rights, register

of mutations or register of tenancies relevant to the land) shall apply to such application.—*G. O. R. D. 6507 of 14-6-1915.*

Certified extracts from the record of rights required for being filed with applications for assistance suits (and in the applications for obtaining such extracts where such applications are not exempted) are therefore not exempted from the levy of Court fees as governed by Article 9 of Schedule I of the Court Fees Act of 1970, which requires Court Fee Label of eight annas for every 350 words or fraction of 350 words.—*G. O. R. D. 6507 of 14-6-1915.*

However a 135I of the Code states that assistance shall be refused to any superior holder under s. 87, if his claim to such assistance is not supported by an entry or entries duly made in the record of rights, register of mutations or register of tenancies.

Obviously this applies to villages to which the survey has been extended. In the case of villages wherein such record is not kept other evidence should be led and the matter be decided thereon.

When once struck off the application for assistance may be re-entertained.—An application for assistance is sometimes filed because applicant does not appear on the day fixed. After sometime however he puts in his appearance adduces sufficient excuse for his non-appearance on the appointed date and urges the proceedings may be resumed. In these circumstances there is nothing to prevent the Revenue Officer from re-entertaining the application provided that the petition for re-entertaining is made within the year prescribed in the proviso in a. 86 of the Code. Indeed there is nothing to prevent a landlord from making a second entirely fresh application for assistance if his first has been 'filed', owing to his failure to appear on the date fixed for the hearing, provided the second application be made within the above year; and a petition to re-entertain a first application is tantamount to a second application. But landlords ought not to be allowed to evade the proviso to a. 86 by means of any such petition or second application.—*G. R. 8797 of 17-11-1901.*

Free notice of the date of hearing should be given to the superior holders and a copy of the notice served on the inferior holder or co-sharer should be sent to him for information and guidance by an endorsement with a view to save time and trouble.—*G. R. 4933 of 9-8-1900*

Collectors may engage temporary peons for the service of revenue processes and pay them at daily rates for the number of days they may have been employed. The amounts so paid should be drawn on contingencies supported by a certificate that the fees realized in stamps were sufficient to recover the expenditure charged in the bill.—*G. R. 2327 of 23-4-1902.*

If the tenant against whom the assistance is applied for, dies after the application is made, the Mamladar should postpone the case and call upon the applicant to specify the name of the legal representative of the deceased tenant whom he wishes to be entered in the record in lieu of the deceased and to have a fresh notice issued to such representative (*Cf. Rule 4 of Order 23 of Civil Procedure Code, 1908*).—*G. R. 632 of 26-1-1937; G. R. 4678 of 21-7-1887.*

The following form of notice be issued under s. 87 to an inferior holder or co-sharer has been sanctioned by Government in their Resolution No 5126 dated 5th September 1881:—

No.

Application under s. 86 of Bombay Act V of 1879 to the Collector of

A. B. Applicant Superior holder

vs.

C. D. inferior holder ( co-sharer. )

To,

Claim Rs.

C. D. resident of  
District

in Taluka

Whereas the superior holder above-named has made an application for the recovery of ( land revenue ) rent on account of Survey No. situated in the village of Taluka

, from you (the co-sharer) inferior holder above named, which ( land-revenue ) rent has become payable during the current ( revenue year, ) year of your tenancy.

You are hereby required to attend before me either in person or by recognized agent at o'clock of the noon at my office ( camp at ) in the Taluka on day of 19 at which time and place enquiry into the said application will be made. And you are hereby required to produce before me at the abovementioned time and place any evidence you may wish to be heard, and further to show cause why the said application should not be granted.

If you fail to attend either in person or by recognized agent in pursuance of this notice, the abovementioned matter will be decided upon in your absence, and you will not afterwards be entitled to be heard with respect thereto

Dated this day of

19 .

(Signed)

Designation of  
officer.

Note:—With a view to reduce heavy work from a large number of assistance cases the following addition was made by a Mamlatdar in the notice to the defendant.

“ On the day appointed you should either produce the plaintiff's receipt for the amount claimed or pay the amount in Court. In default of this if a decree is passed against you after inquiry one forth amount of the sum decreed will be imposed as fine under section 148. ”



The grounds on which Collector's decision should proceed may be as indicated below:—(1) if any agreement between the superior holder and the tenant is proved the rent agreed upon between them; (2) if there is no satisfactory evidence of such agreement, the rent payable by the usage of the locality; (3) in the absence or any agreement or usage such rent as may under the circumstances of the case be deemed just and reasonable. (4) If owing to the complicated and difficult nature of dispute the Collector is unable to settle it summarily, he can refuse assistance or (5) where the survey assessment has been fixed he may grant assistance to the extent of such assessment.—*G. R. 3904 of 17-6-1882.*

Collector is bound to give assistance if required for the recovery of so much rent as is lawfully due from a tenant who shall be regarded as holding the land at the rent agreed on between him and the landlord if there is evidence of such agreement.—*G. R. 5541 of 30-10-1880 and G. R. 6841 of 30-10-1880.*

All steps to be taken for recovery of amount ordered—When an order is passed under s. 87 the amount regarding which assistance is given may be recovered by taking any or all the measures prescribed in Chapter XI of the Code until the amount held to be lawfully due is collected. Assistance cases should not be sent to the record room until the decrees are fully executed; till then they should be considered as pending matters.

Assistance when to be granted to limited extent—"If the land to which the dispute relates has been assessed under the provisions of Ch. VIII or any survey settlement confirmed by s. 112, the Collector may grant assistance to the extent only for the assessment so fixed upon the said land." These words occurring in s. 87 assume that there can be no question of a complicated or difficult nature at issue between the parties about the survey assessment.—*G. R. 1339 of 14-2-1885.*

#### DISCRETION TO BE USED IN REFUSING ASSISTANCE.

Assistance may be refused where the question at issue between the parties is of a complicated or difficult nature.—The power of refusing assistance to a superior holder for the recovery of dues from his inferior holder when the question at issue between the parties appears to the Revenue Authorities to be of a complicated or difficult nature is a discretionary power and should be used with great caution.

The Revenue Authorities should not try to evade the law merely by declaring a case to be of a complicated or difficult nature nor should they avoid giving effect to the law in what may appear to them to be a hard case, for instance when they think the amount of rent which the superior holders have been in the habit of receiving and which therefore, they are *prima facie* still entitled to receive appear to them to be exorbitant.—*G. R. 168 of 8-1-1884.*

If the question what is lawfully due be of a really complicated nature or difficult to determine it is open to the Revenue Authorities to refuse assistance.—*G. R. 5541 of 30-10-1880; G. R. 6841 of 30-12-1880.*

**Judicial discretion:**—Such matters in the course of a trial as are to be decided summarily by the judge, and cannot be questioned afterwards, are said to be within his discretion. Various matters incidental to the conduct of a cause before trial are also by statute left in the discretion of the Court, or a judge at chambers. Discretion is thus defined by Code in Rooke's case.

40 Eliz.— Discretion is a science of understanding, to discern between falsity and truth, between wrong and right, between shadows and substance, between equity and colourable glosses and pretences and not to do according to their wills and private affections; for, as one said, *talis discretio discretionom confundit*.—*Wharton's Law Lexicon, 12th Ed. p. 476.*

**To use discretion means to act according to reason and justice.**— Discretion 'means when it is said that something is to be done within the discretion of the authorities that the something is to be done according to the rules of reason and justice, not according to private opinion, according to law and not humour. It is to be not arbitrary, vague and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself.—*Parvati Sonar v Ganpati, 23 Bom. 513.*

**Note:**—Cl. (3) of s. 87 which gives the revenue officer certain discretionary powers in assistance suits forms one of the most contentious clauses in the Act. It is thought that it gave very wide discretion to the revenue officer who may on the slightest ground refuse assistance asked for which he is sure to do if he is not a painstaking man. He has merely to say that the questions involved are of a difficult or complicated nature in the particular matter before him. It is sure to deprive people of the cheaper and speedier remedy provided by the L. R. Code and drive them to the more expensive and tardier remedy of Civil Courts.

It is much better to provide for specific cases than to confer wide and general discretion difficult in practice to control which might make it possible for the revenue officer to exercise the discretion so vested in him in cases in which it is neither intended nor considered desirable that he should have any discretion and open the door wide to abuse of power leading to great injustice and hardships.

The words 'complicated' or 'difficult nature' are vague in that, opinion will always differ as to what cases are of a complicated or difficult nature and what are not. It may happen that one revenue officer would consider a claim or the questions at issue to be of a complicated or difficult nature in certain circumstances while another officer would consider similar issues in similar set of circumstances to be not at all of a complicated or difficult nature to decide. It is most difficult to decide what issues are of a complicated or difficult nature in resolving whether a thing is of a complicated or difficult nature; so many points have to be considered in coming to a conclusion. If the proceedings before the revenue officer are to be summary, not to be complicated by question of law and arguments of pleaders, this object will not be secured by this clause. The revenue officer will have more

pleaders going before him to argue whether the questions at issue are complicated or of a difficult nature or not. A way for complicated legal arguments will thus be opened and dissatisfied parties will go to the Higher Authority in appeal and there again there will be more arguments to show than the subordinate revenue officer has exercised his discretion wrongly or rightly as the case may be.

However, this question is not free from difficulty. It would not certainly be proper for the revenue officer to take upon himself to decide in his executive capacity a case that could properly be dealt with only by a judicial Court. The revenue officer may if it appears to him that the questions at issue between the parties are of a complicated and difficult nature and that in attempting to adjudicate he would assume a judicial authority which he is not qualified to exercise he may in his discretion refuse assistance asked for. There are precedents for this. The first precedent is contained in Regulation VIII of 1827 in which it is laid down that if from the evidence adduced it appears that the question at issue is of a complicated or difficult nature the judge may suspend the proceedings till the question has been tried by a regular suit. Thus it is laid down that when applicant comes to Court and applies for a certificate which is not of a final nature; the judge may suspend the summary procedure and decline to go further until regular proceeding are taken. A later precedent is found in the Mamlatdars' Court's Act 1906. There the Mamlatdars are given power to hold summary inquiry in cases arising out of termination of tenancies and dispossession etc. of lands, premises used for agricultural grazing or trees or crops etc. Here the Mamlatdar is authorized to refuse to exercise his powers if he thinks that the cases could more suitably be dealt with in a Civil Court or if he considers it inequitable and unduly harsh to give possession in particular classes of tenancy cases.

A mortgagee in possession is a superior holder within the meaning of the Code and is entitled to assistance until he loses possession by due course of law.—*G. R. 5408 of 17-8-1881.*

Assistance shall be refused to any superior holder under s. 87, if his claim to such assistance is not supported by an entry or entries duly made in the record of rights, register of mutation or register of tenancies.—*S. 1351 of the L. R. Code.*

Sawkars should be awarded the rents of lands as an agricultural holding.—*G. R. 12771 of 15-12-1908.*

The employment by money-lenders of the provisions of ss. 86 & 87 as a means of recovering extortionate interest and evading the Dekkhan Agriculturists' Relief Act, 1879, should be discouraged by Mamlatdars and Mukhtiyarkars by declining to recognize transferees whose names are not entered in the records etc.—*G. R. 1057 of 16-2-1900.*

Assistance for rent in the guise of interest should not be given as it would amount to permitting Government Officers the misapplication of the powers given to them by law.—*G. R. 1279 of 21-2-1898.*

**Mamlatdars should refuse to recognize a mortgagee (with possession) if he had omitted to have his name entered in the revenue records.—G. R. 1078 of 17-2-1900 as modified by G. R. F. D. 3813 of 5-10-1901.**

**Arrears of rent or land revenue of past years cannot be recovered under this section. The law (proviso to s. 86) does not contemplate the grant of assistance to superior holders for the recovery of land revenue due to them or the rent whatever it may be from their tenants for past years.**

**No assistance with regard to lands not within jurisdiction.—**The Mamlatdar can give assistance with regard to lands, etc. in his jurisdiction only. It appears that if a man has agreed to pay rent collectively in respect of two lands one being in one taluka and another being in another taluka, the Mamlatdar of one taluka cannot grant assistance for the whole amount.

**Procedure for the recovery and payment of dues in assistance suits regarding land in non-Inam villages.—**

(i) The inferior holders pay the dues to the superior holders direct and the latter intimate to the village officers the fact of receipt of such dues.

(ii) The village officers recover the dues, pay them direct to the superior holders in the village itself, take their receipt and send it to the Taluka Officer for being filed with case-papers.

(iii) The Village Officers recover the dues and send the amount to the Taluka Office whence it is sent at once to the superior holders by money-order. All recoveries and payments by Taluka Treasury are recorded to Kirkol Vahi (Taluka Form XVII-C) and that any monies returned undelivered are treated as revenue deposits and are adjusted in the revenue deposit register.—G. R. L. C. 1950 of 29-3-1927.

**Levy of penalty for default in payment of land revenue or rent due to superior holders —**The Collectors when exercising the discretion vested in them by s. 148 or the Bom. L. R. Code should follow the following instructions in regard to the levy of penalty for default in payment of land revenue or rent due to superior holders:—

1. For default in payment of land revenue or rent due to superior holders interest not exceeding 9 per cent. may be levied in assistance suits and handed over to the superior holders concerned.

2. In case of contumacious default the Collector may levy a penalty, in lieu of interest, not exceeding 25 per cent. of the arrears due.

3. It should be understood that the 25 per cent. penalty above recommended is the maximum that Government consider reasonable and that the actual amount levied should correspond to the wilful and persistent character of the default. Collectors should call for and carefully scrutinise statements, penalties imposed and satisfy themselves that they have not been excessive.—G. R. 2693, 24, of 13-3-1926, and of 22-10-1926. The interest on the decretal amount should be calculated from the date on which the decretal amount became due.—G. R. 2693 24, of 13-3-1926. The whole of the penalty levied in case of contumacious default should be paid to the superior holder

concerned as in the present state of the law it is not possible to credit a part of it to Government.—*G. R. 1693, 24, of 17-4-1926.*

The original documents filed in assistance cases if not applied for by the parties should be destroyed after two years.—*G. R. 1018 of 1-2-1911.*

To copies of orders under s. 87 Article 9 of Schedule I of Indian Court Fees Act, 1870, applies the proper fee for every three hundred and sixty words or fraction of three hundred and sixty words would be eight annas.—*G. R. 5630 of 31-7-1883.*

Costs are expenses incurred in litigation or professional transactions consisting of money paid for stamps etc., to the officers of the Court, or to the pleaders for their fees etc. The general rule as regards costs is that the cost shall follow the event unless the Court, for good reason otherwise orders. This means that the successful party is entitled to costs unless he is guilty of mis-conduct or there is some other good cause for not awarding costs to him.—*Keppuram v. Zamindar of Kala Hasti, 27 Mad. 341.*

Vakils of the High Court and District Pleadors are entitled to represent parties before any public officer in proceedings under s. 87 of the L. R. Code.—*See ss. 7 and 8 of the Bombay Pleadors Act, 1920.*

Appeals from orders in assistance suits are evidently proceedings under s. 87 of the Code and therefore pleaders are entitled to appear in proceedings in appeal under this section.—*G. R. R. D. 1362 of 17-5-1921 has no application so far as this section is concerned.*

No second appeal is allowed and a petition of revision under s. 211 may not be entertained as Civil Courts are competent to grant relief to aggrieved parties.

Decisions in assistance suits are not decrees.—S. 87 is not in any way binding upon the parties like a decree and determines no question of right that may be at issue between them.—*G. R. 5630 of 31-7-1883.*

Assistance may be refused when the question whether the applicant for assistance is the superior holder or not, is at issue in the Civil Courts and the Collector has been made judicially cognizant of this proceeding.—*G. R. 6476 of 26-8-1887.*

Recourse to Civil Court not barred.—When an inferior holder fails to pay the dues the remedy for the recovery thereof as provided by the Code is to be found in ss. 86 and 87. These sections are included in the group of sections relating to the recovery of superior holders' dues. These sections show that it is a special remedy. There is nothing in ss. 86 and 87 to show that the remedy provided by them when an inferior holder fails to pay the dues to the superior holder, is an exclusive remedy and that it prevents the parties from having recourse to a Civil Court.—*Vishwanath v. Kowlaji, 19 Bom. L.R. 821.*

The authority holding inquiry under this section is a Civil Court and such Court may direct by whom the costs of the parties are to be paid whether in whole or part.—*G. R. 4483 of 10-7-1882.* As Vakils of the High Courts

and District Pleaders are entitled to represent parties before revenue officers in proceedings under s. 87 ( ss. 7 & 8 of the Bombay Pleaders' Act 1920 ), the revenue authorities in awarding costs should have regard to the Scheduled fees of pleaders representing the parties. It is laid down in the Bom. Pleaders' Act 1920 (Schedule III) that in no case shall the Pleader's fees be less than Rs. 5 in any application or proceeding (including proceedings before revenue officers under s. 87). Suits by a superior holder for recovery of his dues shall be governed by cl. (c) and not by cl. (b) in Schedule III of the Bom. Pleaders' Act, 1920 unless in the opinion of the Court the suit involves questions of a complicated nature affecting title to land.—*B. G. G. pt. I p. 1400 of 5-7-1923.*

**Amount levied in excess of what is due by a Mamlatdar may be recovered by a suit in Civil Court.**—The plaintiff sued the defendant for Rs. 136-5-0 alleging that the defendant had illegally exacted the amount from him (plaintiff) as rent for land under s. 87 by an order of the Mamlatdar. The High Court held that the Small Causes Court has jurisdiction to try the suit (*Ramchandra v. The Collector of Ratnagiri*, 10 Bom. H. C. R. 305) and that the Mamlatdar's order does not preclude the parties from having recourse to the Civil Courts if dissatisfied with it as provided by the concluding part of s. 86.—*Ganesh v. Mehta Vyankatram*, 8 Bom. 188 (1883).

**Persons holding general power of attorney may represent parties.**—S. 196 of the Bom. L. R. Code declares that all formal and summary inquiries under that Act shall be deemed judicial proceedings within the meaning of ss. 193, 219 and 228 of the L. R. Code and that the office of any authority holding any such enquiry shall be deemed a Civil Court for the purposes of such enquiry. It is thus clear that inquiries under s. 86 and 87 are not judicial proceedings for the purposes of any other enactments. The office of the authority making such enquiry is a Civil Court for the purposes of the enquiry, but the proceedings are judicial only in the above limited sense, and the appearances, applications or acts authorised by law to be made or done, are not made or done by parties to suits or appeals within the meaning of Rule 1 of Order III of First Schedule of Civil Procedure Code, 1908, and Rule 4 of Order III of First Schedule would not appear therefore to apply. The authorities making inquiries are not Civil Courts for all purposes is clear from the fact that s. 87 provides for recourse to Civil Courts as distinguished from such officers.

Reg. II, of 1827, s. 1, which is still in force, requires that no person shall be allowed to act in any judicial proceeding in any Court except the pleaders, the parties, or their recognized agents.

But s. 47 refers to Courts, appointed under that Act, which have jurisdiction over all suits of a civil nature of which their recognizance was not barred. It did not refer to what were then called Revenue Courts.

The recourse to the Civil Courts now reserved by s. 87, L. R. Code, was under cl. (5) of s. 26 of Reg. XVII of 1827 to the Collector and when this

jurisdiction was taken from him by Bombay Act XI of 1866 special provision was made by s. 8 of the last mentioned Act for pleaders engaged in such suits there pending to appear in the Civil Courts. This seems to indicate that s. 47 of Reg. II of 1827 was not deemed applicable to Revenue Courts, and therefore any person (not a pleader) holding a general power of attorney can represent the parties.

As moreover inquiries under s. 87, Bombay L.R. Code, by s. 196, are judicial proceedings only within the meaning of the specified sections of the I. P. Code s. 47 of Reg. II of 1827 would not apply them.—See *G. R. 840 of 1-2-1890*

The Dekkhan Agriculturists Relief Act should not be allowed to be evaded by allowing money-lenders employ the provisions of the Bom. L. R. Code as a means of recovering extortionate interest.—*G. R. 1078 of 16-2-1890*

**Municipality deemed to be a superior holder.**—S. 166 of the Bombay District Municipal Act, 1901 which corresponds to s. 205 of the Bombay Municipal Boroughs Act 1925, provides for assistance for the recovery of rent on land due to Municipality. The section runs thus: "For the purpose of the recovery of any amount due on account of rent from any person to a Municipality in respect of any land vested in (or otherwise held by) such Municipality, the Municipality shall be deemed to be superior holders, and every such person an inferior holder, of such land, within the meaning of ss. 86 and 87 of the Bombay L. R. Code, 1879, and the Municipality as superior holders shall be entitled, for the recovery of every such amount, to all the assistance to which under the said sections superior holders are entitled for the recovery of rent or land revenue payable to them by inferior holders."

**Procedure:**—In the inquiry stage, proceedings originate with a plaint or petition which requires a Court Fee Stamp. A process fee for every notice or summons issued to the defendant or a witness is also charged and the expenses of witnesses have also to be paid at the rate of eight annas or one rupee per witness, according to the class to which he belongs. All these expenses generally follow the order an exception being made only in those cases where the Court considers that the applicant was over hasty in seeking its assistance, or for such similar reasons.

**The execution stage:**—In most cases expenses end after the decree, and there is no formal execution stage. The Mamlatdar sends an order to the village officers giving particulars of the order passed and directing them to enforce it. Generally the defendant pays the money due on verbal orders from the village officers and there is no further trouble. But where this is not the case an attachment and sale of the defendant's property is rendered necessary, and expenses of sale are recovered.

Where a formal notice is issued prior to the attachment and sale of the defendant's property, a notice fee is also charged. These expenses also fall on the defendant, i. e., they follow the order.

The Bhatta payable to a karkun deputed to conduct a sale in cases where sale becomes necessary, should not be separately charged, except in cases in which the services of the karkun have been entirely placed at the disposal

of the holder of a Khoti or an Inam village for any considerable time to execute assistance decrees. But in these cases the pay and allowances of the karkun should be recovered from the Khot or Inamdar.—*G. R. 1880 of 20-3-1888.*

There is nothing in the section to prevent Mamlatdar from awarding as costs the travelling expenses of the defendant when the plaint is rejected and when the Mamlatdar thinks that the defendant or his recognised agent is unnecessarily dragged into the Mamlatdar's office (*Vide* last paragraph of the form of notice to be issued under s.87 to the inferior holder or co-sharer)

**Summoning and attendance of witnesses:**—Processes shall be served at the expense of the party on whose behalf they are issued unless the Court otherwise directs and the Court fees chargeable (see below) shall be paid within a time to be fixed.

The following Rules have been made by the High Court as to travelling and other expenses of witnesses:

(1) As a general rule, the allowances to be paid to witnesses shall be a subsistence allowance varying according to circumstances, but not exceeding the average daily wage of the class to which the witness belongs nor the following maxima:—

(i) Witnesses of the class of smaller cultivators and labourers: annas 8 per diem;

(ii) witnesses of higher class: Rs. 1 per diem;

(iii) witnesses of superior class: Rs. 2-8-0 per diem.

**Note:**—Class (i) will generally include smaller cultivators and labourers; class (ii) Patils, ordinary land owners, Clerks, Artizans and men of business and professional men, etc.; class (iii) will comprise European, Anglo-Indian and Indian gentlemen, large land-owners, professional men of high position and the like.

(2) Travelling expenses will be granted according to the rates specified below in all cases in which the Court deems such expenses to be reasonable having due regard to the distance to be traversed and the position and circumstances of the witness:

(i) When the journey is by road, the actual expenses incurred, provided the same be reasonable;

(ii) When the journey is wholly or partly by rail or steamer;

(a) witnesses of class (i) above: third class railway or steamer fare;

(b) witnesses of class (ii): second or intermediate class railway or steamer fare according to the discretion of the Court;

(c) witnesses of class (iii): first or second class railway or steamer fare according to the discretion of the Court.

(3) When the journey to and from the Court is made by railway or other means of conveyance, the time for which subsistence allowance is paid should be that actually spent on the journey. Where the journey is made



on foot, 15 miles a day should be reckoned as a day's journey, and subsistence allowance should be paid accordingly.

(4) Peculiar cases not provided for in the above rules are to be dealt with according to their own merits, and at the discretion of the Court from which subsistence money or the travelling allowance is demanded.

(5) Witnesses produced under warrants of arrests should receive subsistence money at the rate allowed to judgment-debtors.—*Manual Of Circulars issued by the High Court of Bombay, appellate side, for Civil Courts and officers, 1925 Ed. p. 16.*

Notice fees recovered in executing decrees should be credited to Govt.

#### INAMDARS AND ASSISTANCE SUITS IN INAM VILLAGES

Sums due from sub-sharers in an inam village on account of rent or land revenue should as a general rule, be recovered in cash and should not be adjusted by a set off against sums due to them.—*Cf. B. G. G. for 1912 pt. VII p. 581.*

If a dispute arises between the registered holder and the other sharer or sharers as to the right of recovering the revenue the Collector should consider the holder whose name is entered in the accounts and who has the sole management of the same alone to be entitled to receive the rents or land revenues due by the tenants, until such time as some arrangement or partition of the village for sharing or exercising jointly the right of management is made by the party either privately or by a suit between themselves. The other joint holders if they apply for assistance should be referred to the Civil Court.—*G. R. 3350 of 29-6-1930.*

Holders of alienated villages are entitled to have assistance for the recovery of their dues from their tenants under ss.86 and 87 whether a survey settlement has been extended to their villages or not.—*G. R. 4150 of 19-7-1931.*

Questions not governed by practice to be decided by Civil Courts.—In cases, in which according to the existing practice the holders of sub-inams do not pay rent for the land constituting, their inams to the principal Inamdar, the question whether a change in the circumstances and extent of the principal inam holding warrants, its owner in demanding a payment of rent for the persons who, hold the sub-inams, is one which it is for the Civil Court, and not for the Collector, to decide.—*G. R. 3727 of 8-5-1955.*

The Deshmukh Deshpande or some such Hakkadar having a share in, or a charge on the revenue of a village held by an Inamdar stands *pro tanto* to the latter in the relation of the superior holder [ *cf.* the definition of land s. 3 (4, 13 and 14) of the Code ] and is therefore under s. 86 entitled to assistance in the recovery of his dues from the Inamdar.—*G. R. 4379 of 20-9-1950.* Following this *G. R.* it was laid down in *G. R. 5454 of 21-9-1981* that all the sharers in alienated village whether their names are entered in the account or not as managers, are in respect of their shares in, or charges

on, the revenue entitled to assistance in the recovery thereof as superior holders from revenue of the village and not from other private properties of the inamdar.

Where the practice is for the kulkarni of an alienated village to receive from the cultivators, by way of remuneration, certain quantity of grain, and certain amount in cash in proportion to the area they cultivate, there can be no injustice in holding *prima facie* that the kulkarni is entitled to the payment in question and on failure of the ryots to pay as usual rendering him such assistance as the law (*cf.* ss. 17 and 18 of the Bom. Hereditary Offices Act, 1874) allows to enable him to receive the same, leaving it to the Inamdar or his tenants, as the case may be, to show that the payment is a purely voluntary one terminable at their own pleasure, and not a customary one which they have no right to discontinue.—*G. R. 5795 of 4-10-1881* and *G. R. 6750 of 11-11-1881*.

**The right of sub-sharer.**—Superior holders as a body are entitled to assistance for the recovery of the dues from inferior holders. Failure on the part of inferior holders will generally affect all the sharers alike. The sub-sharer is entitled to assistance under s. 86 as against the co-sharer because he is entitled to a certain sum representing his share or proportion of revenue due to all the co-sharers and this sum he is to receive through the hereditary Patel and Village Accountant.—*G. R. 5838 of 6-10-1881* and *G. R. 4330 of 5-7-1882*.

**The powers of revenue officers are strictly limited to the recovery of sums leviable by law** and they cannot assist a Jahagirdar (who had obtained agreements from his tenants binding them to pay as local fund cess, sums in excess of the local fund actually payable by them in respect of their holding and who had obtained decrees on these agreements in his favour) in recovering more than what the law authorise by the special procedure of ss. 86 and 87 when such Jahagirdar applies for assistance to recover sums decreed upon by Civil Courts from his tenants.—*G. R. 4013 of 3-6-1889*.

**Letters or Yadees addressed to the Collector or other political officers, by Jahagirdars holding their estate under treaty agreement (for assistance in the collection of rent) cannot be considered as applications or petitions requiring to be stamped.**—*G. R. R. D. 3584 of 21-10-1887*.

**Local Fund cess**—All that the Inamdars are entitled to is the assistance in collecting the cess to which they are entitled. If they wish to employ the Village Officers as agents to collect the cess, the latter will be quite justified in refusing to act unless they are paid reasonable remuneration.—*G. R. 10501 of 31-12-1885*.

Superior holder is entitled to recover assessment under ss. 86 & 87 where no service was rendered by inferior holders holding land free of assessment in lieu of service.—*Cf. G. R. 1229 of 13-2-1895*.

Whenever an appointment of a village officer is made in an inam village the inamdar or his agent should be given notice and his objections, if any

to any person whom it is proposed to appoint should be fully considered before the appointment is made. The person to be appointed should be required to sign an undertaking to use all diligence to collect the dues of the inamdar.—*G. R. 5733 of 17-3-1899*, and these orders should be strictly complied with.—*G. R. No. L. C. 2221 of 3-8-1925*. The orders in *G. R. 5733 of 17-3-1899* do not apply to stipendiary servants—*G. O. 1505 of 5-2-1916*.

**Note:**—The unfitness of the person is generally determined by (1) his careless work when formerly officiating; or (2) his belonging to a faction in the village; or (3) his bearing a grudge against the Inamdar; or (4) his not having an intimate knowledge of the village and its surroundings.

A village officer of an alienated village who fails to satisfy the Collector that he will exercise the necessary diligence and show reasonable efficiency in the collection of the revenue due to the inamdar is certainly unfit to undertake the duties of his office and may be rejected under ss. 42 & 43 of his Bombay Hereditary Offices Act. Quarterly statements of collections and arrears of revenue in alienated villages should be submitted—*G. R. 899 of 3-2-1900*. These instructions need not be carried out in the Northern Division.—*G. R. 239 of 11-4-1900*.

The duty of the local officers in giving aid in the recovery of revenue of alienated villages is not less binding than the duty of the collection of Government revenue.—*G. R. 4831 of 16-7-1901*.

**Duty of revenue officers in the matter of assistance to be given to Inamdars.**—Every Mamladar should see that the village officers furnish the Inamdars with the *vasul-baki* or statements of outstanding balances due from each tenant immediately after the lapse of the date of each instalment to enable them to file assistance suits earlier than at the end of the revenue year as is now the case in most cases.

In alienated villages where the demand against each tenant is settled by the Survey Department, there will be no dispute about the demand and therefore the assistance suits in such cases ought to be disposed of within fifteen days at least, from the date of their presentation. Any case undisposed of for one month from the date of presentation should be reported to the Collector.

In cases where the demand is settled by long usage no delay should be necessary, but where the demand is not fixed as aforesaid but fluctuates from time to time according to the agreements between the parties or where the payment is in kind, there will be some delay in arriving at the correct dues claimed. Assistance suits of this nature should be disposed of at least within one month from the date of their presentation. In complicated cases the parties will of course be referred to the Civil Courts. Cases in unsettled villages not disposed of within two months from the date of presentation should be referred to the Collector.

Execution of decrees passed in assistance cases should not be deferred for years. As desired in the G. R. all the measures prescribed in Chapter XI may be taken, if necessary, promptly until the amount held to be lawfully due is collected.

As a general rule no decrees should remain unexecuted beyond six months from the dates thereof.

The Collector and Assistant and Deputy Collectors when examining a Mamlatdar's office or when visiting an alienated village should pay special attention to this part of the administration.—*G. R. 7092 of 8-10-1901.*

Inamdars should furnish the rent roll at the beginning of each revenue year to the village officers—hereditary if there be any.—*G. R. 3782 of 4-6-1902*

**Judi and other Hakks in inam villages to be maintained in good and bad years alike.**—As regards Judi Inamdars should receive a proportionate deduction (*G. R. 5652 of 8-6-1908*) when they bind themselves to give suspensions and remissions to their tenants on the same scale as in Government villages. No further relaxation is allowed in this respect. The liability is to be continued as usual.

With regard to Kadim Hakkdars generally excluding the village officers they should receive their allowances without deductions in bad and good times alike as in Government villages.

As regards villages officers (patil and kulkarni) the following orders are issued:—

"The full scale allowances should be collected and paid into the Taluka Treasury, and the village officers should receive their pay there at the prescribed dates. But each such village officer should be required to present a certificate from the Inamdar to the effect that the collections up to date had been satisfactory. If the Inamdar considers that they are deficient, he should be required to endorse on the certificate particulars showing totals due on account of current demand and arrears and totals actually collected. The Mamlatdar should apply roughly to the village the scale of suspension and remission introduced in adjoining Government villages, and should deduct from the dues of the inamdar as stated by him the amount found by application of the said scale, and take the remainder as the next amount due to the Inamdar. If the collections fell materially short of this net amount, the Mamlatdar should pay only half of the remuneration to the village officers and postpone payment of the remainder. He should call on the village officers to submit an explanation of the deficient collections and should submit it to the Prant Officer, who would decide what proportion of their remuneration should be finally paid to the village officers."—*G. R. 10112 of 8-10-1902.*

**Procedure to be followed in applications from holders of alienated villages for assistance.**—It should be made the rule for Mamlatdars to enquire into and decide applications from holders of alienated villages as far as possible, in the villages concerned, the summary inquiry being in

ordinary cases completed on the day fixed. *G. R. 5084 of 20-7-1901* was not intended to authorise repeated or frequent distinct processes of execution. It was merely intended to direct that for the purpose of executing an order for recovery all legal process might be applied continuously until exhausted. Once this has been done, a fresh application for execution in the case of the same arrears should not be entertained except for very special reasons, such as evidence that the defaulter had previously concealed available property.—*G. R. 7537 of 29-10-1902.*

**An Inamdar's dues cannot be recovered for him by the Collector.**—The Collector cannot under the present law use any of the powers under Chapter XI of the Land Revenue Code in realizing for Inamdars dues from their inferior holders, except upon an application under s. 86 or upon reference under s. 90, in the case of an Inamdar who is the holder of a commission under s. 82.—*G. R. 1493 of 24-8-1904.*

The orders in *G. R. 5084 of 20-7-1901* (see above) should be applied not to Inam villages alone, but they apply equally to alienated holdings in Government villages.

The *Batara* system of keeping the Government and Inamdar's accounts separate should be extended to all districts of Central and Southern Divisions except Ratnagiri. This applies to Inam villages only and not to alienated holdings in Government villages.—*G. R. 5120 of 5-7-1904.*

**Recovery of Judi.**—When an Inamdar omits to pay his Judi, the Collector acquires the right to go past him (without exhausting all the processes against him first) and recover from those below him.

When the exact amount of Judi due from co-shares is not ascertainable, the Collector may recover the rents up to the point required to pay the whole Judi. He should not attempt any calculation of what the proportion of Judi due from the land of each ryot is. He is to recover the rents which the ryots owe to Inamdars. Who the ryots are to be from whom the rents are to be recovered, it is for the Collector and other local authorities to determine.

When the exact amount of each co-sharer is ascertainable and if certain ryots or lands have been assigned to each of them, the Collector may recover from the ryots or lands the rents due to the co-sharer up to the point required to satisfy the Judi due from the co-sharer.—*G. R. 8920, of 21-12-1904.*

**Recovery in a Sharakati Dumala.**—Collections in Sharakati Dumala village should be divided among the sharers in proportion to their shares.—*G. R. 1468 of 21-8-1903.*

It is not necessary for the Inamdars (or his assignee) previous to the institution of a suit in a civil case to proceed under ss. 86 and 87 of the L. R. Code. These sections do not make it compulsory on the Inamdar to ask for assistance of the Revenue Officer. If the Inamdar or his assignee had made a demand on the tenants for the enhanced rent through the hereditary Patel or village accountant, as required by s. 85, and if they had refused he would

have become at once entitled to this ordinary civil remedy.—*Govindrao v Balu bin Monappa*, 16 Bom. 586 (1891).

**Forfeited inferior holding.**—Rule 123 cl. (d) states that : "In the case of an inferior holding forfeited on account of an arrear of rent or land revenue due to a superior holder, for the recovery of which assistance is being rendered under ss. 86 and 87, the Collector may in his discretion transfer the holding to the superior holder thereof, subject to such tenures, rights, incumbrances or equities (if any) as he may direct under s. 56. (*see Appendix A*)

**Note.**—Under Rule 65 (e) *the land in* respect of which the amount is due can be forfeited by the Collector free of incumbrances to the Inamdar, after which the arrears have to be remitted.

(b) Suits by an Inamdar against a land holder for the recovery of village revenues are not cognisable by a Small Causes Court.—39 Bom.131.

A suit by a zamindar will lie in Civil Court for a declaration that his Jagirdar is not entitled to levy more than a certain rate and is not barred under Act XXIII of 1871.—*Ali Mahomed Khan v. Gulamshah*, 2 S. D. 402.

S. 85 imposes a penalty on superior holders of an alienated village demanding or receiving payment from their inferior holders otherwise than through the village officers; but there is no corresponding penalty or duty imposed on the inferior holders. Under the law the payment of rent to one co-landlord by the tenant is a valid discharge.—*Krishnarao v. Mavaji*. 11 Bom. H. C. R. 106. Therefore if the tenant paid rent to a co-landlord of an alienated village and if the other co-landlord obtained an order for assistance under s. 85 of the Code on the strength of his name being registered in revenue account books as representative Vatandar in place of his late predecessor, they can maintain a suit in the Civil Court for an injunction to restrain the other co-landlord from recovering the rents and to avoid the order for assistance.—*Sambhu v. Kamalrao*, 22 Bom. 794.

The order passed on an application under s. 86 of the Bombay L. R. Code by the lessee of a Jagir for dues claimed against an inferior holder is not a decree nor has it the force of a decree. There is no necessity for seeking to set aside such an order. The party dissatisfied with the order may file a suit in the Civil Court not to set aside the order but, if he is the superior holder, to recover such amounts as he may think to be still due or if he is the inferior holder to obtain a refund of the amount levied from him in excess of what was due. The latter's suit is one for the recovery of money had and received and such a suit will lie after he has been made to pay the excess amount. A suit praying to set aside the Mamlatdar's order will not lie.—*Hot Khan v. Phalupal*, 17 S. L. R. 82; A. I. R. 1924 Sind 17.

But in *Karimino v. Alli Akbar*, 2 S. D. 579. it was observed that where the Revenue Authorities proceed under this section to assist a superior holder to recover his dues from an inferior holder and the latter having exhausted his rights of appeal under this Code files a suit for declaration of

his rights, the Court in which the suit is pending shall not grant an injunction to restrain the proceeding under this section.

**A separate sharer applying for assistance.**—In the case of a partition amongst owners who have hitherto held jointly the entire estate standing in the revenue record in the name of one of them only the Collector is not bound to recognise a separated sharer who applies for assistance to recover rent from the inferior of his allotted share without having first of all got all the lands in that share entered in the revenue record in his name. Unless a definite portion of the estate has been assigned or transferred to such sharer and unless, through the operation of some provision of the Code or of some rule made under it, he is unable to get the share transferred to his own name, the Collector would be justified in refusing to recognise him until his name is duly entered in the revenue records as the registered occupant or the holder as the case may be, of his share.—*Cf* 5243 of 20-6-1895.

**Inamdar can only obtain a money decree for arrears of assessment in a Civil Court.**—Where the plaintiffs as inamdar of a village sued the defendants who held certain lands in the village for arrears of assessment and asked for the forfeiture of the occupancy rights of the defendants and the recovery of the amount by sale of the same the High Court held, that the inamdar can only obtain a money decree for the Civil Court; that relief by forfeiture and sale of the tenant's lands must be had if at all, through the Collector under s. 86 of the Code.—*Ratnaji v. Sakharan*, P. J. for 1884 p. 68.

The above case was followed in *Vinayak v. Lakshman*, 28 Bom. 92 (1903). In this case the plaintiff as Inamdar brought a suit in 1897 to recover assessment due for the years 1895-96 and 1896-97 from the defendant. One Vinayak Mahadeo was added as defendant No. 2 on the ground that of his having purchased the interest of the original defendant at an auction-sale in 1899. The question before the High Court was whether the amount of assessment for 1895-96 and 1896-97 was a charge on the land. *Chandavarkar J. held*, that an Inamdar was not entitled to a charge on the lands but only to a money-decree against the occupants and as such defendant No. 2 was not liable at all.

A superior holder seeks to recover his dues through a Civil Court, does not recover them directly from the tenants or the inferior holders within the meaning of s. 85. The right and remedy of the superior holders to recover their dues from inferior holders, who have failed to pay the same are not affected by s. 87 of the Code.—*Vishwanath v. Kowlaji*, 19 Bom. L. R. 526 (1917).

An Inamdar though an offeree of the right of Government to assessment is not in the same position as Government as regards enforcement of rent and the powers exercised by Government under the L. R. Code do not extend to Inamdar. Therefore, where the plaintiff's grandfather had granted a *khul* to the predecessor-in-title of the defendant par-

porting to entitle him and his successors to hold the land in dispute for ever at a fixed rent and where after the death of the grand-father the plaintiff sued to recover enhancement from the defendant, on the ground that as the land was Watan property the *kowl* granted by his grand-father had no effect beyond his life; that by custom the plaintiff was entitled to enhanced rent paid by the cultivators on his property upto a reasonable amount and that he claimed the assessment ascertained by a revised settlement the High Court *held* that in the absence of any agreement express or implied on the part of the defendant or his predecessor for the payment of enhanced assessment the defendant was not bound to pay more than what was agreed upon.—*Sarvotamrao v. Sakharam*, P. J. 1893 p. 198.

**Inamdar entitled to recover enhanced cess**—If a survey settlement is introduced in a village where the tenants are in the habit of paying to the inamdars a rental determined by *Kawls* or perpetual leases and a local fund cess calculated on the amount they actually pay, the inamdar becomes liable for the cess calculated on the survey assessment under s. 6 of Bom. Act III of 1869 and if this amount happens to be greater than the amount previously paid the inamdar is entitled to recover the amount of the enhanced cess, but the *kawls* being perpetual leases he cannot increase the rental so as to make it equal to survey assessment.—*G. R. 3865 of 10-6-1898*.

**Plaintiff holding under summary Settlement Sanad is superior holders.**—The plaintiff held lands under a Summary Settlement Sanad which conferred on him (subject to the payment of a quit-rent) all the rights vested in Government at the time it was granted. The High Court observed: "the plaintiff was thus, the holder of the land for as an alienee of the Government rights he was entitled to the disposal and enjoyment of it whenever the defendant's tenure might terminate. The plaintiff was therefore, a superior holder entitled to receive the land revenue and the defendants were inferior holders. The defendants were liable for assessment and local fund and those items could only be payable to the plaintiff. The plaintiff was, therefore the landlord and the defendants were tenants in respect of the land in dispute."—*Surshangji v. Naran Jivabhai*, 2 Bom. L. R. 855 (1900).

[<sup>a</sup>] 88. It shall be lawful for the [<sup>b</sup>] Commissioner at any time to issue a commission to any holder of alienated lands, conferring upon him all or any of the following powers in respect of the lands specified in such commission (namely):

[<sup>a</sup>] As to the local modification of section 88, see para. 5 of foot-note (a) on p. 1 *supra*.

[<sup>b</sup>] This word was substituted for the original words "Governor in Council" by Bom. IV of 1913. s. 40 (1).



(a) to demand security for the payment of the land revenue or rent due to him, and if the same be not furnished, to take such precautions as the Collector is authorised to take under sections 141 to 143;

(b) to attach the property of persons making default in the payment of such land revenue or rent, as aforesaid;

(c) to fix from time to time the times at which, and the instalments in which, the land revenue or rent due to him shall be payable :

(d) to exercise the powers of a Collector under sections 65 and 66;

(e) to receive notices of relinquishment under section 74, and to determine the date up to which such notices shall be received as in that section provided;

(f) to take measures for the maintenance and repair of boundary-marks in the manner provided for survey officers in section 122 :

Provided that the powers contemplated in clauses (c) to (f) shall be conferred only on holders of lands to which a survey settlement has been extended under the provisions of section 216.

### Commentary

**Commission under s. 88.**—The rule is that in the absence of special reason to the contrary, every inamdar who introduces or has introduced a survey settlement into his village should be granted a commission under s. 88 of the Bom. L. R. Code.—*B. G. G. pt. V. for 1917 p. 519.*

Points to be borne in mind when granting commissions under s. 88:

(A) Applicable to surveyed and unsurveyed villages; ( *Vide* Schedule F to the Code).

(1) The person recommended should be either a holder of alienated lands (s. 84) or his agent ( s. 89 ) including one on behalf of minor's guardian or on behalf of the Chief of a native State holding inam villages in British territory.

(2) The village should be other than a Sharakati inam village (Sharakati village is a village in which Government and alienee divide or share the profit of the village).

(3) A part of the village should not have been separately assigned to and held by a sub-sharer.—(*Vide G. R. 3232 of 10-5-1902*).

**(B) Applicable to unsurveyed villages only.**

(1) Powers under (A) and (B) can only be confirmed as is laid down in proviso to s. 88.

(2) The holder should be recommended by the Collector as fit to be entrusted with the powers and can be trusted not to rack-rent the tenants.—*G. R. 7537 of 29-10-1903*.

(3) The holder should give an undertaking on an eight annas stamped paper to levy rents according to the Dhara or other ascertained custom of the village when such customary rental is certified to be just by the Collector (*ibid* and Article 5 (c) to Schedule I to Act II of 1899.)

**(C) Applicable to surveyed villages.**

(1) If there are sub-sharers their consent has got to be obtained.—*G. R. 6984 of 16-7-1907*.

(2) The agreement must be consistent with the Collector's report *i. e.* about co-sharers and about chapters 8 and 9 extended to the village.

(3) In this case powers other than those under cls. (a) and (b) may be recommended.

**Note.**—(i) Powers under cl. (c) are not to be recommended because the dates of instalments should be the same as in the neighbouring villages.

(ii) Powers under cl. (d) should not be recommended because it is undesirable that the powers of a Collector should be generally given.—*G. R. 6984 of 16-7-1907*.

(iii) Powers under the second part of cl. (e) are generally unnecessary and powers under the first part of cl. (e) should only be recommended when the inamdar resides in the village.

(iv) Powers under cl. (f) should not be recommended (as the work is done by the taluka staff).—*G. R. 7169 of 24-7-1909*.

The Sharakati villages referred to in *G. R. 1468 of 21-2-1905* are managed by Inamdars through village officers.

When the Inamdars fail to recover the net revenue jointly owned by them and Government according to the fixed percentages, Government steps in to guard their own interest by recovering direct from tenants the joint net revenue, as they do in a Government village.

2. As (when) each rupee is so collected by Government without waiting for the Inamdar, it is to be at once distributed (1468-1904), and the village officers pay direct to the Inamdar his percentage due to him in that rupee consequently, all the arrears have to be recovered by Government in order to secure their own percentage.

(3) It will thus be seen that there is no necessity to give a commission to the Inamdar in the case of a Sharakati village because, when Government can recover, direct from tenants, the joint net revenue as above explained, they would not remain satisfied by giving only a commission to the Inamdar and thereby leaving the recovery of their own percentage in the hands of an idle Inamdar.

4. The Sharakati villages above described cannot be called "Government villages" because Government management is adopted only as an alternative on failure by the Inamdar.

Commissions may be granted to all such Inamdars as introduce or have introduced a survey settlement into their villages. In the absence of special reason to the contrary and provided that they agree to give suspensions and remissions according to the rules applicable to Government villages. Where there are sub-sharers they should be called on to state any objections they may have to the issue of the commission in the name of the registered Inamdar, and endeavour should be made in the Collector's discretion to overcome objections.

The commissions eventually granted will confer powers under all clauses of section 83 except cl. (d) under which commissions will be granted only in cases which may be specially recommended and on the condition that the Inamdar, levies special assessment at rates not exceeding those of, and generally in accordance with, the rules applicable to Government villages.—*G. R. 6284 of 16-7-1907.*

**Note**—It is not necessary to insert in the commission this condition but an agreement on stamped paper should be taken from the Inamdar embodying the condition.—*Government Memorandum No. 7177, of 15-7-1903, quoted in the preamble to G. R. 511 of 18-1-1909.*

**Attachment and sale.**—(a) The grant of a commission under s. 83 of the L. R. Code does not give power to an Inamdar to sell property attached by him for arrears of revenue. He has to make an immediate report of the attachment of a defaulter's property to the Collector, who makes arrangement for the sale of that property through his subordinate revenue officers.—(*Vide* ss. 88 to 94 both inclusive).

(b) The holder of a Commission cannot have lands of defaulters forfeited to him free of incumbrances, which is done only when executing an assistance decree.—(*Vide* Rule 123 (d) under the L. R. Code) and *G. R. 10505 of 15-10-1903.*

(c) In accordance with Commissioner C. D.'s Circular No. *R. 5639 of 30-11-1889* an Inamdar having a Commission cannot order the attachment of property, belonging to the defaulter which is situated outside the limits set forth in his Commission, e. g. the Inamdar of Chiuchwad cannot request the Mamlatdar of Baramati to attach the moveable property of a defaulter of land revenue in Chiuchwad residing at Baramati.

(d) An Inamdar having a Commission can attach the property of persons making default in the payment of the land-revenue (in surveyed villages)

and customary rent (in unsurveyed villages) due to him. Therefore if the Inamdar has some Sheri or private lands leased to tenants, he can attach property only in respect of land-revenue or customary rent payable by the tenants to him as Inamdar, but not in respect of any additional amount payable to him by those tenants as a lessor under the lease. In respect of private land he is to be treated as one of the Mirasi holders of the village, and as such holder he must file an assistance suit in respect of the additional amount.

**Precautionary measures by the Inamdar.**—An Inamdar who holds a Commission is entitled to take such precautions as the Collector is authorised to take under ss. 141 to 143. Referring to s. 138 of the L. R. Code it appears that the Collector is only authorised to take precautions under ss. 141 to 143 for the recovery of the land-revenue of the current year and the Inamdar's power is similarly restricted.

**Notice.**—The power to attach property conferred upon an Inamdar by the Commission is not restricted by any reference to any other section or provision of the Land Revenue Code, and there is no reason for holding that the Inamdar is bound to issue a notice of his demand before proceeding to attach his defaulter's property. There can be no legal objection to his sending a preliminary notice to the defaulter if he thinks fit to do so; such course would be commendable, but it is not obligatory, and the Inamdar would not be entitled afterwards to recover as a revenue demand the cost of issuing and serving such notice.—*G. R. 2901 of 15-4-1886.*

## RULES

**Certain powers of Collector to be exercised by the holder with Commission.**—When land assessed for purposes of agriculture only is subsequently used for any purpose unconnected with agriculture, the assessment upon the land so used shall, unless otherwise directed by Government, be altered under sub-section (2) of s. 48 by the Collector in accordance with rules 81 to 87 inclusive.

Provided that the powers of the Collector under those rules, other than the power of estimating the full market value and fixing standard rates of assessment, shall be exercised by the holder or holders of the alienated village in respect of land specified in a commission conferring the powers of a Collector under s. 65 or 66 upon such holder or holders under s. 88 (d).—*Rule 92 (See Appendix A for rules).*

When an information of use for non-agricultural purposes is received by the Collector he shall not pass orders mentioned in cls. (1), (2) of rule 95 in respect of land specified in a commission conferring the powers of a Collector under s. 66 upon the holder or holders of the alienated village under s. 88 (d) but shall forthwith communicate the information for the orders of such holder or holders of the alienated village;

and also provide that any such information may be received and acted upon by such holders of the alienated village direct.—*Rule 95 (See Appendix A for rules).*

Inamdars invested with powers to take precautionary measures cannot inflict punishment under the third para. of s. 142 which enacts that penalty for disobedience of an order made by the holder should be inflicted on conviction after a summary inquiry which in its turn involves a quasi-judicial proceeding (*Vide s. 195*) on the part of the Collector.

The holder of a commission is empowered only to take precautions under this section.—The power under s. 143 which enables the Collector if the revenue due is not discharged within two months after the crop has been deposited under s. 141 (b) to take such portion thereof as he may deem fit for sale under the provisions of Chapter II applicable to sales of moveable property in realization of the revenue due and of all legal costs, also vests in the holder of a commission but the taking of a portion of the defaulter's crop is an attachment of his property and the holder of a commission must make an immediate report thereof under s. 90 to the Collector. At this point 'precautions' cease and the Collector steps in under s. 90 to determine whether the attached crop may be sold or not.—*G. R. 104 of 6-1-1953*.

Where the Collector is official guardian of the estates it is not necessary to issue a commission in his capacity as a guardian. He can exercise all the powers under s. 83 as a Collector. His need not apply to the Mamladar for assistance but on the contrary any assistance which the Mamladar can give is given by him as a Deputy to the Collector and the Collector can direct assistance to be given in any case whatever in his district in which it is legal to grant it.—*G. R. 5124 of 5-8-1902*; and *G. R. 4450 of 11-6-1908*

A Sharakdar when he is a mere rent-charge holder should not be granted a commission under this section.—*G. R. 76 of 10-1-1921*.

The commissioner who is authorized to issue commissions under this section may grant them more freely in future.—*G. R. L. C. 541 of 22-11-1923*.

A sharer in a Jahagir who is not the sole owner cannot bring alone a suit to recover the highest rate of assessment (Kamal Akar) because he is the holder of a commission under s. 83 and having got conferred upon him the powers specified in clauses (a) and (b) of that section. The conferring of the powers cannot give him a right to sue alone if otherwise he has no such right. The High Court following the principles of law applicable to co-sharers as laid down in *Balaji v. Gopal*, 3 Bom. 23, held that he would have no right to sue alone unless he was acting by consent of all co-sharers as the manager of the village.—*Balkrishna v. Moro*, P. J. 1894 p. 263.

In *Balaji v. Gopal*, 3 Bom. 23, Westropp C. J. had observed: "If any one of several tenants-in-common, joint tenants, are co-parceners, who is not acting by consent of the others as manager of an estate, is to be at liberty to enhance rent or eject tenants at his own peculiar pleasure, there manifestly would be no safety for tenants, and it would be impossible for them to know how to regulate their conduct or whom to regard as their landlord. In this case a suit was brought by one of two joint Khots to recover en-

hanced rent from a tenant, the notice of enhancement given to the tenant having been signed by the plaintiff alone, and not concurred in by the other joint Khots the High Court held that the notice was insufficient to render the tenant liable for the increased rent and that the plaintiff was not entitled to recover.<sup>1</sup>

An Inamdar holding commission under this section can take precautionary measures for the recovery of land revenue of the current year only (s. 138).

An Inamdar holding a commission under this section is not bound to issue a notice of demand before proceeding to attach his defaulter's property. He may send a preliminary notice but he would not be entitled afterwards to recover as revenue demand the cost of issuing and serving such notice.—*G. R. 2901 of 15-4-1886.*

It is only when the survey settlement has been introduced and when the powers contemplated in s. 88 have been given to the Inamdar, that he is entitled to receive notices of relinquishment under s. 74 from the persons in occupation of the inam lands, and only such notices are exempt from registration under s. 90 of the Indian Registration Act.—*Per Macleod C. J. in Shidehraj v. Dari Santaram, 23 Bom. L. R. 272 (1920).*

S. 88 clearly shows the intention of the legislature that the holder of an alienated village or group of alienated land shall not receive relinquishment from his inferior holders, as if he were a Mamlatdar or a Mahalkari receiving relinquishment from an occupant under s. 74, unless his village or land have been surveyed and he has been specially authorised to receive such relinquishment.—*Per Fawcett J. (ibid).*

[<sup>a</sup>] 89. Every such commission shall be in the form of Schedule F, and shall be liable to be withdrawn at the pleasure of [<sup>b</sup>] the Commissioner [<sup>b</sup>]; and a commission may, if the [<sup>c</sup>] Commissioner see fit, be issued to one or more agents of a holder of alienated lands as well as to the holder in person.

90. If the holder of any such commission attach a defaulter's property, he shall make an immediate report to the Collector of his having done so. Should the demand on account of which the attachment has been

Form of such commission.

Reference must be made by holder of commission to the Collector in certain cases.

[ a ] As to the local modification of section 89, see para 5 of foot-note ( a ) on p. 1, *supra*.

[ b—b ] These words were substituted for the original word " Government " by Bom. IV of 1913, s. 40 ( 2 ).

[ c ] This word was substituted for the original words " Governor in Council " by Bom. IV of 1913, s. 40 ( 2 ).

made, appear to the Collector, after such inquiry as he may deem fit to make, to be just, he shall give orders for the sale of the property, and the sale shall be conducted agreeably to the provisions of sections 165 to 186.

But if the holder of the commission is invested, under Regulation XIII of 1850, with civil jurisdiction and with power to execute his own or his agent's decrees the sale shall be conducted by him and not by the Collector and his subordinates.

**Commentary**

*Delegation of power to Mamlatdar, etc.*--Administrative order VIII states that the Collector may delegate the power to sanction sale of moveables in alienated villages, under s. 90 to Mamlatdars, etc.--*G. R. 5295 (47) of 1911.*

**91. All compulsory process shall cease:**

When compulsory process shall cease. on the defaulter's paying or tendering the amount demanded of him under protest, or on his furnishing either to the holder of the commission or his agent or agents, or to the Collector, satisfactory security in the form of Schedule D, or to similar effect.

And any holder of any such commission as aforesaid, by himself or his agents, proceeding with any compulsory process after payment made, or tendered as aforesaid, or after the furnishing of such security as aforesaid, or after tender thereof, shall be liable, on conviction in a summary inquiry before the Collector, to a penalty not exceeding three times the amount of the revenue sought to be recovered by such compulsory process.

*Penalty for continuing compulsory process.*

**Commentary**

*Delegation of power to Mamlatdar, etc.*--Administrative order VIII states that the Collector may delegate the power to accept security from defaulting inferior holder under s. 91 to Mamlatdars) etc.--*Administrative Order VIII.*

**92.** The power conferred by any such commission shall extend to the enforcement of the payment of the revenue or rent of the current year and of the year next immediately preceding, but not to that of former years.

Power under commission to extend to current and previous year's arrears

**93.** The holder of any such commission shall not enforce a demand for revenue or rent in excess of what any inferior holder has paid, previously to the date of such demand, or of what he may have contracted in writing to pay. In the event of a dispute the Collector shall hold a summary inquiry and decide what is just, and the holder of a commission shall not enforce a demand for more than what is so decided to be just.

Holder of commission not to enforce any unusual or excessive demand.

The person against whom any demand shall have been enforced in excess of the amount of which payment is lawfully enforceable shall be entitled to recover, on conviction of the holder of the Commission in a summary inquiry before the Collector, three times the amount of any such excessive demand by way of damages, and the sum so due by the holder of the commission shall be leviable from him as an arrear of land revenue.

Penalty for so doing.

**[a] 94.** Nothing in the last section shall be deemed to prevent a holder of alienated land from instituting a suit in any Court of competent jurisdiction for the purpose of establishing his claim to re-assess the lands or re-settle the revenue of any inferior holder paying less than the full sum to payment of which he deems him to be justly liable, or from levying the sum ascertained to be

But holder of commission may establish his right to enhanced rent in Civil Court.

[a] As to the local modification of section 94, see para. 5 of foot-note(a) n p. 1 *supra*.



due in accordance with the decree in any such suit in the manner hereinbefore mentioned.

[<sup>a</sup>] 94A. (1) The superior holder of an alienated village or of an alienated share of a village, in which there are a hereditary patel and a hereditary village accountant, and to which a survey settlement has been extended under section 216, may by application in writing to the Assistant or Deputy Collector in charge of the taluka request that the rent or land revenue due to such superior holder may during a period named in the application be recovered as a revenue demand.

(2) The Collector may in his discretion sanction the application for a period not exceeding that named by the applicant, and in such case the following provisions shall apply:—

(a) Any rent or land revenue that accrues or has accrued due to the superior holder during the sanctioned period or a period of six years previous thereto shall, to an extent not exceeding the assessment fixed on the land, be recoverable under the orders of the revenue authorities as a revenue demand during the sanctioned period.

(b) Where any proportion of the land revenue that accrues or has accrued due to Government in respect of unalienated land in the same neighbourhood during the said sanctioned or previous period has been suspended or remitted by proper authority, the Collector may suspend or remit an equal or lesser proportion of the rent or land revenue that accrues or has accrued due to the superior holder during the corresponding period. Any such suspension or remission shall, notwithstanding anything in the Bombay

[a] This section was inserted Bom. IV of 1913, s. 41.

X of 1876. Revenue Jurisdiction Act, 1876, be binding upon the superior holder in any subsequent proceedings in any Civil Court between the superior and inferior holders or their legal representatives, and any proceedings pending at the date of such suspension or remission shall abate to the extent of any claim that may be inconsistent therewith; and no Civil Court shall entertain any suit against the Secretary of State or Government in respect of any such suspension or remission.

(c) Where any such suspension or remission has been granted to an inferior holder, the land revenue (if any) payable by the superior holder shall be suspended or remitted, as the case may be, to a proportionate extent.

(d) The balance of any sum recovered under clause (a) shall be paid to the superior holder after deduction of the costs, if any, of recovery and of any sum lawfully chargeable upon the sum recovered.

#### Commentary

**Scope.**—In this section offer is made to inamdars of means of speedy recovery of their dues. Cl. (b) s. 94A provides that where in compliance with an application from a superior holder of an alienated village etc. asking Govt. to take over the collection of the revenues of the village on his behalf Govt. directs the Collector to undertake the collection of the revenue of a village on behalf of the Inamdar, the suspensions and remissions which are granted by Govt. in respect of unalienated lands shall also be applied in respect of the holdings in that alienated village.

Cl. (2) (a) A period of limitation for the collection of Inamdars' dues as a revenue demand by the revenue authorities under special procedure is fixed in this clause. This period is the same as that prescribed for a suit by an Inamdar to recover this dues from his tenants (*Vide Antaji v. Kashinath* 6 Bom. L. R. 423 where it is held that Art. 120 applies and the period of limitation for such suits is six years). The insertion of this period does not affect the validity of orders for assistance of more than six years standing and it is considered that if an Inamdar has lost his right to sue and has not obtained assistance orders, it is clearly not desirable that this section should give the Collector power to recover for him what is otherwise irrecoverable.

**Cost of management.**—No cost of management under s. 94A should be levied from an Inamdar.—*G. R. 3334 of 19-3-1915.*

## CHAPTER VIII.

OF SURVEYS, ASSESSMENTS AND SETTLEMENTS  
OF LAND REVENUE. [1]

95. It shall be lawful for the Governor in Council, whenever it may seem expedient, to direct the survey of any land in any part of the Presidency, with a view to the settlement of the land revenue, and to the record and preservation of rights connected therewith, or for any other similar purpose and such survey shall be called a revenue survey. Such survey may extend to the lands of any village, town, or city generally, or to such land only as the Governor in Council may direct; and subject to the orders of the Governor in Council it shall be lawful for the officers conducting any such survey to except from the survey settlement any land to which it may not seem expedient that such settlement should be applied.

The control of every such revenue survey shall vest in and be exercised by the Governor in Council.

## Commentary

The Settlement and the administration of the revenue are two distinct matters according to the present system of land revenue. The settlement of the revenue is made by Taluka at long intervals of 30 years by officers appointed specially for the purpose and, having been so settled, remains unchanged till the expiration of the period for which the guarantee has been given. At the time when the periodical settlement is concluded the revenue officers are of course consulted and to this extent may be said to have a share in the settlement. Once the final orders of Government have been passed, however, the settlement becomes part of the established order of things with which normally the revenue officer has nothing to do but to administer.

Under the Indian and early British Government, however, there was no such distinction between these two branches of the administration. In fact, the settlement of the land revenue was the prime and distinctive duty of the

[1] This title was substituted for the original title by Bom. IV of 1913, s. 42.

revenue officer. This is accounted for by the fact that in those days the settlements were made not at long intervals but annually, the demand for each year being fixed for each village individually by the senior district officer personally on a consideration of the character of the current agricultural season.

At the same time, though settlement and administration were formerly so intimately connected, there was from another point of view a very real separation. While it is true that the total amount to be raised was settled by the District Officers the individual distribution of this amount was a matter of local nay of village concern only. The local administration had to produce a certain amount of revenue but, provided the result was satisfactory, the distribution thereof was left to the villagers.

**The Early History.**—The early type of deccan village consisted of the village proper and a surrounding tract of country, which was owned by a small body of joint proprietors—called, Thalkaris. The village proprietors themselves in all probability were the bhayats or off-shoots of the head of the clan (probably of Scythian origin) from whom they held their land on a kind of feudal tenure, not unlike that now existing among the Rajput villages in the Ahmedabad District. The Thalkaris probably correspond to the aristocratic class of the Marathas of the present day as distinguished from the humbler Kunbis. At the outset it appears that the proprietary bodies had held their lands in common sharing the produce only but it seems that the village lands were ultimately sub-divided among the various shareholders at first into large family sub-divisions, and then again into smaller shares on inheritance according to the Hindu Law. The actual work of cultivation was done by their vassals, the present day Kunbis corresponding to the Rajput Kardias. The rent paid by these tenants to their landlords was originally a share in the crop collected at the harvest time on the village threshing floor. So was the *Rajbhag* or assessment paid to the local Raja, perhaps according to the proportion (one fifth of the produce) laid down in Manu. "As the leach, calf and the bee take their food, so must the King draw from his kingdom moderate taxes of one-fifth part of (the increment of) cattle and gold is to be taken by the King, Kshatriya King who in time of war takes even the one-fourth part of the crops, is free from blame if he protects his subjects to the best of his ability." The old system of taking a share in the actual crop as it lay on the threshing floor affords too many opportunities of evasion and concealment. It was therefore, improved upon and the amount of the assessment calculated by an estimate of the standing crop either by the eye alone or, more accurately by first making a crop experiment.

The employment of such systems as these connote the existence of some rough standards of area which, in the Deccan at any rate would seem to have been based upon productive capacity. Thus, to use a modern equivalent a guntha would mean a piece of land capable of producing, say, half a maund of grain, and the area of a field of 5 gunthas in area according to

modern measurement, but which, owing to the poverty of soil, would produce only half a maund of grain, would be considered as one guntha only.

Further with the growing complication of the administration must have arisen the necessity for a staff of village and the District Officials—the Deshmukh, the Deshpande and the Kulkarni; the Deshmukh being the District Governor, and the Deshpande and the Kulkarni the District and the village accountants respectively, these offices, perhaps, as in Manu originally appointive eventually became hereditary like every other office in India.

**The Mahomedan period.**—The Historic period of the Mahomedan dominion witnessed the collapse of the village community. Unable to undertake the responsibility of the heavy village assessments, now taken in cash, or to obtain rent from their tenants, the landlords were compelled to give up their surplus lands and sank to the position of Government tenants themselves. Nevertheless they still retained some of their old privileges, social and territorial—under the title of Mirasdars. Their vacant lands fell into the hands of Government which leased them out to tenants-at-will—called Upris—at a yearly rental.

In the history of assessment the final stage is the substitution of cash rates for payment in kind. The change can only come with the development of the currency system but once that has been brought about, every Government dealing with large areas will hasten on the substitution, both to save the cost and the trouble of administration, and also to put a stop to the numberless opportunities of fraud and speculation which the crop share system affords.

An accurate system of survey necessarily followed the method of payment of assessment in cash. The originator of the system of surveys and settlements, which are the feature of the Moghul period, is said by Abul Faal to have been Sher Khan, the conqueror of Humayun. It was the genius of Akbar, however, aided by his famous Minister Todarmal which brought the system begun by him to its fullest development. He first fixed the size of the unit of measurement—the Bigha—and then standardized the instruments of land measurement—the gas or a rod and the tenab or chain. The cultivable lands of the Empire were then measured in accordance therewith.

**Note.**—The present method of survey is described under the head 'method of survey' below.

The next operation was the settlement of the land revenue.—The basis of the assessment was the division of soils into three classes by a system of classification. The average produce of each class was then ascertained and the average of these three amounts struck; one-third of this total was then taken and the result converted into a money rate on the average of 19 years' prices and fixed as the standard of assessment. At the outset this assessment was made annually, but, on account of the difficulty of obtaining the annual record of prices, was in the end fixed for a term of ten years.

This system was imitated by Akbar's contemporary, Malikambar, Abyssinian Minister of the Adilshahi dynasty of Ahmednagar and was carried on by Jahangir and Shah Jahau, but all counsels of moderation were swept away by the fanatical Aurangzeb by his peculiar revenue methods.

**The Maratha period.**—During the early period of the Maratha rule the village community *i. e.* the cultivators were divided into two classes, *viz.*, the Mirasdars and the Upris.

**The Miras tenure** had the following characteristics.

( i ) The land held constituted, what is called in the reports, " private property, " that is to say, it was heritable, and transferable, such transfer being always attested by formal documents witnessed, not only by the Patel and Kulkarni, but also by the old hereditary district officials, the Deshmukh and Deshpande.

( ii ) The assesment upon such land was theoretically supposed to be fixed, but in practice, as will be shewn subsequently, no such limitations were observed. In fact, advantage was taken of the Mirasdar's devotion to his ancestral fields to tax him far more heavily than other cultivators.

( iii ) The Mirasdar had what was practically an inalienable right to the possession of his land; so much so that he might even leave the village for an indefinite period and omit to pay the assessment upon it, and yet, upon his reappearance, he would be allowed to reclaim his property, even though it might have passed into the possession of another person, nor was he usually required to make up the arrears of assessment

( iv ) In the event of a resident Mirasdar failing to pay his assessment the whole body of Mirasdars was held responsible for the deficiency, though this rule was abrogated if the defaulter had left the village.

( v ) Miras lands which were what was called " gatkul " or deserted (from gat-gone and kul-tenant ) were at the disposal of Government, either to lease on the Uprri tenure or to hand over to others on the Miras tenure on payment of a fee. This power of disposal seems even to have rested with the Patel, though it seems doubtful whether this was not an assumption on his part.

In addition, however, to being a favoured form of land tenure, Miras was also a source of social distinction. The Mirasdars in fact formed an aristocratic body, having, what is called in the reports, " the freedom of the village. " They had the first place at all feasts and festivals; they had the right also to be the first to receive pau-supari on all formal occasions; and so on. It was in fact these social distinctions which were supposed by a competent observer to constitute the main attraction of the tenure.

**The Uprri Tenure.**—The Upris were mere tenants-at-will cultivating Govern ment lands at a yearly rental, at the end of which time they were free to resign them and go elsewhere. Having no interest in their lands beyond that of getting the largest profit in the smallest possible time this system of leasing led to slack and wasteful methods of cultivation. For the same

reason their rates of assessment were considerably lower than those of the Miras lands; so much so that in time of stress, the Mirasdar was often driven to desert his Miras and take up land on the Upri tenure, though such attempts were always discountenanced by the authorities who went on the theory that cultivation was not as now-a-days a matter of inclination but a paramount duty.

**The Annual Settlement**—The settlement of the land revenue was then an annual affair and usually consisted of two operations, *viz.* first, a settlement of the revenue in bulk for each individual village between the Mamlatdar or the Kamaviadar and the Patel, aided by the hereditary district officials, the Deshmukh and the Deshpande, who were supposed to represent the interest of the Rayats and secondly, a distribution of the amount so agreed upon by the Patel over the holdings of the individual cultivator.

The assessment was divided into two main parts, *viz.* the land assessment proper, which was supposed to be fixed and was imposed directly upon the land itself, and extra assessments over and above the land assessment called *patia*. It is naturally impossible to give any fixed rates for these taxes varying as they did indefinitely.

The land assessment proper was usually a rate fixed upon the local land measure. These however varied to a most remarkable degree. As for the actual rates of assessment these varied not only with the quality of the soil but also with the crops grown. However they were varied to suit the actual condition of the individual cultivator.

In addition to these two main heads there were other taxes such as tax on cattle, sheep, goat and other animals; house tax, taxes on various trades and the transport levied on grain and other goods passing from one District to another.

**Partition of the assessment**—The Deshmukh and the Deshpande—the old hereditary District Officers, were allowed to retain their emoluments though their work was done by others. These emoluments consisted of a percentage on the Land Revenue, amounting to as much as 25 per cent. of the whole in some cases, and were, to the confusion of the administration, collected by the individual himself. But in addition to this the remainder was also sub-divided into fractions called (i) Sirdeshmukhi, (1/10th part) (ii) chaut, (1/4th part) (iii) habti, (iv) sahotra (1/6th part) and (v) mokasa, assigned to (1) the Government, (2) the Miniaters and Sardars, (3) the Pratinidhi, Peshva and Pant Sachiv, (4) the Pant Sachiv alone and (5) the Sardars alone which were all separately recognized in the Government accounts and, in case of dispute, collected by each of the claimants individually, the result being a general struggle in which the rayats were sure to suffer from the violence of the combatants.

**The District Staff**—The Mamlatdar was responsible for the revenue of his District. He had to advance half of the estimated revenue for his District before collections began and the remainder by instalments but always in advance. So long as he paid the demand he was entitled to make what

he could for himself without much scrutiny as to the means employed. In smaller Districts Kamavisdars were in charge of the revenue. These large divisions were again sub-divided into smaller areas under karkuns and they into charges of four or five villages under Shekhdars. Under Nana Fadnavis the Mamlatdars were men of position and influence who were retained in their Districts for long periods together even upto fifty years. They were thus enabled to gain a thorough knowledge of their people, and while naturally alive to their own interests were careful not to press the rayat too hard and to adopt their demands to the necessities of the case in quite an admirable way.

**The Farming system.**—The above system came to an end in the time of Peshwa Bajirao II who introduced the system of farming in its stead. The office of Mamlatdar was put up to auction among the Peshwa's attendants who were encouraged to bid high. Next year the same operation was renewed and the District was generally transferred to a higher bidder. The Mamlatdar let his District out at an enhanced rate to under farmers who repeated this operation till it reached the Patels. If one of these officers farmed his own village he became the absolute master of every one in it. No complaints were listened to and the Mamlatdar who was formerly a check on the Patel as the Government was on the Mamlatdar now afforded him an excuse for tyranny by bearing the blame of his exactions. A man's means of payment, not the land he occupied, were the scale on which he was assessed. No moderation was shown in levying the sum fixed, and every pretext for fine and forfeitures, every means of rigour and confiscation were employed to squeeze the utmost out of the people before the arrival of the day when the Mamlatdar was to give up his charge.

**Gujarat, the Konkan and Kanara.**—The history of the village system of Gujarat apparently corresponds closely with that of the Deccan. As regards the remaining divisions of the Presidency, the Southern Maratha Country shows the familiar separation of the rayats into a privileged class called Chali and a non-privileged class corresponding to the Upri. The Konkan is of course Maratha and its history consequently the same as the Deccan.

With regard to the history of the assessment also the main outlines are the same for the whole, though, as might be expected, details such as those of local land measures and methods of calculating the assessment varied almost indefinitely.

#### METHOD OF LEVYING ASSESSMENT

**The early period of the British system of land revenue administration.**—When the East India Company took over the Deccan from the Peshwa, they decided to give up the farming system and went back to the system of Nana Fadnavis. The income derived from the then existing farming system had however to be adopted as the basis of assessment. The Hon. Mr. Mountstuart Elphinstone, the first Commissioner of the Deccan, laid down the leading principles of revenue administration in the following



terms namely, that they were "to abolish farming, but otherwise to maintain the native system; to levy the revenue according to the actual cultivation, to make the assessments light; to impose no new taxes, and to do away with none, unless obvious and unjust; and above all, to make no innovations". The individual officers were given wide discretion as to the actual measures to be adopted within the above limitations. It may be observed that just about the time that this system was being introduced in this Presidency, a similar system was being introduced in the Madras Presidency by Colonel Read.

**The origin of the rayatwari system.**—It will be remembered that the first land revenue settlement carried out by the British in India was the Permanent Revenue Settlement of Bengal, made by Lord Cornwallis in 1793. The main object of this was the introduction of the English Landlord system so as to create a body of loyal, contented and intelligent land owners who would be not only a source of strength to Government but also, like their counterparts take an interest in their estates to the improvement of the condition not only of their lands but also of their tenants, the cultivators. On the one hand this system has to face the main difficulty of tenancy legislation but on the other hand the Government is saved a vast amount of troublesome and detailed work by the fact that the responsibility for and the collection of the land revenue lies in the hands of comparatively a small body of persons. The result of the system was that the new landlords were left free to rackrent their tenants to the utmost limit. Government having no direct interest in the land the cultivators found it difficult to obtain any real and detailed information regarding the condition of the agricultural population or the resources of the country. For this and other defects in this system a reaction set in and in 1793 rayatwari system was introduced into the Districts of Barambol and Dandigul of the Madras Presidency. The main principle of this system was that of direct relations in revenue matters between Government and the cultivators as compared with a middleman.

Under the rayatwari system it was proposed to have a complete survey and assessment of the cultivable lands, so that Govt. might thus obtain full and correct information about the resources and economic condition of the districts, which it was not possible to obtain under the zamindari system. Another advantage which it was thought would result from the rayatwari system, was that the rayat would therein have to deal direct with Govt.; and that consequently he could expect greater justice and consideration from Govt. as superior landlord than from ordinary Landlords under the zamindari system. Subsequently this was spread by Sir Hector Munro throughout the Madras Presidency.

**Failure of early British administration based upon Mounstuart Elphinstone's system.**—Under the new system of Rayatwari Land Revenue Administration introduced by Mounstuart Elphinstone there were to be no changes in the existing system of land revenue except in so far as may be necessary

for the reformation of abuses and low assessments. It seems, however, that in practice the principles laid down by the Chief Commissioner about low assessments were not carried out and that as a result thereof it was found after few years' experience that "the revenue was less secure, the people less respectable and perhaps intelligent, the servants less to be depended upon, and private rights not more certain and secure than when the Province first came under the Company's Government." This result has been attributed to various factors. Some of the important factors however were the following: "Owing to the pernicious system of farming introduced in the times of Bajirao II there was an absence of correct accounts of income derived from land and consequently no accurate knowledge could be obtained of the amount paid by the cultivators as land revenue. As the country was suffering in those days from alternate commotion and rapacity the amounts of the collections were regulated by the power of the farmer to enforce them on the one hand and the means of the rayat to evade them on the other. The only documents forthcoming were general accounts of the assessments imposed in the years preceding the conquest (called *talelands* and *patraks*), generally exhibiting little more than the total sums imposed on villages or parganas, without specifying the details regarding fields, or names of their owners and cultivators. As these amounts were recovered during a period of exaction and oppression, the estimate of the resources based on those figures proved to be too high. Moreover, as there was an extraordinary variety of land measures and methods of assessments, any assessment could not be recovered, and it was found necessary to introduce a system of annual remissions. One of the results of this system was that subordinate officers tried to show a better land revenue on paper, although the actual receipts were much lower than the paper figure. In the words of Mr. Wingate "the District and Village Officers have been accustomed to use every expedient whether of persuasion or intimidation to prevent land being thrown out of cultivation and this with little or no regard to the means of the cultivator who, upon sustaining any reverse, has been obliged to retain the same quantity of land under cultivation and to pay the same revenue when no longer able to raise the same quantity of produce."

With the advent of the British there was peace and consequently the Military camps and the Court at Poona were broken, the stream of wealth was stopped at its source and the soldier once more exchanged his sword for the plough. Occurances such as these had their effect and prices fell like a stone, but there was no decrease in the rates of assessments and the result was the state of over-assessment referred to above. In this connection it should be remembered that the first Collectors were ordinarily Military Officers without experience of the extraordinarily complicated revenue system which they found themselves called upon to administer. Even so a large part of their time was taken up with political and police duties arising out of the late troubles. The revenue system was naturally entrusted to their subordinates who were not of the best class. The native agency from the Kulkarni upwards had been utterly corrupted by the influence of the

farming system under which "common honesty was not expected of any Mamladar." In short the failure may be attributed to the fact that the British land system owed its immediate origin to the practices inherited from the most decadent period of Indian rule (Peshwa Bajirao II) and its form to changes made slowly, and not without mistakes, by men who were new to the country and could only with difficulty and by slow degrees, assimilate the requirements or enter into the feelings of the people.

By 1827 it was found that it was impossible for the revenue officers to carry on the work of fixing the assessment in addition to their various departmental duties; it was then considered necessary to appoint a special officer and the choice fell on Mr. Pringle, the assistant Collector of Poona, who was placed on special duty to devise a system of survey and settlement for the Poona and the surrounding districts. It was in the same year that the Bom. Reg. No. XVII of 1827 was enacted. The preamble to this Regulation says:—

"Whereas it is expedient, with a view to the protection of the rights of the State and of individuals, that the principles on which the public revenue is assessed, and its realization secured and effected, should be made known; that authorised receipts on account of revenue should be regularly and correctly recorded and unauthorised exactions promptly punished; that the powers and responsibility of subordinate revenue officers, of farmers and of superior holders of land should be defined, that the Collector should be vested with civil jurisdiction in the cognizance of cases which relate to land and its rent and produce, so that the titles held to confer a right, except in times of exigency, to entire or partial exemption from the payment of revenue should be declared, and a mode provided for trying the title to exemption enjoyed when such title is deemed insufficient by the revenue officers, the following rules have therefore been enacted, to have effect throughout the territories subordinate to Bombay from such date as shall be prescribed in a Regulation to be hereafter passed for that purpose."

As the assessment had not been finally fixed, s. 1 of the Regulation says that the settlement of assessment shall be conducted by the Collector and the officers acting under his orders. It was further laid down that the heads of villages were responsible to such extent as may be consistent with the custom of the country and the Collector was to fix the assessment of the village in agreement with these heads. The second clause says "all land" whether applied to agricultural or other purpose, shall be liable to the payment of land revenue of Govt., according to the established principles which govern the assessment of that description of land to which it belongs except such as may be proved to be either wholly or partially exempt from the payment of land revenue under any of the provisions contained in Chapters IX and X of this Regulation." S. III lays down that "the settlement of the assessment shall be made with the occupant of the land; the cultivator, when the land is held direct by him from Govt., is to be considered the occupant and when it is not so held, the person having the highest right of holding

recognised by the custom of the country, or resting on specific grant which intervenes between the Govt. and the cultivator, is to be so considered." S. IV says that "when there is no right on the part of the occupant in limitation of the right of Government to assess, the assessment shall be fixed at the discretion of the Collector subject to the control of Government."

Thus while Govt. considered it necessary for the time being to give discretionary power to the Collector to fix the assessment they at the same time considered it necessary to have the various methods of fixing the assessment brought under one system, and it was for this purpose that Mr. Pringle was appointed special settlement officer. His system comprised two main operations—(1) a survey of all the cultivable lands by field and (2) an assessment of every field so measured. The fields measured were the sub-divisions of the old ancestral shares which were reckoned as 'Fields' in the Kulkarni's accounts. As such these were subject to no standard of area and might be of any size from 100 acres downwards; nor would each necessarily be in the possession of one occupant only but might be held jointly by several joint occupants. The measurement itself was done by chain [note—the chain is of iron and is composed of 16 links (called anhas) joined together by iron rings. The total length of the chain is 33 feet], and Cross staff (note—Cross staff is an instrument for laying rightangles to a given chain line). This is a round or square piece of wood,  $1\frac{1}{2}$ " thick and about 6" in diameter or sides, having two fine grooves,  $\frac{1}{4}$ " deep, in it which are at right angles to each other. A staff with a pointed end is stuck upright into the ground, and the cross is fixed to the top of the staff about 5" high. In the original Survey the chain and cross staff were invariably used. Now this method has become somewhat absolute, it takes more time than the Plane table and is not so accurate and the standard of area was the English acre with its sub-division the guntha. The second of these operations *viz.* the field assessment was a highly complicated measure. His system was based on the theory that the relative capacity of different classes of soil to bear assessment is in proportion to their average net produce, meaning by his expression the surplus of the gross produce which remains after deducting the cost of cultivation. To arrive at the net produce he divided the soils into classes, ascertained the average gross produce of each class, tried to discover the average cost of producing the amount and then deducted the second from the first. Therefore the next operation was to place each field in one of the soil classes, the place of a field containing more than one class of soil being determined by the average. Next, the total area of the cultivable lands was reduced to acres of the first class in accordance with the "Net produce" scale; *e. g.*, if the net produce of the first class was Rs. 16 and of the fourth Rs. 4 then four acres of the first class. Lastly the revenue collections for each of these years were calculated from the Kulkarni's books and the total so discovered divided by the average found by the method given above. The assessments were to be guaranteed for thirty years.

Unfortunately, however, for the hopes with which it was started the result was failure. The assessments in full could never be collected and the

old system of annual remission with all attendant evils again came into force. Further, the survey itself was found very defective and vitiated by fraud. Apart from this the main causes of failure seem to have been (i) the impossibility of proper supervision over the very large body of subordinates serving under Mr. Pringle; (ii) the extremely intricate nature of the inquiries attempted; (iii) the failure to realize that what was essentially needed was a large reduction of the assessments; (iv) the occurrence of a series of famine years, which put the finishing touch to the fate of this unfortunate experiment.

Moreover, owing to the difficulties in assessing the average gross produce of each class and the average cost of production, the system resulted in an uneven and a very heavy assessment. Mr. Rogers in his well-known book, "The Land Revenue of Bombay", Volume II, refers to the evil resulting from Mr. Pringle's system in the following terms:

"The theory that assessment can be more correctly based on the net than on the gross produce of land is, of course, true, as the cost of raising an equal amount of produce on lands of various qualities and differently situated must vary considerably; but it is difficult to imagine how anything but a reliance on the magic power of figures could have led an able man to conceive that he could evolve a system that would establish the true relative values of lands to each other out of returns of their actual outturn supplied by interested parties, however much checked by experiments on crops and in other ways, put together for calculation by non-agriculturists. The result which will be noticed hereafter was that the whole of the operations were pronounced untrustworthy and the measurements, as well as the assessments founded on them were in most cases cancelled."

Yet in spite of failure Mr. Pringle's settlement was not entirely void of some definite result for future guidance. These were: (1) the introduction into common use of the English acre as the standard land measure. (2) The practical introduction of a common tenure by the abolition of all real difference between the tenure of the Mirasdar and the Upri inasmuch as he based the land assessment upon the value of the land itself and not on the status of the holder and guaranteed the rates for a long period. (3) The disappearance of all such things as patts, local land measure, local assessments, etc.

**Origin of present system of settlement.**—In 1836 finding that the condition of the revenue administration was going from bad to worse Government directed Mr. Goldsmith of the Civil Service, aided by Lieut. Wingate of the Engineers as a survey expert to commence operations *denovo* in Mohol and Madha talukas of the (then) Poona District. (These two at present form part of Sholapur District).

In 1840 these officers submitted to the Revenue Commissioner their report regarding the recommendations of the Government of India for the adoption in this Presidency of the North Western Provinces system. In that report they examined in detail both the systems and in paragraph 44 laid down the

general principles which according to them should form the basis of a survey settlement. They say:—

“ We further believe many most important elements of national prosperity to be secured by the plan of settlement now being followed in the Deccan among which may be enumerated a moderate and an equal assessment, leaving a portion of the rent with the proprietor or holder; the settlement confirmed for thirty years, security against increase of demands on any account whatever, during the term of the settlement the consequent accrument of all benefits arising from improvements to those who make them, limitation of joint responsibility to a few cases where fields are held in common, or have been sub-divided by coparceners; recognition of property in the soil and perfect freedom of management with regard to rent from sub-tenants and sale secured to its owners, facilities for effecting sales or transfers of land, afforded by the apportionment of the assessment on fields or such limited portions of land, as would, in the circumstances of the proprietors of this country, be naturally made the subject of such transfers; collection of the assessment from cultivated land only, and thus permitting the rayat to contract and extend the sphere of his labours according to the means at his immediate command, a privilege of immense importance in a country where the capital of the agriculturists is not only small in itself but subject to great fluctuation from the effect of variation in the seasons. ”

In that Report they say that the chief object of a revenue survey is the regulation of the customary landtax, so that it shall at once secure an adequate revenue to Government and also lead to the progressive development of the agricultural resources of the country, and also preserve all proprietary and other rights connected with the soil. They were also of opinion that the existing rates were much higher than what the people could afford to pay, and hence they wanted to reduce the same. The keynote of their proposal was moderation in demand, combined with a fixed field assessment. Under this system the cultivator's title to the occupation of his fields was indestructible so long as he continued to pay the assessment levied upon them. It gave him the power to relinquish any fields or take up others so as to accommodate the extent of his liabilities to his means. The introduction of this system resulted in better collections of land revenue, in more land being brought under cultivation and in the increase in the general prosperity of the people. Referring to the results of their work Captain Wingate and Mr. Goldsmith say “ we shall probably be considered prejudiced judges of our own operations, but as our opportunities of ascertaining the feelings of the people regarding them have been great, we shall venture to assert that our settlement has been received almost universally with feelings of great satisfaction; and should confirmation of this assertion be needed, we unhesitatingly appeal to the experience of every officer who has been employed in districts where the new settlements are in operation. ”

**Commencement and first development of the new system**—The encouraging results of the new system inaugurated in Indapur by Goldsmith and Wingate were due mainly to the following causes:

(1) "Moderation in demand" was the first principle which these officers attempted to grasp.

(2) The guarantee of the assessment for a long period of years was strongly urged on the ground that the consequence would be a great stimulus to agricultural enterprise, as the rayat would get all the benefit of improvements made by himself to his holding over a long term and thus would be encouraged to employ his capital in full security that the benefits would be ensured to himself.

(3) The settlement of the assessment upon clear and simple lines.

(4) The concurrent settlement of rights in land and the gradual introduction of one form of tenure.

(5) Direct and strict supervision of every operation by competent agents (who were at first usually military officers.)

(6) The stereotyping of the survey and the settlement of field boundary by the erection of official boundary marks.

So far as the system of survey was concerned the acre was adopted as the standard and the Kulkarni's field as the unit of measurement. No attempt was made to produce maps, the areas of the fields only being ascertained, and a descriptive record of the boundaries was prepared.

For the purposes of assessment the factor of 'natural fertility' was taken into consideration and the soils were divided into three orders viz. (1) Black (2) Red (3) Gravelly; so arranged in order of fertility. Each of these orders was then sub-divided into three classes viz. 1st Black, 2nd Black, 3rd Black; 1st Red, 2nd Red, 3rd Red; and so on, making nine classes in all. Trial pits were dug in various portions of the field and the quality, depth, etc. judged of the soil examined in each. The average acre rate was then found by multiplying the shares of each class by its rate according to the scale, adding up the total and dividing by the total number of shares. Multiplication by the area would then give the assessment of the whole field. The following example will explain the process:—

Suppose a field with an area of 3 acres were found on examination to contain three shares of 1st Black soil, two shares of 2nd Red and four shares of 1st Gravelly. Then the assessment would work out as follows:—

Soil.	Shares.	Total
1 Black	3	900
2 Red	2	250
3 Gravelly	4	400
	Total shares 9	1,550
	Per share	
Average rate	————— 173 reas.	
	per acre	

Hence for the whole field of 3 acres the assessment would be reas 519, or, at 25 reas to the anna, Rs. 1 annas 5.

**Rates of assessment**—In Mr. Pringle's settlement the relative values of soils had been fixed according to the "Net produce" scale after a series of most elaborate calculations, the acre rates being also settled by a similarly elaborate process. But Messrs. Goldsmith and Wingate discarding such method as only calculative to confuse and mislead, preferred to trust rather to their own judgements and the assistance of those best skilled in agriculture. They succeeded however in preserving in the assessment the true principle of assessing each field at what it will bear whilst they adopted a plan compatible with speed of execution. This was it must be admitted a somewhat indefinite process.

**The period of guarantee**—Government had at first decided that the term should be ten years but for reasons given below it was fixed at 30 years. They are: "The period of ten years is much too limited a term to admit of the resources of the people being greatly increased or to hold out much inducement to undertake permanent improvements involving any considerable outlay of capital. It would tend indeed to retard rather than to advance such objects, by creating a distrust of the intentions of Government at the expiration of the term, an apprehension of the assessment being then raised in proportion as the land had increased in value, which would effectually prevent any expensive improvement. Besides a better system of tillage which may be hoped for from a moderate assessment, the most general improvements likely to be undertaken are the construction of wells and bunds, with the view of converting jirayat into bagayat land, both of which, however, require in general an expenditure of capital which it would require many years to repay. Lieut. Wingate wrote: "the most certain way of giving an impulse to agricultural industry and attracting capital to the improvement of land would be to create a private property in the latter by declaring the present settlement to be permanent; but should Government be averse to compromising its claims to such an extent, I would strongly advocate the policy of extending the present term to a period of at least 30 years, which would afford time for the renovation of the delapidated resources of the country, and hold out to the cultivator a fair prospect of obtaining an adequate remuneration for any outlay he may feel inclined to make in the improvement of his estate. Such a term would secure many of the advantages of a permanent settlement, and by rendering land saleable tend to bring it into the possession of people of capital and thus check in some measure the continued sub-division of property arising from the laws of inheritance, which threaten to retain for ever the cultivating classes in the position of mere labourers, and to prevent the accumulation of wealth with its attendant advantages of an extension of commerce and manufactures."—*Ss. No. C. L. I. p. 110*

**Survey maps**—The inconvenience of keeping a merely descriptive record of field boundaries soon became evident and a rough sketch map showing the relative position of the various fields within the village boundary was added. Subsequently in 1839 the sketch map was substituted for a scale map by plotting the individual fields to scale separately from the measurements and



then transferring these plotted sketches to one sheet by tracing paper and thus forming a village map.

**Boundary Marks**—These were essential as in their absence the continual changes due to encroachments, division, etc. would in short time have resulted in a complete failure in correspondence between the survey measurements and the facts as found in the field. At first an attempt was made to secure this object by inspection at the ploughing season and a system of fines for the obliteration of the original boundaries by the rayats, but the impossibility of carrying out the enormous amount of inspection involved soon rendered this system of no effect and led finally to the evolution of an official mark easily recognisable and easily preserved. This was at first a narrow mound of earth encircling the whole field, a species which was soon however found both too troublesome and too expensive. Hence in 1840 the low narrow mound enclosing the field was reduced to the large broad earthen mound pointing the boundary of the field at the corners and supplemented on long boundaries by similar mounds at intervals.

**Assessment.**—The object of the system was to assess fields in accordance with their relative natural fertility in the case of dry crop lands. This was found to depend primarily upon the order—as represented by the colour—the depth and the quality of the soil. Properly speaking therefore in assessing fields there were two chief operations to be performed—firstly the expression of the relative values of fields in terms of soil fertility and secondly, their assessment in accordance therewith. The old system was somewhat as follows:

(a) The classification scale was based upon depth and quality of soil, pure "Black" soil of 1½ haths (1 hath 1 foot 6 inches) in depth being considered 'first class' or 16 annas valuation.

(b) In the case of Black soil the valuation was lowered one class

(i) for every decrease of ½ hath in depth;

(ii) for the presence of any deteriorating factors or 'faults' as they were technically called, sufficient to cause loss of fertility.

The class of faults ...	...	These faults seem to have the following
No. Technical terms ...	...	Description:
1 Chukhal ...	...	A mixture of minute fragments or nodules of limestone.
2 Gochu ...	...	The same as the above, only that the nodules are larger.
3 Utarrat ...	...	An appreciable slope in the surface of the field.
4 Valsar ...	...	A mixture of sand.
5 Resvat ...	...	A want of cohesion among the constituent particles of the soil, arising from the presence of fine sand.

6	Dupan	...	...	The liability of being swept over by running water.
7	Upalvat	...	...	Excess of moisture from surface springs.
8	Karal	...	...	Clayey soil which when dry turns very hard, which does not easily absorb water and which if once wetted does not dry soon. It is sometimes so bad that even grass will not grow on it. In this case it was entered as Paraspok (unculturable).

**Note**—With respect to the method of applying these faults in actual practice the following explanations are given by the Survey Rules:—

1. **Chukhad** ... .. In a wet climate minute fragments of lime counteract the effects of excess of moisture and should not, therefore, be considered and given as a fault.
2. **Gochu** ... .. Large nodules of lime, when met with thickly strewn over a field, should be given as a fault, as they tend materially to diminish fertility.
3. **Utavat** ... .. This fault may be given when the surface slopes so much as to prevent moisture being retained in the soil.
4. **Valsar** ... .. As a rule, sand is found more or less in all except clayey soils. When the grains are large and there is such a quality present as to cause clods of earth, when taken up, to crumble, then a fault should be given.
5. **Resvat** ... .. When fine sand is found to such an extent in the soil as to cause want of cohesion, a fault should be given.
6. **Dupan** ... .. In some cases, instead of being a fault, it is an advantage, as the moisture retained in the soil adds to fertility; when, however, the running water washes away the soil a fault should be given.
7. **Upalvat** ... .. Whenever this fault is met with, one or two faults, to meet the extent of damage caused, should be given.

4. Level — — — One, two or three fathls should be given according to their liberating efforts. As a rule, when two or three fathls of clay are in the soil it is important to sow some crops in very good seasons of rain-fall. Agricultural day is the worst kind, on which even grass will not grow; in such a case the land should be entered on a warable. Heavy clouds of earth denote the presence of clay and absence of sand; when this is found to be the case, half or one fathl should be given according to its presence.

(1) - Red soil was considered one class inferior to Black, and pure red soil of 14 beds in depth was therefore classed as 13 acres, one class below being made in the normal sum for the presence of fathls in the ordinary way.

(2) - "Dered" or gravelly soil, being usually of about depth, the maximum depth was taken to be 1 half and, if pure, such soil was reckoned as two-thirds class and its maximum area valuation therefore as 4.

In 1841 the procedure followed was that the classer used to go over the field and estimate the relative quantity of each class of soil mentioned therein. This seems to have been done in a very rough and ready fashion by inspection and occasional digging. No diagram of the field, apparently was drawn, nor was anything laid on record to show the exact location of the different classes of soil. The classer merely made his estimate and would then put down in his field book that the field of say 10 acres contained two acres of hot class soil, seven of fourth class and one of seventh class. The valuation of the field was then worked out as follows:

Class of soil	Area	Valuation
1	2 acres	32
4	7 "	28
7	1 "	3
Total		63 acres

Average value therefore 9 annas 1 pie.

This seems to say that relatively to a field of 10 acres valuation the value of the particular field was 2/3 or just over half. An improved system was introduced by which the classer was made to divide the field into a number of equal portions, and test the soil in each; then to draw a rough sketch plan of the field and to show by figures the situation of the different classes as determined by him. Even this was found to be imperfect inasmuch as the Classer did not show the situation of each class of soil within the field nor for what parts the different fathls were given. The land and soil for 10 acres, therefore, is that by which

(a) the field was divided up into compartments of roughly equal area according to the different classes of soil and each compartment classed separately;

(b) conventional signs were invented for the various faults and marked in the compartments in which they occurred, together with the order of the soil (shewn at first by means of dots and later on by the letters P, D and T), with the depth and the soil class of the compartment as worked out from the classification scale.

**The classification of garden lands.**—The chief difficulty realised was that in Motastal lands there were three factors of value to be considered *viz.* the supply of water, the quality of the soil and the sufficiency of land under the well to admit of the land being allowed to recruit its strength by a course dry cropping. In framing a system of classification it was necessary to decide what part each of these factors play in determining the fertility of Motastal land and to arrange the relative scale of values accordingly.

Each factor had therefore to be taken in consideration and divided into classes as follows:

(1) **Soil factor.**—In the soil classification Lieut. Davidson thought that three classes were sufficient as constant manuring and irrigation, in his opinion, tended greatly to equalise the relative properties of the various soils.

(2) **Rotation factor.**—Three classes were arranged under this head in accordance with whether the extra land available was sufficient (a) to give the irrigated land two years' relief, (b) to give one year's relief or (c) if there was no extra land, whether the area under the well was constantly irrigated. The scale of values were then arranged according to the interaction of the soil and rotation factor.

(3) **Water factor.**—The capacity of each individual well was ascertained by enquiries regarding the depth of water, capacity of the springs, etc. and then a certain number of acres were allotted to each well according to its capability. The assessment was then determined by the rate per acre, as found proportionately to that of the first class according to the soil and rotation scale, multiplied by the number of acres assigned to the well.

**The classification of patastal land.**—In patasthal cultivation from natural causes the supply of water to lands lying near the bandhara is more abundant than to such as lie remote; and the surface watered is not as in the case of motasthal, proportional to the supply. The patasthal and motasthal differ in another important point, which is, that in the former there is no system of rotation of dry cropping. Lieut. Davidson in fixing the patasthal rates took only two points into consideration *viz.* the supply of water and the quality of the soil. The supply of water was arranged in six classes and the soil into three, thus forming by combination 18 varieties.

**The classification of rice land.**—With regard to the rice lands the question was whether any system of classification was required at all, since the opinion seemed to have been held that it was unnecessary owing to rice

lands being supposed to run very much in beds of equal value. Mr. Fraser Tytler who worked out a system of classification for this class of land in 1841 showed that the opinion was incorrect. He found on minute investigation into the character of actual rice fields that so far from rice beds running with any sort of similarity there possibly existed every degree of fertility within the limits of the same compartment. He thought therefore that it was necessary to establish standards for the different varieties of soil—in other words it was essential to determine upon a scale of classes, under the respective heads of which were to be brought all lands of equal or nearly equal productive power. The principle upon which his system of classification is based is as follows:

In the classification, standards were fixed on a uniformly descending scale in values from the highest to the lowest. This was especially necessary in the case of rice lands where so many different influences combined in each field, all of which have to be weighed singly and conjointly before an estimate of its productive power or value could be arrived at.

Secondly to arrive at certain conclusions, concerning the comparative intrinsic value of different soils by calculations founded by data easily procurable and also to find the average expense attendant on the tillage of the land and thereupon to form a scale sufficiently minute for all practical purposes.

The relative value of each of the influences which combined to form the result. The classification to be ascertained and then to determine a comparative value which each bears to another and consequently to fix separate standards of each influence to guide the classifiers in their work and to ensure uniformity.

In this system the classifier first classes the soil according to the scale and rules laid down, then the wheel (supply of moisture) and then the embankment and adds their relative values as given in the several scales to find the result or class of the field.

The principles upon which the classification systems of Davidson and Tytler were based are the following:

The object was to find the relative value of fields and to express that value in terms of fixed scale. In doing this the single factor kind of land i. e. dry crop in which there was only one main factor of value to be taken into account was of no use and a different procedure in the case of garden and rice land in which there were more than one factor had to be adopted.

(a) For dry crop therefore one scale alone was necessary with gradation according to the depth and quality of the soil, and minor deteriorating factors.

(b) For rice and garden it was necessary first to specify the different factors of value, next to settle the comparative value which each factor bore to the other, and thirdly to express the total value of the field as a combination of those factors either through the medium of a scale

(Mr. Tytler system) or by first arranging the various combinations in order and then grading them in a scale from 100 downwards according to the opinion of the settlement officer as regards their comparative value (Davidson system).

**The system of assessment.**—The method by which the rates were fixed was thus described "the present condition of the agricultural classes, the state of particular villages, the amount of the Government realisations, the prices of produce, and similar considerations compared with those of preceeding year afforded the chief ground work for determining what abatement or addition should be made to the existing Jumma. By similar process the settlement officer arrived at an opinion what the rates of the different soils should be and by applying these to the ascertained area and classification he found what amount of Jumma these rates would produce and by examining whether this is as much in abatement or excess of the existing Jumma as his previously formed opinion had led him to think necessary, the settlement officer was enabled to correct his first estimate of the appropriate amount of Jumma and thereby finally settle the assessment rates.

**Organisation of the Survey Department.**—As has already been noted, the new survey, at the commencement was an isolated experiment of a local character in the Poona District. At the outset therefore it was under the direct control of Goldsmith and Wingate without an intervening authority. As the operation extended Assistant Superintendents (usually Military officers) were appointed.

**The joint report.**—As the survey operation extended from Poona to Nasik, Sholapur, Ahmednagar and the Southern Maratha country it became imperatively necessary that some authoritative statement of principles should be made as regards both the future conduct of the work and also the revenue system to be based upon the foundation of the survey and settlement and Government in 1847 directed the three Superintendents—Mr. Goldsmith, Captain Wingate and Captain Davidson—to hold a conference at Poona "for the purpose of taking into consideration the best means of bringing the somewhat diversified operations of the several Revenue Surveys of this Presidency into conformity as far as practicable" and also "for ensuring the results of the surveys being turned to the best account and maintained in their original integrity in the future management of their districts." The result of their deliberations was the Joint Report.

**Divisions of the report.**—For our purposes it is sufficient to divide the subjects dealt with into the three main heads of (a) the unit of assessment (b) the assessment of the unit (c) the Revenue System to be based thereupon with special reference to the important question of tenure, as laid down in the Joint Rules.

**The Unit of assessment.**—In the landlord system of Bengal a unit is found in the 'Estate', in the village system of the United Provinces and the Punjab it is the village, but in the Rayatwari system such cannot be the case. The term 'Rayatwari' merely means that the State enters into

direct relations with the cultivator as regards the payment of land revenue and unlike other systems, contains no implications as to what the unit is to be. There being thus no unit ready to hand one has to be invented. Two systems were in view. The old *Khat-bandī* system of Gujarat according to which the assessment is placed upon the whole area held by the occupant whether situated in one place or not. It is called assessment of holdings and it implies the idea of granting to the holder, a long lease of the area (holding) for the period for which the assessment is guaranteed. In such a case the assessment is placed not upon particular portions of the holdings but upon the whole area as one estate, no part of which can be given up separately from the whole as each portion is jointly and severally liable for the whole assessment.

The second system is that of the so called 'field' system according to which the assessment is placed upon individual 'fields', the village for this purpose being divided into separate parcels of land of a convenient size, each of which is assessed on its merit as a unit independently of the holding in which it may be situated. In this case the occupant is responsible for the assessment of each field as a separate entity and can, under certain conditions resign any one of the individual fields and so diminish his holding if need be, or may increase it by taking up vacant 'fields' at the Government assessment. With a small body of proprietors the best system must be that which gives the greatest flexibility of transfer and allows the *Rayat* to contract or enlarge his holding according to the state of his resources. Under the system of assessing holdings, this is impossible as the holding is one and indivisible. In the beginning the "field" had meant the old ancestral subdivisions as recorded in the *Kulkarni's* books. These were frequently of enormous size and also held by a number of separate occupants. On several considerations it was found necessary to constitute a permanent artificial unit by dividing the village lands into areas of reasonable size based upon some fixed principle. The principle in those days considered reasonable was that the area should be such as could be cultivated by a pair of bullocks as farming cannot be prosecuted at all with a less number than this. This area would vary with climate, soil, description of cultivation and methods of husbandry.

The assessment of the unit—The principle of assessment laid down by the Honourable East India Company for the guidance of its officers was "that land should be assessed in accordance with its capabilities" thereby excluding consideration of such details as the means, caste or condition of the cultivators which, through the foundation of the Indian systems was objectionable as "by creating different rates of profit upon capital employed in agriculture it would interfere with its natural and most advantageous distribution by diverting it from lands actually in cultivation to the lowly-assessed waste of those villages of which the cultivators happen to be poor." It would also foster in the latter a slovenly mode of agriculture and at the same time "the assessment would become less and less suitable with every





that at a distance, for a variety of reasons, chief of which are the extra cost involved in watching and carrying the crops, the time lost in going and coming, etc.

#### THE SYSTEM OF FIELD CLASSIFICATION.

**Soil classification.**—The system was substantially the same as that devised by Col. Davidson which has been described previously. Except that the value of the lower classes was somewhat raised it comprised a scale annas based upon depth, soil-fertility being stated to be “chiefly dependent on its power of imbibing and retaining moisture and as this quality was mainly affected by depth, they had chosen the latter peculiarity as the principal regulating influence in the formation of their scale of values. This scale was divided into nine classes; three orders of soil were distinguished *vis.* Black, Red and Gravelly. In the matter of the deteriorating factors of ‘fault’ the Joint Report system was exactly the same as that previously described.”

**Extrinsic circumstances.**—By this expression was meant “distance of a B. No. from the village site” and secondly the situation of a field with respect to fields in other villages, which may affect its value indirectly. Thus a field which is situated close to the village site was more valuable than one at a distance as being more convenient, not only for cultivation but also for the watching of crops, cartage of manure and crops, and general supervision. The second factor is of importance because, *ceteris paribus* a field in a large village is naturally of more value than one in a small village, on account of the competition for land and its higher price, the greater facilities for the disposal of produce, and so on.

Allowance for both these factors was made by one and the same operation *vis.* the application of the Distance from Village Scale. The first factor was allowed for by varying the normal assessments, as worked out by the classification values, in accordance with a scale which made allowances for every  $\frac{1}{2}$  mile distance from the village site, numbers situated within  $\frac{1}{2}$  to  $\frac{3}{4}$  mile usually having their assessments raised, and those at a greater distance having their assessments lowered. The second factor was allowed for by making the increase for numbers close to the village greater and the reduction for distance less in the case of large than in that of small villages.

(iii) **Facilities for irrigation.**—In framing the classification scales two main points were taken into consideration, *vis.* garden lands (a) *Misathal*.—the supply, depth and quality of the water (b) *Patathal*.—the amount and duration of the water supply; *Rice lands*.—Under this head the class of “facilities” is two-fold, *vis.* firstly, the inherent moisture due to the position of the field, those that are low lying naturally receiving more moisture than those situated on the higher levels, and secondly, the supply derived from tanks or other sources.

For the classification of rice lands, two methods were adopted, the Rupee Scale System in Gujarat, Konkan and parts of the Deccan; the Dharwar System

which was subsequently introduced in parts of the Deccan and Karnatak. In the Deccan: the soil and water factors were considered to have generally equal values; eight annas were assigned to soil and eight annas to water; classification annas of each portion were added together and one maximum rate was applied to the combined annas in working out the assessment. In Gujarat, the device of separate maximum rates was applied. In the Dharwar system there were six water classes according to the duration of the water supply. The average water class was worked out for the whole field in the same way as if the figures of the water class were annas.

**Advantages of the system are.**—This system obliges the classer to give his minute attention to every portion of the field and, by requiring a separate estimate of the value of each, his judgment is brought to bear on a very limited number of particulars and the chance of error thereby greatly reduced. The distinct record of the valuation of each share further admits of the operation being tested in its minutest details, so that any error of judgment or carelessness on the part of the classer in the valuation of any one share in a field, subject to re-examination may at once be discovered and brought home to him even if it should not affect the accuracy of his average valuation of the whole. The determinate character of the rules of this system and the facility afforded for the application of a minute and searching test must greatly conduce to the promotion of uniformity in the work of different classers, a consideration of immense importance where a trustworthy and experienced agency is not to be obtained.

**Assessment.**—In order to find out the best mode of fixing the absolute amount of assessment three important questions have to be taken into account. They are (1) grouping (2) the determination of the Aggregate (3) the distribution of the Aggregate.

**Grouping.** The first question for consideration was the extent of territory to which the same maximum rates should be applied. This depends upon influences such as climate, position with respect to markets, agricultural skill, and the actual condition of the cultivator. As the settlements were intended to be of considerable duration there was an obvious advantage in regulating the assessment by considerations of a permanent character, or at least such as were not likely to undergo any very material change during the term of years (generally 30) for which it was to endure.

In determining upon the extent of country to be assessed at uniform rates it was considered desirable that the more permanent distinction of climate, markets, and husbandry should receive the chief attention. It was not considered desirable to impose different rates of assessment on a tract of country similarly situated in respect of the above three points, in consequence of the actual condition of the cultivator varying in different parts of it. Were the Government to do so they should depart from the principle laid down by the Honourable Court of Directors of assessing land according to its capabilities, and adopt the objectionable one of doing so with reference to the means of holding it. The effect of such a system by creating rates of

profit upon capital employed in agriculture would interfere with its natural and most advantageous distribution, by diverting it from lands actually in cultivation, to the lowly assessed waste of those villages of which the cultivators happen to be poor by enabling the latter to meet the Government demands, without the application of the same degree of capital and skill required in the case of better cultivated villages. It would foster in the former a slovenly and unremunerative mode of husbandry and by taking into account an element so uncertain and liable to change as the condition of the cultivators in particular villages, the assessment would become less and less suitable with every improvement in their condition. On the other hand by basing the assessment on considerations of a durable character there is the promise of its remaining suitable for a lengthened period, and at the expiration of the term for which it is confirmed requiring no further alteration than a simple increase or decrease in its amount, as the exigencies of the country and Government might demand.

*Practical application of the theory.*—There are usually marked distinctions between different portions of the same Taluka and it is obviously required that the assessment should be regulated with reference to these. It is true that it is an obvious advantage to consider the assessment of each of the Talukas, the management and the records of which are distinct, though in the same collectorate. The first question then in proceeding to the assessment of a Taluka is to ascertain whether such distinctions exist and to define the limits over which they prevail.

The whole thing may be summarised as follows:

- (a) The unit of settlement is to be the Taluka.
- (b) Where within the taluka there exist marked and permanent distinctions between different tracts, such as call for a variation in the standard of assessment, the villages are to be divided into classes or Groups to use the term usually applied.
- (c) This division into groups is to be based upon considerations of a permanent character, chief of which are to be differences in (1) Climate, (2) Proximity to markets, (3) Husbandry.

*The determination of the aggregate.*—The next and most important operation is 'to fix the absolute assessment: to be levied from the whole,' an operation which is described as perhaps the most important and difficult connected with the survey, and requires, beyond all others the exercise of great judgment and discrimination on the part of the officers on whom it devolves—*para. 79 Joint Report.*

The methods to be used are described as follows: "The first requisite is to obtain a clear understanding of the nature and effects of our past management of the district which will be best arrived at by an examination and comparison of the annual revenue settlements of as many previous years as trustworthy data may be procurable for and from local inquiries of the people during the progress of the survey. The information collected on the subject of past revenue settlements should be so arranged as to

enable us to trace with facility the mutual influence upon each other of the assessment, the collections and the cultivation". This, it is considered, can best be done by the aid of diagrams giving the information required in tabular form, for the preparation of which instructions are given which need not be detailed. "The information thus collected and exhibited with that obtained by local inquiries into the past history of the district will generally enable us to trace the causes which have affected its past condition; and a knowledge of these, aided by a comparison of the capabilities of the district with those of others in its neighbourhood, will lead to a satisfactory conclusion regarding the amount of assessment to be imposed".

The distribution of the Aggregate over the various classes of land and the groups, is the final operation in this connection. This is to be performed by fixing maximum rates which, when applied through the medium of classification of the S. Nos. to the classes of land within each group, would produce the sum desired. The Settlement Officers were merely directed "to fix the Maximum Rates for the different classes of the cultivation, when of course all the imperial rates will be at once deducible from the relative values of the classification scale".

These operations were left to the decision of the Settlement Officer as it was thought that "to attempt greater minuteness, without answering any useful purpose, would fetter the operations of the survey by enjoining particular methods of procedure which local circumstances may render inapplicable."

The chief developments thus were (a) the evolution of the S. No. based upon the principle of "the area that can be ploughed by a pair of bullocks" (b) the introduction of the principle of "grouping."

The joint rules were drawn with the object of providing "the most suitable means for ensuring the results of the surveys being turned to the best account and maintained in their original integrity in the future management of the districts" (Talukas).

**Remissions and suspensions.**—As regards remissions it was laid down that "all abatement of the established revenue should be regarded as exceptional to the ordinary management of surveyed districts and ought not to be made unless for special and urgent consideration, which cannot be provided for by general rules".—*para. 86 Joint Report.*

In short the object of grouping was to divide the Taluka into homogeneous groups of villages, comprising those parts of the whole area, the relative condition of which called for a variation in the 'Standard of assessment,' in order to allow for advantages and disadvantages. The pitch of assessment was graduated for the several classes of lands. Within each separate group the same maximum rates were applied to the different classes of lands, difference of fertility having been already taken into account by the classification. The principles for grouping were such marked and permanent distinctions as climate, situation and the state of husbandry. The grouping of the Original Settlement was to a large extent of a transitional

character. The success of the settlement depended on the determination of the demand. The Settlement Officer had to bear in mind two points when coming to a conclusion regarding a suitable demand. He had to enquire whether the existing assessment was suitable to the existing conditions, whether it was equitable or too high or too low. He was expected to base his conclusions on a careful study of the revenue history of the tract.

The Settlement Report comprised:

(1) The description of the physical features of the area to be settled and also its relation with the neighbouring tracts, if any, previously settled.

(2) The conditions and means of communication, roads, railways, facilities for transport, transit, bridges on rivers.

(3) Modes of cultivation and the state of husbandry and facilities for irrigation.

(4) The condition of the people, the agricultural stock, schools or no school, the health of the people.

(5) Statistics of Land Revenue including the actual demand, collections, remissions for as many years past as possible, an estimate of the incidence of the assessment.

(6) Statistics of occupation of land and its bearing upon the question of the pressure of assessment.

(7) A careful study of the prices, whether they were stable or showed any upward or downward tendency.

(8) A study of the leases, rental statistics and sale statistics, mortgages. The information was called from the various offices and sources *e. g.*, the Educational Department, the Agricultural Department and Railway as regards the extent and kind of goods traffic and so on.

**The Maximum Rate.**—The last operation was the distribution of the aggregate over the individual Survey Number; this was done through the medium of the maximum rates fixed for the different classes of land. It may be noted that the maximum rate is not the same thing as the maximum assessment. The maximum rate is the rate applied to the 16 annas land. For various advantages the land may be classed above 16 annas. If rice is grown from tank irrigation, the classification may be even 32 annas. If the maximum rate is Rs. 8/-, the maximum assessment will be—

$$16 : 32 : 8 = \text{Rs. } 16/-$$

**The Jastri.**—An important adjunct to the Bombay Settlements deserve notices; this was the *Jastri*; it is a ready reckoner of assessments showing the acre rates for the different classification values according to the sanctioned maximum rates, which were worked out ready to hand, in order to save the trouble of calculation for each survey number. The acre rates were those which a clerk could have worked out for himself. Later on the rates shown were not such as could have been calculated by a clerk, but were modifica-

tions of those drawn up by the Superintendent personally and embodied his ideas as to what the rates ought to be.

**The Progress of the Survey.**—The publication of the Joint Report and the statement of principles and policy laid down therein led to a great development of the new survey system. Three years later the survey was extended to Gujarat and the Konkan and in the same year the appointment was created of a Settlement Commissioner in general charge of the whole operation. From that time district after district was taken in hand until the whole of the British territory had been brought under the operations of the Survey. In the year 1891, the Devgad Taluka of Ratnagiri was surveyed and the 'Original Settlement' was brought to a close. (Original settlements are at present made only in Inam villages where the survey and settlement were not introduced. See notes under s. 216). Long before that time, however, the period of 30 years' guarantee had expired for those talukas to which the Settlement had been first applied; and thenceforth Original and Revision Settlements proceeded *pari passu*.

With Original and Revision Settlements proceeding simultaneously, it was natural that all technical improvements, whether in methods or measurements or classification, should be adopted equally in both *e. g.*, the 'Traverse system' of village surveys was first adopted at the Revision Survey of Indapur in 1868, but was afterwards applied to all subsequent original surveys also. The main problems of the revision however, were firstly, to what extent were re-survey and re-classification necessary, and secondly upon what principles were the new rates to be fixed for the next period of guarantee, with special reference to the possible rate of enhancement over the existing assessment and also to the important question of the taxation of improvements effected during the currency of the expiring settlement.

**Later changes in the settlement system.**—Even though the survey settlements introduced since the time of Messrs. Wingate and Goldsmid had greater legality than that of mere previous usage, it was felt after these operations had been in progress for nearly 26 years, that some steps should be taken to give these measures a legal sanction. With the introduction of regular civil administration, increased value was attached to rights in the land, and there was stronger inclination to resist any attempt to encroach on these rights. It was, therefore, considered necessary to confer on these proceedings a validity which only legal sanction can give. Accordingly, in the year 1864 a bill was introduced in the Local Legislative Council to provide for the survey, demarcation, assessment and administration of lands held under Government, in the Districts belonging to the Bombay Presidency and for the registration of the rights and interests of the occupants of the same. This became law in the following year under the title of the "Bombay Survey and Settlement Act" (Act I of 1865). It seems from the following extract from the preamble:

"Whereas a moderate assessment of land revenue is equally conducive to the interests of Govt. and the well-being of its subjects, and whereas it has been and is the desire of Govt. to equalise assessments,

to ascertain and settle the obligations, and to record the rights, interests and privileges of persons and classes owing and occupying land."

that the Govt. of that period realized the necessity of having 'moderate assessments' and of settling the interests and privileges of land-owning classes. S III of the Act declared the existing settlements to be in force subject to its provisions. S. XXV and XXVI made it lawful for a survey officer to assess any lands not paying land revenue "under such general and local rules as may be in force in the survey under his charge" and include in this power of assessment the power to assess whether directly on the land or in the form of a rate or cess upon the means of irrigation, or in any other manner whatever." S. XXX made it "lawful for the Governor in Council to direct at any time a fresh survey or classification of soils or revision assessment, or all or any of these combined, but the assessment so revised shall not take effect till the expiration of the period of previous guarantee given as provided in s. XXVIII. Such revised assessment shall be fixed, not with reference to improvements made by the owners or occupants from private capital and resources, during the currency of any settlement under this Act, but with reference to general considerations of the value of land, whether as to soil or situation, prices of produce, or facilities of communication." This section exempted improvements carried out by the owners of the land during the currency of any settlement under this Act. This Act while confirming previous settlements, empowered Govt. to direct the extension of a survey to any part of the Presidency," and further defined the powers and duties of survey officers, provided for the demarcation of field and village boundaries, and the settlement by the survey officers of disputes connected with them, and for the erection and repair of boundary marks. It also empowered the officer in charge of a survey to assess Govt. and alienated lands, and required him, when making settlements of land revenue, to prepare a record showing all rights and interests in the land, and giving all other necessary information. It further provided for the administration of survey settlements, and empowered Govt. to direct a fresh survey and to revise assessments on the expiration of a term of settlement. Shortly after the passing of the Act the settlement leases of the earliest settled talukas began to fall in and in these, field operations preliminary to the introduction of revision survey rates had to be undertaken. Indapur was the first taluka in which revision field operations were commenced. These operations were conducted on the general principles which guided similar operations in the original survey. The policy of this Govt. was from the beginning opposed to entire re-measurement and re-classification, but as in the tracts settled during the infancy of the Survey Department the work of the original survey was found to be too faulty and imperfect to be adopted as the basis for revision of rates, a general re-examination and revision of the old measurements and classification were found at first to be necessary. Gradually, however as the tracts latterly dealt with by the original survey came up for revision the field work became more

and more partial until in the talukas last dealt with, the field work of the original survey was found to be sufficiently correct to be adopted for the purpose of revision settlements without any detailed test or re-examination. Advantage was taken at revision to improve the old valuation with due caution that such improvement should not in any degree be a virtual tax on improvements carried out during the currency of a lease by the expenditure of private capital.

**Pardi land** may be defined as 'cultivated or cultivable land surrounding houses within the village site'. It is first mentioned in Wingate's Survey Rules of 1853, where all such areas, if above half an acre, were ordered to be measured into 'Pardi Numbers' and demarcated, the question of their assessment being left for future decision. The necessary orders were passed by *G. R. 1765 of 5-5-1858*, by which Pardis above  $\frac{1}{2}$  Acre in area were ordered to be assessed, those under  $\frac{1}{2}$  acre being exempted. Since that date a number of orders have been passed at various times as to the limit of exemption in accordance with local circumstances. They are summarised below:

Survey.	District	Taluka	Area exempt up to	Remarks
Deccan & Southern Maratha Country.	All	.....	$\frac{1}{2}$ Acre	
Gujarat.	Kaira	Thasra Kapadvanj	} 1 Acre	} As Kaliparaj tracts were large Pardis allowed by custom.
"	Surat	All		
	Panch Mahals.	Halol	$\frac{1}{2}$ Acre	
	Remainder.		$\frac{1}{4}$ Acre	
Konkan	All		$\frac{1}{8}$ Acre	
Kanara	All		$\frac{1}{4}$ Acre	

**Boundary marks**—The species which were to be employed as boundary marks to demarcate the survey number was settled by the Superintendent to suit the requirements of soil and climate. The chief mark was everywhere the earthen, supplemented in the Konkan by stones and in Gujarat by stones and small pillars of bricks and chunam.

**Measurement**—The measurement of the Survey Number was carried out by the method of chain and cross-staff.



**The village map**—In the village map was introduced a system of measurement of the village lands upon main 'base lines' running through the village from one boundary to another with subsidiary basing lines branching off therefrom. By setting out such lines with the Theodolite and measuring from and plotting upon them the survey numbers through which they passed, a skeleton map was formed, into which the remaining numbers could be fitted.

**Taluka and District maps**—In 1864 a system of 'Traverse survey' of village boundaries by the theodolite was introduced which enabled a highly accurate Taluka Map to be constructed by fitting together the traverses of individual villages. Subsequently the typographical value of these maps was greatly enhanced by collecting them up by measurements with the stations of the great Trigonometrical Survey of India. The District Map was prepared by placing together the Taluka Map in the same way as the Village Map had been fitted together to form the Taluka Map.

**Classification**—The main principles as laid down in the Joint Report were preserved in all the Survey *viz.*—(1) the separation into various classes of land (2) the settlement of the relative factors of value for each of these classes (3) The arrangement of a system of 'field classification' for each of these factors.

**The classes of land**—The main line of division was that into dry-crop and irrigated. In the districts of Nasik and Satara and in the Konkan it was found necessary to make further sub-divisions of Dry-crop such as Mal and Bhadli, Tisali and Kumri, Rabi and Varkas to cover the poorer classes of land found in the hill country. Irrigated lands were everywhere divided into Garden and Rice, with local sub-divisions such as that of Garden in Gujarat into lands watered from wells, lands watered from Dhekudis or water-lifts from rivers and streams, and Bhatas lands, or of rice in the Konkan into sweet and salt.

**The factors of value**—These were divided into two classes of intrinsic and extrinsic circumstances.

**The system of classification**—The favourite system was that of the 'rupee scale'. By this it was meant that the best class of land was that valued at 16 annas and it was to this that the maximum rate was applied. But with the progress of the survey the 16 annas scale was found too restricted to cover the whole field of classification. For Example, as there were 'faults' there were 'advantages' also. It was found necessary to recognize advantages as to allow deduction for faults. One of the earliest recognized 'advantages' was the alluvial increase. Lands enjoying the 'advantages' of river-flooding with the consequent deposit of valuable silt were subjected to an increase of one or more classes (of 2 annas each) according to the estimate of the benefit accruing. This means that the maximum classification of valuation of dry-crop land was raised from 16 annas to 22 as, by the Survey rules three classes increased or 6 annas could be added for this particular 'advantage'.

### CLASSIFICATION

Classification is a process by which the value (that is, the capacity to produce a crop) of any piece of land used for agriculture can be determined. As has been shown previously for, the purposes of assessment 'natural fertility' was taken into consideration and the soils were divided into three orders i. e., Black which is of the first quality (this class is shown by the letter P). The second order is one which is somewhat inferior i. e. red (this class is shown by letter D). The third order which is still more inferior is gravelly or Mal land or Barad (this class is shown by the letter T.) Trial pits are dug in various portions of the field and its average depth is ascertained. A depth of three feet called a hat i.e.a cubit, is taken as a standard depth so far as dry crop land is concerned. As the soil value of land depends mainly on the depth of the surface soil and on its capacity to receive and retain moisture, the best class of land is taken as 16 annas (1½ cubits). After the average depth of each piece of land is ascertained, its value in annas is calculated making due allowance for the faults the soil may contain. This is called part in the vernacular. The scale is divided into nine classes. There are 8 faults which are considered as the factors that go to deteriorate the soil. They are enumerated above at p. 470-71 with the explanations as to why they are considered as deteriorating factors which are likely to cause loss of fertility. The conventional signs were invented for various faults; when there was excessive deterioration a double fault is given.

As the value of land is decreased by the faults which it contains, so it may be increased by any exceptional advantages that it contains. The Gunas as the exceptional advantages are termed, are as under:

- (a) Proximity to a nallah.
- (b) Deposit of silt from the overflow of rivers.
- (c) Favourable situation so as to receive drainage from higher grounds.
- (d) Capability for irrigation from a well.

Lands situated within 5 chains of a nallah have their classification value increased upto 2 annas. This increase is called the *Nallah Chad*. Lands which are situated near rivers so as to receive silt from their overflow have their value increased by 2 to 6 annas according as they are of even surface and capable of receiving and retaining large deposit of silt. Land situated in trap countries such as in the Satara and the Khandesh Districts have an advantage over those situated on higher grounds owing to the greater amount of drainage which they receive. Lands having this advantage have their value increased upto 3 annas according as they are situated on the slopes, or in the valleys.

Lands in which it is possible to dig wells and which are so irrigable by well water have their value raised,

Apart from these faults and advantages, the value of a land may be increased or decreased by scale increases or decreases given by the Superintendent of Survey. These scale increases (upto 2 annas) and decreases (upto 1 anna) were given in certain talukas only, as it was thought, the

poorer soils were in danger of over-assessment owing to the maximum rates being high.

There are different rules of classification for rice lands and Bagayat lands. For rice land the depth taken is 1 cubit, and the water classification has also to be taken into account. This depends on the amount of water available *e. g.* up to January, or March and the moisture that remains and so on. The Rules of classification for Konkan are different from the Kanara classification rules and for Gazan rice, Kharapat lands there are special rules. Detailed rules on Survey and classification are incorporated in a separate selection No. DXXXII, under *G. R. 7807 of 22-8-1914*.

The Resolution of Government 6682 of 10-11-1881 provides that, where wells existed at the date of the original settlement and the lands were assessed at well-rates, the revision assessment is limited to dry crop rates (but the maximum dry crop rate) applied to the vicinity. And where new wells have been constructed subsequent to the first settlement, the ordinary dry crop rate without addition is levied. (*Govt. Order 13614 of 24-2-1918*). Levy of water rates on old wells is inadmissible.

The soil scale was revised at the Revision Settlement because the poor soils were over-assessed as compared with the richer. Proportionate additions to the soil annas of the highest classes were made according to the scales prescribed by the Superintendent of Survey. The result was that the increase fell more on the good soil than on the bad one. Another change was the introduction of the position, class and the sub-soil water classes. The former was used in the Deccan and Karnatak and the latter in Gujarat. Dry crop lands were divided into 4 classes *e. g.* flat low lying lands in the villages receiving best drainage from higher grounds, ridges or slopes retaining no moisture were in the last class. The chief feature of the sub-soil water class system was that the village lands were divided into areas homogeneous in respect of the sub-soil water supply.

Another example of the same kind, though of a slightly different character is that of tank-irrigated rice in Gujarat, where the factors of value are those of soil, moisture and tank assistance. In this case in order to cover all the possible variations, it was found necessary to adopt a scale giving 16 annas to soil, 8 to moisture and 8 to the tank factor, a total of 32 annas in all. The result of extending the scale above 16 annas was that the maximum and the maximum assessment for lands classed according to the rupee scale system ceased to coincide. The peculiar method of fixing the rates is due to the exigencies of the rupee-scale as an instrument of calculation which made it necessary for the maximum rate to be always applied to 16 anna land. Thus the true 'Maximum Rate' *i. e.*, the highest rate at which any particular class of land is assessed is that which results from the application of the survey 'Maximum Rate' to the classification on value of best land of that class which may as in the case of Uttam-bagayat lands in surat amount to more than 3 times the 'Maximum Rate' of the survey.

"Surveying" is the art of ascertaining by measurements and of representing the form of the earth's surface and the relative positions of objects upon, it, as projected on a horizontal surface. The surface of the earth includes not only its visible portion, but also the bottoms of lakes, rivers, the interior of mines and so on.

**Object of survey**—The objects of the operations included under the head of survey were the following:

- (i) The measurement of the village lands and the preparation of the Survey Records based thereupon.
- (ii) The construction of maps-village, taluka and district.
- (iii) The demarcation of boundaries by means of boundary marks.

#### MISCELLANEOUS

**Talukdari Villages** may be ordered to be surveyed—*S. 4 of Act VI of 1889.*

**The Survey of vacant lands** in village sites may be directed with a view to the settlement of land revenue. The assessment is then to be fixed under s. 10). The assessment of lands not coming within the operation of an order under this section is to be fixed under s. 52 by the Collector.—*G. R. 4344 of 18-6-1886.*

**Salt land** may also be surveyed under this section—*G. R. 6139 of 21-8-1889.*

**Non-agricultural buildings** should be excluded from agricultural assessment.—*G. R. 4267 of 29-5-1896 and 4582 of 16-6-1904.*

**Supervising Tapedars** in Sind are appointed survey officers for the purposes of Chapters VIII and IX in their charge.—*G. N. 6415 of 25-6-1908; Bom. Govt. Gazette 1908 Pt. I p. 944.*

**Separate action for survey of Kadim Inam lands** is not necessary. Action can be taken under the provisions of the Record of Rights so far as the mere survey of these lands for the protection of rights is concerned. *G. O. R. D. 6392 of 10-6-1918.*

If an area over ten acres in extent is proposed to be surveyed by any Department of Government, the Municipalities, Local Boards and other public bodies, an intimation of the nature, purpose and extent of such survey should be first communicated to the Settlement Commissioner and Director of Land Records.—*G. O. R. D. 13115 of 12-12-1913.*

**96.** It shall be lawful for the survey officer deputed to

Survey Officer may require by general notice or by summons, suitable service from holders of land, etc.

conduct or take part in any such survey, to require by general notice or by summons, the attendance of holders of lands and of all persons interested therein, in person, or by legally constituted agent duly in-

structed and able to answer all material questions, and the presence of taluka and village officers, who in their several stations and capacities are legally, or by usage, bound to perform service in virtue of their respective offices and to require from them such assistance in the operations of the survey and such service in connection therewith, as may not be inconsistent with the position of the individual so called on.

**Commentary**

*Note*—See notes to ss. 95 and 97.

**97.** It shall be lawful for the survey officer to call upon all holders of land and other persons interested therein to assist in the measurement or classification of the lands to which the survey extends by furnishing flag-holders; and in the event of a necessity for employing hired labour for this or other similar object, incidental to survey operations, it shall be lawful to assess the cost thereof, with all contingent expenses on the lands surveyed, for collection as a revenue demand.

Assistance to be given by holders and others in the measurement or classification of lands.

**Commentary**

*Cf. S. 135G* which enables the revenue officers and village accountants to requisition assistance in the preparation of the maps or plans required for the purposes of any record or register for the purposes of the Record of Rights (Chapter X-A).

The large waste survey numbers should be divided at the cost of Government even if they are to be given out of cultivation—*G. R. 1135 of 3-2-1909.*

Under this section expenses of supervision and clerical labour cannot be recovered. They can be recovered only under s. 135G in connection with the preparation of plans and maps as required for purposes mentioned in s. 135G—*J. R. 3839 of 21-4-1910.*

**98.** Except as hereinafter provided, no survey number comprising land used for purposes of agriculture only shall be made of less extent than a minimum to be fixed from time to time for the several classes of land in each district by the Commissioner of Survey, with the

Survey numbers not to be of less than a certain extent.

sanction of Government. A record of the minima so fixed shall be kept in the Mamlatdar's office in each taluka, and shall be open to the inspection of the public at reasonable times.

These provisions shall not apply to survey numbers which have already been made of less extent than the minima so fixed, or which may be so made under the authority of the Commissioner of Survey given either generally or in any particular instance in this behalf; and any survey number separately recognized in the [a] land records [a] shall be deemed to have been authorizedly made whatever be its extent.

#### Commentary

The history of the survey number is really inseparable from that of the occupancy in order to be able to understand the principle upon which it is based. It is necessary to go into the question of occupancy to some extent. One of the most important questions connected with any system of land settlement is that of the person upon whom rests the primary liability for the payment of the land revenue for it is upon the answer to this question that the form of the whole system really depends. In Bengal for instance, this responsibility rests upon the landlord and the unit of assessment is the estate; in the Punjab upon the co-parcenary body of the village proprietors and the unit of assessment is the village. For various reasons the system of settlement adopted in Bombay was rayatwari, the main principle of which is that the assessment is placed, not upon the large estate of the village as a whole, but upon the separate small holdings of individuals who in other systems would be the tenants of the large proprietors.

We find this principle embodied in s. 6 of the Bom. Reg. XVII of 1827. This regulation, however, made no change in the respective rights of the Mirasdars and Upris among whom as we know the non-jnam lands in the Deccan were divided. It merely laid the responsibility for the land revenue upon the occupant, whether Mirasdar or Uprī, leaving incidents of the tenures to be regulated by custom. There came Mr. Pringle's settlement, the effect of which was to base the assessment solely upon the value of the land and not upon the status of the cultivator.

With the Joint Report, however, came fundamental changes in the conditions of occupancy. The system introduced by the scheme of the Joint Report was intended to apply to Uprī lands only. The object of the scheme was to modify and improve the conditions of tenure in the case of Uprī

[a—a] These words were substituted for the original words, "survey records" by Bom. IV of 1913, s. 43.

lands. Now the main disadvantage of that tenure at the time was its insecurity, since the Uprī, being merely a tenant-at-will, could be turned out at any time. By the new system the basis of which was security of tenure the Uprī got in exchange for a tenancy-at-will a permanent tenure with an assessment fixed for 30 years, the only obligation laid upon him being paying the Govt. assessment. It also resulted in wholly relieving the occupant from the interference of Govt. officers. Freedom from responsibility was also secured by allowing the cultivators to resign any field or fields at his option. This gave him the opportunity of contracting or extending the area held by him in accordance with the state of his resources.

At the same time it was thought to be absolutely necessary to introduce provisions designed to ward off certain dangers which, if not guarded against, would form the greatest obstacle to the success of the permanent survey settlement. This great danger, in the view of Government also was the future sub-division of the land owing to the increase of the population, of which the inevitable result would be the ultimate sub-division of the land into very small occupancies accompanied by the impoverishment of the whole agricultural class. Farms would become so small as barely to provide subsistence for the occupants in their village and the surplus from which the assessment is to be paid, so trifling that the slightest deficiency in the ordinary crop would suffice to annihilate it. It was, therefore, laid down as one of the fundamental principles of the new tenures that the survey field must be taken as the ultimate sub-division of the land, beyond which further sub-division must not be allowed to proceed. The preservation of the integrity of the survey fields appeared to be an object of such paramount importance as far to outweigh the hardship of saddling a cultivator with a little more land than he wants. If his means are so small as only to enable him to cultivate a fraction of a survey field it would be a public benefit, to get the land out of his hands and thus admit of the whole field, in which his fractional share is included, being transferred to this important object, as tried to be secured by the following measures:—

(a) The first and the basic principle was to be, that the title for the possession of land must be made to depend upon entry as occupant in the Govt. records.

(b) The land-holders as they existed at the time of the original survey were, therefore, to be entered as 'occupants' in the Govt. records; either of whole survey numbers or in cases where holdings below the minimum area had been put together to form a standard number, then of recognized shares'.

In the case of numbers unoccupied at that time not more than one person to be permitted to be taken as 'occupant', except in the case of numbers assessed at over Rs. 20 which might be entered in the names of two holders.

(c) Further sub-division of these original occupancies was to be prevented by regulating their inheritance, transfer and resignation as under:

(1) Inheritance—In the event of the death of any occupant the survey numbers or shares standing in his name were to be entered in the name of his eldest son or next heir.

(2) Transfer—Transfer was to be made only by 'occupants' and then only of whole survey numbers or recognized shares.

(3) **Resignation**—In the case of "recognized shares," if one share of a field was given up, either by resignation or decease of the shareholder with-out heirs, then it was to be offered to the other shareholders, and if they or anyone else refused to take it up the whole survey number was to be relinquished.

As a result, in the eyes of the revenue authorities the 'occupant' of the survey number or share was the person whose name was entered authorizedly in the Govt. record; on the death of such an 'occupant' the name of his eldest son or the next heir alone was entered. Transfer was permitted of a whole number of recognized shares alone. Officially, therefore, sub-divisions, being unrecognized did not exist.

Unfortunately, however, this scheme proved a failure. In spite of the Joint Rules, the people were allowed (unofficially) to sub-divide their lauds either on inheritance or for purposes of transfer as though no limitations existed. But further no legal steps by way of passing an act to that effect being taken to prevent the courts from enforcing partitions made by the people, the Courts proceeded to order partitions of fields and the Collectors were compelled by law to carry them into effect and put the different persons in possession of their several plots. On the other hand, the Collector was compelled by the Joint Rules to enter the name of the eldest son only as heir in the Govt. records and the eldest son alone was technically regarded as 'occupant'.

The result of this divergence was to establish two kinds of title to land, one founded upon possession, recognized by the Courts; the other upon 'registration', recognized by the revenue authorities. The history of the subsequent years upto 1933 is the history of the struggle first to reconcile and next to compile into one system. For further developments leading to the creation of new type of unit the 'subdivision of number"—See *notes under s. 117A*.

After having treated the history of the survey number from the point of view of the history of occupancy it is but necessary to go into the question from the technical stand-point.

**Survey Number.**—The Survey No. of the Joint Report was the product of the Deccan conditions as they existed at the time of the first Survey which were large holdings, a small population, and extensive areas of waste. To such conditions a number of a large size based upon the principle of 'the area which could be ploughed by a pair of bullocks' was well suited; hence the Deccan numbers with its area of from 4 to 20 acres according to the character of the cultivation. The conditions in the Konkan and Gujarat were far different from those of the Deccan. Here pressure of the population upon the land had resulted in its being far more sub-divided, so that the adoption of the theoretical standard of the Deccan would have made the Survey Nos. a mere conglomeration of numerous sub-occupancies. In Gujarat, therefore, it was found necessary to make the rule that not more than five sub-occupancies should be included in a single number. In the case of Konkan rice and garden lauds the great extent to which sub-division had proceeded, made numbers of a still smaller area essential; hence in these cases the standard



size was lowered to from 1-5 acres. The Warkas lands on the other hand being of enormous extent and small value, were divided into large numbers of from 15000 acres. Thus the theoretical standards of areas for the survey numbers had to be abandoned and the simple rule of practical convenience in their place had to be substituted.

Notes—See notes under the head survey number in s. 95.

A scale of minima for the regulation of sub-divisions of survey numbers as fixed from time to time is given below:

SCALE OF MINIMA.

Name of District.	Description of cultivation or class of land.	Minimum Area.		Authority.
		A.	G.	
Gujarat (all districts)	Dry crop	1	0	<i>G. R. 2161 of 29-5-1869.</i>
	Garden	0	20	
	Rice	0	20	
Deccan (all districts)	Dry crop	1	0	<i>G. R. 6577 of 18-8-1865.</i>
	Rice	0	10	
	Garden	0	10	
Thara	Rice	0	10	
	Garden	0	10	
	Jirayat	3	0	
Ratanagiri	Rice	0	5	<i>Govt. Notfn. of 6-10-1868 B. G. G. Pt. I, 1129</i>
	Garden	0	5	
	Varkas	2	0	
Belgaum, Dharwar Hijapur	Dry crop	6	0	
	Rice	1	0	
	Garden	0	20	
North Kanara (settled Talukas) below Ghat districts Cott: 1 Karwar 2 Ankola 3 Kumtha 4 Honavar	Dry crop	5	0	<i>G. R. 5594 of 11-11-1872.</i>
	Rice	0	5	
	Garden	0	5	
	Kumri	5	0	
Above Ghat districts— 1 Haliyal. 2 Yellapur. 3 Sirsi. 4 Saldapur.	Dry crop	3	0	<i>G. R. 9971. of 13-10-1896</i>
	Rice	1	0	
	Garden	0	20	

Note—The above table does not give the minima for the District of Kolaba, as that district was formed after 1869. The scale of minima in force in the several Talukas of the District is therefore to be understood to be the same which is prescribed in the above table for the Districts to which they originally belonged.—*The Bombay Survey and Settlement Manual vol. II 217 (ed.) p. 295.*

**Note.**—These limits are not observed in the Phalni operations now carried on for the purposes of the Record of Rights.—*vide G. R. 9578 of 21-9-1908, printed under Section 113.*

**Note.**—In view of the rank of sub-divisions under s. 117A of the Code as amended by the Act IV of 1913, the restrictions have little practical effect except when waste lands of Govt. are to be given away. However, s. 117B imposes a joint liability on the occupants of sub-divisions for land revenue and gives them the right of pre-emption at a price to be fixed by the collector.

**Amalgamation.**—(1) Any survey number or sub-division of a survey number may be amalgamated with any other co-terminous survey number with the sanction of the Collector and upon the application of the holder, whenever all the parcels of land proposed for amalgamation are held by the same holder upon the same tenure.

(2) Any sub-division may be amalgamated without prior sanction with any coterminous sub-division of the same survey number held by the same holder upon the same tenure.

(3) When such amalgamation is effected, the two or more portions of land shall become one entry in the land records, bearing the same distinguishing number as the first in series of the amalgamated numbers. Any boundary marks placed between the amalgamated holdings shall be removed; and the village map corrected accordingly.—*Rule 11, the Bombay Land Revenue Rules, 1921.*

**Amalgamation of two or more contiguous Hissas in two (or more) survey numbers of the same holder** may be permitted—provided there be no objections such as unwieldy size or shape, adverse effect on the interest of holders or no genuine aid to cultivation—by the Collector indirectly by first allowing (on holders requests) the amalgamation of the survey numbers (Rule 11). Then automatically the contiguous hissass become one hissa.

**Classification of land.**—For the purposes of assessment all land shall be classed with respect to its productive qualities. The number of classes and their relative value reckoned in annas shall be fixed under the orders of the Commissioner of survey with reference to the circumstances of the different tracts of country to which the survey extends and to the nature of the cultivation.—*Rule 7, the Bombay Land Revenue Rules, 1921.*

**Field-books.**—Every classer shall keep a field-book and record therein the particulars of his classification of each survey number and sub-division and reasons which led him to place it in the particular class to which in his estimation it should be deemed to belong. Such field-books shall be preserved as permanent records of the survey.—*Rule 8, the Bombay Land Revenue Rules, 1921.*

**Test of classification.**—Test of the original classification made by the subordinate officers in charge of classing establishments, in such manner and to such extent as may be directed by the Commissioner of Survey.—*Rule 9, the Bombay Land Revenue Rules, 1921.*

The said test shall be an independent test, that is to say, it shall be made by the testing officer in entire ignorance of the original classer's proceedings or record until it has been completed and its results have been finally determined, when only the original classing valuation and the test valuation shall be compared and their separate results recorded.—*Administrative Order No. XVII.*

### 99. Repealed by Bom. IV of 1913, s. 44.

#### Commentary

The Repealed section stood as follows :

**Provisions applicable to recognized shares of survey numbers.**—Recognized shares of survey numbers shall be subject to the same provisions of this Act as are applicable to entire survey numbers, except:—

(a) That it shall not be obligatory to demarcate such shares separately and

(b) that if any such share is relinquished by the occupant absolutely under the provisions of section 74, the occupancy thereof shall be offered to the occupants of the other shares of the same survey numbers in order of the relative largeness of the amounts payable by them respectively on account of the assessment of their said shares, and that in the event of them all refusing the occupancy of the said share, the assessment thereon shall, until such time as the entire number is relinquished by them, be levied from them in proportion to the amount of assessment payable by them as aforesaid.

**Note.**—The recognized share of survey number of s. 99 is abolished and in place of this section is introduced a new section 117A, which authorises the dividing up of a survey number into as many sub-divisions as there are holders, and provides for distributing amongst these holders the land revenue payable in respect of the assessment unit—the survey number.—*Delated in the Bom. Leg. Council on Bom. Act. IV of 1913.*

**100.** Subject to rules [c] made in this behalf under section 214, the officer in charge of a survey to fix assessments.

Officer in charge of a survey to fix assessments. survey shall have authority to fix the assessment for land revenue at his discretion on all lands within the local operation of an order made under section 95 not wholly exempt from land revenue, and the amounts due according to such assessment shall, subject to the provisions of section 102, be levied on all such lands.

(a) Words repealed by Bom. IV of 1913, s. 45, are omitted.

In fixing such assessment, regard shall be had to the requirements of the proviso to section 52.

Regard to be had to proviso to section 52.

But nothing in this section shall be deemed to prevent the survey officer aforesaid from determining and registering the proper full assessment on lands wholly exempt from payment of land revenue or on lands especially excepted under section 95 from the survey settlement, or from dividing all such lands to which the survey extends into survey numbers.

Proviso.

#### Commentary

Lands formerly included in military cantonments but now in civil limits should be assessed to land revenue.—*G. R. 5023 of 19-8-1882.*

The present policy is to settle the whole Talukas at one time instead of proceeding with the settlement of a group of village immediately after the measurement and classification of them is completed. (see notes to s. 95 where the subject of the survey and settlement is discussed at some length.)

**At his discretion.**—Although the words 'at his discretion' occur in this section, the discretion is made subject to rules made under s.214; clause 2 (b) whereof lays down that rules may be made—

"Regulating the assessment of land to the land revenue and the alteration and revision of such assessment and the recovery of land revenue"

**Note.**—The whole of the survey mainly comes under this rule and restricts the powers of the settlement officers in fixing the assessment.

All agricultural assessments (or judi) shall be calculated out to the nearest pie at the rate (per acre or otherwise) sanctioned upon the area chargeable and rounded off in the following manner:

When the assessment (or Judi)

(a) does not exceed one rupee, the nearest half anna shall be taken neglecting 3 pies and under and counting 4 pies and 5 pies as 6 pies, in case of all districts, except the Konkan and below-ghat talukas of Kanara, where the nearest 3 pies shall be charged. For example, in the Thana, Kolaba, Ratnagiri districts and the below-ghat talukas of Kanara—

an assessment of Re. 0-10-4 shall be taken as Re. 0-10-3;

an assessment of Re. 0-10-5 shall be taken as Re. 0-10-6;

an assessment of Re. 0-0-2 shall be taken as Re. 0-0-3.

#### ELSEWHERE

an assessment of Re. 0-8-3 shall be taken as Re. 0-8-0;

an assessment of Re. 0-9-4 shall be taken as Re. 0-9-6.

(b) Exceeds one rupee—

The nearest anna shall be taken in all cases, neglecting 6 pies and under and counting 7 to 11 pies as one anna for example—an assessment of Rs.1-3-6 shall be taken as Rs. 1-3-0;

An assessment of Rs. 1-3-7 shall be taken as Rs. 1-4-0 Provided that—

(1) When the calculation results in the sum total of the new assessments (or Judi) of all sub-divisions of a survey number are greater or less than the whole assessment (or Judi) of that number the difference shall be equitably distributed over the sub-divisions by deduction or addition in the largest shares, so as to make the total equal to the assessment (or Judi) on the survey number;

"(2) Subject to proviso (1), the assessment of a sub-division shall in no case be less than a pie and every fraction of a pie shall be considered as one pie, the addition being counterbalanced by deduction in the assessment of any of the other sub-divisions of the same survey number in an equitable manner."

"(3) No new assessment (or judi) on a survey number or sub-division of a survey number shall be less than 3 pies in the Thana, Kolaba and Ratnagiri Districts and in the below ghat talukas of the Kanara District, or less than 6 pies elsewhere, but this provision shall be subject to the condition that the total of the assessments of all the sub-divisions of a survey number shall not exceed the assessment (or Judi) of that survey number. Where this condition cannot be fulfilled, any assessment of less than 3 pies or 6 pies, as the case may be, may be retained subject to proviso (2)."—G R., R. D. 5314 123 of 15-4-1933.

Note.—This rule does not apply to Sind which has another, but some what similar method.

**101.** The power to assess under the preceding section shall, in the case of lands used for purposes of agriculture alone, include power to assess, whether directly on the land, or in the form of a rate or cess upon the means of irrigation in respect of which no rate is levied<sup>[a]</sup> under section 55<sup>[b]</sup> or under the Bombay Irrigation Act, 1879<sup>[b]</sup>, in any other manner whatsoever that may be sanctioned by Government.

The assessment so made may be on land or means of irrigation, etc.

Bom. VII  
of 1879

**Commentary**

(N. B.—See also notes under s. 55. *supra*.)

A Pat.—is a water-course, like a small canal, led off from the upper waters on a stream by building a Dam or Bandhara. In Sind a Pat is called

[a] "levied" was substituted for "leviable" by Bom. VII of 1879 s. 2.

[b-b] These words were inserted by the Bom. Irrigation Act, 1879 Bom. (Bom. VII of 1879) s. 2.

Wahi or Jabal. These Bandharas are usually put up by cultivators at their own expense; some are permanent, others very transient.

**Patasthal** is of two kinds (*G. R. 3068-04*):—

**A.**—A fixed addition under s. 101, L. R. C., to the ordinary Land Revenue assessed upon land, in respect of the benefit derived from irrigation from a Pat, suited to tracts when irrigation is steady and reliable.

Patasthal is also levied for percolation water (not conveyed by any channel) and sometimes for water raised by lift from temporary *budkis* and also for inundation water.

**B.**—An occasional rate from year to year in respect of land actually irrigated, levied under s. 55, L. R. Code, suited to precarious tracts and occasional irrigation.

Rice cultivated annually (not as a rotation crop as in the Khandesh Phads) by Pat irrigation is not treated as *Patasthal* but as *Tari* and classed for water like all other Rice.

Government have laid down the principle that they cannot assess under s. 101, L. R. C., unless they can guarantee the right to water (*G. R. 1889-62*). Therefore, holders, who get water not of right but by occasional concession and grace (Dharmarth), are chargeable only under s. 55, L. R. Code.—*See also notes under s. 55 ante.*

**History.**—In the original Survey and Settlement all existing Pats were assessed with reference to their reliability and volume. A Pat which flowed perennially and was practically never known to fail was placed in the first class, while the others were rated in the decreasing scale according to the length of time they normally flowed each year. Then, of course, the class of water was multiplied by the class of the soil; But it was open to one objection that with the same water facilities good and bad soil would not yield alike.

A most important point in connection with Patasthal assessment is that water from a Pat often commands several acres of land, but owing to the limitations of the supply, it can only actually be used for watering a limited area, say one acre out of four. This acre might in different years be in different parts of the field. The classer who assessed the Patasthal rates used to form his own judgment as to the probable average area which could be annually irrigated. If the Pat was precarious he did not always reduce the class of the Pat, but instead of putting down one acre as irremediable he put down  $\frac{1}{2}$  acre even  $\frac{1}{4}$ . Therefore, the rate and area assessed in any given survey number on paper was of no use to decide whether or not full allowance was made for the precariousness of the supply. This method made it impossible to mix the crop-rate system of the Irrigation Department with the Patasthal assessment system of the Revenue Department. The latter must be surrendered together with the Settlement guarantee before Canal Irrigation can be given. Soil or dry crop rates for the best class of land are the same throughout a group; climate, markets, and

state of development or the tracts are assessed by variations in the maximum rate between one group and another. In Patasthal assessment, as also in the rice rates the classer not only considers the quality of the soil, but also the quantity, quality and duration of water supply, and further the distance from the markets and climate features; *i. e.* to a large extent he includes in his classing the differences which in dry crop land are dealt with in the grouping. It is, therefore, argued that it would be legitimate when Pats are so classed to fix the same maximum Patasthal rates throughout all the groups of the Taluka.

Of course, the constructors of the Bandhara had a natural right to its water, even though it might be conducted a considerable distance through, or near, the lands of other people who had not contributed to its cost. Patasthal irrigation is almost everywhere supplemented by wells, on which Motasthal is charged; the classer judges which is the more important, and gives a 'chad' for the other. These wells pick up the sub-soil water, frequently brought there by the Pat, and continue to water the crop after the Pat has ceased to flow. Therefore, the combination of Patasthal and Motasthal rate is very common. When the Pats cease to flow through disrepair, but the well irrigation still continues, then if the Patasthal rate is removed still the Motasthal is retained, because the lands obviously have better facilities than ordinary dry crop. And such lands are also liable to the position-class 'chad' or 'step up' in classification.

When at a Revision Survey, enhancements of soil rates are limited to 30% for the group, 66% for the village, etc., this limits do not apply to or include Patasthal (*R. 3205-98*). At a Revision Settlement, the Assistant Settlement Officer inspects all Pats and distributaries from tanks in the second class under the Irrigation Act, and all other tanks; see Director of Land Records and Agricultures' Circular A-1003 of 1903.

**Revision of Assessment of lands irrigated from wells.**—In the Deccan and Southern Mahratta Country (1) the maximum Jirayat rate alone (and no special water assessment) should be levied in the case of old wells constructed before the first settlement. (2) In the case of new wells, constructed subsequent to the first settlement no addition should be made on that account, but ordinary dry crop rate should be imposed.

Burkees of permanent construction should be treated as wells. Land within a certain distance from a stream and available for a Burkee and similarly land deriving benefit from its proximity to tank may be classed at a higher rate. This should form part of the regular process of classification to enable classing assistant (now officers in charge of classing establishment stated in rule 9) to test it along with other classification Returns. —*G. R. 1023 of 25-9-1874 and G. R. 6632 of 10-11-1881. Levy of water rates on old wells was held to be inadmissible.—G. O. 13814 of 24-12-1913.*

**Note.**—In accordance with the policy of Govt. of exempting improvements from taxation a differentiation was made in the classification system adopted in the case of wells constructed after the original settlements, and those

assessed at the original settlement. The 'A Table chad' is an increase for the advantage of percolation effected by adding some annas to the soil classification in the case of new wells since the original survey, sunk before or after the construction of a caual within 165 feet of it.

'B. Table chad' is the motasthal on wells existing before the original survey.

**Water assessment on lands irrigated from Bandharas (dams) built across streams or nullas. —**

(1) Lands under Bandharas existing at the original settlement were assessed at garden rates and they would, at the revision pay the revised rates,

(2) Lands classed as dry crop at the original settlement but which have been converted into garden by the use of water from public streams, beyond the limits of the occupancy of the cultivator, during its currency, will be assessed at the revision at garden rates modified according to (a) the quantity of water obtainable, (b) the number of months for which it can be depended upon (c) the description of cultivation which it will render practicable, (d) the cost of providing the means for obtaining water or forming the water courses (paths) necessary for its utilization.

(3) When lands are classed at the revision settlement as dry crop, and it is desired to convert them into garden during the currency of those settlements by the construction of temporary or permanent Bandharas on, or by drawing water directly from streams not within the boundary of a cultivator's occupancy, the previous permission of the Collector must be obtained (for tracts where water supply is fitful and inconsistent see *G. R. 4663 of 11-7-1908*) and any person erecting a Bandhara or drawing water without such permission (Mamlatdars and other revenue village officers should report such cases—*G. R. 3212 of 23-6-1874*) will be liable to the penalties prescribed by law. (Such Bandharas will either be removed or Bagayat assessment will be levied on the lands watered by them—*G. R. 3172 of 23-6-1834*. The Collector may couple the permission, if given, with such conditions as to (a) payment of garden rates, the removal of obstructions to the stream arising from the means employed to obtain water, etc. as may be desirable. The Collector in a district where the custom is to levy extra rates at once without waiting for the expiration of existing settlements may continue to follow the same but where such has not been the practice it will be left to the Collector under the orders of the Commissioner to impose such conditions, as keeping channels clear and other matters relating to the use of the water as he may consider fair and reasonable. The Collector will in granting such permission pay due regard to the interests of those who may have already erected bandharas on the same stream and will further take care to obtain from the applicant a written acknowledgment of the rights of Government to make other use of the water at any further time if they should think fit to do so, to remove the bandhara without compensation whenever it may be desirable, and to compel the applicant to clear the stream of any obstruction caused by his neglect to keep the bandhara in proper order—*G. R. 3618 of 14-7-1874*.



In tracts where water supply is fitful and inconsistent and where in consequence, patasthal assessment is regulated by a. 55 (*G. R. 3969 of 25-5-1904 see p. 368 ante* with a view to give maximum encouragement and the minimum of penalty and trouble, Government have ordered that the people may take water without first giving notice or making application. But on the extent of irrigation being ascertained they will be liable to pay such rate as will be fixed by the Collector under a. 55.—*G. R. 6663 of 11-7-1906.*

This is not intended to apply to land under regular Patasthal irrigation such as the large irrigated tracts of Western Khandesh.—*G. R. 3333 of 15-4-1907.*

In tracts where class A Patasthal is not wholly abolished, permission is required for any new Bandhara or new irrigation from an existing Pat. This permission is generally given if no rights thereby be injured.

Collector's permission is required for construction of bandhara and Budkis in precarious tracts; and for constructing a dam, Superintending Engineer's consent is necessary.—*G. R. No. 634024 of 9-6-1928.*

After the series of famines from 1896 onwards during which many Pata failed to a greater extent than the survey officers had anticipated and after the Irrigation Commission, the necessity for revising the whole subject was felt and finally in 1907 it was decided to abolish Patasthal of either class A or class B in the tracts which were considered precarious. The reasons are given the *G. R. 2739 of 15-3-1907.* The list of talukas or tracts where Patasthal is wholly or partially abolished is given below.

**Patasthal assessment in precarious areas abolished.**—It was considered that the amount of revenue to be sacrificed will not be large and the result would be a much needed stimulus to private enterprise in the husbanding of the supply of minor rivers, streams and nullas, and the irrigation of the small areas commanded by them. Again the danger that a cultivator who takes water from a Pat may be called on to pay assessment even though a Pat may fail at a critical time, while the man who makes no use of the water may obtain a remission or suspension of assessment, had to be averted. The existence of such a danger is likely to discourage the full utilization of water. If on the other hand water is absolutely free, every drop of it will be utilised, the general value of the crop will be improved, and, possibly, in times of scarcity, employment will be provided both for making the small works required and for cultivating the irrigated crop.

It will be in full accordance with the policy to refrain from assessing for water, lands of precarious tracts which may be irrigated from small channels and dams constructed by the enterprise of the cultivator.

In talukas specified below (given at p. 503-504) which are precarious tracts Patasthal assessment shall be abolished.

As regards other talukas the Collector should make recommendations. To the report containing the recommendation a statement should be appended showing for every part, whether exempted or not, (1) the village, (2)

character of Bandhara, *i. e.* Kacha or Pucka, (3) Maximum rate, (4) Total Patasthal assessment, (5) Whether exempted or retained, (6) Total of Patasthal assessment for all Patasthal village, and (7) Remaining Patasthal assessment after a deduction of total exemption from (6).

**Remission in case of failure of water supply for parts on which Patasthal assessment is retained.**—Where the parts have failed, the Collector should by the 15th of December in each year announce a remission, roughly adjusted to his estimate of failure of 4 annas or 8 annas or 12 annas in the rupee of the recorded assessment in all the parts of the Talukas with any notorious or well-established exceptions. Beyond this, no enquiry should ordinarily be made regarding individual villages or parts.

The Collector should make the decision on his own authority but should report for the information of the Commissioner who should submit a general report for his Division to the Govt. But they should see that equality of treatment is secured by comparison of similar tracts.

The riparian rights of holders of land evidently remain unaffected and will be entered in the revenue records as usual. The construction of additional bandharas, etc on any streams will remain subject to veto by the Collector which should be exercised with due regard to the exercise of existing rights (of persons whose rights have been recorded) and the capacity of the stream. In the above named precarious tracts it is therefore, still necessary to record in V. F. I. which were the lands entitled to water before the abolition of fixed Patasthal and which retain the right of claiming this veto. In all villages the Bandharas and Pats are marked on the map.

The Collector's prior permission will no longer be required for new irrigation within the tracts to which these orders may be extended.—*G. R. 2759 of 15-3-07.*

The orders contained in *G. R. 2759 of 15-3-1907* distinctly contemplated a sacrifice of revenue and Govt. did not think it advisable to go back on them *G. O. 6261 of 20-6-1919*

These orders (*i. e.* contained in *G. R. 2759 of 15-3-1907*) do not apply to tanks or bandharas in charge of the P. W. Dept., which are or have been repaired at the cost of Govt.

Again the above orders (*i. e.* of *G. R. 2759 of 15-3-1907*) do not prevent the taking over by the P. W. Dept., of bandharas and pats where the supply of water can be materially improved by the expenditure of Govt. money and the imposition of a charge under s. 55, L. R. Code, sufficient to give a fair return on the money expended.—*G. R. 3422 of 1-4-1908.*

WHOLLY ABOLISHED

District	Taluka
Sholapur .....	All talukas.
Ahmednagar .....	Shevgaon. Jamkhed. Karjat. Nevasa. Rahuri. Saugamner. Kopergaon. Nagar (except 3 villages. ( R. 6257-09 and 6261-19 ). Parner (except 25 villages ) ( R. 6257-09 and 6261-19 ). Shrigonda ( R. 4631-11 and 6261-19 ).
Poona .....	Indapur. Bhimthadi. Sirur ( R. 4675-16 ).
Nasik .....	Nandgaon ( R. 6351-08 ). Yeola ( R. 2279-11 ).
Bijapur .....	All talukas. ( G. R. 7087 of 18-7-1907 )
Belgaum .....	Parasgad ( G. R. 7087 of 18-7-1907 )
Dharwar .....	Ron, Navalgund, GadagMundargi ( R. 7087-07 )

( Note.—The above orders do not apply to inam villages coming under settlement because the alternative annual assessment under s. 55, L. R. Code is inconvenient. Here the Superintendent of Land Records must inspect State, and assess them for the settlement period under class A. Remission can be given by the Collector ( s. 84 A, L. R. Code ) when supply fails ( R. 11926-15 ).

PARTIALLY ABOLISHED.

District.	Taluka		
W. Khandesh.	{	Shahada	G. R. 2132-09
		Pimpalner	G. R. 636-08, 7270-08
		Sikri	G. R. 1749-12
		Dhulia	G. R. 10377-11.
E. Khandesh. ....	{	Raver	
		Chaliagaon	
		Jalgaon	G. R. 7049-08.
		Bhunaaval Amalner	
Poona. ....	{	Haveli	G. R. 7323-14
		Purandhar	G. R. 6975-16.
		Jannar and Khed.	G. R. 10526-15 and 164- 1
Nasik	{	Sinnar	
		Niphad	
		Nasik	G. R. 2279-11
		Igatpuri	
		Chandor	
		Dindori Baglan Kalvan.	G. R. 163-16

Ahmednagar. ....	Akola (only 4 villages)	<i>G. R. 8257-09</i>
Satara.	{ Man Karad Khatav Koregaon Wai Khandala	<i>G. R. 13535-15</i>
		<i>G. R. 1753-17</i>
	Taagaon, Walwa, Khanapur, confirming in	<i>G. R. 645913</i> <i>G. R. 9257-19</i>
Belgum. ‡ ...	{ Athni Gokak Sampgaon Chikodi & Hukeri	<i>G. R. 10033-11</i>
		<i>G. R. 1601-16</i>

Enquiries for Ratnagiri, Kanara abandoned (*G. 10033-11*) None in Kolaba  
 Certain tracts of Purandhar were classed as precarious in *G. R. 9257-19*  
 For the remaining tracts where class A is still levied, it was abolished for  
 those Pats which were classed as precarious, but replaced (*G. R. 3671-06*,  
*para 12, and 6863-06*), by an annual assessment of class B based upon inspection.

The position then was that for considerable areas an annual assessment  
 was to be imposed, upon inspection (*para 2 of G. R. 3969-04* and see *Rev.*  
*Accounts Manual, pp. 140 & 143*).

The orders upto 1915 left a considerable number of Pats liable to annual  
 inspection and assessment. However in *G. R. 13535 of 18-2-1915* it was  
 directed that new or revived Pat Irrigation by a Bandhara on a stream  
 should not be so assessed, if all Patasthal rates on Pats below the Bandhara  
 were abolished, unless upon personal inspection an officer not below the  
 rank of Deputy Collector judges that the supply is constant and plentiful  
 and obtained at small cost compared with the profits and should not go  
 untaxed. Then (*G. R. 4967 of 20-4-1917* was issued which stated, even in  
 that tracts classed as non-precarious the general principles promulgated in  
 the above Resolution (*G. R. 13535 of 18-12-1915*) should be applied to them  
 subject to the proviso that assessment under s. 55 may be imposed in cases  
 which ordinarily fell under the rules of exemption if it appeared to a  
 sub-divisional officer or a revenue officer of a higher grade on personal in-  
 vestigation, that assessment ought to be imposed in view of plentiful and  
 constant supply of water utilised at small cost compared with the advan-  
 tage gained. Subsequently *G. R. 6679 of 3-7-1919* was issued which stated  
 that if there were any clear cases for the levy of water rate on lands not  
 assessed to Patasthal rates but never-the-less receiving regular irrigation  
 from a pat they should be dealt with by taking action under Govt. Reso-  
 lution mentioned above (*i. e. G. R. 4967 of 20 4-1917*).

Himayat—In the Southern Maratha Country all water rates for tank  
 irrigation have been levied as a separable part of the fixed land revenue  
 called the 'water share'. In Gujarat, it is called Himayat (or 'protection')  
 and Dhekudiat, when the water is lifted by basket from a Dhekudi or dri-

pping well. There is not much real difference between a tank and a Bandhara; but since, in Gujarat, the streams usually have less gradient and catchment the simple expedient of a direct flow led off by a channel from the stream has to be replaced by the more expensive arrangement of a dam and waste weir, and so on. Sometimes the land for which the water is intended is on the upper side of the shallow embankment. Himayat is also levied for inundation from rivers and even from the drainage of roads just as it is also charged (under another name) for the inundations on the banks of the Krishna. In Gujarat the tanks merely supplement the rain-fall; they do not irrigate (like a Panjab Canal) an entirely arid area. In good years crops can be grown without tank water at all. In poor years a single watering from the tank may make all the difference between a good crop and almost a total failure. In these years the great value of the protection can be imagined. There is a tendency to condemn tanks as useless if in October they are found dry. But this is due to a misapprehension of their function. The method of assessing Himayat does not differ widely from that employed for Patasthal. It must always be remembered that the amount imposed in Gujarat is based upon the classer's judgement of the probable average number of years in which the tank would benefit and protect the rice crop (*G. R. 5823 of 11-7-1904*). There is no idea that the whole of the irrigation of the rice every year should be performed by the tank.

In the Joint Report there is no hint that the assessment was made in respect of any obligation upon Government to repair or construct the tanks. In Madras there has been a regular distinction in assessment between tanks and canals maintained by Government and those not so maintained.

There is a traditional and customary obligation upon the irrigators to do petty repairs—see para 115 Vol. I of the Report of the irrigation Committee. If neglected, petty disrepair soon becomes important and expensive disrepair. It is suggested therefore that almost all tanks not taken into the charge of Irrigation Department should be brought under part X of the Bombay Act Irrigation Act, 1879 which was inserted by Bombay Act II of 1914. S. 73 of the Bombay Irrigation Act empowers the Governor-in-Council to declare a canal, channel, stream, river, pipe or reservoir or any part thereof to be a second class irrigation work. S. 84 of that Act imposes the following obligations to be performed by certain persons declared to be under such obligations. They are:—

(1) The filling up of gullies, ruts and holes especially at the back of revetments, and all petty repairs of a like nature essential for the safety of bunds, of tanks, channel-banks or other portions of the said second-class Irrigation Work.

(2) The prevention of the growth on such work of prickly pear, young trees and other vegetation endangering the safety or concealing the condition of such work.

(3) The preservation of such bushes and grasses as have been planted for the protection of the interior water slopes of such work.

- (4) The clearance of silt from sluices, supply and distributing channels.
- (5) The clearance of waste weirs and waste channels.

The general principle regarding the expenses to be incurred by Government for the repairs of tanks (*W. I. 5735 of 1914*) is that in Gujarat upto 20 times Himayat may be spent; but in the Southern Maratha Country where water rates are higher than in Gujarat only ten times the water share is the fixed limit (which may be exceeded with sanction). It has not yet been decided whether this expenditure is to be regarded as final or if not, after how many years it may be repeated.

**Canals.**—If a tank of which the entire water supply vests in Government is taken over and repaired by Government with the intention of keeping it regularly in repair and of controlling the distribution, it then becomes a canal within the definition of the Irrigation Act, *G. R. 11232 of 1916*, and consequently the Himayat assessment is to be struck off after the settlement period; but if the supply is enhanced from a 'new source' or greater catchment area, a supplementary rate may be levied under s. 44 of the Irrigation Act (in spite of the settlement), as is done under all other Irrigation canals *G. R. 3669 of 1916*) provided the rate added to the Himayat does not exceed the water rate on land not paying Himayat. When such a repaired tank irrigates more land not previously assessed for water protection, then either annual irrigation rates may be levied under s. 44 of the Irrigation Act (if in charge of the P. W. D.) or under s. 55 of the L. R. Code (if Part X is applied), or the land may be classed and assessed to Himayat with reference to the amount and quality of supply. This assessment under s. 101 of the L. R. Code is preferable according to the Joint Report but it is only possible at settlement time.

**Sub-soil water.**—The Land Revenue Assessment Committee, Bombay in their Report (1926) at page 26 has discussed the question whether in fixing assessment in general any rate should be levied on sub-soil water. The Committee state "The existing practice is based on *G. R. 1211 of 27 3-1868*. That Resolution gives reasons for charging a low sub-soil water rate instead of a high water rate on wells dug by the agriculturist. It was contended by those who are opposed to this assessment that, if Govt. levy no rate upon a well built by an agriculturist, it is unfair that after the construction of a well had disclosed the presence of sub-soil water in the neighbourhood, a rate should be levied on sub-soil water not only in respect of the land owned by the diggers of the well but also upon the land owned by his neighbour, who perhaps had not the means to dig a well himself." The majority of the Committee were of opinion that such water should not be made the subject of assessment and recommended that this practice be discontinued in future and that rates hitherto charged on such water should be remitted. This recommendation, however, was not accepted by Government.—*G. R. 179321 of 13-5-1927*.

**Sub-soil water.**—In regard to special taxation of wells, it is said with truth that water is, like mineral wealth, fairly taxable by the landlord when

used by the tenant. His Excellency in Council, however, considers that the first principle of its taxation should be that which governs our taxation of the land itself, that is, the capability of being used rather than the use itself. If water of good quality be easily available near the surface, it is more reasonable to tax such land by a light additional rate, whether the water be used or not, than to lay an oppressively heavy tax on those who expend capital and labour in bringing the water into use. There is, however, a point at which this principle must be modified, for when the land is such that when water is not brought to it, it will bear nothing, and when water is used it will yield a fine crop, then even a light tax in the former case is impossible. Of this class are the sandy tracts in the Konkan, which under the influence of water become coconut gardens. It must be held that the right of Govt. to levy a rate by virtue of the water below the surface is in abeyance, or dormant, till the water is produced, but it is doubted greatly, even in this extreme case, whether it is politic, though it may be asserted to be just, to levy more than would be leviable from first class rice ground, which enjoys also the benefits of water not created it is true by the tenant, but utilised by means of his preparation of the ground.—*G. R. 1211 of 27-J-1908.*

**Railway Administrations, Municipalities and local bodies to be charged for use of water.**—The concession of free use water granted to railway companies in *G. R. 2842, of 1-12-1893*, is withdrawn with effect from *6-4-1927*. Railway administrations, municipalities and local bodies should now be charged for at the following rates:—

Rate per 10,000  
cubic feet.

- (a) In the case of Railway Administrations.—
  - (1) water taken from a river, canal or storage work not constructed or maintained by Government.
  - (2) water taken from a tank constructed or maintained by Govt. or from a river or canal getting its supply from a storage reservoir so constructed and maintained. ... .. Not less than Rs. 4
- (b) In the case of municipalities and local bodies.—
  - (1) water taken for drinking and domestic purposes from a natural source vesting in Govt. in the Revenue Department. ... No charge.
  - (2) water taken from any source for industrial purposes, or for any purpose which is a source of profit to the local bodies, or water taken for drinking, or domestic purposes from a tank, river or canal deriving its supply from a storage reservoir or other work constructed and maintained by Govt. ... .. Not less than Rs. 2.
- (c) In case of other bodies.—
 

Railway Administrations (except State Railways) or local bodies or other bodies who are permitted to draw water from any source mentioned above should be required to enter into an agreement in the form

printed as appendix XXIX. The conditions in the agreement are laid down for the guidance of officers who may modify any of them according to the requirements of each case; but in cases where it is proposed to depart widely from these conditions the officer concerned should submit his proposals for the approval of Government.”—*G. R. 6449/24 of 6-5-1930.*

**Payment for water when considered to be land revenue.**—So long as the taking of water from any source of irrigation and payment for the same are optional with the cultivator, the payment cannot be looked upon as ‘land revenue’ payable to Government. Where the payment for water as a part of the land revenue whether it be brought to account under the separate heads of water and dry-crop assessment or not is compulsory, it should be held as land revenue.—*G. R. 1508 of 23-3-1870 (Standing Orders of Govt. in R. D. Vol. III p. 1392).*

**Dhekudiat.**—The Dhekudi (Gujarathi term) or Budki (Deccan term) is a well or pit sunk near the bed of a river into which water either percolates direct, or is led by means of a channel out from the stream. Lands watered in this way in Gujarat were called dhekudiat.

#### SUSPENSIONS AND REMISSIONS.

The cases of places where the supply of water is more or less assured and which will not require a wholesale abatement of the assessment but only suspension or remission of water assessment in years of absolute or partial failure of water supply will be governed by No. 7 of the rules regarding suspension and remission published in *G. R. 5324 of 27-5-1908. (See now Administrative Or. XXXIV in Appendix A).*

(1) It should be remembered that though a taluka as a whole is not classed as precarious, certain groups of villages might well be classed so. It does not necessarily follow that because all patasthal has been abolished, therefore the taluka is precarious and no assessment should be levied under s. 55. As regards the remaining tracts classed as non-precarious the general principles promulgated in *G. R. 13535 of 18-12-1915* should be applied to them, subject to the proviso that assessment under s. 55 may be imposed in cases which ordinarily fall under the rule of exemption, should it appear to a revenue officer not lower in rank than a sub-divisional officer, on personal investigation, that assessment ought to be imposed in view of plentiful and constant supply of water utilized at small cost compared with the advantage gained—*G. R. 4967 of 20-4-1917 (R. D.)*

When patasthal assessment has been abolished by executive orders but a revision settlement of the taluka has not taken place so that the land has not been assessed as dry crop, a water rate higher than the patasthal share of the assessment cannot be imposed under s. 55.—*G. R. L. C. 4472 of 2-9-1930.*

(2) The Commissioners of Central and Southern divisions should consider the cases in which no definite pronouncement has been made whether the



tracts are precarious or not and decide whether such talukas or portions of them should be classed as precarious and entitled to a future exemption of assessment under s. 55.

In the case of suspensions—Administrative Order XXXI states, where the area affected is homogeneous, or whole villages are more or less uniformly affected, the suspensions should be announced for such tract or villages without detailed inspection.

The principal difficulty in applying the term 'homogeneous' is in respect of irrigated land. It can hardly be said that land irrigated by wells is homogeneous with unirrigated land. The general rule is that when fixing the annual valuation of the crops for a considerable tract such as a taluka, attention is paid only to the dry crop (*G. R. 8952 of 1911*). But if it were specially necessary to determine whether suspensions or remissions should be granted on irrigated lands regarded as "a homogeneous tract" distinct from the dry crop lands, the orders are that each holding in the sense of a single plot of land held by one holder (*i. e.*, the survey number if undivided or the sub-division) should be treated individually. If more than half is irrigable it should be treated as irrigated; if less than half, then as dry crop. Next the valuation of the crops should be based rather on the general state of the water supply and level. A man who has a well of water but, has not used it hardly deserves compassion. A full utilisation of the existing facilities is presumed by Govt. Therefore, detailed inspection of the crop of each irrigated holding is quite unnecessary. Officers should ascertain (a) which are the irrigated holdings, and (b) what is the general state of water over the tract and give suspension and remission orders accordingly. These orders might of course be quite different from the dry crop orders.—*G. R. 765 of 1908, 650 of 1907 and 219 of 1914.*

When Officers are not dealing with a tract, such as a taluka or mahal, but when the question is only as to a group of say 10 villages, then they are dealing with a local calamity and Order XXXVII applies. When tank or well irrigation has completely failed either in respect of a single tank through its bursting, or local absence of rain, or in respect of many such sources through short rainfall then a special remission or suspension on the irrigated holdings affected is countenanced under Administrative Order XXXVII.

Remission in case of failure of water.—Order XXXIV states, 'when the assessment includes a separated rate for water advantages then, if the water fails to such an extent that no irrigated crop, or an irrigated crop not exceeding  $\frac{4}{8}$  annas can be grown, the  $\frac{\text{whole}}{\text{half}}$  of the portion of the assessment which represents the water rate should in the case of all occupants and superior holders be remitted without suspension (*G. R. 5087 of 1907 and 528 of 1908*). If such remissions are extensive, the Collector should first consult the Irrigation Officer of the district and in case of difference of opinion should refer the case to the Commissioner.

Notes.—These separate rates are the Patasthal, Himayat or tank water Dhekadiat and Akasia. Motasthal on well irrigation is not usually an extra

rate, but only a rise (or *chad*) in classification which is not separable from the Land Revenue. The separate or separable water rates are usually distinguished in Village Form L. or a statement supplementary thereto, such as the Himayat statement.

(ii) *Akasia* is a rate for capacity to grow rice on rain water only. When the rain is insufficient and crops other than rice are grown the *Akasia* portion is to be remitted.—*G. R. 5475 of 1905.*

(iii) A water rate not assessed as land revenue but optionally contracted for by the holder, as for supply of canal water is not land revenue and its remission *etc.* is not regulated by these rules.

#### RULES REGULATING DISPOSAL OF WATER VESTING IN GOVERNMENT

**Land Revenue Rule 70A** states: No person shall without the previous permission of the Collector in writing, make use of any water of a river, stream or nala which is the property of Govt. for the purpose of irrigating by a *budki* (or *Dhekudi etc.* or a pumping plant) land other than that subject to the existing *nala-chad*.—*Rule 70A (See Appendix A for Rules).*

**Note**—*Nala chad* is explained below at p. 276.

The Collector may grant permission for the use of water of river, stream or nala which is the property of Govt. and for which no water rate is levied under the Bom. Irrigation Act-1879, for the purpose of irrigating by a *budki* (or *Dhekudi. etc.*) or a pumping plant, land other than that subject to the existing *nala-chad* on payment of such water rate as he may deem fit, but not exceeding the rate per annum per acre which may have been fixed for the locality by Govt. for occasional irrigation by Pats under s. 55 of the Bom. L. R. Code, or where no such special rate has been fixed, the maximum *Patasthal* rate sanctioned in the current settlement for the group in which the village or in which the land in question is situate may have been included. Provided that in precarious tracts irrigation by *budkis* or (*Dhekudi etc.*) or pumping plant shall be exempt from the water rate leviable under this Rule.—(*Rule 70B*): (*ibid*).

Any person who, without the previous written permission of the Collector, makes use of any water of a river; stream or nala which is the property of Govt. and for which no water rate is levied under the Bom. Irrigation Act, for the purpose of irrigating by a *budki* (or *Dhekudi, etc.*) or a pumping plant, land other than that subject to the existing *nala-chad* shall be liable to pay such water rate as the Collector may deem fit, but not exceeding Rs. 50 per annum per acre of land so irrigated. *Rule 57C (ibid.)*

The water-rates payable under rules 70B and 70C shall be recoverable as arrears of land revenue.—*Rule 70D (ibid).*

Explanation—For purposes of rules 70B and 70C '*budki*' includes a '*dhekudi*' or any similar appliance for raising water." *R. L. C. 2587 of 1-7-31.*

**Nala Chad**—Lands situated within 5 chains of a nallah have their classification value increased upto two annas. This increase is called the Nallah Chad.

As has been described elsewhere the chief factor of value in the case of ordinary dry crop lands is that of the soil which therefore, forms the basis of classification. There are however, dry crop lands which possess certain advantages over the ordinary class and which therefore, according to the survey principle have received a higher classification value. Such lands under the Deccan system are those.

(1) which are situated close to a nalla or stream from which irrigation is practicable by means of budki.

(2) which have deposit of silt from the overflow of rivers or streams.

(3) which are favourably situated for receiving the drainage from higher grounds and so have a superior supply of moisture,

(4) which though not actually irrigated from a well, are yet clearly capable of being so irrigated;

In all these cases the "advantage" over the ordinary soil was allowed for by making an increase to the soil classification in accordance with a scale for each factor.

Lands situated within 5 chains of nalas (chains being considered the effective range of this kind of irrigation) which contain water till the end of December, and on which there would be no difficulty in drawing water by means of a budki or other contrivance, should have an increase added to the *shag* (soil) annas as follows:—

Soil classification	Increase
From 16 to 10 ... ..	One class, 2 annas
9, 11 to 6 ... ..	Half class, 1 anna
Under 6 ... ..	No increase.

The increase so made to the soil annas was technically known as "Nala Chad"

By *patasthal Bagayat* is meant land irrigated by damming streams with dams called "*bandhara*" and leading the water collected above the dam to the area to be irrigated by means of channels (*puts*). These *Bandharas* may be either permanent (*palika*) or temporary (*kacha*), but are usually of the latter description, being constructed annually of earth and stones at small cost. Frequently a stream is dammed at many spots, the overflow from the principal dam being impounded by the next lower dam, the supply of which is after supplemented by springs in the bed of the stream between the two dams. *Patasthal* irrigation is essentially by flow, but water-lifts called *saps* or *sapals* are used to lift the water to the pat from the reservoir when the impounded water about the dam falls below the level of the channel.

**Different classes of Patasthal irrigation.**—Except when very small, each *bandhara* usually serves several fields, varying in number according to

the head of water and owned by different proprietors, each of whom has the right to take water from the pat in turn, the garden highest up the pat getting the water first, then the next, and so on till the last when the re-distribution re-commences. The regulation of the water supply as between the different owners depends entirely upon custom and varies with the district. Thus, in Khandesh and Nasik where the area under individual *bandharas* is usually considerable, the whole is divided up into *phads* or sections, in each of which the sharers in the *pat* possess a plot. These *phads* are so arranged as to correspond with the rotation of irrigated crops. Thus, in the case of a village with a 3 year rotation, there might be 6 *phads*, 2 of which would each year be cultivated with sugarcane, 2 with rice followed by sugar and 2 with wheat and similar crops. In the next year the sugarcane *phad* would be cultivated with wheat, the wheat *phad* with sugarcane and so on. There is no rule as to the time for which each garden is entitled to have the water, as it is to the advantage of each sharer to flood his field as quickly as he can in order that his next turn may come round again as soon as possible. Elsewhere in the Deccan, where the area irrigable under individual *pats* is usually smaller, the *phad* system does not prevail in its Khandesh form. There is, however, an approximation thereto in the Satara District, by which the sharers in turn have the privilege of cultivating sugarcane in certain portions of the irrigable area, the supply of water after the 1st March being reserved for them alone, with the understanding that in successive years similar consideration will be shewn to the others. In this district the *pali* or rotation of distribution is fixed for a certain period, say 8 days, and the exact number of hours, or rather *prahars* of 3 hours each per week, during which each sharer may use the water, is carefully arranged.

**102.** The assessment fixed by the officer in charge of a survey shall not be levied without the sanction of Government. It shall be lawful for the Governor in Council to declare such assessments, with any modification which he may deem necessary, fixed for a term of years not exceeding thirty in the case of lands used for the purposes of agriculture alone, and not exceeding ninety-nine in the case of all other lands.

Assessment so made not leviable without the sanction of Government. But may be fixed, with or without modification, by the Governor in Council for a term of years.

#### Commentary

**Period of Revision**—Except in Sind the period of revision has, as a rule, been thirty years and the Governor in Council has not, except in very rare cases, exercised his powers to fix it below that period. In Sind the period

of settlement was fixed for ten years up to 1917 when the period was generally raised to twenty years in accordance with the Chatfield Committee's recommendation.

This restriction, however, will not apply to lands receiving water supply from canals depending upon the Lloyd Barrage—*G. R. L. C. 1453 of 11-9-1924*.

A term of thirty years in the case of agricultural lands.—Laud revenue assessments that are not liable to short periods of revision but are fixed for a long time will stimulate industry, initiate enterprise and lead to improvement in agriculture. A long term of settlement is less disturbing to the assessment-payer and enables him to look ahead and lay his plans without fear of having to make a higher contribution to the State treasury until expiry of the settlement period. Thirty is the generation in the life of an agriculturist. If he knows at the beginning of this period that his assessment is subject to no enhancement at the hands of Govt., he has ample time to assimilate his expenditure and his mode of living generally to the rate of assessment he is called upon to pay; while, if in the course of the settlement period the value of his land increases, prices show a steady rise, and facilities of markets and communications improve, his economic condition is such that he can prepare himself for a reasonable enhancement of rates at the succeeding revision settlement.

Forty years is the period of settlement adopted in the United Provinces. In Sind conditions are different. Agriculture in that province depends upon irrigation and the whole situation is often changed by the construction and improvement of canals.

Note—There are some who argue that a short period of settlement is advantageous to the state and community at large, in that they benefit alike by enjoying their legitimate share of an unearned increment that changing conditions may bring into existence between the dates of two revision settlements.

'It shall be lawful'—These words are according to well established rules of interpretation imperative and not optional. Therefore, Government must immediately, after the rates are sanctioned with and without modifications declare that the rates so sanctioned shall not be liable to increase for a term of years.—*G. R. 784 of 3-2-1892*.

'Fix'—S. 100 empowers the officer in charge to fix the assessment. The declaration under a. 102 does not really fix the assessment but grants a particular period to the 'fixity' of the assessment. Otherwise the assessments 'fixed' are provisional and can be modified (a. 102) or revised (a. 106) by Government. The use of the word "if any" in a. 48 shows that assessment may be fixed although it has been declared under a. 102 to be for a term of years.—*G. R. 4477 of 10-6-1904*.

Term of years—This section leaves Govt. a discretion to fix rate for a period not exceeding 30 years or 99 years, provided the rates are fixed for a term of years. S. 104 which contains distinct special provisions (1) for the year in which a survey settlement is introduced and (2) for the next follow-

ing years, indicates clearly that the legislature did not contemplate settlements for one or even two years only; for the provisions in question are such as are just and requisite at the initiations of a term of settlement. It would be a misuse of language to call a settlement for a year a settlement for a term of year.—*G. R. 784 of 3-2-1892.*

**Distinction between fixing a period and sanctioning a settlement.**—In s. 102 in the first sentence provision is made for sanctioning the rates proposed by the Settlement Officer, which is tantamount to sanctioning the settlement within the meaning of s. 25 of ( Bom. Act I of 1865 ) the Survey and Settlement Act. And the section then goes on to provide for fixing the period of the settlement which is tantamount to re-enacting what was provided in s. 28 of the Bom. Act I of 1865. Thus there is a very fair distinction between ' fixing ' a period during which a sanctioned settlement is to continue in force unmodified, and " sanctioning " a settlement which goes no further than accepting the rates proposed by the Settlement Officer.—Per *Beamont J. in Secretary of State v. Sadashiv, 14 Bom. L. R. at p. 87(1911).*

When the term of a settlement expires but no action is taken the same settlement continues.—*G. R. 784-1892, 1397 of 1912,*

**Revision Settlement of Sind** should not be undertaken or enforced before the expiry of 20 years from the date of last revision, but this restriction will not apply to lands receiving water supply from canals depending upon the Lloyed Barrage.—*G. R. L. R. 1453 of 11-9-1924.*

Lands which are really building sites should be excluded from the operation of the officer engaged in revision settlement of agricultural land and left to be dealt with separately.—*G. R. 4763 of 11-7-1903.*

#### INAM VILLAGES.

**Settlement procedure in the case of Inam villages.**—The orders in *G. R. 8914 of 14-9-1916* ( see this *G. R.* below) apply equally to: revision ( and original ) settlements of Inam villages. In the settlement reports of Inam villages it should be invariably reported whether the procedure prescribed in the *G. R.* referred to above was adopted—*G. R. 5473/24 of 23-2-1927.*

In the case of Indian villages, coming under the settlement after the general settlement of the Taluka, the same rates may be applied *G. R. 15921 of 16-1-1878* and this general sanction should be taken to be the sanction required under s. 102 and 103.—*G. R. 6386 of 6-12-1880.*

In the absence of survey and re-classification temporary revision settlements are introduced ( with a period of guarantee of four years,—*9727 of 3-1-1926* to permit the survey being taken up ) in Inam villages which were due for first revision settlement in a taluka where revision settlements are introduced—*G. R. 3129 of 23-2-1923.*

Even in the case of Inam village when the term of a settlement expires but where no sanction is taken, the old settlement continues as a whole—**44 Bom. 110.**

**Introduction of Revision Settlement into an Inam village**—Unless consent of all sub-sharers in the Inam is obtained previously, there can be no such introduction.—*G. R. 345/24, of 1-5-1924.*

**In the case of temporary revision settlements of inam villages, the period of guarantee is fixed for four years, to permit the survey being taken up.**—*G. R. 8727 of 8-7-1926.*

“In Talukdari villages the proposals regarding the grouping and rates should be published together with the part of the report relating thereto. Government do not consider it desirable to publish proposals for the reduction of demand below the full amount leviable by law as these reductions may depend not only on general considerations but also on the position of individual estates.”—*G. R. 1240, of 6-2-1918; These Orders were reaffirmed in G. R. 1203/28 of 15-8-1928*

**Assessment of rice lands.**—*G. R. 3805 of 6-4-1918* stated that Govt were not prepared to modify the orders passed in *G. R. 887 of 3-2-1899*. The object of the orders was not to impose a tax on improvements but, pending the execution of the improvements, to reserve the right to tax the natural advantages of the land which rendered improvement possible. The principle underlying *G. R. 887 of 3-2-1899* was by no means new, for at the first revision settlements, new rice was specially dealt with in order that the natural facilities for the conversion of the land into rice land should be taxed. But in order to avoid taxing the portion of the improvement due to the expenditure of the occupant's capital and labour the taxation was always based on the dry crop rate. The order in *G. R. 3805 and 2675 of 1901* apply both to first and second revision settlements. The average assessment of new rice land should not exceed the maximum dry crop rate of the group.—*G. O. 12325 of 17-11-1919.*

### THE PRELIMINARY NOTIFICATION

In the case of Revision Settlements, the Settlement Officer should as soon as he has worked out his revision of groups and rates, forward to the Collector a notification (see the form of advance notice of proposed settlement (1) for Presidency proper (2) for Sind *infra* at p. ) in the vernacular of the district giving the names of the villages coming under revision according to the groups or assessment circles in which it was proposed to arrange them and showing against each village the existing and proposed maximum rates, that the Collector should cause this notification to be published without delay by arranging to have one copy posted up in the Chavadi or other conspicuous place in each village affected by the settlement, and that in the notification it should be stated that for a period of two months from the date of its publication the Collector would be prepared to receive objections made by the village community and presented in writing by the Revenue Patil as their representative to the proposed grouping of the villages and maximum rates. (A Similar course should be adopted in Sind *G. R. 571 of 21-1-1897*). In the notification for local publication in the villages as direct

ed above, the Settlement Officer should also publish a brief summary of the reasons for the proposed alteration in the rates and grouping and a copy of the Settlement Officer's report should be deposited in the Taluka Office in order that persons interested therein may consider the detailed proposals.—*G. R. 8914 of 14-9-1916.*

"In *G. R. 8686* of 31-10-1937 and 17-2-1938 Government directed that the Settlement Officer, when submitting his report to the Settlement Commissioner, should prepare a precis of more important parts, that the Settlement Commissioner should approve and arrange for its translation into the vernacular and that copies of it and of the appendices should be published in the villages. They also directed that printed copies of the precis and of the appendices should be made available for distribution to the public on payment."

The Collectors may forward their remarks on settlement reports (*G. R. 7447 of 23-10-1896*) and may then forward the petitions of objections to Government with remarks on them through the Settlement and Divisional Commissioners.—*G. R. 7152 of 11-7-1916.*

**ADVANCE NOTICE OF PROPOSED SETTLEMENT.  
FORM OF NOTIFICATION FOR THE PRESIDENCY PROPER**

It is hereby made known to the people of the undermentioned villages of Taluka \_\_\_\_\_, District \_\_\_\_\_, that the revision and the survey assessment of the lands of the said villages is about to be effected and that it is proposed to divide the said villages into the following groups, the existing and proposed maximum rates of each village being as shown against its name in the following list:—

Number	Name of village.	By former settlement				By revision settlement		
		Maximum rates.				Maximum rates.		
		Number of group	Dry crop.	Rice	Garden	Dry crop	Rice	Garden
1	2	3	4	5	6	7	8	9
	Group I							
	Group II							
	Group III							

Reasons for alteration in the rates—

Reasons for alteration in the grouping—



The result so far as the village of \_\_\_\_\_ is concerned is that the rates in the village are raised by \_\_\_\_\_ annas in the rupee.

A copy of the Settlement Officer's report has been deposited at the office of the Mamuldar of \_\_\_\_\_ and is open to the inspection of any one interested.

For a period of two months from the date of the publication of this notification the Collector will be prepared to receive objections made by any village community to the proposed grouping of their village and the maximum rate thereof, which objections must be presented in writing by the revenue patel of the village as the representative of such village community.

Collector of \_\_\_\_\_

*Note.*—When the Settlement is not revision but original, omit such words as 'revision' and 'existing' rates cols. 3 to 6 and words implying 'alteration.' For the 3rd clause below the form read "the result is that the Mamul or old revenue payments made by the village are raised by \_\_\_\_\_ annas in the rupee."

**FORM OF NOTIFICATION FOR SIND.**

It is hereby made known to the people of the undermentioned villages of taluka \_\_\_\_\_, district \_\_\_\_\_, that the revision of the survey assessment of the lands of the said villages is about to be effected and that it is proposed to divide the said villages into groups as detailed in the subjoined statement, the existing and proposed rates of each village being as shown against its name.

Number	Name of village	By former settlement					By revision settlement			
		No. of group	Rates according to different modes of irrigation.				Rates according to different modes of irrigation.			
1	2	3	4	5	6	7	8	9	10	
	Group I									
	Group II									
	Group III									
	Group IV									

Reasons for alteration in the rates—

Reasons for alteration in the grouping—

A copy of the Settlement Officer's report has been deposited at the office of the Mukhtiar of and is open to the inspection of any one interested.

For a period of two months from the date of publication of this notification the Collector will be prepared to receive objections in writing from any zamindar to the proposed grouping of his village and the collection of revised rates proposed therefor.

**Note**—*Vide.* foot-note to the form of notification to Collector of the Presidency proper.

**Notifications of settlement and period of guarantee**—(1) Where the assessments have received the sanction of Government under 102, a notification shall be published in the district or portion of the district to which the settlement extends in form A, if such district or portion of the district is situate in the Bombay Presidency excluding Sind or, in Form A.4 if it is situate in Sind as the case may be, and when the Governor in Council has, under 102, declared such assessment, with any modifications which he may deem necessary, fixed for a term of years, such declaration shall be notified in the official Gazette.

(2) Where the Settlement is introduced into a part of a taluka the assessment of which part has been already settled the guarantee will be restricted to the unexpired portion of the period for which the assessments in the already settled part of the taluka were fixed.—*Rule 17, The Bombay Land Revenue Rules, 1921.*

**Notes**—Prior to 1908 when a thirty years guarantee expired say on 31-7-1904 the new settlement rates were announced during the revenue year ending 31-7-1905 but since as provided by s. 104 they could not be brought into force during that year, they were levied from 1-8-1905. Thus a complete year elapsed between the two. But recently Government started introducing the revised settlement in the last year of the expiring settlement *i. e.* during the year 1903-04. By adopting this device Government is enabled to get over the difficulty created by s. 104 and is able to levy the revised rates immediately after the old period of guarantee expires. But this method deprives the public of the benefit intended to be reserved for the public by s. 104.

#### FORM A (Rule 17)

Notification of Settlement for the Bombay Presidency excluding Sind.

( Notice under sections 102 and 103, Land Revenue Code, 1879. )

#### For Revised Settlement.

( For original settlements and revised settlements when the basis of classification is changed. See notes below. )

Whereas the Governor of Bombay in Council has been pleased to sanction, under section 102 of the Bombay Land Revenue Code, 1879, the levy of assessments for the revised settlement, which have been fixed under the provisions of s. 100 and 101 of the said Code in the case of such lands as are now actually used for the purposes of agriculture alone and in the case of

unoccupied cultivable lands ( but excepting lands classed as pot Kharab )  
within the village of

of the taluka

it is hereby declared under a. 102 of the said Code that the said assessments  
calculated as noted below shall henceforth be leviable in accordance there-  
with and shall be fixed for a term of years from

Class of land	Approximate increase or decrease in the rupee of existing assessment. Annas pies.
---------------	---

Dry Crop. ....	....
Rice etc. ....	....

2. Notice of the same is hereby given under a. 102 of the said Code to all  
holders of land in respect of which the assessments have been sanctioned  
( approved ).

3. By this notice the Revised Settlement shall be deemed to have been  
introduced in the aforesaid village.

4. But in the case of land which may hereafter be brought under irriga-  
tion by the use of water, the right to which vests in Government or which  
is supplied from works constructed and maintained by, or at the instance  
of, Government, or in the case of land which may be supplied with an  
increased amount of water from works constructed, repaired or improved at  
the cost of the State, Government reserves the right of imposing an extra  
cess or rate, or of increasing any existing rate, for the use of water supplied  
or increased by such means, whether under the provisions of the Bombay  
Irrigation Act, 1879, or otherwise.

5. In addition to the fixed assessment, a cess not exceeding such rate as  
may be allowed by law will be levied under the Bombay Local Fund Act,  
1869, or other law for the time being in force, for the purpose of providing  
funds for expenditure on objects of local public utility and improvement.

6. The reservations respecting the right of Government to trees as made  
by any general notification at the time of, or after the Survey Settlement,  
and reproduced in the margin, or as made by any express order at the time  
of Survey Settlement and recorded in the Settlement Records, are hereby  
continued. All other rights over trees are conceded to occupants.

Note 1—In cases of original settlements the following changes should be  
made in the above form.

( 1 ) Substitute " original " for " revised " occurring in line 3 of paragraph  
1 and in line 1 of paragraph 3.

( 2 ) After the word " assessments " in line 7 of paragraph 1 add " as shown  
in the accompanying Akarband " and omit " as noted below. "

( 3 ) For the words " approximate increase or decrease in the rupee of  
existing assessment " in paragraph 1 substitute Maximum Rates.

Es. As.

(4) Substitute the following for paragraph 6:—

“6. The right of Government to trees standing in lands which are now occupied, is hereby conceded to occupants thereof subject to the general exceptions entered in the margin and the special exceptions inscribed in the Settlement Records.”

**Note 2**—In cases of revised settlements in which the classification basis is altered the following changes should be made in the above form:—

(1) After the word “assessments” in line 7 of paragraph 1 add “as shown in the accompanying Akarband” and omit “calculated as noted below”.

(2) For the words “approximate increase or decrease in the rupee of existing assessment” in paragraph 1 substitute “Maximum Rates.

Rs. As.

**Note**—This form was finally confirmed in *G. R. 3013-20*.

**Land used for non-agricultural purposes.**—After 1901 all unoccupied land whether non-agricultural or not and all Non-agricultural land and all land which was judged to be building sites even if not yet built upon (*G. R. 4763 of 17-7-1903*) even if occupied was excluded from the settlements (*G. R. 6513 of 19-9-1903*). In 1904, however, in disregard of s. 54 it was again ordered *G. R. 4582 of 1904* that unoccupied agricultural land should be deemed to be included in the Settlement, if any assessment was imposed in the Akarband. But read rule 38. The proviso to s. 58 does not apparently come in the way.—*Anderson*.

**Assessment.**—When rates of assessment have been sanctioned by Government, the assessment to be imposed on each survey number or sub-division shall be determined according to the relative classification value of the land comprised therein.—*Rule 10, the Land Revenue Rules, 1921*.

In order to afford the people an opportunity of knowing and filing their objections to his proposals, the Settlement Officer shall publish a notification in the vernacular in Form C-B (*R. 7447-86, 1281-14, 344-15 and 8914-16*), in which the proposed increase or decrease in rates in annas and pies per rupee is stated with a short abstract of his reasons translated into the vernacular; also a copy of his report is deposited for inspection at the Taluka Office. Petitions of objections received by the Collector within two months are submitted to Government for consideration with his proposals. If Government raise (or in an inam village lower) the rates proposed by the Settlement Officer, a fresh notice issues and a fresh opportunity of objection is afforded before the orders become final—*R. 6141-03, 15544-17. Administrative Order XIX, the Land Revenue Rules, 1921*.

**Note.**—The above order applies to Talukdari villages also; *G. O 1240 R.D. of 6-2-1918*. The Collector should maintain a register of the objections received in writing to the proposed settlements. *G. R. 2101, 6529 of 1894, G. R. 1205 of 15-8-1928*.

*Notes.*—*G. R. 6141 of 9-7-1903* states that when Government have not accepted the Revision Settlement Officer's proposal by enhancing them, another notification should be published showing the assessment as determined under the orders of Government. In this connection Patkar J. in *Emperor v. Moheshwar Janardan*, 30 Bom. L. R. p. 1262 (1928) said that the Resolution mentioned above and the note thereon by Mr. Anderson in his commentary on Land Revenue Rules (1921) have not the force of legislative enactment or statutory rules. If the introduction of settlement was legal under s. 103 the mere fact that certain formalities, which were required to be observed under a Government Resolution were not so observed would not nullify the validity of the introduction of the survey settlement under s. 103.

*Notes.*—The approval given by Government to the proposed new rates would be a sufficiently considered approval to allow of their introduction and levy. But there would remain a locus paenitentiae or space for making amendment and hearing complaints which might be extended to about a year. The Settlement Officer's report and the proposals should of course go through all the usual procedure and examination before the first notification of introduction in form A is issued (see form A above).

The Assistant Settlement Officer should prepare a brief summary of his recommendations and remarks and deposit a copy of his report and of his summary in the Taluka Office. *G. R. 6914 of 1916*. This summary should be translated in vernacular which should be about 1/10th the bulk of the report, should also be printed and (some) copies kept for sale at the Government Book Depot. *G. R. 8680/24 of 30-10-1927; 17-2-1928*. Orders as to the printing of Settlement Reports and Reviews (to go in duplicate) as in *G. R. 1003/28 of 24-7-1928*.

If the proposals made by the Settlement Officer are altered by Government a fresh notification should be issued inviting further objections as stated above: the rates approved of by Government being held as provisional and subject to reconsideration after objections are received.—*G. R. 6141 of 7-9-1903* and *G. R. 13544 of 1917*.

(iii) *The Settlement Report.*—The proposals of the Settlement Officer are submitted to Government in the form of a Settlement Report which consists of three parts *viz*: a Settlement Map, the report proper and a number of Statistical Appendices. It should be confined to essentials and not digress into superfluous details. (*G. R. 8618 of 14-7-1923* and *G. R. 6479 of 14-1923*)

(a) *The Settlement map.*—This Map has to be sent in duplicate, the one copy showing the existing grouping and the other the proposed grouping of villages with the boundaries of the various groups outlined in colour according to the following colour chart.—

Group-I.	Group-II.	Group-III.	Group-IV.	Group-V.
Red	Blue.	Purple	Dark green	Light yellow
	Group-VI.	Group-VII	Group-VIII	
	Orange	Light green	Brown	

The proposed maximum Dry-crop rates are also shown in the margin together with the rates of the adjoining talukas.

(b) **The Report proper.**—The points usually discussed in the settlement report may be divided into the following six main heads:—(i) Introductory remarks; (ii) Position and physical features (iii) Climate, general condition of the people and resources. (iv) Revenue history. (v) Proposed Grouping and Rates. (vi) Estimated result of the proposed Grouping and Rates.

The subject generally dealt with under heads (iii) and (iv) and the sources from which the necessary information with reference thereto is obtained are the following:—

**Head (iii)—Climate, general condition of the people and resources.**

Subject.	...	...	Source of information.
(1) Climate	...	...	Personal observation and local inquiries.
(2) Rainfall	...	...	Appendix A.
(3) Cultivation and crops	...	...	Appendix B.
(4) Modes of husbandry	...	...	} As 1
(5) Communications—Railways, Roads... and ferries	...	...	
(6) Markets and fairs	...	...	As 1.
(7) Imports and exports	...	...	From the Railway and Customs authorities,
(8) Manufactures	...	...	} Appendix E.
(9) Industries	...	...	
(10) Population	...	...	Appendices C and M.
(11) Schools and education	...	...	From Educational authorities.
(12) Health	...	...	From the Mamlatdar.
(13) Live and dead stock	...	...	Appendix D.
(14) Water-supply	...	...	Appendix F.
(15) Value of land as ascertained by	...	...	
(a) sales	...	...	Appendix G,
(b) leases	...	...	Appendix H.
(16) Result of crop experiments	...	...	Revenue authorities printed reports.
(17) Prices	...	...	Appendix L
(18) Wages	...	...	The Mamlatdar and personal inquiries.

**HEAD (iv)—Revenue History.**

(19) Explanation of variations in occupied area and revenue.	...	...	} The Mamlatdar.
(20) Remissions: casual or permanent	...	...	
(21) Revenue collections.	...	...	
(22) Coercive measures for recovery of land revenue.	...	...	

(c) **The Statistical Appendices.**—The statistical appendices to be attached to the report—14 in number are as follows, the forms of the appendices together with any special orders as to the way in which they are to be drawn up being given in Appendix VI:—

Appendix.	Subject	Source of information.
A	Rainfall ... ..	The Director of Agriculture.
B	Cultivation and crops. ...	The Mamlatdar.
C	Population according to occupation ... ..	The Director of Agriculture.
D	Agricultural stock ... ..	The Mamlatdar.
E	Shops, industries, etc. ...	Do.
F	Wells, tanks, budkis and sources of water-supply. ...	Do.
G	Ordinary sales ... ..	} To be prepared by the Settlement Officer from the Record of Rights.
H	Leases. ... ..	
I	Prices. ... ..	The Director of Agriculture.
J	Changes in occupied areas (abolished by G. O. 706 of 23-2-19	} The Mamlatdar.
K	Revenue Statement. ...	
L	Effect of Revision settlement proposals. ... ..	
M	The population and the area and assessment of Govt. unoccupied land. ( Revised by G. O. 706 of 39-2-1919 as showing village population and area of unoccupied, assessed cultivable Government land.	The Mamlatdar.
N	Reference to papers regarding the expiring Settlement.	

The Settlement Report in this form is to be submitted to Government through the Collector, the Settlement Commissioner and the Divisional Commissioner, the officers are directed to keep to following time table:—

By Settlement Officer to the Collector. ... ..	Before 1st August
By Collector to the Commissioner of Settlements ... ..	Before 1st January
By the Commissioner of Settlements to the Divisional Commissioner ... ..	Before 1st July.
By the Divisional Commissioner to Government. ... ..	Before 1st January

G. R. 6646 of 3-3-1922.

On the receipt of the report and a consideration of the opinions of the various officers through whom it has passed and also the petitions of objections if any, Government issue orders:—

(a) either sanctioning the proposals or making such modifications in them as may seem fit;

(b) fixing the date of introduction;

(c) determining the period of guarantee. As regards—

(b) the date of introduction—the orders are that Revenue Settlements should invariably be introduced between the 1st August and the date of the first instalment of Land Revenue (*G. R. No. 1447 of 27-2-1901*).

(c) the period of guarantee—the usual term is thirty years, which is also under s. 102 L. R. Code, the maximum period permissible in the case of lands used for the purpose of agriculture alone, but, subject to this maximum, any period may be fixed by Government according to circumstances.

### (3) THE INTRODUCTION OF THE SETTLEMENT.

Previous to the amendment of the Land Revenue Code by Act IV of 1913 the introduction of the settlement, under the provisions of s. 103, was performed by the announcement on the spot of the revised assessment of each survey number. By the same section of the revised Code, however, the settlement is deemed to have been introduced "when the levy of the assessment fixed under ss. 100 and 101 upon any land has been sanctioned under s. 102 and notice of the same has been given in accordance with rules made in this behalf". The rules providing the form of notice to be given are Rules 17 and 18 under s. 214 (g). It is to consist of firstly a notification to be published in the district to which the settlement extends (a). The districts Notification.—this is to be published in the form of Appendix A to the L. R. Code and secondly a notification in the Government Gazette.

"When the assessments fixed by the Survey Department have been sanctioned by Government a notification determining the period for which they are guaranteed is generally published in the Government Gazette in the form given below. The publication of such a notification is not however, an essential step towards the introduction of a settlement under s. 103 *G. R. 557-B, of 9-5-1932*.

No  
Whereas Government have sanctioned the assessment fixed by the Superintendent of Land Records, in the case of such lands as are now actually used for the purposes of agriculture alone, and in the case of unoccupied cultivable Lands, Government and Inam within the (but excepting lands classed as pot-kharab) villages herein below mentioned, in the taluka of the district; and whereas notice of such sanction has been given in accordance with the provisions of s. 103 of the Bombay L. R. Code, 1879, and the Revision Survey Settlement has thereby been introduced into the said villages: Now



in exercise of the powers conferred by s. 102 of the said Code, the Governor in Council is pleased to declare all the assessments above referred to, fixed for a term of \_\_\_\_\_ years,

commencing with the Revenue year of \_\_\_\_\_  
and ending with the revenue year of \_\_\_\_\_

As will be seen from the terms of the second notification the assessments so fixed are those "of such lands as are now actually used for the purpose of agriculture alone and of unoccupied lands". Lands used for a non-agricultural purpose are thereby excluded from the settlement and the survey guarantee does not apply to them. Further, by the first notification the power is retained of levying an extra cess for water in the case of those lands which may "hereafter" obtain a new or increased water-supply by the use of water the right to which vests in Government.

**Concessions to occupants**—Two concessions are secured to occupants by law under s. 104 of the L. R. Code:—

(a) Under the first paragraph of that section the difference between the old and revised assessments, is to be remitted in the year in the course of which a settlement, original or revised may be introduced. By "this year" as has been ruled by *G. R. 2973 of 5-5-1903* is meant the first year of the new settlement.

(b) By the last paragraph of this section an occupant who is dissatisfied with the new rates may, in the year next following—i. e., the second year of the introduction of the new settlement—resign any survey number or sub-division held by him on notice given before the 31st March and on doing so will receive remission of the increase imposed by the revised assessment.

In addition concessions to occupants are granted under the Igatpuri or other similar rules (*vide* Part I. p. 177). Under standing orders these concessions are to be extended to all talukas in which revision settlements are introduced (*G. R. 5396 of 10-6-1914*) but having been promulgated solely under the executive orders of Government they may be withdrawn at any time.

**Printing of Settlement Report.**—Regarding the printing of the Settlement Report correspondence, the orders are that all reports relating to the revision of assessment are to be printed as selections in foolscap size. The present practice is that, when a Settlement Report is ready in manuscript a duplicate copy of it, with all its appendices is sent at once to the Superintendent, Government Printing, through the Settlement Commissioner and Director of Land Records, with instructions to print them as selections in foolscap size. Each of the Officers (the Collector, the Settlement Commissioner, and the Commissioner of the Division) through whom the report passes likewise, forwards a copy of his remarks to the Manager, Government Central Press, with similar instructions. Finally, when the report has been reviewed by Government, the resolution is sent to the Press to be printed. The whole correspondence is then bound as a selection with a title page

and an index and all the copies—570 is the usual number—are sent to Government for distribution from the Secretariat to the various officers and departments concerned.

**Appointment of a Standing Advisory Committee**—One of the questions before the Land Revenue Assessment Committee, 1925–26 was whether a Standing Advisory Committee consisting of officials and non-official members of the Legislative Council with a majority of the latter should be appointed to examine the settlement proposals submitted by the settlement officer through the Collector *etc.*, and to advise Govt. upon them before they are brought into operation. The Committee after having given careful consideration to the arguments of official witnesses who were opposed to the creation of such a Committee thought that their objections were greatly exaggerated. The Committee wrote: "In their opinion it is unfair to suppose that the non-official members of the proposed committee would not give absolutely unprejudiced advice and would not place the interests of the State and the community at large above their own personal wishes and the demands of their constituents. They consider that officials are apt to regard the question of assessment too much from the financial point of view and are liable to ignore the real interests of the masses in their not unnatural desire to bring additional revenue into the exchequer. They think that the advice of non-officials, experienced in agrarian problems, would materially assist Govt. in coming to a decision upon the proposals put up by its revenue officers, however, experienced and expert the latter might be, and they very strongly recommend that a standing committee should be set up for the purpose of putting the case of the persons immediately concerned, *viz.*, the agriculturists, before Govt. in every case of revision settlement. In their opinion there should be a statutory provision that all proposals for revision settlement should be placed before a standing advisory committee consisting of six members, of whom not less than four should be non-official members of the Legislative Council, elected by that body itself. The Committee recognise that settlement experts would be required on this standing advisory committee and therefore do not wish to restrict the officials to members of the Legislative Council, but would leave it open to Government to appoint as their representative on the Committee any officer with a special knowledge of settlement technique, whether a member of the Legislative Council or not.

The Committee have no desire that the Legislative Council should usurp any of the administrative functions of Government, but they strongly hold the opinion that there must be some safeguard against Government's entirely ignoring the recommendations of the proposed standing advisory committee. They propose therefore that, if its recommendations on any revisions settlement proposals are not accepted by Govt., the said proposals shall not be put into force unless the sanction of the Legislative Council is obtained. In the opinion of the Committee it is essential that in a matter so vital affecting the whole of the agricultural population of this Presidency, the ultimate voice in the matter of the enhancement of assessments should rest

with the Legislative Council. They are aware that it is not possible for a large legislative body to go into all the intricacies and technicalities of a revision settlement proposal, but they think that after the proposed advisory committee has thoroughly gone into such proposals and discussed their details with the expert officers of Govt., it is quite possible to present the material facts of each proposal to the Legislative Council in such a form that the Council can come to a definite decision on the actual merits of every case.

The opinion of official witnesses is summarised by the Committee in the following terms—“The official witnesses are satisfied with the prevailing practice of consulting local cultivators in the initial stages of a revision settlement inquiry. The settlement officer spends several months in touring the taluka under revision, in the course of which he visits nearly every village and takes the opportunity of consulting the villagers on the spot and hearing what they have to say. Their views are taken into most careful consideration by him and his proposals are made with the fullest knowledge of local conditions as expressed by the people most intimately concerned. He is in a far better position than any other person, official or otherwise, to appreciate the actual economic condition of the country-side, and to estimate the extent to which the tract under his survey is capable of bearing an enhancement of assessment or deserving of reduction. His proposals are carefully scrutinised in turn by the Collector, the Settlement Commissioner and the Revenue Commissioner and they are also published in the taluka for the purpose of inviting objections. Under the orders of Govt. a notification of the proposed rates must be posted up in each village of the taluka with a notice that the Collector will for a period of two months be prepared to receive objections. When the proposals finally come before Govt. therefore, not only have they passed through the hands of all the superior revenue officers who have both a local knowledge of the circumstances of each taluka and an expert knowledge of the science of revision settlement, but local opinion has also had ample opportunity of expression and all objections are laid before Govt. and carefully scrutinised before orders are passed. In these circumstances the official view is that no committee, advisory or otherwise, can be in a better position than Govt. themselves to decide upon the merits of any particular proposal. It is further contended that the revision of a revenue settlement is one of the executive functions of Government, which cannot be delegated to a purely legislative body like the Legislative Council, the more so in as much as such a body must from its very nature be swayed by political considerations, and bound to be influenced by the demands of agricultural electorate which returns the majority of its members and whose interests lie naturally in the directions of opposing any form of additional contribution to the State.

**Non-official view**—At present the settlement officer after preparing his report submits it to the Govt. through the Collector, the Settlement Commissioner and the Revenue Commissioner, and the Govt. by an executive fiat either confirms it or modifies it, but any arbitrary levying of assess-

ment or enhancement of assessment is not at present subject to any judicial check as the jurisdiction of the Civil Courts in respect of the incidence or enhancement of land revenue is barred. The settlement officer after publishing his report invites objections from the rayats. Scarcely one per cent. of the rayats affected by this revenue report can understand the intricacies of the Report. Besides the method of keeping this report open to inspection in the Mamlatdar's office is hardly conducive to the rayat getting any outside help in the matter of understanding the contents of this report. Under these circumstances nothing except a general inability to pay an enhanced tax is pleaded by the rayat, and the authorities having once taken it into their heads that the rayats are prospering, are hardly likely to listen to and consider the objections if any, in detail. It is, therefore, sought to place some check on this procedure followed and a Standing Advisory Committee is suggested to be appointed in this connection.

This Committee is to do nothing more than to examine these proposals of the settlement officer and to advise Govt. thereon. It is sought to have a non-official majority on this committee. No doubt the work of the settlement officer is stupendous and to subject it to a check by having recourse to a Civil Court would entail great loss of time and money. But looking to the fact that the provisions of the Land Revenue Code have often been observed in the breach during the last half a century under cover of Rules framed by the Executive Govt., it may even be thought necessary to have such a drastic check on the doings of the settlement officer. But if nothing is left hereafter to the arbitrary discretion of the settlement officer and the Executive Govt. but the whole system of determining assessment and its enhancement is embodied in a law, then perhaps a recourse to Civil Courts would be uncalled for. However, notwithstanding any comprehensive code of rules, the settlement officer and the Executive Govt., is likely to go wrong and some check is absolutely necessary. So long ago as in the year 1871 Sir Bartle Frere in his evidence has stated "that in such a matter as this one could hardly be too favourable to the rayat the great danger in India being that the Govt. Officer always strained more or less in favour of Govt." This being the state of affairs and the basis on which the incident of assessment is fixed being completely contradictory as understood by the Govt. and the people, there ought to be some check on the actions of these Govt. Officers. If the Standing Committee is to be of any use at all, its advice ought to be respected by the Govt., otherwise the farce of such a committee having a non-official majority would simply be ridiculous. Some official witnesses have gone the length of saying that the non-official members would be biased in favour of the rayat, but the above quoted opinion of Sir Bartle Frere would prove the necessity of meeting the official view by putting forward the non-official one. To avoid all this arbitrary procedure there is only one solution and that is of having a permanent settlement with each individual holder. But in its absence one may even go the length of suggesting that the bar to the jurisdiction of

Civil Courts should be removed and the rayat would be allowed an open door to enter into and attack the arbitrariness of the procedure only on the ground that the incidence of enhancement is opposed to the rules of Law.

[\*] 103. When the levy of the assessment fixed under Introduction of sections 100 and 101 upon any land has settlement. been sanctioned under section 102, and notice of the same has been given in accordance with rules made by the Governor in Council in this behalf, the settlement shall be deemed to have been introduced with respect to the lands of which the assessments have been sanctioned.

#### Commentary

*N. B.*—See notes to s. 102. *ante*.

**History.**—Under the old s. 103 of the L. R. Code the introduction of the Survey Settlement was effected by announcement publicly made on the spot by the officer in charge of the survey, the Collector, Assistant or Deputy Collector of the revised assessment for each survey No. The old s. 103 of the L. R. Code was amended by Bom. Act VI of 1913, s. 46. The present section as amended by Bom. Act VI of 1913, s. 46 laid down only two conditions to validate the introduction of the survey settlement, first, the sanction under s. 102 and second, the notice in accordance with the rules made by the Governor in Council. Under rule 14 (see below) of the Bombay Land Revenue Rules, 1921 the notice required by s. 103 shall be given by beat of drum in the village for which the assessment has been sanctioned and a written notice shall be posted in the Chavdi or some other public place in the village. The first condition is to be satisfied by the Government by publishing a resolution giving sanction to the rates for the various classes of the land and by giving intimation that the revised rates should be introduced during a particular year and guaranteed for a period of a certain number of years.—*For Patkar J. in Emperor v. Horekhar*; 30 Bom. L. R. at p. 1261 (1928).

**Procedure.**—The relevant sections of the L. R. Code are ss. 102, 103 & 104. The Statutory requirements are, that Government should 'fix' the assessment, for a term of years not exceeding thirty (s. 102) and then by s. 103, when this has been done "and notice of the same has been given in accordance with rules made by the Governor in Council in this behalf, the settlement shall have been deemed to have been introduced with respect to the lands of which the assessments have been sanctioned." s. 104, so far as is relevant provides that the enhanced assessment shall not be levied in the

[a] This section was substituted by Bom. Act V of 1913, s. 46, for the original section. As to the local modification of section 103, see para. 4 of foot-note (a) on p. 1, *supra*.

year in which a survey settlement is introduced. There is no other statutory requirement. The rules made under s. 103 are rules No. 17 and 18 of the Bombay Land Revenue Rules 1921. (see below).

Now where the revised assessments were sanctioned by a *G. R. of 5-7-1926*, which directed that the revised rates should be introduced during the current year 1925-26, and guaranteed for a period of 30 years and where notices in the terms of Rule 17, made under s. 103 were given and announced in the village by beat of drum and where subsequently on *26 8-1926*, Government issued another notification under s. 103 of the Code, declaring the revision settlement already introduced to be fixed for a term of thirty years commencing with the revenue year 1926-27 and ending with the revenue year 1955-56, a point was made about the discrepancy between the statement in the first resolution that the revised settlement was introduced in the year 1925-26 and a declaration in the second resolution, that its term is from 1926-27 *Murphy J. held*: "The explanation is that the announcement and introduction are identical, for the assessment is introduced by being announced. The revised assessment comes into force in the sense that it is levied, in or from the year after its introduction, and as the intention is that rates once fixed should be collected for thirty years, the guarantee for thirty years should run from the year in which the new rates are first levied, as the first year of the thirty. This would be 1926-27, and there is really no discrepancy and no illegality in the matter.

However, on *24-7-1926*, a notice was issued by the Collector stating the rates proposed by the Settlement Officer and those sanctioned by Government giving concise reasons for increases, and inviting objections to be made within two months by the representatives of the villages affected. It appears that the Collector acted in accordance with a *G. R. 6141 of 9-7-1903* which resolved that when Government have not accepted the Revision Settlement Officer's proposal by enhancing them, another notification should be published showing the assessment as determined under the orders of Government. Now objections under this notice may still be made to the proposed grouping and the maximum rate of a village but to argue that the effect of this notice which is issued by the Collector is to cancel the Government Resolution introducing the survey, and the one declaring its duration is manifestly wrong. The object of the notice is, in fact, explained in *G. R. 15544 of 28-12-1917.—XX*

"The attention of the Officers concerned should be invited to *G. R. 6141 of 7-9-1903*, and they should be informed that by the issue of those orders it was the intention of Government, that if an increase beyond the rates proposed by the Settlement Officer was ordered, a further opportunity for objections should be allowed, the increased rates being held as provisional and subject to reconsideration of objections if any received."—*Emperor v. Moreshwar Janardan*, 30 Bom. L. R. at p. 1268 (1928).

**Notification of Settlement and of period of guarantee.**—(1) Where the assessments have received the sanction of Government under s. 102, a noti-

ication shall be published in the district or portion of the district to which the Settlement extends in form A, if such district or portion of the district is situate in the Bombay Presidency excluding Sind, or, in form AA, if it is situate in Sind, as the case may be, and when the Governor in Council has, under s. 102, declared such assessments, with any modifications which he may deem necessary, fixed for a term of years, such declaration shall be notified in the official Gazette.

(2) Where a Settlement is introduced into a part of a taluka of which a part has been already settled the guarantee will be restricted to the unexpired portion of the period for which the assessments in the already settled part of the taluka were fixed.—*Rule VII, The Bom. Land Revenue Rules.*

*Notice of sanction and announcement of assessment.*—(1) The notice required by s. 103 shall be given by beat of drum in the village for which the assessments have been sanctioned and written notice shall be posted in the chavdi or some other public place in the village.

(2) Such notice shall be given by or under the orders of the officer in charge of the survey, referred to in s. 100, or the Collector.

(3) Persons affected by the assessments who do not attend at the time and place specified in the notice shall be subject to the same liabilities as if they had attended.—*Rule XVIII, The Land Revenue Rules. (See Appendix A for Rules).*

104. In the year in the course of which a survey settlement, whether original or revised, may be introduced under the last preceding section, the difference between the old and new assessment of all lands on which the latter may be in excess of the former shall be remitted, and the revised assessment shall be levied only from the next following year.

[<sup>a</sup>] In the year next following that in which any [<sup>b</sup>] original or [<sup>c</sup>] revised survey settlement has been introduced, any occupant[<sup>c</sup>] who may be dissatisfied with the increased rate imposed by such new assessment on any of the survey

[a] As to the local repeal of section 104, para. 2, see para. 4 of foot-note (a) on p. 1, *supra*.

[b—b] These words were inserted by Act XVI of 1895.

[c] As to the local modification of the word "occupant" see para. 5 of foot-note (a) on p. 1, *supra*.

numbers<sup>[a]</sup> or sub-divisions of survey numbers<sup>[b]</sup> held by him shall on resigning such number <sup>[a]</sup> or sub-division <sup>[a]</sup> in the manner prescribed by <sup>[b]</sup> section 74 <sup>[b]</sup> on 'or' before the 31st March, receive a remission of the increase so imposed.

### Commentary

**Scope.**—S. 104 does not permit the levy of enhanced rates in the year of introduction *e. g.* If an original or revised settlement is announced between 1st August 1916 and 31st July 1917 no enhancements are leviable in the year 1916-17 even though the old settlements expired on 31st July 1916.

*G. R. 6651 of 5-7-1908* prescribes that reductions announced, say in the year between 1st August 1916 and 31st July 1917, shall usually take effect in that year even when the old rates may not expire till 31st July 1917 and have already been collected; the refunds are not made in cash but the amount recovered in excess is deducted from the assessment due in the following years. *G. R. 8824 of 12-12-1916*. In the same circumstances, enhanced demands should be brought with the accounts and treated as 'remitted' though legally they cannot be demanded—*G. R. 4147 of 1897*. This is due to the practice (cancelling *G. R. 2973 of 1904*) of introducing revised settlements in the last year of the expiring settlement.—*G. R. 1143 of 30-1-1917*.

**Notes.**—*G. R. 2973 of 5-5-1904* perhaps correctly interprets s. 104 when it lays down that the year of introduction must be the first year of the new settlement and not the last year of the current settlement, that is, if the old settlement expires on the 31st July 1904 the new settlement must be introduced on 1st August 1904 and the revised rates would be leviable from 1st August 1905.

When the term of a settlement expires but no action is taken, that settlement continues integrally, and cannot be applied to some lands and not to others.—*G. R. 784 of 1892* and *G. R. 1307 of 1912*.

The amount of remission should be disbursed to whomsoever pays the assessment into Government treasury, whether solely or partly on his own account and whether he be the Khatedar, sub-sharer or tenant.—*G. R. 2108 of 31-3-1882*.

**Directions.**—Land Revenue Settlement should be introduced between the 1st of August and date of the first instalment of the Collection of Land Revenue and reductions in the assessments should be given effect to, in the year of introduction.—*G. R. 1447 of 27-2-1901*. This is a special concession made by Government and does not affect the period of guarantee.—*G. R. 1396 of 27-2-1903*.

[a—a] These words were inserted by Bom. IV of 1913, s. 47.

[b—b] These words and figures were substituted for the original words and figures "sections 74 and 76" by Bom. IV of 1913, s. 47.



## THE GRADUAL LEVY OF ENHANCEMENT

**Increase of assessment in the case of individual holdings.**—The main causes of increase in the case of individual holdings were stated in *G. R. 2619 of 26-3-1884* to be (a) the assessment of *Pat-kharab*; (b) the assessment of encroachments; (c) changes in the system of classification. In the same resolution commenting upon these cases Govt. observed that "In order to prevent excessive individual increases the fixed standard of valuation must not be abandoned. It will always be optional with Govt. to remit wholly or in part, or for a particular period, such proportion of the increase in excess of 10 per cent. as may seem necessary." It appears from these remarks that the system of relief was meant to apply only to cases in which the increase was over 100 per cent. and it appears to have been contemplated that increases falling short of this degree would be collected in full from the beginning. In the event, however, the system that was actually worked out went much further than this.

**The Igatpuri Concession, 1885.**—The system referred to in the above paragraph was brought into operation at the Revision Settlement of Igatpuri of Nashik by *G. R. 341 of 4-3-1885*. The object as stated in the above mentioned *G. R.* being 'the proposed rates are fully approved by all the officers who have expressed an opinion and they no doubt represent a very moderate assessment. Much of the best dry-crop land has in fact during the past settlement been held at a quit-rent. But as there has been a rectifying of classification and an enhancement of assessment on general grounds, the increase is in many cases very considerable, and though the rates are approved it is a question whether they can be at once collected in full without disturbing the domestic economy of the rayats. Govt. therefore, directed that while the *alarlaas* should in all cases be made out according to the full sanctioned rates, it should be notified that enhancement in excess of 4 annas in the rupee or 25 per cent. of the assessment on a holding will be remitted for the first two years of the Revised Settlement, enhancement in excess of 8 annas in the rupee for the third and fourth years, and enhancement in excess of 12 annas in the rupee for the fifth and sixth years of the Revised Settlement, so that the cultivators may adjust themselves to the increased payment by degrees.'

**Note.**—The remissions entailed were originally granted upon the holding *i. e.* upon the revised, as compared with the original assessment of all the lands standing in a rayat's name in the Government books as a whole and upon the assessment of individual survey number, but by *G. R. 2579 of 20-3-1895* and *G. R. 2798 of 3-4-1895* Government directed that the remissions granted in future revision settlements should be calculated on the survey number or *pat*-number, unless specifically ordered to the contrary.

**Bhiwandi Concessions.**—The Igatpuri concessions do not apply to the Koukan districts of Thana, Kulaba and Ratnagiri to which the Bhiwandi concessions are applicable. The scale of enhancement is 33 per cent. for



4. **Katara**

Waste numbers.

Remission of 14 annas per rupee for the first 3 years when the khata is Rs. 25 or over.

Cultivated numbers.

Remission of 50% for 1st year.  
 .. 25% for 2nd year.  
 when the revised assessment of the cultivated numbers is Rs. 25 or over.

These concessions under the Igatpuri and Konkan systems are now granted when the new Pakka Akar exceeds the old Pakka Akar by more than the prescribed limits, provided that the excess is 4 annas and above.—*G. R. 8573/24 of 19-5-1928.*

The year of introduction is the year in which a notice is given under s. 103. In this year the excess of the new over the old assessment is remitted (*G. R. 2826 of 7-5-1887*). Revision Survey Settlements must be held to have been introduced in the year in which the provisionally sanctioned assessments are announced under s. 103 and not in the year in which the modifications to which those assessments may have been declared liable are brought into operation.—*G. R. 8057 of 22-12-1900.*

Occupant may resign survey Number or its sub-division—By the last paragraph of this section an occupant who is dissatisfied with the new rates may in the year next following *i. e.*, their second year of the introduction of the new settlement resign any survey number or sub-division held by him on notice given before the 31st March and on doing so receives remission of the increase imposed by the revised assessment.

**INAM VILLAGES**

Levy of enhanced rates in the year of introduction is not allowed in the case of Inam villages by virtue of s. 216 read with s. 104. When this term of a settlement expires but no action is taken, that settlement continues as a whole even in the case of Inam villages—44 Bom. 110.

105. The fixing of the assessment under the provisions of section 102 shall be strictly limited to the assessment of the ordinary land revenue, and shall not operate as a bar to the levy of any cess which it shall

The fixing of assessment under section 102 limited to ordinary land revenue.

be lawful for the Governor in Council to impose under the provisions of any law for the time being in force for purposes of local improvement, such as schools, village, and

district roads, bridges, tanks, wells, accommodation for travellers, and the like, or of any rate for the use of water which may be imposed under the provisions of section 55 Bom.VII of 1879 [a] or of the Bombay Irrigation Act, 1879 [a].

#### Commentary

The Consolidated assessment can not legally be increased on account of improvements in irrigational facilities effected during the currency of a settlement introduced under s. 102 (*G. R. 6068 of 11-8-1897* and *G. R. 7019 of 22-9-1897*) but there is no objection to the imposition of rates under s. 55 as well as of crop rates under the Irrigation Act in respect such improvements. Clause 4 of Form A (under Rule 17) of the notification of settlement is sufficient to safeguard the rights of Government. (*see Appendix A for Rules*).

**106.** It shall be lawful for the Governor in Council to direct, at any time, a fresh revenue survey or any operation subsidiary thereto, but no enhancement of assessment shall take effect till the expiration of the period previously fixed under the provisions of section 102.

[b] Provided that when a general classification of the soil of any area has been made a second time, or when any original classification of any area has been approved by the Governor in Council as final, no such classification shall be again made with a view to the revision of the assessment of such area.

#### Commentary

"Fresh Revision Survey" is ordinarily called "Revision Survey."

The tripartite classification (dry crop, rice, and garden) in village Form I (see this form in section) is a record of soil classification which is final under s. 106 and this record has its value and should be maintained, notwithstanding the fact that in course of time the character of the cultivation of particular field may change.—*G. R. 5098 of 22-8-1905.*

[a—~~a~~] These words were added by the Bom. Irrigation Act, 1879 Bom. VII of 1879 s. 2.

[b] This proviso was substituted for the original clause by Bom. IV of 1886, s. I.

No re-classification after a general classification of soil made a second time where at the original survey a Gut number which was waste, was divided into four compartments only of nearly 50 acres each for classification and where the number was subsequently given out for cultivation and where at the revision settlement the survey classification of this occupying number was made according to the 'partial' system and the original classification was regarded as confirmed. Government held that the method of re-classification having been approved the land could not be re-classified at the next revision settlement in view of the letter of a. 106.—*G. R. R. D. 14618 of 4-12-1917.*

The revision settlements.—From 1863 the period of Revision Settlements commenced. The original revision settlements were nothing but in name original settlements, because the work of survey and demarcation was done *de novo*. Later on improved methods were introduced. At first the field work was reduced to a test of the old measurement and classification and finally abolished altogether and the original work continued in its entirety. The operation then performed was the fixing of the assessment rates. Where a general classification of the soil is approved as final, no such classification shall be again made with a view to revision of the assessment of such area (a. 106). In 1892, the work of settlement was handed over to the Revenue Department after the abolition of the separate Survey Department. The work of the Revision Settlement is now entrusted to the sub-divisional Officer, either an Assistant Collector, or a Deputy Collector. He is then called the Settlement Officer. For the collection of statistics he is given the assistance of a clerk. The settlement officer is to seek the guidance of the director in preparing his reports especially in respect of all technical matters which were formerly dealt with by survey Officers.—*G. Rs. 516 of 22-1-1905.* and *1308 of 23-6-1901.* The Commissioner of Settlements and Collectors are required to give to the Settlement Officer proper instructions and guidance as soon as he begins his work.—*G. G. 6618 of 14-7-1923* and *G. R. 6479 of 1-6-1922.* It should be remembered that the Settlement Officer has to do with classification. The way in which the Settlement Officer can revise the relative assessment of the villages is by changing their grouping or by enhancing the previous maximum rates up to a certain limit and thus there is a gradual levy of the enhancement. The new assessment on the group must not exceed the former assessment by more than 33%. No increase exceeding 66% should be imposed on a single village without the orders of Government; no more than 100% should be levied on an individual holding. *G. R. 5739 of 29-10-1884* and *2619 of 16-3-1884.*

The Publication of Settlements reports.—The proposals are forwarded by the Settlement Officer to the Collector who with his remarks submits them to the Commissioner. And the Commissioner sends them on to the Settlement Commissioner and the Settlement Commissioner with his remarks submits them to Government for approval.

The rates are published, with a precis being made, and objections are invited. Rents paid by tenants should be taken into careful consideration in framing settlement proposals (*G. R. 2698 of 13-3-1908*). The new rates are introduced by the Collector before the Revenue year begins. The new Akarbands (Village Form No. 1) are prepared by the Superintendent of Land Records for each Survey Number or Hissa. The Akarbands are sent to the Taluka Office. The Talatis or Kulkarnis then prepare the new Khatavaniyas for collecting the revised assessment,

[a]107. In revising assessments of land revenue regard shall be had to the value of land and, in Conditions applicable to revisions of assessment. the case of land used for the purposes of agriculture, to the profits of agriculture:

Provided that if any improvement has been effected in any land during the currency of any previous settlement made under this Act or under Bombay Act I of 1865, [b] by or at the cost of the holder thereof, the increase in the value of such land or in the profit of cultivating the same, due to the said improvement, shall not be taken into account in fixing the revised assessment thereof.

### Commentary

**History**—Although the survey settlements introduced since the time of Messrs. Wingate and Goldsmid had greater legality than that of the mere previous usage, it was felt, after these operations had been in progress for nearly 26 years, that some steps should be taken to give these measures a legal sanction. With the introduction of regular civil administration, increased value was attached to rights in the land and there was stronger inclination to resist any attempt to encroach upon these rights. It was therefore considered necessary to confer on these proceedings a validity which only legal sanction can give. With this view the 'Bombay Survey and Settlement Act' (Act I of 1865) was passed by the local legislature in 1865. The following extract from the preamble:—

"Whereas a moderate assessment of land revenue is equally conducive to the interests of Government and the well-being of its subjects, and whereas it has been and is the desire of Government to equalise assessments, to ascertain and settle the obligations, and to record the rights, interests and privileges of persons and classes owning and occupying land."

[a] This section was substituted for the original section 107 by Bom. IV of 1896, s. 2.

[b] Bom. I of 1865 (except sections 37 and 38) is repealed by section 2 of this Act which has been repealed by Bom. IV of 1913, s. 5.

shows that the Government of that period realized the necessity of settling the interests and privileges of land-owning classes. S. 3 of the Act declared that the existing settlements were to be in force subject to its provisions. Ss. 25 and 26 made it lawful for a Survey Officer to assess any lands not paying land revenue 'under such general and local rules as may be in force in the survey under his charge', and included in this power of assessment the power 'to assess whether directly on the land or in the form of a rate or cess upon the means of irrigation, or in any other manner whatever'. S. 30 made it 'lawful for the Governor in Council to direct at any time a fresh survey or classification of soils or revision of assessment or all or any of these combined, but the assessment so revised shall not take effect till the expiration of the period of previous guarantee given as provided in s. 28. Such revised assessment shall be fixed, not with reference to improvements made by the owners or occupants from private capital and resources, during the currency of any settlement under this Act, but with reference to general considerations of the value of land, whether as to soil or situation, prices of produce, or facilities of communication.' This section exempted improvements made by the owners of the land during the currency of any settlement under the Act. This Act, while confirming previous settlements, empowered Government to 'direct the extension of the survey to any part of the Presidency,' and further defined the powers and duties of Survey Officers, provided for the demarcation of field and village boundaries and the settlement by the survey officers, of disputes connected with them, and for the erection and repair of boundary marks. It also empowered the officer in charge of a survey to assess Government and alienated land, and required him when making settlements of land revenue to prepare a record showing all rights and interests in the land and giving all the necessary information. It further provided for the administration of survey settlements, and empowered Government to direct a fresh survey, and to revise assessments on the expiration of a term of settlement. Shortly after the passing of the Act the settlement leases of the earliest settled talukas began to fall in, and in these field operations preliminary to the introduction of revision survey rates had to be undertaken.

Advantage was taken at revision to improve the old valuation with due caution that such improvement should not in any degree be a virtual tax on improvements carried out during the currency of a lease by the expenditure of private capital.

Until 1879 the law which governed these operations was contained in Act I of 1865. In this year Bombay Act I of 1865 was repealed and the provisions therein contained were re-enacted in the Bombay Land Revenue Code, 1879. In this Code, while all the provisions of Bombay Act I of 1865 relating to assessment and revision were re-enacted without any change, a new provision was inserted whereby a right was reserved to Government to take into consideration, in fixing revised rates, certain classes of improvements effected by the owners or occupants from private capital. This provi-

sion was opposed to the fundamental principle of Bombay settlement system and further, as it was considered likely to discourage the application of private enterprise and capital to agriculture, Government, in 1884, issued an executive order giving a general assurance that all improvements effected by occupants from private capital should be exempt from taxation in revision and further restricting the enhancements in revision settlements to the limits prescribed in the following rules:—

1st.—The increase of revenue in the case of a taluka or of a group of villages brought under the same maximum dry-crop rate, shall not exceed 33 per cent.

2nd.—No increase exceeding 66 per cent. shall be imposed on a single village without the circumstances of the case being specially reported for the order of Government.

3rd.—No increase exceeding 100 per cent. shall in like manner, be imposed on an individual holding.

Notwithstanding this assurance it was considered inadvisable to retain the objectionable provision above referred to in the statute book and it was accordingly amended by Act IV of 1886, whereby the following two principles have been laid down for the guidance of settlement officers in fixing rates in future revision settlement:—

(1) That assessments will be revised on consideration of the value of land and the profits of agriculture; and

(2) that assessment will not be increased at revision on account of increase in such value and profits due to improvements effected on any land during the currency of any previous settlement by or at the cost of the holder thereof.

#### VALUE OF LAND

The term 'Value of land' does not refer to the intrinsic richness or quality of land. The vernacular equivalent of 'value' is not 'Magdur' but 'Kimmatt,' i. e., price.

In *G. R. 1790/24 of 12-5-1927* Government observed that they should limit at the time of revision settlement the pitch of enhancement to 25 per cent. in the case of all talukas that have already undergone a second revision.

**System of Assessment in Bombay essentially empirical.**—S. 107 is criticised as being quite 'vague.' In fact it does not attempt to define what is meant by 'profits of agriculture' an expression which is capable of various interpretations. The section does not say how the profits are to be ascertained nor what share the Government is to take of them when ascertained. The words 'regard shall be had to' are also noteworthy. The assessment, it appears, is not necessarily to be based on the profits of agriculture.

It is observed that the vagueness existing in the provision appears to be intentional and is in accordance with the history of the land revenue system, especially in Bombay. S. 107 must be read with reference to the system



which it was intended to interpret and give effect to. The Bombay Land Revenue system is thus described in the report of the Indian Taxation Inquiry Committee (1924-25).

"The system of assessment in Bombay is essentially an empirical one..... At the original survey the lands were classified after careful enquiries as to their fertility into several groups, and their relative values expressed in fractions of a rupee, 16 annas representing the best class of soil. The classification of the soil was not made with the object of basing the assessment on the net produce, but merely served as a basis for the apportionment of the total demand determined for the area on general considerations. The determination of the assessment involved three distinct operations. The talukas were first grouped according to marked and permanent distinctions such as climate, situation and the general condition of cultivation. The next process was the determination of the total demand for the area under settlement by an examination of the revenue and economic history of the tract. The third and final operation was the distribution of the aggregate thus determined over the individual survey numbers with reference to the soil classification described above. The Settlement Officer's final decision thus depended not upon the formal working out of results based on theory, but rather upon the subjective impressions of local knowledge and experience."

**Assessments incapable of dogmatic treatment.**—The Government of India, in their Land Revenue Policy Resolution of 1902, strongly condemned any attempt to turn the system into a science:

"Assessments cannot be dictated by the theorist in his study. They elude dogmatic treatment, and can only be safely worked out by the Settlement Officer in the village and on the fields. While they admit of statistical analysis, they are liable to be hampered by premature statistical definition. The true function of Government is to lay down broad and generous principles for the guidance of its officers, with becoming regard to the traditions of the province and the circumstances of the locality, and to prescribe moderation in enhancement and sympathy in collection."

In 1919 after the Royal Commission on Decentralisation had recommended that the general principles of assessment should be fixed by legislation, Lord Minto's Government protested against the proposal on the ground that the matters for which the Commission wished to provide by legislation "require a more elastic expression than the precise forms of law allow" and that "an attempt to embody in the law anything beyond the somewhat vague generalities contained in the Bombay Land Revenue Code would inevitably lead to grave difficulties."

**Practice differing from principle.**—There was, however, in practice a growing tendency towards more precise and dogmatic method. Revision settlement came to be based more and more on statistics, multiples and indices, especially in Bombay. After the Joint Committee of Parliament which was appointed to consider the Government of India Bill, 1919, had recommended that the process of revising the land revenue assessment should

be brought under closer regulation by statute, the Government of Bombay appointed the Land Revenue Assessment Committee whose report was published in 1926. This Committee recommended by a majority that s. 107 be amended as follows:—

“In revising the assessments of land revenue regard shall be had to the profits of cultivation. The settlement officer shall take into account the following factors:—(i) the state of communications during the previous settlements, (ii) the proximity of markets, (iii) the trend of price, (iv) the general economic conditions and history of the tract, (v) the results of crop experiments, and (vi) rental value.

**Rental value as basis of assessment.**—However it must be observed that the official members of the committee took the view that rental value, where it can be ascertained, should be adopted as sole basis for fixing the assessment, all other considerations being regarded as merely subordinate factors.

Before orders were passed on the report the Indian Taxation Inquiry Committee also submitted their report in which they recommended that for the future the basis of settlement should be annual value, i. e., ‘the gross produce less cost of production, including the value of the labour actually expended by the farmer and his family on his holding, and the return for enterprise. In *G. R. 1790/24, of 13-5-1927* Government accepted the view of the official members of the Land Revenue Assessment Committee (1926), whereby, it was pointed out, they would merely ‘give legal effect to the existing principle upon which Bombay settlements are already based. The Government accepted the principle that in order to take its share in the earned increment derived from land the Government should limit at the time of revision settlement the pitch of enhancement to 25 per cent. in the case of all talukas that have already undergone a second revision. It was proposed by Government to embody this limit in law. The contemplated change in the law not having yet been made we have to take s. 107 as it stands. But even as it stands there is no legal hindrance in it to the basing of the assessment upon rental value, or what the Indian Taxation Inquiry Committee have described as annual value. The Government in *G. R. 1790/24 of 13-5-1927* laid down that ‘rental value is the sole basis for fixing the assessments, and all other considerations *viz.* proximity of markets, trend of prices, etc., are subsidiary factors.’ Previous to this by *G. R. 1446/24 of 27-8-1926* Government had proclaimed ‘rent cannot be regarded as part of the cost of cultivation. (It is a share of the profit.)’ Mr. F. G. H. Anderson, the Settlement Commissioner and the great exponent of the theory of rental value, in his ‘facts and fallacies’ about the Bombay Land Revenue System (1929), says that rental value is not the same thing as rents and does not emerge from mere enumeration of the rents actually paid or agreed upon. According to him rental value is a sublimation or abstraction from actual rent of all sorts. There is, therefore, bound to be considerable difficulty in ascertaining it correctly, and where leasing is the exception rather than the rule, one must be very cautious in applying rental value deduced from the actual

rents found, to the much larger area which is never leased at all. The natural interpretation of the language of s. 107 is that value is a matter proper for consideration in the case of both agricultural and non-agricultural land. But as in the case of agricultural land, the value will normally depend on its capacity for producing profits. The main criterion, however in determining the rates of assessment, is the profit of agriculture.

#### NON-TAXATION OF IMPROVEMENTS.

"Improvement" defined.—An "improvement" in its technical sense means any improvement made by a rayat in the agricultural value of his holding, at his own expense and not at the expense of the State. Thus when a cultivator builds a well either with his own capital or with the aid of funds borrowed from Government under the Improvements Act or the Agricultural Loans Act, he is said to have made an "improvement". Again if at his own expense he converts drycrop land into rice land the result is an "improvement". But if in the latter case the conversion is due to the construction of a Government tank, canal or other source of water-supply it would not be termed an "improvement" in the technical sense.

Ploughing and sowing would be as much an improvement as irrigating because it goes to increase the net profits of agriculture. Improvements are unobtrusive such as grading, draining, applying the improved methods, or obtrusive *i. e.*, visible such as embankments, tanks, wells.

At the Original Settlements land was classed and assessed in accordance with the condition in which it was found at the time, *i. e.*, rice land was assessed as rice, bagayat as bagayat, dry-crop as drycrop, and so on. Even at that time, as Mr. Tytler noted, both rice lands and bagayat constituted "improvements" since the wells must have been constructed some time previously at the expense of the rayats and similarly the rice lands must have been prepared by them by the construction of embankments. Indeed, the Collector of Poona protested against the special assessment of bagayat lands upon this very ground. But these opinions were in advance of the age, and though now accepted as the basis for the assessment of such lands, were rejected at the time when they were first put forward, and lands assessed strictly in accordance with their "class".

Non-taxation of improvements.—One of the chief principles subsequently laid down by the Bombay Govt. for the guidance of their survey officers in revising survey settlements was that the assessment of land should not be enhanced in revision settlement on account of increased value due to improvements effected by the holders during the currency of the past settlements. When the first survey and settlement act (I of 1865) was passed, the need for the encouragement of agricultural improvements, and especially for the construction of wells had impressed upon Govt. the advisability of adopting a benevolent and liberal policy in assessing lands and this policy was given effect to in s. 30 which provided "Such revised assessment shall be fixed, not with reference to the improvements made by the owner or occupant from private capital and resources during the currency

of any settlement under this Act, but with reference to the general considerations of the value of land, whether to soil or situation, prices of produce or facilities of communication."

In 1879, Bom. Act I of 1865 was repealed, and the provisions contained therein were embodied in the Bom. L. R. Code (Act VI of 1879). In this Code, while s. 30 of the Bom. Act I of 1865 was re-enacted with little change as s. 106, another section (s. 107) was added to it. It ran as follows:

"Nothing in the last preceding section shall be held to prevent a revised assessment being fixed:—

(a) With reference to any improvement effected at the cost of Government or

(b) With reference to the value of any natural advantage when the improvement effected from private capital and resources consists only in having created the means of utilizing such advantage, or,

(c) With reference to any improvement which is the result only of the ordinary operations of husbandry."

Now although that section had never been so applied or interpreted as modifying the principle that the occupant should be secure in the enjoyment of the improvement effected by his labour and outlay, it did reserve to Government the power to consider, in fixing the revised assessment, the increased value derived from certain classes of improvements. The effect of the refinement caused by the new s. 107 upon the plain terms of the previous section was, not unnaturally, to arouse doubts in the public minds as to the real intention of Govt. Thus the presence of the subsoil water is a 'natural advantage' which is 'utilized' by the construction of a well, such an improvement, therefore, would fall under the purview of s. 107.

Similarly, the improvement of the soil by careful cultivation and manuring might well fall under paragraph (c) of this section as being "the result only of the ordinary operations of husbandry." Needless to say, the section did not, as a matter of fact, mean that there was any change in the declared policy of Government. At the same time the somewhat ambiguous way in which it was expressed undoubtedly did arouse suspicion, and in 1881, it was thought necessary to issue an executive order to the effect that "clause (b) of the section will not apply to wells dug at the expense of the owner or occupier of the soil"—*G. R. 6682 of 10-11-1881*.

Three years later the whole question was re-considered and finally settled as part of the important pronouncement upon the general policy of the Bombay Government. *G. R. 2619 of 26-3-1884*. This important State document should be read as a whole by every student of the Bombay Land Revenue System. For the present, however, it is only necessary to mention the following paragraphs which deal with the question of the assessment of "improvements."

" 19. Attention will now be directed to s. 107. The principles which the Governor in Council desires to maintain are—

" (1) that enhancements of assessments shall be based upon 'general considerations' and not on the increase of value in particular fields;

" (2) that the occupant shall enjoy the entire profit of improvements made at his own cost.

" 20. These principles being applied to the interpretation of s. 107 it is observed that 'reference to the general considerations of the value of land' means reference to increased value due to extraneous causes distinct from the result of expenditure of money or labour by the occupant. For instance, a railway which affords a better access to markets is such a cause.

" 25. His Excellency in Council desires to regulate the action of Government in this matter by the broad principle that the occupant of land pays for the use of all advantages inherent in the soil when he pays the assessment on the land. Among inherent advantages he would include sub-soil water and rain water impounded on the land, and he would secure to the occupant altogether free of taxation any increased profit of agriculture obtained by utilizing these advantages through expenditure of labour or capital.

" 26. His Excellency in Council has no desire to claim any part of such profit for the State either immediately or after a certain term of exemption.

As a result of the resolution ss. 106 and 107 were repealed by Act IV of 1906 and the present section 107 was substituted.

The effect of this section is absolutely to secure the occupant against the assessment of "improvements." It is true that, at the time of the passage of the Bill through Council, one of the members objected to the use of the word "such" in the phrase "no such classification" on the ground that "only the general classification would be prevented and not a re-classification in regard to individual holdings", but Government replied that the clause must stand "as a measure of protection to the rayat, as circumstances may arise by which the rayats of a certain village or taluka may become directly interested in re-classification. They might wish for it, with a view to revision of assessment on account of the physical deterioration of the soil. Not the slightest apprehension need be entertained that in leaving the clause as it stands now re-classification will be an element in future revisions of assessment," a pronouncement which is important, not only negatively, but also positively, as admitting the right of the rayat to have the classification of his fields revised in cases where deterioration from the original standard shall be proved to exist.

#### SETTLEMENT PROCEDURE

Procedure at Settlement may be divided into the following heads, viz.—  
 (1) Preliminary. (2) The submission of Settlement proposals (3) The introduction of the Settlement. (4) The calculation of the assessment. (5) The preparation of the Settlement registers.

**Preliminary.**—(a) Under the present orders of Government the Settlement Commissioner is required to report to the Commissioners of Divisions before 31st July in each year the names of the talukas in their divisions the current Revenue Settlement of which expires on 31st July three years later (*G. R. 4955 of 30-6-1904; G. R. 5545 of 3-3-1922*).

(b) For the purpose of revising the assessments of these talukas an officer is selected to prepare the proposals, who is appointed a Survey Officer under s. 18 of the L. R. Code, and in the travelling season following, the Settlement Commissioner should thoroughly visit the tract to be reported upon. *G. R. 800 of 2-2-1900*. He should seek the guidance of the Director in preparing his report specially in respect of all technical matters which were formerly dealt with by Survey Officers.—*G. R. 519 of 22-1-1895 and G. R. 5202 of 27-6-1905*.

(c) An Officer so appointed should be either an Assistant Collector or a member of Provincial Service.—*G. R. 2486 of 10-3-1911*.

(2) **The Principles of Revision.**—(a) In putting forward proposals for the new rates the Settlement Officer is to be guided by the principles laid down in the "Instructions for Settlement Officers," issued under the authority of *G. R. No 22-10-1910*. These instructions are as follows:—

**Instructions for Settlement Officers.**—

1. The Settlement Officer who has to revise the settlement of a taluka will find, when he approaches the task, that in the Original Settlement the taluka has been divided into groups homogeneous as to physical characteristics and economic advantages, such as climate, rainfall, general fertility of soil, communications and the like. For the villages contained in each of these groups, uniform maximum rates have been fixed, from which the assessment for each field or survey number is deduced by reference to its soil valuation.

2. The problem for the Settlement Officer is to revise the old maximum rates and to fix upon a new set of maximum rates for each group in the taluka, and the purpose of this note is to lay down in broad outline the lines of enquiry which a Settlement Officer should follow in order to acquire the knowledge and information which will enable him to formulate his proposal.

3. It is necessary for him to first ascertain to the best of his ability, what is now the incidence of the existing assessment on the profits of cultivation. Conclusions on this point may be reached along two main lines of enquiry... an indirect and a direct line.

4. The indirect line of enquiry will afford circumstantial, but none the less convincing evidence of the incidence of the assessments by revealing their general effect on the economic and agricultural condition of the tract. The Settlement Officer will carefully examine the past revenue history of the taluka group by group. He will enquire whether the area under culti-

vation and occupation has expanded or contracted, whether the assessment has been collected with ease or not and whether the material condition of the people is prosperous or the reverse. He will pass under review the markets and communication of the tract, the history of the prices of its main staples and the statistics of selling and letting and mortgage values of the land.

*Note.*—He should note that the revision of settlement will depend mainly on changes in prices, including such local changes as result from improvement of communications and shifting of markets although all indications of an increase or decrease in material wealth and general prosperity will be a guide as to the suitability of the old assessment. (*G. R. 7484 of 12 10-1897*).

5. The Settlement Officer has now at his disposal in the Record-of-Rights a large amount of detailed information as to sales, mortgages and leases at various periods during the currency of the expiring settlement, which will enable him to judge with some confidence what development, if any, there has been in land values since the last settlement. In examining the statistics of sales and mortgages, it is hardly necessary that he should study and tabulate the figures of every village in the taluka. A close examination of the statistics of representative villages in different parts of the taluka will enable him to form just conclusions as to the development of land values in the taluka as a whole and in its various component groups.

6. The statistics for various periods, *e. g.*, the beginning, the middle and the end of the settlement period, should be compiled in some such form as that given in Appendix I. In compiling the statistics the Settlement Officer will, of course, be careful to exclude transactions which appear to be only nominal sales or mortgages, *e. g.*, sales which are accompanied by verbal agreements that the vendor shall on repayment of the sale money be restored to his original position as owner of the land.

Similarly, transactions affecting *inami* or revenue-free land should be excluded from consideration.

7. After such a general review the Settlement Officer will be able to reach broad general conclusions as to the effect of the existing assessments on the economic condition of the tract. If he finds that the tract has prospered, he may conclude that, judged by this standard, the assessments were and are reasonable and moderate, and he may also be led by other general considerations to conclude that they might reasonably and safely be enhanced. On the other hand, his view may lead him to an opposite conclusion that the assessments should be reduced or at any rate left unaltered.

8. The Settlement Officer will then be confronted in each assessment group with the problem as to what should be the limit of enhancement or reduction as the case may be. The history of prices would be an important factor, but it would not always be easy or possible to deduce from the ratio of price increase what should be a reasonable or safe ratio of enhancement of assessment.

9. The Settlement Officer will now endeavour to check and supplement his general conclusions by a direct line of enquiry which would aim at ascertaining the prevailing rents, and observing the ratio of incidence of the assessment upon them.

10. Rents may be divided into two classes produce rents and cash rents.

**Produce Rents.**—(a) Rents consisting of a fixed amount of produce. The money equivalent of such rents is easily ascertainable.

(b) Rents consisting of a definite share of the gross produce commonly one-half.

In order to find the money equivalent of such rents the Settlement Officer should ascertain to the best of his ability the average local yield per acre of each crop for which produce rents are commonly taken. For this he will rely partly upon recorded crop experiments, partly upon crop experiments conducted by himself and partly upon enquiries as to the average outturn on normal soils under normal conditions. The Settlement Officer in Bombay has the unique advantage of a detailed soil classification of every field, which tells him the range of soils prevailing in every village and every assessment group. The people themselves know very well what this outturn is, and a Settlement Officer who keeps his eyes and ears open and makes judicious enquiries will usually be able to ascertain it, especially in tracts where produce rents are common.

11. The next factor for investigation is the actual share of the gross produce commonly received by the landlord. The landlord's rent is usually expressed in some simple fraction, one-half or one-third of the gross produce, but it will often be found on enquiry that the landlord's actual receipts fall considerably short of these fractions. The landlord may have to meet a share of customary payments to village menials, or for charitable purpose; or he may have defrayed some of the cost of production, e.g., the cost of seed or manure or weeding or irrigation, and deductions necessary on these accounts may reduce his rent to a level much below its apparent figure.

12. When the actual quantity of the produce rent has been ascertained, it is not difficult to determine its money value by reference to prevailing prices and to compare it with the assessment.

13. **Cash Rents.**—In the case of cash rents as in the case of produce rents, the Settlement Officer will have to make careful local inquiries, village by village and group by group in order to ascertain the prevailing rents for land which is a fair average sample of its class. He will have to exclude abnormal rents, e.g., rents paid by mortgagor-tenants, which are not true rents but merely repayments of capital and interest under the guise of rent. He will have to enquire whether they are paid in full and with regularity. In enquiring whether the land-paying rent is a fair sample of its class, he will be assisted by the detailed classification record.

14. Detailed figures of cash rents should be extracted from the Record-of-Rights for each village in the form shown in Appendix II and the totals tabulated for villages and groups.



15. But the Settlement Officer should constantly bear in mind that statistics of rents, whether in kind or in cash, cannot be used as the basis for definite conclusions as regards the general incidence of the assessments in a village or group, unless they exist in considerable volume and unless their reliability has been carefully tested.

16. This analysis of rents and comparison of them with the assessments will give the Settlement Officer fairly definite ideas of the profits of cultivation in various villages and groups in the taluka and of the ratios of incidence of the assessment on those profits. It will also give him information as to the existing distribution of the assessment over the various groups of the taluka, which will be of great value to him if he should wish to make any re-distribution or re-adjustment of the burden of assessment over the various groups of the taluka.

17. The settlement Officer will now be in a position to formulate his final proposals.

He has first of all on broad general considerations reached certain broad general conclusions as to the direction the Revision should take in each group. He has then examined the rents and compared them with the existing assessments, in order to get more definite and detailed knowledge of the incidence of the existing assessments.

This knowledge now enables him, if he is proposing enhancements, to make the enhancement in each group and each maximum rate with a proper regard to the existing incidence of the assessment. Thus, if there are two groups A and B and in A the ratio of existing assessments to rents appears to be 40 per cent. while in B it appears to be 25 per cent., it will be necessary (other things being equal) to propose enhancements for group A with much greater caution and circumspection than in group B.

And the Settlement Officer should always record, for the information of Government, what he considers to be the ratio of incidence of his proposed assessments on the rents as ascertained by him.

18. It must, however, be clearly understood that the arguments for enhancements should be based primarily on the indirect evidence of the general considerations referred to in paragraph 4 above, and that the rent statistics should be employed only as a check to prevent the enhancement from going too high and as a guide to secure a proper distribution of the assessment between the various groups.

(b) By (*G. R. 518, of 22-1-1935*) the attention of Settlement Officers is invited to "the great importance of the closest personal consultation practicable among the officers concerned, whether in the framing or in the criticism of settlement proposals, more especially before they are actually formulated, as a means of reducing divergencies of opinion to a minimum, lessening the time required by the officers through whom they pass to master them, and to facilitating their ultimate disposal of Government." All officers concerned, the Commissioner of settlements and the Collector are required to give to the Settlement Officer proper instructions

and guidance as soon as he begins his work. (*G. R. 6618 of 14-7-1923 and G. R. 6479 of 1-6-1923.*)

(c) It has further been ordered that "in all cases in which irrigation takes place with water stored by the Irrigation Department or is assisted by work carried out by that department, its officers should be consulted as to the rates of assessment. They are in the best position to judge of the supply of water, which is the basis of the consolidated rate." (*G. R. A 1015 of 28-1-1927.*)

Since the appointment of a Committee for the purpose of inquiry into the revision settlement of the Bardoli Taluka much light is thrown on the way in which Settlement Inquiries should be made by Settlement Officers. The following suggestions which emerge out of the discussions will be found useful.

**Improvements in communications and marketing facilities.**—In certain talukas it may be true that the construction of a railway has materially increased the importance of one or two stations capable of dealing with goods traffic and has provided a direct and easy outlet for whatever export trade there is. But it is possible that the opening of a railway might not have benefited the agriculturists in the taluka as a whole to any appreciable extent.

It may also be possible that the railway had not been actually opened at the time of the previous revision, it was practically completed, and was taken into consideration in the proposals then sanctioned. This being the case and the railway being given its due weight in the previous revision settlement its mere existence may not in itself be a sufficient ground for the further enhancement of the revenue. Of course, if there be any changes during the period of the previous settlement and the revision settlement under contemplation which were not then anticipated or allowed for, it would be proper to take account of them.

Similarly any improvement in the condition of the roads will be a matter which the Settlement Officer will have no means of judging. He will probably not know what the former condition was.

So far as introduction of motor-traffic is concerned it may be noted that it may even be a source of loss to the rayats.

So far as exports are concerned it may appear that in the great majority of villages rice is generally not grown for export at all. It may also be found that if there be any trade in rice it is carried on by sawkars who purchase the grain from their tenants in villages or collect it in their share rents.

So far as the principal markets within the limits of the taluka are concerned generally it is found that weekly bazars are as a matter of fact very small affairs where only such things as vegetables, chillies, spices, salt and some coarse cloth are sold.

The abnormal increase in the price of food grains (if not grown for export) and the increase in the agricultural wages would rather suggest not an enhancement but a reduction of land revenue.

The statistics of population may suggest some interesting problems. It may be found that there is an excess of births over deaths usually a considerable excess in the last several years while the population may show a slight increase only or even a decrease. One of the explanations may be the emigration to other parts. Another which suggests itself is the recurrence of epidemics. In several places where any appreciable number of people are in service or business in centres like Bombay or elsewhere in India, the excess of birth may be due to the fact that these people send their wives home to be delivered but ordinarily keep their families with them. Here and there cases may be found of permanent emigration. It may be that some small holders who were doing well have sold out their encumbered lands and gone to some other place where land is cheap.

So far as new houses constructed the following points should not be forgotten. A great many of the imposing edifices belong to the people who have made money in business outside the taluka if not in other country. These of course cannot be taken to have been built out of the profits of agriculture. Large houses again are sometimes evidence not so much of prosperity as of extravagance and ostentation.

**The agricultural stock.**—So far as milched cattle are concerned there is no doubt that the profit which can usually be made from the sale of ghee does make a considerable difference to the cultivator's budget but in many places people do not keep buffaloes but cows as they cannot afford to purchase their plough cattle from outside and have to make shift to breed for themselves.

**The official statistics of prices.**—The figures are furnished as a rule to the Settlement Officer by the Director of Agriculture who obtains his information presumably from the monthly returns submitted from each taluka head quarters. These returns again, are based on local inquiry which in practice means on the information supplied by one or more local merchants. The rates quoted for food stuffs are in fact, the prevailing retail rates, which may not be the rates affecting the general body of agriculturists. Another difficulty arising from the fact that these statistics are compiled on the basis of the Bengal Maund consisting of 40 seers of 80 Tolas. The local Maund may be different and in this case it is obvious that neither the figures of seers per rupee, nor the figures of rupees per maund may correspond to any figures with which the people are familiar. No doubt the standard maund is adopted for the purpose of comparison with other parts of India; but it is certainly inconvenient for the Settlement Officer to have to deal with figures, the real meaning of which can only be extracted by a rather troublesome calculation.

It is very important to remember in connection with prices that whereas commercial crops such as cotton are the staple export Jowari and rice and such other food crops are almost entirely grown for local consumption. If therefore the result of the abnormal conditions in the years following the great war should be a considerable permanent increase in the price of the

former commodity; without a corresponding permanent increase in the prices of food stuffs. This result ought to be decidedly beneficial to the agricultural community. Cheaper food may be expected to react on wages sooner or later and to reduce the cost of cultivation all round.

**Adh-bhad, Ardhal or Share-leases.**—Share-leases as a rule are unpopular and exceptional in many places. Share rents are taken from relations or particularly trusted tenants, but they are generally taken only if there is a doubt of recovery of cash rents. But the cultivating classes generally hold the view that this form of leasing is not quite respectable. The reason is that the tenant is not his own master. The Landlord thinks himself entitled to interfere and to keep his eye on the crop. Where share-leases have recently increased, on enquiry, it will be found that the change had been brought about at the instance of the tenant, not of the landlord. The latter would prefer cash rents, if they could get reliable tenants to agree to pay them.

**Rental statistics and their use in making settlements.**—A most important part of the inquiry is the rental statistics and the use which is to be made of them in the settlements. It is very important to scrutinise the transactions recorded in the tenancy registers.

**The necessity for scrutiny.**—In a very large number of transactions recorded as leases the 'rent' really represents interest, or money borrowed or in arrears or the interest, on a sum which the tenant, previously the owner of the land, has received under a conditional sale, and hopes in time to repay. There may be little known relation between the rent paid in such cases and the true rental value of the land. D

**Family arrangements.**—Then there is a fairly large class of leases which are the result of family arrangements of various kinds. A man who is under an obligation to maintain a minor or decrepit relation or a female member of his family, frequently cultivates his or her land and agrees to pay an amount of rent which is more or less charitable; and for one reason or another transactions between relations are rarely safe indications of the economic rent. Similarly instances may be found in which tenants pay or have paid abnormally high rents for temple or masjid land from charitable or religious motives, though it is more usual to find such land leased cheaply owing to its not being kept in good condition. For instance a large number of transactions entered in the tenancy register as leases for the amount of the assessment only which are not leases at all but merely family arrangements necessity by the farm say of a Bhagdari tenure. When those are excluded the amount of genuine, easing in such a village will be found to comparatively inconsiderable.

**Grazing leases.**—In villages where grazing land is scarce, leases of such often show abnormal, and generally speaking the rents of grass land tend to be high in proportion to the assessment, which is commonly low

Sometimes the rent shown for a field includes the rent of the house in village site or of a hut or huts. This fact is rarely mentioned in the

ancy register. Very often the usufruct is included especially of mangoes and such other trees.

Very frequently the landlord has incurred expenditure before the lease by manuring the land or ploughing it up or clearing or hedging it.

It is obvious that allowance ought to be made for the landlord's expenditure, since that is a factor which affects the value of the rents as indication of rental value. The difficulty is to determine what allowance should be made. The information available, even when it is reliable, is seldom sufficiently precise for anything but a very rough calculation.

The various circumstances described above are practically never mentioned in the tenancy register.

Tenants will be found paying higher rents because the land taken on lease adjoins their own lands, or is in the vicinity of their house, or has some other special advantage from their point of view. If cases of this kind are numerous they cannot be called as exceptional. However, the possibility that the rent paid in such cases may be in excess of economic rent cannot be altogether ignored, if it is desired to make rentals the basis of the assessment.

Another reason why it is unsafe to base conclusions merely on the statistics without the scrutiny of the transactions themselves is this. The tenancy register records the rents agreed upon, but does not record whether those rents were actually paid. Whatever the reason for the non-recovery of rents may be, if some proportion of the rents shown in the tenancy register has regularly to be written off as irrecoverable, then to that extent the figures are misleading as an indication of the real rental value. Rental value must depend upon actual and not upon merely potential rents. It is quite impossible to estimate, even approximately, what proportion of the total rents should be regarded as normally irrecoverable. It varies greatly, no doubt, in different villages, and at different times in the same village. One can only say that this is yet another of the more or less elusive factors which have to be borne in mind in connection with rents, and which show the necessity for caution in dealing with the statistics, for not taking them too strictly at their face value, and for leaving an ample margin to cover possible error.

A rather different, but connected, point is that the rents appearing in the tenancy register are, not in a few cases, higher than the landlord really expects to recover. There are also found penal rents *i.e.*, sums fixed as a penalty in case an agreed share of the produce is not given. The Settlement Officer may also come across a certain number of service rents, *i.e.* transactions in which the tenant is not expected to make any payment, but to perform such duties, such as looking after the landlord's palm trees or mangoes, or supplying the village cattle trough with water.

If rental statistics are to be reliable evidence of rental value, it is essential (1) that they should be compiled in a manner which ensures their

accuracy and elimination of irrelevant cases, and (2) and they should be applied with a proper understanding of their meaning

The tenancy register is probably the least reliable of the village records, and in course of inquiries the Settlement Officer may discover a large number of mistakes. Mistakes such as showing rents against one survey number when several are included in the lease, showing land as leased for a longer or shorter term than was really the case, showing the tenant as paying the assessment when he deducts it from the rent, or even when the landlord himself pays it, showing a wrong figure of rent, etc. are quite common and may obviously make a considerable difference to the results obtained. Occasionally, he may find that for a whole year or even a series of years the rents are not entered at all. But apart from errors of this kind, due to carelessness, the tenancy registers, in the form at which they are at present maintained, do not contain all the material facts. Interest-leases are generally entered without any indication of their real character. Expenditure by landlord is never mentioned, even when it is a condition of the lease. Information as to the usufruct of trees is usually incomplete or missing altogether. Such instances show that the rental statistics which a Settlement Officer requires, cannot be obtained by any process of mere compilation from the tenancy registers.

For this purpose a scrutiny in the presence of the party in the villages is essential, but it cannot be made in the time available to the ordinary Settlement Officer, except as regards leases for a comparatively few recent years in the villages which he is able to visit. That is so even if the Settlement Officer has no work but settlement to do. But in practice we find that the Settlement Officer on duty has his ordinary work as District Dy. Collector or Assistant Collector in addition. The difficulty with regard to the scrutiny is that after a length of time the parties are dead or not available, or if they are available they have forgotten the facts. It may be necessary, therefore, for a Settlement Officer for a close scrutiny to confine himself to the current tenancy register *i.e.* of the last five years. Even with the period limited in this way the Collection of material is frequently a slow and labourious process especially where a village contains scattered hamlets, where there are many absentee landlords and where a large proportion of tenants reside in other villages. However, in an average village it is perfectly feasible to get a fairly complete check of leases for a period of 6 years, and even where the scope of inquiry is to be restricted as above stated, the statistics collected may be taken to be sufficiently representative for practical purposes, but, with the other necessary inquiries which a Settlement Officer has to make, on more than this can be done properly in the ordinary course of inspection, allowing a day for each village.

There may be villages where, after inquiry in leasing transactions it will be found to be useless and misleading to attempt to work out a multiple, either because there is so much disparity and eccentricity about the rents that no single figure can possibly be taken to be typical; or because straight-

forward leasing is so much the exception that after the exclusion of inadmissible cases nothing remains which can be treated as representative of rental value in the village as a whole.

The ascertainment and expression of rental value is not by any means such a simple matter. The latest orders of Government (*G. R. O. D. 1780/24 of 13-3-1937*) are those passed on recommendations of the Land Revenue Assessment Committee. In this resolution Government have accepted the position that 'rental value where it can be ascertained must be adopted as a sole basis for fixing the assessment and have expressed the view that rental value 'is generally speaking, a factor which can be determined with a high degree of certainty and accuracy.' But nowhere have Government laid down exactly when the rental value should be deemed to have ascertained from the rental material available or how it should be expressed when ascertained. Nor is it stated anywhere that the older principles of grouping (involving use by the Settlement Officer of his own knowledge of local condition to qualify the more rental results have been virtually superseded. On the contrary it is expressly stated in the Government Resolution that no change is contemplated in the principle upon which the Bombay settlements are already based; and in the draft of the proposed bill to amend the Land Revenue Code it is provided that the revision of assessment shall also have regard to a number of factors which are clearly based on the old principles of grouping and may give indications quite contrary to the rental value if this is regarded as finally determined by the 'index.' But considerable confusion is likely to arise about the values to be attached to these two groups of data and it is suggested that examination of a history of revision settlement procedure will help to show that the 'index' has come to be invested with a significance which was not originally intended for it and which it certainly will not dare.

The instructions for Settlement Officers issued by *G. R. 8623 of 22-10-1910* (Survey and Settlement Manual, Vol. II p. 394) are still in force. These instructions clearly assume that the original grouping based on the more permanent characteristics of the taluka (including general fertility of soil), will be respected in subsequent revision operations. In instructions (15) and (18) the settlement officer is twice warned against placing too much reliance on rental statistics, which are to be used mainly as a check on conclusions reached through more general considerations. These instructions were amplified in 1919 by directions to calculate and show indices according to the method adopted in the Belgaum and Chandrad report. As originally explained in that report (Government Selection DLXXXIV, p. 11 para. 29) the index was supposed to represent the rent of 8-anna land and thus to afford a fair guide to the maximum rate of 16-anna land. In practice, however, it had nothing to do with 8-anna land as such, but was derived from the average multiple of assessment represented by all the rents recorded. The method was, in fact, only a convenient way of stating what maximum rate of assessment would have given an average incidence of 50 per cent. on these rents, and of enabling villages in different groups to be compared on

that basis. This is apparently the only sense in which the device has ever received the explicit approval of Government.

In his discussions of this method the (Government Selection No. DLXXXIV, pp. 90-91, paras 14-18.) Belgaum and the (Government Selection DLXXX, p. 81, para 2.) Khanapur Reports the Settlement Commissioner (Mr. Anderson) claimed considerably more for the indices than their inventor (Mr. Webb), and held that--- provided that a substantial number of instances had been averaged--- they could be used directly as "a true index to a full standard assessment," whether the original classification was right or wrong. This view involved several very large assumptions which we shall discuss presently. But it is noteworthy that, with all the assumptions made, Mr. Anderson did not then regard the indices as a substitute for grouping. On the Khanapur report he remarks, "It is quite clear that these proposals have been based on the supposed effect of the indices. But it is not possible to follow figures of rent and sales quite so slavishly. They are a very good, indeed quite the best guide. But they must be considered broadly, and in batches. We should get the most curious results if every village were put into a class determined only by its own statistics."

In passing orders on the Belgaum and the Khanapur reports, Government did not accept all that was claimed for these indices. On the Belgaum report in their *G. R.* they recognised the "potential value" of the system "as an addition to the volume of statistics upon which settlements are based," but remarked--- "Conclusions derived from such indices are by no means infallible, and, as indeed the Settlement Officer has been careful to point out, the results have their greatest utility as tests of conclusions reached from those well established principles which go over the grouping and rating in revision settlements." On the Khanapur report, while directing that rental indices should be included in the future settlement reports, Government added, "At the same time it should be emphasised that this method of indices should be used only as a test of conclusions based on the accepted principles of grouping and rating.....Indications are not wanting that he (the settlement officer) has been induced in some cases to adjust his grouping with reference to these figures, upon which too great reliance should not be placed."

This was substantially the position when Government received the recommendations of the Land Revenue Assessment Committee. It appears, however, from subsequent reports, that the reliance on rental indices had in the meanwhile gradually increased, and as exemplified in the present papers, it amounts almost to a denial of the original principles of grouping, we do not think that the Settlement Commissioner's use of index figures in these reports can be justified, when regard is had to their intrinsic character and their inherent limitations.

The steps by which an index is obtained are three:—

(1) An average multiple is obtained by dividing the actual rents of the lands examined by their actual assessments.



(2) This average multiple is applied to the maximum rate of the village to give the supposed rental value of 16-anna land.

(3) The rental value of 16-anna land, so calculated is divided by two and is then called an "index" of the full standard maximum rate applicable to the whole village.

Thus the rental value of a village is conceived not as an absolute amount but as a common factor, which is really the same as the average multiple of assessment and can only be expressed quantitatively in terms of the actual assessments of different fields. The index is used to translate it into a concrete form for land assessed at the maximum rate, and, in so far as it is then treated as applicable to the whole village, assumes complete correspondence between the anna classification scale and the scale of rental values.

Obviously when calculated by this method the "rental value" of a particular field may be something quite different from the "true rent" actually paid for it, since it will be determined partly by the rents of other fields. It is not clear from the definition of rental value given in the draft Bill whether this result is intended; but at any rate the usefulness of the conception of rental value as a common factor (*viz.*, the average multiple) must turn on whether the rents actually averaged do represent net profits and whether they are fairly typical not only of the lands leased but of all lands in the village. Whether these conditions are fulfilled or not cannot be judged from an index badly stated.

Further, the assumption that rental value varies in proportion to the anna classification does not appear to be justified. Mr. Anderson himself appears to have admitted this point in his remarks made in 1924 on the settlement report of the (Government Selection p. 64, para 8.) Man Taluka. "It is very obscure whether the familiar 16-annas of the classification scale were supposed to follow the gradation of the gross produce or the very different scale of net produce.....There can be no doubt, in spite of expressions tending to the contrary in the early reports, that the 16-anna classification scale was a gross produce scale.....What we really want is a thorough investigation of rental value in relation to classification". If, as appears to be the case, rental value is determined by net produce, while classification is based on gross produce, it is not legitimate to argue from the classification to the rental value, and the rental value is not completely stated by any one index figure. Even if the classification scale had been used on the net produce at the time of the survey, any general alteration of the cost of cultivation would similarly upset the original classification ratios and destroy their correspondence with the present net produce or rental values.

The net index still remains useful for the purpose for which it was devised, *viz.*, for comparing the incidence of assessment in villages differently rated, but it cannot validly be quoted as though it were a final and scientific means of ascertaining the maximum rate which would levy the full standard assessment on all lands. It might perhaps be better to omit altogether the

third step in the process by which the present index is obtained, *viz.*, the division by two, in order to check any tendency to identify the result with any substantive rate of assessment; but if any division is proposed with such an object, it would be safer to adopt a divisor of at least three, in order to allow more margin for the limitations of the method.

As a result of our study of rental transactions in these talukas, however, we would in any case deprecate the view that rental value is established as soon as any chance assortment of rents has been averaged, and can be converted into an index of the proper maximum rate by a mere mathematical formula. Assuming that the data have been recorded after proper sifting (which was not done in the present case as we have already shown), the most important part of the process, and indeed the only part which can give the results any value, still remains; that is, to study the cases in detail in order to decide whether in the case of any village or group of villages, the data are good evidence of rental value, and if so what rental value they seem to indicate. Before any such decision can be reached it must be seen whether the material collected is sufficient, and sufficiently representative, to yield an average which will mean anything at all; whether the rents per acre and assessment per acre show any correspondence; whether all the indications point the same way, and how the various indications should be interpreted in view of the known facts of individual cases and the general circumstances which govern leasing in the village.

**The net profit and cost of cultivation.**—It is suggested some times that inquiries in about three villages in each group, say a dozen in all, would supply sufficient material for the settlement. For determining the profits of agriculture *i. e.*, by ascertaining the yield, multiplying it by the price and deducting the expenses of cultivation; (the main items in which as is some times explained are labour, including the estimated wages of working owners and their families, seed, live-stock and dead stock and manure). The method suggested above is not a new one, and no one acquainted with its history can feel very sanguine about the results to be expected from it. It was the foundation of Mr. Pringle's system in the infancy of the Bombay survey. The unfortunate outcome of that experiment has been related in the survey and Settlement manual (Vol. I p. 29 foll). It is one element in the Madras system. But the calculation of the cost of cultivation is there more empirical than strictly scientific and moreover it is attempted in original settlement as a rule and not in revision settlement; see S. VI of the Madras Settlement Manual quoted in Ch. III of the report of the Land Revenue Assessment Committee, and Chapter IV of the Report of the Indian Taxation Inquiry Committee. The Land Revenue Assessment Committee decided (para. 33 of their Report) that 'it is not possible either to define net profits or to calculate with any accuracy the different items included in cost of production'. For that decision, on doubt, the casting vote of the Chairman was required, but the I. T. E. Committee were unanimous in their opinion that any comparison of the assessment with net produce is, in practice, impossible, "since the ex-

(pieces of cultivation are not known with sufficient accuracy, and it would take years to ascertain them;" (*Indian Taxation Inquiry Committee's Report Chapter IV para. 93*).

**108.** It shall be the duty of the survey officer, on the occasion of making or revising a settlement of land revenue, to prepare a register, to be called "the Settlement Register," showing the area and assessment of each survey number, [c] with any other particulars that may be prescribed [c] and other records, in accordance with such orders as may from time to time be made on this behalf by Government.

Preparation of statistical and fiscal records.

occasion of making or revising a settlement of land revenue, to prepare a register, to be called "the Settlement Register,"

### Commentary

Survey and Settlement Records which by the L. R. Code as amended in 1913 are included among 'Land Records', may be divided into two main heads viz.:-

(I) Preliminary, and (II) Final. The former class comprises those which are used for the preparation of the Settlement proposals while the latter comprises those which sum up the result of the settlement after sanction.

(I) The preliminary records may be divided into four heads, (a) Theodolite, (b) Measurement, (c) Classification and (d) Settlement. As the Vernacular names of some of these records are often employed in official correspondence, these are given in Marathi and Gujarati, the Marathi term being used in all the Southern surveys.

#### (a) THEODOLITE RECORDS.

1. **Theodolite Field Book.**—This is used in all surveys and contains Theodolite stations, outward and inward angles, the distance in chains from one station to another and short notes as to any important topographical features, such as rivers, unlas, hills, etc., as will enable the Survey or to plot the country traversed accurately.

2. **Traverse Patrak.**—This is used in all surveys and shows computation of the Traverse of the village boundaries.

3. **Contour Map.**—This is used in all Surveys and in vernacular it is called Parigh. This is prepared from Traverse Patrak and shows the boundaries of the village and other important topographical features as originally fixed by the Theodolite Surveyor.

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[a—c] These words were substituted for the original words "together with the name of the registered occupant of each survey number" by Bom. LV of 1913, s. 48.

**(b) MEASUREMENT RECORDS.**

4. **Rough Field Book.**—This is used in all surveys. In Marathi it is called *Tipau*. In Gujarati it is called *Kachi Book*. It contains (1) sketches of survey numbers drawn roughly but not to scale. These sketches show the lines of measurements and the chaining of measurements of these lines: (2) All detailed measurements for divisions of cultivations such as Dry crop, rice and garden, if any and their sketches and also roads and *nalas* within and on the boundary of Survey numbers and measurements of their lengths and breadths. The *Tipau Book* differs from the fair or *pakka field book* in not having the area computed, and having the fields numbered according to the *Chalta series*, *i.e.*, in the order they were measured, instead of according to the final or *pakka series*, as in the fair field book.

5. **Fair Field Book.**—This is used in all Surveys. It is called *Kabetra Book* in Marathi and *Pakki Book* in Gujarati. This book contains the sketches of survey numbers drawn to scale and also the details of area calculation, except where separate *Vaslevar Books* were provided for the purpose. In sketches no internal measurements are shown but only those of exterior boundaries, except in the *Konkan* where no measurements are given at all.

6. **Area Book.**—This is used in Deccan and *Konkan* surveys. In Marathi it is called *Vaslevar Book* or *Gunakar Book*. This record contains the detailed calculation of the areas of survey numbers.

7. **Rough Village Map.**—This is used in all surveys. In Marathi it is called *Kachha Nakasha* and in Gujarat *Kacho Naksho*. This is drawn to scale concurrently with the measuring work in the field season and differs from the *Pakka* or fair Field Map in having two sets of numberings to the Survey numbers. One set according to the order in which the fields were measured, called *Chalta numbers*, and the other the confirmed serial numbers. These latter are the numbers that appear in all the subsequently prepared papers.

8. **Fair Field Map.**—This is used in all surveys and in Marathi it is called *Pakka Nakasha* and in Gujarati *Pako Naksho*. This is prepared from the first constructed map—called the *Kachha Map* and is therefore according to scale. It gives (1) the numbering of the fields according to the final series and not the *Chalta* numbering, and shows (2) all details of survey boundary marks, roads and *nalas* within and on the boundaries of the survey numbers.

**(c) CLASSIFICATION RECORDS.**

9. **Classification Book.**—This is used in all surveys. In Marathi and Gujarati it is called *Prati Book*. This contains (1) sketches of survey numbers with shares or compartments in which the numbers are divided for the purposes of classification with the details of soil and water classification, and (2) the culturable and *Kharab* area of each description of cultivation and total culturable area of the numbers as finally fixed.

10. **Record of Garden Lands.**—This is used in Deccan Surveys and is called in Marathi *Bagait Takta*. This record contains information regarding

the area irrigated, the crops raised in the irrigated portions, the amount of water supply and all the other information necessary for the fixing of Metcalf and Peshkhal land. In it was also entered the assessment rate per acre of Peshkhal by the Settlement Officer personally.

(d) SETTLEMENT RECORDS.

11. The Chamber's Register.—This is used in the Deccan Survey. This paper shows survey numbers, Peshkhal numbers, the names on which they are held, their total area, and the nature of the land, whether dry crop, rice or garden with the classification valuation per acre of each kind.

12. The Kharabha Sud.—This is used in Kharabha Surveys and corresponds to the Chamber's Register of the Deccan. It contains the same details with additions for showing the acre rates and assessments which were fixed in subsequent years.

13. The Peshkhal Sud.—This is used in the Deccan and Gajnah Surveys. This paper shows the details of area for every field together with the old (Khar) and new numbers allotted to each and also the names of the occupants.

14. The Damsani.—This is used in all the surveys. In the Deccan the survey numbers of the villages were arranged in groups according to their classification valuation. Then under the head '36-anna' valuation all numbers of that classification value were brought and their areas added together and so with all numbers classed at 15 annas, 6 pias, 15 annas 6 pias and so on. This paper was an important one for the Settlement Officer, since, by applying trial rates to the total areas under each of the head of classification value, he was enabled to work out the final rates which would produce the total assessment of the whole taluka. A separate Damsani was of course prepared for each class of land.

As assessed and subsequent revision settlements, no fresh Damsanis need ordinarily be prepared. If a Settlement Officer wishes to ascertain how a particular settlement rate will operate on a particular survey number or villages or groups of villages, he has only to raise the existing assessment in proportion to the increase in the maximum rate he wants to propose. In the rare cases, however, where re-classification either of whole villages or of any particular class of land has to be done, the preparation of new Damsanis will be necessary to enable the settlement officer to estimate the effect of the application of the proposed rates to these villages or classes of land.

(III) FINAL RECORDS.

As has been explained above these records were prepared after the rates had been finally determined and in them the whole settlement was summarised. (Being, however, so the classes in the revenue system by the amendment of the L. R. Code by Act IV of 1913, and by the revised version of the new system of classifying summarised the forms and nature of these Final Damsanis has been changed considerably of late years, though in most talukas the old forms are still current so there has been no opportunity of introducing

ing the new forms as lately revised. It is, therefore, necessary to describe both sets of forms, *i. e.*, those current before and those introduced after 1913.

**Forms used before 1913.**—Previous to the amendment of the L. R. Code the occupant was the person whose name was entered in the Government Records. But the only records in which the occupant's name could be officially entered at that time were those prepared at the time of settlement. Hence the Final Record prepared at the time of every new settlement has to show, not merely the new assessments, but also the names of the occupants of every survey number. Two kinds of Final Record were, therefore, prepared—one the 'simple assessment roll of the village,' as Colonel Anderson called it, containing the details of the area, classification and assessment of each number; and the other containing together with the area and assessment, the record of the names of occupants.

**The Assessment Roll.**—This was called in the Deccan and Gujarat Surveys the Akarband and in the Konkan the Sud. All these forms show the survey numbers in order, and the area and assessment of each class of laud within the number, but there is some difference in detail: *i. e.*, the Gujarat Akarband shows the classification annas of each class while the Deccan Akarband and the Sud do not; again, the two kinds of Akarband have the Kacha assessment per acre of each class which the Sud omits, and so on.

**The Record of Occupancy.**—Under s. 108 of the L. R. Code as it stood before the amendments made by Act IV of 1913 the Settlement Officer was required 'to prepare a register, to be called the Settlement Register, showing the area and assessment of each Survey Number, together with the name of the registered occupant of such survey number.' This register, as prepared in all the surveys, was that known as the Faisal Patrak. This paper contained the details required by the Act, the area and assessment being shown for each class of land within each survey number.

**Forms introduced after 1913.**—By the amendments made in the L. R. Code by Act IV of 1913 the 'registered occupant' was abolished and occupancy made to depend simply upon possession. Henceforth the only record of occupancy is to be the Record-of-Rights. In the amended s. 108, therefore, the 'Settlement Register' to be prepared by the Settlement Officer is to show 'the area and assessment of each survey number with any other particulars that may be prescribed,' the words 'together with the name of the registered occupant of each survey number' having been eliminated. By this change in the law the necessity for keeping two separate survey registers has been done away with. Consequently only one such register is now prepared and is called the Akarband in all Surveys. It is prepared by the Laud Records Department in duplicate in the form of V. F. 1. as is shown in the revenue Accounts Manual. One copy is kept in the District Survey Office and one is sent to the village to serve as V. F. 1. The Akarband Pa-

trak, which shows the area and assessment of sub-divisions of survey numbers is similarly prepared by the Land Records Department. In Gujarat in addition to these forms a register called Kayam Kharda is also prepared.

**Entry in the Survey Settlement Officer's record, finality of.**—The Settlement Officer's record fixing the amount of rent payable to a Khoti in respect of lands in the Khoti village, though prepared in the form of statement published at p. 584 of the "General Rules of the Revenue Department" (Ed. of 1893) and labelled 'hotkhat,' cannot be treated as a Survey Register under this section.—*Vaidhyan v. Sakhya*, 20 Bom. 729.

**The decision of a Survey Officer determining the tenure on which a survey number is held is not final under the Khoti Act (Bom Act I of 1890) and it can be reversed or modified by a competent Court.**—*Antaji v. Antaji*, 31 Bom. 480.

109. *Repealed by Bom. IV of 1913, s. 49.*

110. *Repealed by Bom. IV of 1913, s. 49.*

[\*]111. In the event of any alienated village or estate,

Revenue management of villages or estates not belonging to Government that may be temporarily under Government management.

coming under the temporary management of Government officers, it shall be lawful for the Collector to let out the lands thereof, at rates determined by means of a survey settlement or at such other fixed rates as he may deem to be reasonable,

and [b] to grant unoccupied lands on lease [b] and otherwise to conduct the revenue management thereof under the rules for the management of unalienated lands, so far as such rules may be applicable, and for so long as the said village or estate shall be under the management of Government officers: provided, however, that any written agreements relating to the land, made by the superior holder of such village or estate, shall not be affected by any proceedings under this section in so far as they shall not operate to the detriment of the lawful claims of Government on the land.

[a] As to the local modification of section 111, see para. 5 of foot-note (a) on p. 1. *supra*.

[b—b] These words were substituted for the original words "to sell the occupancy of unoccupied lands by auction" by Bom. IV of 1913, s. 50.

### Commentary

Owing to the minority of the Talukdar the revenue administration of his village was entrusted to the Talukdari Settlement Officer and under him to the Mamlatdar of Prantij, under a guardianship order passed by the District Court. The plaintiff was a Khatedar of that Talukdari village. The Mamlatdar was invested with the power of making attachment of moveables by delegation from the Collector under s. 12 of the L. R. Code. To recover the arrears of assessment for past years from the plaintiff, the Mamlatdar attached ornaments belonging to him. The plaintiff having sued the Mamlatdar to recover damages for the wrongful attachment, the High Court held that the Mamlatdar was authorised to distrain moveable property of the plaintiff, both under s. 154 of the L. R. Code because he was invested with the power of making attachment of moveables by delegation from the Collector and under s. 111 of the L. R. Code as modified by s. 38 of the Gujarat Talukdars' Act.—*Dalchand v. Gulabbhai*, 18 Bom. L. R. 323, (1916).

Talukdari Settlement Officer has power to recover arrears of rent by taking action under ss. 150, 152 & 154 of the L. R. Code.—A Government Officer in the temporary management of a Talukdar's estate under s. 33 of the Gujarat Talukdars' Act, 1898, has the same powers which the Collector has in an unalienated village, to recover arrears of revenue inclusive of rent.—*Jinabhai v. The Collector and T. S. Officer*, 28 Bom. L. R. 416 (1925).

### ESTATE

'Estate' means any interest in the land and aggregate of such interests vested in a person or aggregate of persons capable of holding the same.—S. 3 (5) L. R. Code, 1879. See p. 14 ante.

The Court of Wards is not a Government Officer within the meaning of this section.—*G. R. 7898 of 7-9-1909*.

[<sup>a</sup>]112. Existing survey settlements of land revenue made, approved and confirmed under the authority of the Governor in Council shall be, and are hereby declared to be, in force subject to the provisions of this Act.

[<sup>b</sup>]113. Expenses properly incurred in making partition of estates paying revenue to Government shall be recoverable as a revenue

[a] As to the local repeal of section 112, see para. 4 of foot-note (a) on p. 1, supra.

[b] This section was substituted by Bom. IV. of 1913, s. 51, for the original section.



demand in such proportions as the Collector may think fit from the sharers at whose request the partition is made, or from the persons interested in the partition.

### Commentary

**Change in the law.**—The original s. 113 has been replaced by the present section. The change was effected by s. 51 of Bom. Act IV of 1913. Sub-sections (1) and (2) of the original section had become superfluous owing to the extended recognition of Sub-Divisions, and were, therefore omitted altogether. Sub-section (3) only has been retained in a slightly altered form.

**Partition of estates paying revenue to Government:** to be made by the Collector or any Gazetted subordinate of the Collector deputed by him. The relevant provisions in the Civil Procedure Code (1908) are contained in a. 54 and Order 20, Rule 18 (1).

**Partition of estate or separation of share.**—"Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of estate or the separation of the share shall be made by the Collector or any Gazetted Subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates."—S. 54. Civil Pr. Code, 1908.

**Decree in suit for partition of property or separate possession of a share therein.**—Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,—

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any Gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of a. 54;—Order 20, Rule 18 (1) of the Code of Civil Procedure, 1908.

**"Estate".**—The word "estate" is here used in its ordinary signification, *Secretary of State v. Nand Lal*; 10 Cal. 435, (1884). Sheri lands, that is lands held under a lease from Government for a fixed period, come within the terms of this section as revenue paying lands, *Dattaraya v. Mahadaji*; 16 Bom. 528, (1892). But isolated plots of land which fall short of being the share of a co sharer of a mahal do not. *Ram Dayal v. Megu Lal*; 6 All. 452, (1884). A raiyatwari holding has been held not to be an "estate" within the meaning of this section. *Mattuchandan v. Kudalalagayyanganar*; 6 Mad. 97, (1883); *Mattuchandan v. Karupa*; 7 Mad. 382, (1884).

**"Estate assessed to the payment of revenue."**—This section refers to estates assessed to revenue in one lump sum for the whole estate, and not to estates, like the ordinary paddy land holding in Burma, which are assess-

ed at acre-rates.—*Maung Po Nyun v. Ma Saw Tin*; Rang. 206. (1927) 95. I. C. 39; (1926) A. I. R. 80.

Deosthan Inam Lands paying only Judi to Government may be partitioned provided that by the partition effected there be no alienation of the property out of the family by which the services for which it was granted are to be performed. *Mancharam v. Pranshankar*, 6 Bom. 298, (1882).—*G. R. 2457 of 23-4-1887.*

**Partition by Collector:** Where the whole of the property which is the subject matter of a suit for partition consists of landed property assessed to revenue, the suit would be governed by the provisions of Order XX, Rule 18 clause (1) and s. 54 of the Code of Civil Procedure, and all that a Civil Court can do is to give a decree declaring the amount of the plaintiff's share as against the defendant and leaving the plaintiff to take any steps he may think proper for the actual partition of his share in the Revenue Court. The Civil Court should declare the rights of the several parties interested in the property, but should direct the actual partition or separation to be made by the Collector or any gazetted subordinate of the Collector deputed by him in that behalf. The provisions of s. 42 of the Specific Relief Act 1877, do not constitute a bar to such a decree.—*Rupan Rai v. Subh Karan*, 41 A. 207 (1919); *Asman Singh v. Tulai Singh*, 2 Pat. L. J. 221 (1917).

Where a decree has been passed for partition or for separate possession of a share of an estate paying revenue to Government the proper authority to effect the partition or to deliver possession of the share is the Collector; the Court has no power to do so. *Dattatraya v. Mukadaji*, 18 Bom. 528. The term 'partition' is not here confined to a mere division of the lands in question into the requisite parts but includes the delivery of the shares to their respective allottees.—*Parbhudas v. Shankarbhai*, 11 Bom. 662.

In every case of partition in cases of Inam land and villages held under the summary settlement the Collector shall be bound to accord separate entry if the partition is supported either by a deed of consent or by a decree of the Civil Court. But in the case where the partition is supported by a decree of the Civil Court, the decree must be a decree for the partition of the land or village. A Decree which merely declares a person to be entitled to a share would not give that person a right to have a separate entry of name.—*See G. R. 3453 of 5-5-1883 and G. R. 8934 of 14-11-1894.*

**Collector's position in partition cases:** The entire execution of a decree which has been referred under s. 54 of the Civil Procedure Code for a partition devolves upon the Collector. He acts not as an officer or an agent of the Court, but as a distinct tribunal invested by law with the sole power (subject to appeal and revision under Chapter XIII of the L. R. Code) of determining everything relating to the execution. And he is to follow the procedure laid down in the L. R. Code.—*L. R. 870 of 23-5-1890 vide G. R. 4873 of 14-7-1890.*

**Revision of a Partition made by a Collector.**—The Collector can revise, of his own motion or under instructions from the Commissioner, a partition

wrongly or irregularly effected by him. *J. R. 6548 of 8-9-1907*. If a partition is not in accordance with the direction of the decree by mistake a Collector can re-open the partition and the Court also should not allow a mistake by the Collector in carrying out its directions to work permanent injunction. *Ranchandra v. Krishnaji*, 40 Bom. 118 (1915). Where a Collector has made partition, there is nothing to prevent him from revising the partition for mistake or other cause before he has passed final orders and returned the proceedings to the Court.—*Krishnaji v. Damodar*, 5 Bom. L.R. 648 (1903).

**Interference by Civil Courts with Collector's Partition:** Section 54 of Civil Procedure Code (1908) has placed the execution of decrees mentioned therein entirely in the hands of the Collector. And an objection that the Collector has made an unequal partition is no ground for interference by the Court with the order passed by the Collector. *Dev Gopal v. Vasudeo*, 12 Bom. 371 (1888); *Srinivas v. Garuath*, 15 Bom. 527 (1891); *Dhiman Gouda v. Hanmad Hanappa*, 42 Bom. 689 (1918). But in a Madras case, where all the parties objected to a partition effected by the Collector on the ground that it was unequal, the Court held that it had power to entertain the objection. *Chinna v. Krishneramanna*, 19 Mad. 435 (1896). In another case it has been held that when there is no dispute as to title in the land partitioned, the plaintiff's grievances arising solely out of the manner in which the land was actually allotted, the Civil Court is debarred from taking cognisance of the suit, and the plaintiff must pursue his remedy on the revenue side.

But if the Collector contravenes the decretal command of the Court, or transgresses the law for the time being in force, relating to partition his action is subject to the control and correction of the Court which passed the decree and sent it to him for execution. *Dev Gopal v. Vasudeo*; 12 Bom. 371, 376 (1888); *Gaoji v. Dhanda*, 14 Bom. 450 (1890); *Purushottam v. Balakrishna*, 28 Bom. 238 (1904); *Ranchandra v. Krishnaji*, 40 Bom. 118, 124-128 (1916); *Timmara v. Govind*, 28 Bom. L. R. 523 (1926). In such a case, it has been held, the aggrieved party should proceed by an application under s. 47, and not by a separate suit.—*Krishnaji v. Damodar*, 5 Bom. L. R. 648 (1903).

Similarly, the Allahabad High Court has laid down that an action will lie in a Civil Court to provide a remedy where a person's rights have been infringed by some fraudulent act of the defendant, even though the fraud was one practised upon a Revenue Court, and would affect the result of partition proceedings.—*Jinmal Rai v. Hindushri Nai*; 41 All. 626.

**Receiver not *rendered functus officio*.**—A receiver appointed in a suit for partition does not after the passing of the decree under sub-rule (1) become *functus officio* as regards agricultural land comprised in the suit. The Court may, therefore, grant an interim injunction restraining a party from interfering with the receiver's possession.—*Shankar Das v. Behari Lal* 6 Lah. 442, 89 I. C. 932 (1925); A. L. 445 (1925).

**Costs of Partition:** The travelling allowance of the person entrusted with the partition as also contingent expenses on account of carriage

of instruments required in partitions, necessarily and properly incurred are to be recovered under this section. The parties concerned should be called on to provide in the first place, whatever assistance in the way of carriage of labourers the persons interested with the partition may require, and in the event of a necessity to employ hired labour, the cost thereof with other contingent expenses should be recovered under this Section.—*G. R. 6280 of 11-9-1882.*

The salaries and allowances of Surveyors and peons employed in effecting partitions should be included in the expenses necessarily and properly incurred within the meaning of this section. They should be for the time the above officers are actually engaged in the village in which the partition is to be effected, and for a reasonable time for going to and returning from that village; but a charge for one and the same day should not be made in more than one case. *G. R. 5894 J. D. of 29-10-1888.* Partition charges of estates should be debited to land revenue and the recoveries when made should be credited to that head by a reduction of expenditure.—*G. R. 3118 F. D. of 27-4-1889.*

Costs of partition in execution of a Civil Court's decree of estates paying revenue to Government may be recovered by Collectors by using their powers under the Bom. L. R. Code.—*G. R. 1993 J. D. of 14-4-1890.*

The Collector may appoint special Circle Inspectors and Menials for partition and sub-division work performed for private individuals, the cost of which is deposited in advance.—*G. R. 8067 of 17-6-1907.*

Government servants accepting Commissions issued by Civil Courts should pay into the treasury sums which they may receive as fees for the execution of their Commission, as a compensation for the loss to Government of their services during the time they were engaged in executing the Commission.—*G. R. 7853 of 28-9-1885; G. R. 8520 of 20-12-1889; G. R. 2053 J. D. of 17-4-1890.*

**Procedure to be followed when stamped papers are to be used.**—The stamped papers should be purchased only when the proceedings are completed but the requisite amount should be taken in advance and deposited in cash. The money should be credited to 'revenue deposits' in partition cases where the proceedings are commenced in a revenue Court and to 'Civil Courts' deposits' when the proceedings are commenced in a Civil Court.—*G. R. 10815 of 19-10-1908 and G. R. 9829 of 11-10-1909.*

Where partition is brought about by a suit the "final order" for effecting a partition within the meaning of s. 2 (15) of the Indian Stamp Act, (II of 1899), in the case of an estate assessed to the payment of revenue to the Government is that of the Collector effecting the partition and is to be written on a general stamp as provided by Article 45 of Schedule I of the Indian Stamp Act, 1899.

**Note:**—In view of s. 54 and O. 20 Rule 18 of the C. Pr. Code, the Court can merely declare the rights of the several parties interested in the property. It has no jurisdiction to effect the partition, but must direct the same to be

made by the Collector. The decree containing such declaration and direction is not a final order for effecting a partition.

In the case of any other (*i. e.* not being an estate assessed to the payment of revenues to the Government) immoveable or moveable property if the Court itself effects a partition by consent, the decree giving effect to such partition is the final order. If the Court issues a commission under O. 26 R. 13 of the Civil Procedure Code a decree passed after the report of the Commissioner has been confirmed is the final order.—*G. O. R. D. 5438 of 2-5-1917.*

The words "a final order" in s. 2 (15) and article 4 (c) of Schedule I to the Indian Stamp Act (II of 1899) refer to the order for effecting the partition passed by a Civil Court and must therefore, be stamped as an instrument of partition.—*Balaram v. Ramkrishna, 29 Bom. 366, and 36 All. 137.*

**Scale of Bhatta (Allowance):** The scale, according to which daily allowance is to be allowed to persons entrusted with the partition, actually on tour is as follows:—

	Rs. A. P.
(a) A Government servant of the <i>first</i> grade ...	6—8—0
(b) A Government servant of the <i>second</i> grade on pay—	
(i) Up to Rs. 250 ...	2—4—0
(ii) Above Rs. 250 up to Rs. 300 ...	2—12—0
(iii) Above Rs. 300 up to Rs. 350 ...	3—2—0
(iv) Above Rs. 350 up to Rs. 400 ...	3—8—0
(v) Above Rs. 400 up to Rs. 450 ...	4—0—0
(vi) Above Rs. 450 up to Rs. 500 ...	4—8—0
(c) A Government servant of the <i>third</i> grade on pay—	
(i) Up to Rs. 50 ...	0—8—0
(ii) Above Rs. 50 up to Rs. 75 ...	0—12—0
(iii) Above Rs. 75 up to Rs. 100 ...	1—0—0
(iv) Above Rs. 100 up to Rs. 125 ...	1—4—0
(v) Above Rs. 125 up to Rs. 150 ...	1—8—0
(vi) Above Rs. 150 up to Rs. 175 ...	1—12—0
(vii) Above Rs. 175 up to Rs. 199 ...	2—0—0
(d) A Government servant of the <i>fourth</i> grade... ...	0—3—0

(Bombay Civil Service Rules Manual, 1932, page 129).

**114.** Whenever any one or more co-sharers in a khoti estate, into which a revenue survey has been introduced, [°] or in a talukdari estate [°], consent to a partition of the said estate, it shall be lawful for the Collector, or for any other officer duly empowered by him

Partition of certain estates by the Collector on application by co-sharers.

[a—e] These words are repealed in the districts of Ahmedabad, Kaira-Broach and the Panch Mahals by *Bom. VI of 1899, s. 2.*

in this behalf, [a] to divide the said estate into shares according to the respective rights of the co-sharers, and to allot such shares to the co-sharers:

Provided that no such partition shall be made, unless:

(a) all the co-sharers are agreed as to the extent of their respective rights in estate, and

(b) the assessment of the share or shares of the sharer or sharers consenting to such partition exceeds one-half of the assessment of the entire estate.

In such cases the expenses of partition shall be recovered [b] as a revenue demand [b] from all the co-sharers in the estate divided.

**115.** *Repealed by Bom. IV of 1913, s. 53.*

[c]116. When any portion of cultivable land is permitted to be used under the provisions of section 65 or 67 for any non-agricultural purpose or when any portion of land is specially assigned under section 38, or when any assessment is altered or levied on any portion of land under sub-section (2) or sub-section (3) of section 48 such portion may, with the sanction of the Collector, be made into a separate number at any time notwithstanding the provisions of section 98.

Division of survey numbers into new survey numbers.

#### Commentary

**Note:**—This section does not apply to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888 extends—*Vide Bom. Act VI of 1889 ss. 1 and 3.*

The provisions of the Bhagdari and Narwadari tenures Act (Bom. Act V of 1862) are not affected by this section.—*See s. 117 Bom. L. R. Code 1879.*

[a] Words repealed by Bom. IV of 1913, s. 52, are omitted.

[b—b] These words were substituted for the original words "under rule (3) of the last preceding section" by Bom. IV of 1913, s. 52.

[c] This section was substituted by Bom. IV of 1913, s. 54, for the original section.

Lands dry water dry should be demarcated for roads by means of continuous catch constraints at the expense of the road and by the officer entrusted with its construction in laying out new roads. Wherever this system cannot be conveniently adopted the demarcation should be by stones or earthen mounds. A record of the area so demarcated and deducted from survey holding as "Pot kharab" should be kept in the office of the Executive Engineer of the District.—*G. R. 692; C. W. 1783, P. W. D. of 21-11-1883.*

When a line of road cuts off a portion of a survey number so small or so irregularly shaped as to render its cultivation unprofitable to its occupant such portion should be acquired at the expense of the road. The disposal of the plots so acquired must be left to the discretion of the Executive Engineer or of the Local Board in the case of the local roads. In some instances they may be useful for stacking material or for burrowing pits for murum for road repairs, in some they may, with advantage, be disposed of to the owners of neighbouring fields, which should be arranged for through the Collector and in others the best method of treating them will be to hand them over to the Revenue Department for tree plantation (*ibid*).

Portions of survey numbers cut off by canals, which the occupant cannot cultivate or dispose of should be taken over by the Irrigation Department and planted with trees. *G. R. P. W. D. 221 W. I. 538 of 15-18-1885.*

In the case of lands intersected by railways the old corners should be acquired and then be made over to the adjacent cultivator on easy terms.—*G. R. 100 P. W. D. 13-1-1886.*

When several survey numbers are bisected by railway or drainage each portion should be made into a separate number. It is not right to leave them as they are, marking the area taken as Pot Kharab. The changes should be recorded as punctually as possible after they occur.—*G. R. 535 of 28-1-1904.*

The cost of hired labour and of erecting boundary marks at the survey settlement should be recovered from the occupant.—*G. R. 8626 of 8-12-1903.*

All expenses incurred in demarcating land part of which had been acquired for railway purposes should be debited to the railway concerned as part of the cost of acquiring the land.—*Government of India R. D. 889-2132 of 10-4-1905; and Bom. P. W. D. 805 of 9-8-1905.*

117. Nothing in section [1]116 shall affect the provisions of Bombay Act V of 1862 not affected.

#### Commentary

Bombay Act V of 1862, refers to Bhagdari and Narbadari Tenures Act.

[a] Words repealed by Bom. IV of 1913, s. 55, are omitted.

[<sup>a</sup>]117-A. (1) Survey numbers may from time to time be divided into so many sub-divisions as may be required in consequence of the acquisition of rights in land or for any other reason.

(2) The division of survey numbers into sub-divisions and the fixing of the assessment of the sub-divisions shall be carried out and from time to time revised in accordance with rules made by the Governor in Council in this behalf :

Provided that the total amount of the assessment of any survey number or sub-division shall not be enhanced during any term for which such assessment may have been fixed under section 102, unless such assessment is liable to alteration under section 48.

(3) The area and assessment of such sub-divisions shall be entered in such land records as the Governor in Council may prescribe in this behalf.

#### Commentary

**History.**—The recognized share of a survey number of s. 99 was abolished and in place of that section is introduced this new s. 117A which authorises the dividing up of a survey number into as many sub-divisions as there are holders and provides for distributing amongst these holders the land revenue payable in respect to the assessment unit, the Survey number.—*Proceedings of the Bom. Leg. Council, B.G. G. pt. VII, of 23-2-1913.*

**Note.**—It was objected at the time when the L. R. Code, Amendment Bill No. XIV of 1912 was before the Council that it is in the interests of the Government that the numbers are to be sub-divided and Government should bear the expenses that are likely to be incurred in making sub-divisions. *G. R. 2819 of 1884*, was pointed to show that the people were given to understand that remeasurement and reclassification were to cease altogether to be operations of revision of rates. If no remeasurement was to be undertaken for the purpose of revising the rates it was but reasonable that rayats should not be charged for subdividing their holdings for administrative purposes. But see now rule 22 in appendix.

**Object.**—This section was introduced by Bombay IV 1913, s. 56. The object is to make the assessment recoverable from each occupant from time

[a] Words repealed by Bom. IV of 1913, s. 52, are omitted.



to correspond with the area of land in his possession. Moreover value of each occupant was to be ascertained by survey, or by agreement among the occupants in the same survey number or by the rule of proportion.

**Objections: Extensive Sub-division an Evil.**—The splitting up of survey numbers into small sub-divisions which came to be legally recognised by this and the following section was strenuously opposed by non-official elected members such as Sir Pherozshah Mehta and Gokuldas K. Parekh, as being a piece of ruinous policy since it encouraged fragmentation. It was pointed out that from the time of the joint survey it had been a proposition clearly laid down and had been accepted even upto then that there is always a particular irreducible area, and if it was reduced beyond that, the agriculture could not be carried on economically in such a way as to pay, and therefore s. 98 of the Code provided that in every district according to the character of the cultivation and the character of the fields there should be a list which gives the irreducible area of every particular class of land. It was altogether against public interests that people should be forced or rather induced to split to very small numbers and so far as these small numbers were concerned it would be a very desirable thing that there should be no recognition of anything less than the irreducible minimum. It was also pointed out that the recognising of such sub-divisions by law would be giving an impetus and accustoming the people to regard small sub-divisions of land as something which has been sanctioned by law and approved by Government. Such a tendency, if created, will be most unfortunate to the agricultural progress and improvement of this country. If any steps were to be taken they should have been in the opposite direction. Ss 98 and 116 of the Code before the amendment of 1913 distinctly pointed to a policy of not recognising small sub-divisions of survey numbers and authorised measures for the purpose of preventing the minutest sub-divisions.

The present system of Record of-Rights though introduced with the object of showing at a glance the persons in actual occupation of every piece of land has the disastrous effects in encouraging and simplifying the sub-divisions of survey numbers very minutely into such small holdings, that in course of time no agricultural improvements will be possible. The tendency of legislation, therefore, ought to be opposed in future to the formation of minute sub-divisions.

As a result of the fragmentation which was not only allowed to proceed but was actually legalised we have now a large number of holdings which have become unprofitable for cultivation and some have been left uncultivated. Yet the assessment and revised assessment is still being exacted from the poor cultivators who are still clinging and will continue to cling to them owing to their natural and inborn sentiment and well known love for a piece of land howsoever unprofitable and burdensome it may be.

Mr. Anderson the Settlement Commissioner while speaking on the Small-Holdings Bill of Sir C. V. Mehta, said that the facts observed by him were

extremely grave and menacing for the agricultural welfare of this Presidency. The population of this Presidency being about 20 millions excluding Sindh each one of this population will have to live on  $1 \frac{2}{3}$  (one and two-thirds acres) and out of this  $1\frac{2}{3}$ , so much is poor stuff that he has to live really on little more than 1 acre. The reason why fragmentation has increased is, according to him, that the joint family which was formerly in tact has now especially since 1836, been dissolving under the operation of the Income-Tax Act and secondly because of the pressure of population. If the country goes on increasing fragmentation from year to year then the production must go on falling. There are plots of land so small and so narrow that though they are under the command of the best canal in the Presidency, they cannot be irrigated because a water channel cannot be cut through them to irrigate them, and some of them are left uncultivated. The troubles about boundaries, about weeds, about fencing, about straying cattle, about the inability to make any improvement, have all been graphically described by him to show that by the fragmentation, large acres of land have become unproductive and even uncultivable.

**Sub-division of a Survey Number.**—The history of the survey number is described in s. 98 from the point of view of the history of occupancy which in fact is inseparable from the former. It will be found from discussion under s. 98, that the land holders as they existed at the time of the original survey were to be entered as occupants in the Government records either of the whole survey numbers or in cases where holdings below the minimum area had been put together to form a standard number, then of 'recognized shares'. Up to the year 1865 when the first Survey and Settlement act was passed the operation of the survey had been carried on as a purely administrative measure under the authority of Government. The passing of the Act involved the supersession of the Joint Rules and their incorporation, with some changes, in its provisions; and among the Rules so incorporated were, of course those relating to occupancy. Considerable changes, however, were made, so that the conception of occupancy in the new Act will be found to differ appreciably from that of the Joint Rules. The definition of occupant according to section II (j) was "the person whose name is entered authoritatively in the survey papers, or other public accounts, as responsible to Government for payment of the assessment due upon any field, or recognized share of a field." He was not, however, in virtue of this position, by any means necessarily the sole holder of the survey number or share, since by Rule 27 any co-owners of the occupancy could make applications and have their names entered as joint occupants. At the same time, by the terms of the law, the occupant proper was still held responsible for the assessment of the number. The joint occupants had merely the rights to have their names entered and their shares shown in fractional parts of a rupee, but were responsible for their share of the assessment to the occupant, who alone was held responsible for the assessment to the Government. Further, however, by Rule 32, the occupant could be ejected by any person producing the decree of a competent Court proving that he was entitled to be regi-

stered as occupant in place of the incumbent. As regards succession again, failing a claim from other heirs, the rule of primogeniture still held (Rule 27), but according to Rule 28 if there were more heirs than one, they could, if they chose, make an application and be registered as joint occupants on the terms aforesaid, while by Rule 33 a person producing a certificate of heirship from a Court was also entitled to entry as occupant.

While recognising the fact of sub-division, the Act of 1865 refused to allow the original survey numbers or recognised shares to be divided into smaller numbers or shares. The difficulty was tried to be removed by amending the Act. Act IV of 1868 was passed which permitted the sub-division of survey numbers and recognised shares for certain purposes, subject only to the limit of a minimum of area. The provisions of that Act allowed Survey Officers at revision survey to sub-divide any survey number or share subject to the limitations of the area imposed. Subsequently the Bom. L. R. Code was passed and in it was incorporated, with modifications, the survey Act of 1865. In the Code, recognition was, for the first time, accorded to the double system of title to land and of the existence of rights other than those derived from entry in the Government records. This was done by the separation of the two classes of rights under the two heads of 'occupancy' and 'registered occupancy'. In short the registered occupant of the Code was the middleman on account of the survey number or share for which his name was registered; the occupant was the unregistered man in possession.

Subsequently it was thought desirable to amend the revenue law so as to make the actual holder of land primarily responsible for the Land Revenue. The changes proposed were embodied in the Bom. L. R. Code by Act IV of 1913. By this Act the registered occupant was abolished and occupancy was made to depend upon possession. The primary liability for the payment of land revenue was diverted from the original "registered occupant" and laid upon the new possessory occupant.

These two reforms necessarily involved a third, *viz.*, the recognition of a new unit of holding. By the old law the only sub-division of the survey number recognized had been the "recognized share"—a term including the pot number. This, however, was a survey unit and under the old system could only come into the Revenue accounts by way of the survey records after actual survey and map correction. Such an area could obviously not serve as the new unit of holding, which was to be based upon possession and not upon entry in the Survey Records. Hence it was necessary to create a new type of unit, the "sub-division," which is defined in s. 3, Cl. (7).

The term 'recognized share' of a survey number was abolished and pot and falni numbers under the amended Act, are included under the head of 'sub-division'. (see para. below for pot number and falni number.)

The splitting-up of the survey-number into such sub-divisions was, at the same time, authorized by the present section. The same also authorized the fixing up the assessment of the sub-divisions. The process of prat falni is described below.

As the primary liability for the payment of land revenue was laid upon the occupant it became necessary to keep the record of occupation as complete and accurate as possible.

With this object, therefore, the measurement and mapping of all such sub-divisions has been undertaken, and since the work proposed is for the benefit of the occupants, by s. 135G post, the cost of preparation has been made recoverable from them.

**The 'recognized share'; the Pot Number; and the Falmi Number.** The 'recognized share'.—In the rules attached to the Joint Report, mention is made of 'shares' of a Survey Number. By this expression is meant a holding which being below the area necessary to constitute a number of the standard size, were included with other holdings in a standard number in accordance with the principles inunciated in the Report. In the Deccan these shares were not measured or assessed, but were shown in the accounts against the names of their holders as constituting so many annas in the rupee of the whole number; e. g. 2 or 4 annas share. In the Gujarat, however, such subordinate holdings were measured though very roughly after the regular survey had been completed, and the assessment calculated by the rule of three. No measurement record proper was kept of these areas and the Survey Number still remained the unit, both of survey classification and assessment. Such sub-divisions were called 'recognized shares' and were given legal recognition as 'subordinate share of a Survey Number in the Survey Act of 1865.

**The Pot Number.**—The evolution of the Pot Number took place in the Konkan. Like the 'recognized share' the Pot number was a 'subordinate share within the Survey Number', but it was also something more than this; for, whereas the recognized share was formed only of separate individual holdings, in the Konkan, in the case of 'mixed numbers' (i. e., those containing more than one class of land such as garden mixed with rice etc.) every separate parcel of each class held by a different occupant was made into a separate portion. But the chief distinction between the two lies in the fact that the Pot number unlike the recognized share was separately measured, classed, assessed and later on demarcated by boundary marks. The Survey Number in fact became an aggregate of Pot numbers, though it was still separately measured and mapped; it was also in one way the unit of holding since, by the Survey Act of 1865, if a holder of a pot number resigned his share for any reason the holders of the remaining pot numbers had either to take it up or pay the assessment thereupon. This, however, was a purely administrative measure designed to preserve the integrity of the Survey Number, the real unit, both of holdings and of assessment, being the pot number.

**The Falmi Number.**—In the early days of the Konkan Survey the Varkas lands were not measured in detail, as they were not assessed separately but were lumped with the Rice lands, the latter having their assessments slightly raised on account of the privilege allowed to use the Varkas lands

for the purpose of obtaining rate therefrom. They were merely surveyed in the mass with the Gavcharan and forest lands. This was not considered satisfactory and the so called Falni system was introduced. By means of this Varkas lands in the possession of rayats and used for the purpose of rate were separated off into large numbers, and the integral holdings measured. They were called Falni numbers.

#### SURVEY OF SUB-DIVISIONS.

The survey of sub-divisions or the Hissa survey is the process carried out by the Land Records Department. The Hissa survey was originally undertaken as required by *G. R. 10524 of 21-11-1910*, in all the Districts of the Presidency. For the conduct of the Hissa survey originally a special staff of temporary surveyors who have been called Hissa Surveyors or Pot Hissa Surveyors, was entertained under an Officer called the Survey Maulatdar. The general control of the Hissa Surveyors vested in the superintendent of Land Records of the Division concerned.

**Procedure.**—Before the commencement of the field operations by the Hissa Surveyor, a notice has to be issued through the Maulatdar of the Taluka and posted in the village chavdi and proclaimed by beat of drum stating that the sub-divisions in the survey numbers in the village are about to be measured according as they have been divided by the holders. The Hissa Surveyors is required to give, as far as possible, daily notices to the khabedars of the Hissas or sub-divisions, mentioning the numbers which he would measure the next day and asking the khabedars to be present at the time of the survey to give any information required. The Hissa Surveyor is also required to refer to the village records and collect the necessary information, for the survey of Hissas, from the Village Accountant and Record of Rights and also from the khabedars of the Hissas.

When there is no dispute, the boundary of each sub-division is confirmed according to the actual *vahivat* in the field. Where there is any dispute, the boundary to which the dispute relates is measured and mapped in accordance with the claims of both the parties, the dispute is registered in the register of disputed cases and the papers are sent for disposal to the Survey Maulatdar who is empowered to decide all disputes arising at the time of the Hissa Survey. After the dispute has been settled, the Pot Hissa map is corrected accordingly, and the area of the sub-division entered in the Land Records.

The Hissa Surveyors begin the field work early in November and close it by the end of May. From June to the end of October they work on the recess work called the *Barnat* work. For the conduct of Hissa Survey, field as well as *Barnat* work, Departmental rules have been framed with the approval of the Settlement Commissioner and Director of Land Records which the Pot Hissa surveyors are to follow strictly. There are 12 Hissa Form prescribed for Hissa Survey work; the most important are the *Tippau Book*, the *Plane Table Sheet* and the *Area Book*.

The proportionate assessment of sub divisions to the land revenue settled upon the Survey Number should be calculated according to the relative classification value of the several parts of the survey number. When the total of the calculation of assessment of all sub-divisions of Survey Numbers according to this procedure (which method is also called Part Phalni) falls short of or exceeds the whole assessment of that survey number, the difference is equitably distributed over the hissass by addition or deduction in the assessment of the big Hissas so as to make the total equal to the assessment of the Survey Number. Ordinarily the new assessment over the hissa should not be less than 6 pies in the Districts of Belgaum, Dharwar, Bijapur and the above-ghat Talukas of Kanara and 3 pies in the Districts of Kolaba, Ratnagiri and the below-ghat Talukas of the Kanara District. But in certain exceptional cases, where the area of the hissa is very small, the assessment over such hissass will have to be calculated to one pie in order to keep tally with the total assessment of the Survey Number. In no case should the assessment over the hissa be less than one pie. This procedure has been authorized by *G. R. R. D., 5314/28 of 6-8-1931*.

The total cost of the Hissa Survey is first met from the "Advances Recoverable Under Pot Hissa" grant. The practice was for some years to divide all the cost in the Taluka equally over all hissass irrespective of the size or value. But of late a graduated scale of hissa fees, considering the area, size and value of each hissa is fixed and levied so as to cover the entire cost of Hissa Survey. Such cost can be recovered from the kabjedars of each hissa under the authority of s. 135G (b) of the L. R. Code. The Kabjeddar of each hissa is supplied with a sketch or the map of his hissa.

**Up-keep Hissa Survey or the Measurement of new Hissass.**—By the up-keep hissa survey is meant that the hissass formed in the survey numbers are measured and mapped with the aid of the Plane Table subsequent to the measurement of hissass which had originally existed and had been measured before. The work of up-keep hissa measurement is done by the District or Cadastral Surveyors under the direct supervision of the District Inspector, Land Records. The procedure of measuring such hissass is not different from that laid down for the measurement of original hissass, described under the Hissa Survey. But the method of assessing the survey cost on account of new hissass differs from that under Hissa Survey. In the case of new hissass no graduated scale of fees is applied but a uniform fee of one rupee per hissa is to be recovered from the kabjeddar, irrespective of the size of the new hissa.

Where the existing measuring staff of the district is found unable to cope with the measurement work of new hissass, a special party of surveyors is entertained for this purpose and the cost on account of it is met from the Advances Recoverable Grant. The fees realized on that account are credited to the Advances Recoverable Head in reduction of the advance made.

Every year the Village Officers are required to send, by the end of July, an intimation about the formation of new hissass in their villages to the

District Inspector, Land Records, through the Mamlatdar in the form prescribed in the Revenue Accounts Manual. On receipt of this information, the District Inspector, Land Records examines it Taluka by Taluka. He takes no action in respect of the villages in which there are a few hissas, viz., not more than six, but he directs measures to do the work where the hissas are more than six. The District Inspector, Land Records, prepares a schedule of the villages in which there are a substantial number of new hissas to be measured and sends it to each Cadastral Surveyor together with the measurement cases of the villages pertaining to the charge of the Cadastral Surveyor. If the District Inspector, Land Records, finds that it is necessary to send the Cadastral Surveyor to the village for measurement work, he directs the Cadastral Surveyor to take up the measurement of new hissas in that village even if they are less than six. After measuring all the new hissas in the village, the Cadastral Surveyor is required to make an endorsement in the Register of New Hissas maintained in the village, to the effect that all the hissas up to that date have been measured.

In some districts and talukas, the hissas have been surveyed on the *falni* method by chain and cross staff, prior to the use of the Plane Table in the Hissa Surveys. The *Falni* method was a crude method of ascertaining the area by taking measurements of a few sides only. But during the course of the measurement of new hissas, the hissas originally measured by *Falni* system, are to be measured by Plane Table.

The Hissa Survey records of the district are lodged in the District Survey Office along with the records of the Original Revision Surveys.

#### PRAT PHALNI.

Prat phalni is a process of distributing the valuations of soil recorded in the Prati Book at the Revenue (Original) or the Revision Survey, or worked out in the Prat Phalni Patrak for the sub-division in the survey number for the purpose of assessment. Land was divided into suitable compartments by the staff of classes at the time of the classification, in view of the varying conditions of the soil and the size. The value of each compartment was then worked out in accordance with "Rupce scale" prescribed by the Joint rules, estimating the order of the soil, its depth, and the deteriorating faults. Prat Phalni is, therefore, a process by which assessment is worked out subsequently by the survey staff after a survey number is split up into sub-divisions.

The term 'Prat Phalni' has come to be used since the introduction of Hissa Survey. Before that 'Prat Phod' was in vogue, and no definite rules seem to have been laid down on the subject. But limits in the area varying with each kind of land were laid down as shown in the margin.

	A. G.	}	The object of this procedure was to save clerical labour. When the area of the land under Prat Phalni was within these limits, assessment was worked out by the Rule of Three, but in other cases the assessment was
(A) Khuski (Dry crop)	5 0		
(B) Tari (Rice)	1 0		
(C) Bagayat (Garden)	0 2		

calculated upon the basis of the Bhag Annas actually worked out under the Prat Phod system. The results of this were incorporated in a book called the "Prati Utar." When the Hissa Survey was in its infancy the system was only rough, but was replaced by a better and a regular one known as the "Prat Phalni."

**The Rule of Three**—The calculation is made by using the 'Dar' of the number and the Akar Jantri, (*i.e.*, a simple ready reckoner). Proportionate adjustments are made to the pakka assessments of the sub-divisions by making plus and minus, to preserve the original assessment of the survey number in tact.

While doing Prat Phalni, the following are the rules which need to be observed :—

(1) When the soil classes of the land are as in the margin, the assessments

1-2-3	} of the sub-divisions are to be calculated by the Rule of three; as there is no material difference in the valuation of the soil, contained in the several sub-divisions for the purpose of survey assessment. The same holds good of Rice and Pat Bagayat lands where the soil annas are as above and the difference in the water class is more than 1. Where the difference is greater than the prescribed limit, the sub-divisions will be dealt with under the Prat Phalni system.
2-3	
3-4	
4-5	
5-6	
6-7	
7-8	
8-9	

(2) When it is obvious at a glance from the comparison of the pakka sketch (Plane Table sheet) and the Prati Book that the Bhag Annas of the sub-divisions are the same, since the classification compartments are exactly the same in each sub-division, no Prat Phalni will be done and the assessment in such cases will be worked out by the "Rule of Three."

(3) When it is found that the Bhag Annas of the sub-divisions do not differ in any case by more than 2 annas, no Prat Phalni need be done, but the assessment is calculated only by the Rule of Three, provided that, if the Bhag Annas of one sub-division are 8 annas or under, the difference allowable is 1 anna 6 pies only.

(4) In mixed numbers, *e.g.*, of rice and drycrop or drycrop and Patasthal garden, the rule of Prat Phalni is applicable to each class of land.

These rules contain only the general principles underlying the Prat Phalni system. As for the technical working, first, the kshetra is pricked off from the Pakka sketch, the survey number and the Pot numbers being outlined in black ink and the new sub-division in red ink. On the tippan thus prepared, the classification compartments are drawn within the dotted lines and may be enlarged to the required scale for this purpose. The classification compartments are then worked out chiefly on the basis of their areas. In calculating the Bhag Annas, parts of less than 1 guntha of a compartment are ignored entirely, *i.e.*, more than  $\frac{1}{4}$  will be treated as one and more than  $\frac{1}{2}$  as half, less than  $\frac{1}{4}$  as nothing and so on.

The method above described is called the "Ekarman" as the distribution of the Kshetras (classification compartments) is based upon the acre. There is another method of Prat Phalni named "Akritiman." This method



is adopted only when the shape of any sub-division is irregular or its area is too small for drawing accurately the classification compartments. Under this method only the shape and the size are taken as the basis for the Prat Phalni work. Of course, the results of the two methods are the same, and there can be no difference.

The measurement work is done by a special staff in this Presidency.

The following rules are made by the Governor in Council as provided in a. 215 (J) for regulating the division of Survey Numbers into sub-divisions and the fixing of the assessment of the sub-divisions under a. 117A. Rule 20 deals with the notices to be issued stating that the sub-divisions of survey numbers are about to be measured and their posting in the village chavdi; Rule 21 prescribes the procedure for laying down the boundaries in cases where there is no dispute and also in cases where there exist disputes regarding the boundaries, and the settlement of the same under ss. 37 and 119-120 or Rule 108 as the case may be and for the correction of the map and entry of the same into the land records. Rule 22 provides for the fees to be recovered for making sub divisions. Rule 23 states that the proportionate assessment of sub-divisions is to be calculated according to the relative classification value of the several parts of the survey number as directed in Rule 10.—For Rules see the *Bombay Land Revenue Rules, 1921, in the Appendix.*

The process laid down in Rule 20 is to be carried by the Land Records Department.

Under a. 13/G (b) costs are to be recovered as a revenue demand after the completion of the work.

Rule 23 does not apply in Sind, where each sub-division is treated as a Survey number and as there is no classification as we understand in the Presidency but only classes according to crop and methods of irrigation, the assessment of each hissa is calculated, it seems, each year, upon its recorded area.—For further information see *Sind Survey Manual.*

The distribution of assessment is to be based on the classification confirmed by a. 106 whenever possible. The result is usually summarised in a statement termed the '*Akar Phod Patrak.*'

For the distribution of assessment of pot hissas, see *R. 3464* and *7776-11*, and for the minimum assessment of 6 pies (or  $\frac{1}{2}$  anna in Konkan and Kanara below ghats *R. 6299-13*) and Dharsod to the nearest  $\frac{1}{2}$  anna if the assessment is less than one rupee and the nearest anna in other cases (*R. 1698-10*) subject to the total assessment of S. No. not being exceeded, see *R. 7410-14*, and for Dharsod on amalgamation see *R. 5242-11*. The same Dharsod scale is applied to jodi on inam sub divisions (*R. 15227-17*).

(ii) Effect is not given at the time of discovery to slight (below 5 per cent.) differences in the aggregate area. They are noted for incorporation in the new Akarband and V. F. I. at the next Revision Settlement. But larger differences are investigated and corrections made (see *Compilation of Rules for Land Records Department and new Rule 15*).

(iii) The detailed measurement of sub-divisions often discloses in respect of the survey number (1) errors, (2) encroachments, (3) conversions of land to other uses or categories. As to (1) see Rule 15 in the appendix which comes into operation if the difference is appreciable, after the new measurement is proved correct.

As to (2) obviously either the old boundary must be restored or the new one accepted (*R. 3630-37*). It will depend upon the agreement of the parties and the evidence. Where the old maps and measurements cannot be exactly relied upon to prove the boundary, and where a party has been in uncontested possession for over 12 years the boundary and area as it is actually found must be accepted. (*R. 7359-17*). When it is thus accepted, the Records may have to be corrected, and some area may be transferred from one survey number to another.

If A "improves" Warkas or waste land in an adjoining survey number, whether it belongs to Government or to B, and incorporates the improved land in his number, then it seems that he would not be protected against paying the full Old Rice assessment on the converted area, if he retains it, instead of the concession rates for New Rice. The "improvement" which he has made was not in his own holding, and is not covered by any guarantee.

As to (3), assessment is not always affected by improvements, but the new map of sub-divisions and the village map should show the existing state and existing boundaries, while the assessment depends upon the former classification. The commonest case is the conversion of Warkas land into Rice; if the map shows only Warkas when all is now Rice, it will not satisfy the requirements for crop inspection; it is better not to ignore the facts. The land, therefore, is mapped as it is found. But when fixing the proportionate assessments, the old Suds are looked into in order to see what the land originally was.

[\*]117B. If any sub-division of a survey number is

relinquished under section 74 or is forfeited for default in payment of land revenue, the Collector shall offer such sub-division at such price as he may consider it to be worth to the occupants of the other sub-divisions of the same survey number in such order as in his discretion he may think fit; in the event of all such occupants refusing the same, it shall be disposed of as the Collector shall deem fit.

Provided that until the said sub-division shall be occupied or until the entire survey number shall be relinquished,

[a] This section was inserted by Bom. IV of 1913, s. 56.

whichever event may first occur, the assessment of the said sub-division shall be levied from the occupants of the other sub-divisions of the survey number in proportion to the amount of assessment due from such occupants on account of their sub-divisions.

For the purposes of this section notwithstanding anything contained in section 3, if any of the other sub-divisions have been mortgaged with possession, the mortgagors shall be deemed to be the occupants thereof.

#### Commentary

The unrestricted creation of sub-divisions, will not involve any risk to the realization of the land revenue and will not cause the disintegration of the survey number. The revenue is safeguarded by this section. The maintenance of the responsibility of all the holders of sub-divisions within a survey number for the revenue of any sub-division that goes out of occupation is found necessary for it is not unlikely that an unequal distribution of assessment over sub-divisions will occur by agreement, collusion or otherwise, and in the absence of such a provision (as s. 117B) the overburdened sub-divisions would sooner or later become waste. An effective way to prevent the creation of occupancies less in area than survey numbers would be to enact a law against the transfer or inheritance of land in parcels of less than a specified area.—*Report on the proposed Amendment of the Bom. L. R. Code (1922) by G. D. French (18-4-1911)*.

The term occupant is subject to modification when applied to any estate in the district of Ahmedabad, Kalra, Broach and Pauch Mahals to which the Gujarat Talukdars' Act, 1888, extends, (*vide Bom. Act VI of 1888, ss. 1 and 33*).

This section does not provide for the levy of assessment from the remaining occupants in the case of a sub-division consisting of an intestate occupancy under s. 72, and where the collector is unable to dispose of it by sale for want of bidders.

Delegation of power to Mamlatdar.—The Collector may delegate all his powers under this section to mamlatdars, etc.—*Administrative order VIII*.

### CHAPTER IX.

#### THE SETTLEMENT OF BOUNDARIES AND THE CONSTRUCTION AND MAINTENANCE OF BOUNDARY-MARKS.

[\*]118. The boundaries of villages situated in British territory shall be fixed, and all disputes relating thereto shall be determined by Determination of village boundaries.

(a) As to the local modification of section 118, see para. 4 of foot-notes (b) on p. 1, *supra*.

survey officers, or by such other officers as may be nominated by Government for the purpose, who shall be guided by the following rules :—

*Rule 1.*—When the patels and other village officers of any two or more adjoining villages, and, Village boundaries may be settled by agreement. in the case of an alienated village the holder thereof or his duly constituted agent, shall voluntarily agree to any given line of boundary as the boundary common to their respective villages, the officer determining the boundary shall require the said parties to execute an agreement to that effect, and shall then mark off the boundary in the manner agreed upon. And any village boundary fixed in this manner shall be held to be finally settled, unless it shall appear to the said officer that the agreement has been obtained by fraud, intimidation, or any other illegal means.

*Rule 2.*—If the patels and other village officers, and, Procedure in case of disagreement or dispute. in the case of an alienated village, the holder thereof or his duly constituted agent, do not agree to fix the boundaries of their respective villages, in the manner prescribed in the preceding rule, or if it shall appear to the said officer that the agreement has been obtained by fraud, intimidation, or any other illegal means, or if there be any pending dispute, the said officer shall make a survey and plan of the ground in dispute, exhibiting the land claimed by the contending parties, and all particulars, relating thereto, and shall hold a formal inquiry into the claims of the said parties, and thereafter make an award in the case. If either of the villages concerned be alienated, an award made by a survey officer shall, unless the officer making it be the Superintendent of Survey, be subject to his

confirmation, and an award made by any other officer shall be subject to confirmation by such other officer as Government may nominate for the purpose.

### Commentary

This chapter consists of eight sections (ss. 118-125) and deals chiefly with the settlement of the boundaries of (i) villages and of (ii) fields. It lays down rules for the determination of such boundaries and further provides that when once a boundary has been fixed accordingly such a decision shall be final and it shall be conclusive as regards, (i) the proper position of the boundary lines or the boundary marks and (ii) the rights of the landholders on either side of the boundary fixed, in respect of the land adjudged to appertain, or not to appertain to their respective holdings. The expenses required for the construction and repair of such boundary marks have been made recoverable from the Landholders concerned and a small penalty is imposed upon any person found to injure any such mark.

S. 118, deals with the determination of village boundaries which may be settled either by an agreement between the village officers, or holders of the villages concerned, or in cases of disagreement, by the Survey Officers, after a formal inquiry into the merits of the claimers of the contending parties.

*Local modification.*—This section is subject to modification when applied to any village in the districts of Raunagiri and Kolaba to which the Khoti Settlement Act extends.—*Vide Bom. Act I of 1880, ss. 1 and 39.*

*Rules regarding Determination of boundaries between States.*—In determining boundaries between States the rule of mid-channel may be adopted where large rivers, whose bed is fairly full throughout the year divide the States. The rule of mid bed should be preferred with a reservation of the right of use of the water where the rivers run very dry and shift their channels but leave the banks as a permanent boundary. However, the rule of midchannel should be adopted where the banks are subject to erosion and are as shifting as the channel.—*G. R. R. D. 8759 of 21-12-1891; G. R. P. R. 1660 of 8-3-1883.*

*Encroachments of long standing before location of boundaries.*—Where encroachment before the location of boundaries can be distinctly proved it would be hardly expedient to evict the person under s. 61 in case of land which has been included in an occupied number at an original or revisional survey and it would be especially inexpedient where the survey took place many years ago and the land alleged to be encroached upon has been in occupation ever since.—*G. R. 3620 of 13-5-1887.*

*Court has no power to fix boundaries.*—When the assistance of the Court is sought for the purpose of ascertaining the boundaries, which the plaintiff himself is unable to point out by reason of some confusion in them, and to recover possession when those boundaries have been ascertained by the

Court, it was held, that the Court has no power to fix the boundaries of legal estates unless some equity is superinduced by the act of the parties as some particular circumstance of fraud or confusion.—*Kavasji v. Hormuji*, 29 Bom. 73: 6 Bom. L. R. 782.

Note:—See commentaries to s. 121.

[<sup>a</sup>]119. If, at the time of a survey, the boundary of a field or holding be undisputed, and its field boundaries. correctness be affirmed by the village officers then present, it may be laid down as pointed out by the holder or person in occupation, and, if disputed, or if the said holder or person in occupation be not present, it shall be fixed by the survey officer according to the [<sup>b</sup>]and records [<sup>b</sup>] and according to occupation as ascertained from the village officers and the holders of adjoining lands, or on such other evidence or information as the survey officer may be able to procure.

If any dispute arise concerning the boundary of a field or holding which has not been surveyed, or if at any time [<sup>c</sup>] after the completion of a survey [<sup>c</sup>] a dispute arise concerning the boundary of any survey number, [<sup>d</sup>] or sub-division of a survey number [<sup>d</sup>] it shall be determined by the Collector, who shall be guided [<sup>e</sup>] by the land records [<sup>e</sup>] if they afford satisfactory evidence of the boundary previously fixed, and if not, by such other evidence as he may be able to procure.

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[a] As to the local modification of section 119, see para. 5 of foot-note (a) on p. 1, *supra*.

[b-b] These words were substituted for the original words "Village records" by Bom. IV of 1913, s. 57.

[c-c] These words were substituted for the original words "after the survey records have been handed over to the Collector" by Bom. IV of 1913, s. 57.

[d-d] These words were inserted by Bom. IV of 1913, s. 57.

[e-e] These words were substituted for the original words "in the case of survey numbers by the survey records" by Bom. IV. of 1913. s. 57.

### Commentary

Scope of the Sections 119 and 121.—In a memorandum dated 11th April 1912, the Commissioner of Legal Affairs Bombay says:

“A 119 of the Land Revenue Code, as I read it, applies to the following

cases—

(a) Where a survey is being carried out and it is necessary to make fields into Survey Numbers; here, the Survey Officer lays down the boundaries of the fields, with a view to making Survey Numbers, according to the best evidence available to prove the right of the occupiers to possession of the land they claim as belonging to their fields.

(b) Where a field or holding has not been surveyed and there is a dispute as to the boundaries and it is necessary to determine the boundaries; here, the Collector lays down the boundaries of the field such as the same may as the Survey Officer laid down the boundaries under (a).

(c) Where a survey has, at some previous time, been carried out, and there is a dispute as to the boundary of a Survey Number or sub-division, the Collector lays down the boundary of the Survey Number or sub-division (for this is the matter of dispute) according to the evidence obtainable. He further proceeds to say that “Section 119 to 121 apply mainly to boundary disputes, that is disputes as to the position of boundaries, and rights which depend upon and follow from the position of a boundary; they do not touch rights acquired over the land by any other means, such as transfer or prescription.”

“Section 123 would so far as one can judge, apply the foregoing as follows:—

In the case of (a) the Survey Officer's decision determines the boundaries of the field and of any Survey Number which may be constituted by the Survey Officer, and the extent of the land which the holder of the field or Survey Number is at the time entitled to hold as appertaining to his field or Survey Number.

In the case of (b) the Collector's decision determines the boundaries of the field and the extent of the land which the holder is at the time entitled to hold appertaining to his field.

In the case of (c) the Collector's decision determines the boundary of the Survey Number or sub-division and the extent of the land which the holder of the Survey Number or sub-division is at the time entitled to hold as appertaining to his Survey Number or sub-division.

What is a ‘boundary dispute’?—The word ‘dispute’ in the second part of this section means a dispute between two neighbouring owners and not a dispute between the Collector and the owner. Where a dispute arises between the plaintiff and the Collector as to whether the former had cut the trees from the Government land in front of his land and in the course of that dispute the Collector cut some wood into the question of boundary between the land of the plaintiff and that of his neighbour and later on

ordered the correction of the revenue records on the basis of the enquiry, and the plaintiff subsequently sued for the declaration of his title to certain strip of land which he had been ordered to give up by the Collector, it was held that there was no such dispute as is necessary for the application of this section and that the question of the plaintiff's title to the land could be gone into in the later suit.—*Malkarjunapp v. Anandrao*, 53 Bom. 766.

The term "boundary dispute" as used in the Survey Act, means a contention between two neighbouring land proprietors. After the functions of the Survey Officers have ceased in a dispute, the Collector is the proper person to determine disputes as to boundaries, but where a landowner seeks to recover from the owner of neighbouring land ground usurped or encroached upon by him, he must file a suit in a Civil Court. The determination of the Collector as to the proper position of the boundary marks withdraws no rights of possession, although it affords valuable evidence as to the rights of the parties. *Proceedings of the Bombay Legislative Council for the year 1877*.

In an earlier case of the Bombay High Court, West J. remarked that it was not easy to say what is a boundary dispute as distinguished from a suit for ejectment or to remove interference with possession. It would seem, indeed, that the two classes of cases are not divided by any unvarying line of separation; that they overlap one another as it were; and that to assign any particular suit to the one or to the other is frequently a matter rather of convenience than of judicial principle.

For a critical and historical discussion of the whole question see the case itself.—*Pitambar v. Sambhajirao*, 8 B. H. C. R. (A. C. J.) 185 (1871).

A Cadastral Surveyor is a public servant and performs his legitimate functions when he measures the land and maps it in accordance with the claim of the disputants.—Under s. 119, cl. 2 of the L. R. Code, when a dispute arises concerning the boundary of any survey number at any time after the completion of a survey, it shall be determined by the Collector, who shall be guided by the land records if they afford satisfactory evidence of the boundary previously fixed, and if not, by such other evidence as he may be able to procure. The Mamlatdar under No. s. 60 and 61 of Revenue Department No. 5295 dated June 1 1911, and under rule 9 (a) of the Standing Orders of the Land Record Establishments, the District Inspector is required to send measurement cases for measurement to the Circle Inspector. The Circle Inspector in this case is represented by the complainant who is a cadastral surveyor. Under rule 15 of the Land Revenue Rules, 1921, for all lands which shall be hereafter surveyed, it shall be the duty of the Director of Inam Records to cause to be corrected any arithmetical or clerical error whenever discovered, and to cause to be incorporated punctually in the land records all changes in the boundaries; and rule 21, clause (2), says:—

"Where there is any dispute, the boundary to which the dispute relates shall be measured and mapped in accordance with the claims of both



disputants, and the dispute entered in the register of disputed cases. After the dispute has been settled under s. 37 and rules 119-120, or rule 108, as the case may be, the map shall be corrected accordingly and the areas finally entered into the land records."

It is clear, therefore, that the Mamlatdar had the power to determine the boundary under s. 119, cl. 2, and the complainant had jurisdiction to measure the land and map it in accordance with the claims of both the disputants. In rule 25 roughly dressed long stones are prescribed to be boundary marks for the purpose of demarcating the boundaries of survey numbers. It is clear, therefore, that the complainant was performing his legitimate functions under the rules under the L. R. Code and the obstruction caused by the accused would fall within s. 186 of the I. P. Code.—*Emperor v. Limba* 31 Bom. L. R. 800 (1929).

**Determinative Character of the Collectors' decision in boundary disputes:**—The Collector's decision as to the position of the boundary line of a survey number and as to the rights of the landholders is determinative and it cannot be objected to on the ground that Civil Courts alone have power to decide the question of title. Government has power to settle boundary disputes under s. 119—*G. R. 3418 of 1-4-1904*.

The correctness of the boundary fixed at the time of the survey cannot be subsequently called in question.—*G. R. R. D. 10430 of 28-10-1900*.

**Previously fixed.**—The boundary of a pot-hissa as mapped in a plain Table Survey under s. 157G, should be taken to be the boundary 'previously fixed' within the meaning of this section. The map made at the time when the survey number is sub-divided under s. 117A is the best possible evidence of fixing.—*G. R. 1063 of 27-1-1917*.

**Application of ss. 119 and 121.**—S. 121 come into operation when there has been a settlement of a boundary under any of the previous provisions of chapter 9, while s. 119 gives power to Collector to determine a dispute arising concerning the boundary of a survey number or a sub-division of a survey number,

Ss. 119 to 121 apply merely to boundary disputes, i. e. disputes as to the position of boundary and rights which depend upon and follow from the position of a boundary; They do not touch the rights acquired over the land by any other means, such as transfer or prescription.—*G. R. 2950 of 27-6-1917*.

**When is the jurisdiction of Civil Court ousted.**—It is only when a boundary dispute arises between the owners of adjoining lands and the Collector is called upon to determine the dispute that his determination becomes final under s. 121 of the code so as to oust the jurisdiction of the Civil Court.—*Laxma v. Anaji*, 25 Bom. 312.

**Adverse possession of survey numbers.**—The Collector's decision as to the fixation of boundaries, under s. 121 of the L. R. Code, 1873, does not prevent one of the disputing parties from filing a suit in the Civil Court on the

ground that he has acquired a portion of neighbour's survey number by adverse possession.—*Bhaga v. Dorabji*, 43 Bom. 67.

The jurisdiction of a Civil Court is not ousted by this clause, in case of a dispute as to the position of the boundary line between two survey numbers as laid down by the survey authorities, the defendant alleging that the boundary marks were changed, the plaintiff alleging that they are in their right direction.—*Bala v. Nana*, P. J. 1898, p. 41.

**Costs:**—Ss. 119 and 120 provide the machinery for the settlement of a boundary dispute and make it the duty of the officers mentioned therein to decide the dispute which must be done obviously free of cost.

The cost of constructing a boundary mark is recoverable as a revenue demand—Ss. 120, 124 and 137 whenever it is necessary—*G. R. 2465 of 29-3-1889*. But this section does not contemplate revision of boundary on the ground of incorrectness in their location by the survey—*G. R. 3796 of 23-5-1889*.

However, in *G. R. 745 of 29-1-1890* Government allowed the practice of recovering cost in cases of inquiries set on foot on complaints as to the incorrectness of boundary marks fixed by the survey to be continued.

**Note.**—See Commentaries to s. 121.

**120.** If the several parties concerned in a boundary dispute agree to submit the settlement thereof to an arbitration committee, and make application to that effect in writing, the officer whose duty it would otherwise be to determine the boundary shall require the said parties to nominate a committee of not less than three persons, within a specified time, and if within a period to be fixed by the said officer the committee so nominated or a majority of the members thereof arrive at a decision, such decision, when confirmed by the said officer, or if the said officer be a survey officer lower in rank than a Superintendent of Survey, by the Superintendent of Survey, shall be final.

Provided that the said officer, or the Superintendent of Survey shall have power to remit the award, or any of the matters referred to arbitration, to the reconsideration of the

When award may be remitted for reconsideration.

same committee, for any of the causes set forth in [°] paragraph 14 of the second Schedule to the Code of Civil Procedure, 1908 [°].

If the committee appointed in the manner aforesaid fail to effect a settlement of the dispute within the time specified, it shall be the duty of the officer aforesaid, unless he or, if the said officer is a survey officer lower in rank than a Superintendent of Survey, the Superintendent of Survey, see fit to extend the time, to settle the same as otherwise provided in this Act.

If arbitration fail, survey officer to settle dispute.

**Commentary**

**Object.**—This section and ss. 119 and 121 are primarily meant for the purposes of the Survey settlement of the boundary marks as between the Government on the one hand and the occupancy tenants on the other. Government assesses upon the areas of survey numbers and recognized portions of survey numbers. An occupancy tenant could not perhaps sue Government in the Civil Courts for a declaration that the survey boundaries of a certain number were wrong and the area was actually less. In this sense the Collector's boundaries may be determinative. But they may not be so on the question whether a certain survey number or part of it belongs to one individual or another.—Per Madgavkar J. in *Kambhal v. Ismailbhai*, 28 Bom. L. R. 1498 at p. 1506.

The Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrators or empire, upon such terms as it thinks fit :—

(a) Where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, unless such matter can be separated without affecting the determination of the matters referred ;

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

(c) Where an objection to the legality of the award is apparent upon the face of it.—*Schedule II, para. 14, Code of Civil Procedure, 1908.*

[°]121. (1) The settlement of a boundary under any

Effect of a settlement of a boundary. of the foregoing provisions of this chapter shall be determinative :

[a-a] These words and figures were substituted for the original words and figures "section 520, of the Code of Civil Procedure" by Bom. IV of 1913, s. 58.

[b] Section 121 was numbered sub-section (1) of section 121 by Bom. IV. of 1913, s. 58.

(a) of the proper position of the boundary line or boundary-marks, and

(b) of the rights of the landholders on either side of the boundary fixed in respect of the land adjudged to appertain, or not to appertain, to their respective holdings.

[\*](2) Where a boundary has been so fixed, the Collector may at any time summarily evict any landholder who is wrongfully in possession of any land which has been adjudged in the settlement of a boundary not to appertain to his holding or to the holding of any person through or under whom he claims.

#### Commentary

**Change in the law.**—At the time of the second reading of the Bill the Hon. Mr. Mandlik pointed out that the term used in the Survey Act of 1865 was 'owners or occupants' of land where the word 'Landholder' now appears in Bom. L. R. Code 1879. He objected to the omission of the term "owner". It was stated on behalf of the Government that the change did not interfere with any person's rights at all, that "holder" included "owner" and that the term "owner" was deliberately omitted.

He also suggested that in regard to field boundary disputes there should be no finality at all. In other cases, *i. e.*, in cases of disputes in regard to village boundaries there should be no finality up to two years and on due cause being shown power may be left in the hands of the executive Government to reopen them if they see fit. He pointed out that the old Survey Act contained an important proviso which has been left out in this new Act of 1879 which was to this effect:—

"The determination of any boundary under this section shall not debar anyone claiming a right in the land from any legal remedy he would otherwise have for dispossession".

By the Survey Act of 1865 it was declared that all disputes as to village boundaries when decided by the survey should be final. This was so because there was a special tribunal for them under the Elphinstone Code. In regard to field boundaries the right of individuals was saved, resort to the ordinary Courts of law having been allowed. He, therefore, supported by other Indian members of the Legislative Council, pressed for the retention of such a safeguard; but as the non-Indian members, who were against such a retention, were in a majority, Mr. Mandlik's proposition failed.

[a] This sub-section was added by Bom. IV of 1913, s. 59.

'In the Settlement of a boundary'.—this insertion is made in order to remove misapprehension and make it clear that the jurisdiction of the Civil Courts is ousted only where there has been a dispute about a boundary.—*Report of the Select Committee—Amending Act IV of 1913; B. G. G. pt. VII 20-2-1913.*

Clause 2 gives the Collector power to give effect to a finding which the first sub-section declares to be determinative.

*Notes*—In the Select Committee it was urged that the summary powers of eviction to be vested in the Collector should exist only in respect of that portion of land which forms or constitutes the boundary itself, and should not extend over the land lying on either side of the boundary. For to invest the Collector with summary powers of eviction in respect of the land adjoining the boundary on either side would be both unnecessary and inexpedient. It would be unnecessary as the necessary remedies in such cases are provided by the Mamlaidars' Courts Act, the Specific Relief Act and the general Civil law of the land. It would also be inexpedient as very contested matters may frequently arise in such cases calling for a thorough and regular investigation and a deliberative decision at the hands of a Civil Court. In the contentions proceedings, it is obviously undesirable to substitute the rough and ready methods involved in the exercise of summary powers by the Collector for the regular and systematic procedure of the Courts. The reason for vesting summary powers of eviction in the Collector in respect of the land constituting the boundary has no application whatever to the land adjoining the boundary. The reason in the former case is the preservation and maintenance of the boundary. This reason obviously cannot apply to the land adjoining the boundary, matters regarding which may be investigated and decided in the same way as similar matters in connection with any other land.

*Analogue Law:* No Civil Court can exercise jurisdiction as to claims regarding boundaries fixed under Bombay Act No. 1 of 1865, or any other law for the time being in force, or to set aside any order passed by a competent officer under any such law with regard to boundary marks.—*S. 4 cl. g. The Bombay Revenue Jurisdiction Act X of 1916.*

*Scope of the Sections 119, 120 & 121.*—The Bombay L. R. Code is enacted mainly for the purposes of collection of land-revenue as between Government on the one side, and the land-holders, occupancy tenants or others, on the other. Chapter IX, to which these sections appertain, is headed 'settlement of boundaries and the construction and maintenance of boundary marks,' which are connected with the Rayatwari system, which has been an essential feature of this Presidency. These sections, taken as a whole, are meant to provide for the settlement of the boundaries of survey numbers and the preservation of boundary marks upon which the survey settlement and the whole assessment and collection of land-revenue in this Presidency depend. It is doubtful whether the legislature contemplated the results to which a strict and literal application of these sections would give rise. For, in that case, if the dispute pertained to land which composed

exactly one or more whole survey numbers, a decision of the Collector might be determinative, in other words, conclusive. But, if it extended to any portion of a survey number so that it would not only be a question of boundary marks the Collector would have no right to decide and the jurisdiction of the Court would remain. Or, again, if the dispute refers to the boundary of a survey number and is between the Collector and a party, is the Collector's decision conclusive and not open to question in the Civil Courts? Or, as in the present case, even after the institution of a suit and *pendente lite*, the jurisdiction of the Court could be ousted by a reference to the Collector at the instance of one of the parties, notwithstanding the objection of the other.

Confining myself to the last point, I should say that these three ss. 119, 120, 121 are primarily meant for the purposes of the survey settlement of the boundary marks as between the Government on the one hand and the occupancy tenants on the other. Government assesses upon the areas of survey numbers and recognized portions of survey numbers. An occupancy tenant could not perhaps sue Government in the Civil Courts for a declaration that the survey boundaries of a certain number were wrong and the area was actually less. In this sense the Collector's boundaries may be determinative. But I doubt if they are so on the question whether a certain survey number or part of one belongs to one individual or another. The authorities—*Bai Ujam v. Valiji Rasulbhai* 10 Bom. 456 (1886); *Lakshman v. Antaji*, 75 Bom. 312 (1900); 2 Bom. L. R. 1083; *Kavasji v. Hormasji*, 29 Bom. 23 (1904); 6 Bom. L. R. 782; and *Bala bin Joti Shirke v. Nana bin Dhulappa Hunargi*; P. J. 41 (1898), are not all easy to reconcile. But where, as in the present case, there has been no determination by the Collector prior to the suit, I do not think that the appointment of a Survey Officer as Commissioner by the Court and a subsequent determination by that officer and by the Collector *pendente lite* can oust the jurisdiction of the Court and its own independent consideration.—Per Madgaonkar J. in *Kanhailal v. Ismail Bhai*, 28 Bom. L. R. 1498 (p. 1505).

**Collector's powers under s. 121.**—It would seem at first sight as if the power of summary eviction was the natural corollary of *cl.* (2); (b). If the Collector may determine the rights of landholders, he should be able to evict a land holder wrongfully in possession of land judged not to belong to him. But the purpose of s. 121 (b), if construed in this comprehensive manner is foreign to the context in which the section occurs and gives the Collector powers outside his duties as a revenue officer. Chapter IX applies to the settlement of boundaries. Ss. 118 and 119 empower the officer enquiring into a matter regarding boundaries to fix the limits of villages or fields. The wording of these sections clearly shows that what such officer is empowered to do and what he was intended to do is to ascertain and decide the actual physical boundary line between villages, holdings or survey numbers; to decide, that is, how much land belongs to field (or village) A, and how much to field (or village) B, and to point out the line between them. And so far the determination of the boundary involves the determination of the

rights of the holders of A & B (who may be referred to 'a' and 'b'). But the chapter does not contemplate that the Collector should inquire whether 'a' who now holds a portion of B does so by encroachment or by right. The Collector is concerned solely with the question whether the field A ends here or there.—Report on the proposed amendment of the Bombay Land Revenue Code, 1879, by Mr. G. D. French (1911) prepared and submitted under G. R. R. D. 1489 of 14-2-1911.

Can a Provincial Legislature pass measures ousting the jurisdiction of Civil Courts? In *Kashihal v. Ismail Bhai*, 28 Bom. L. R. 1498 (1500). Martin C. J. raised this point. In considering the effect of ss. 119 & 121 of the L. R. Code and of s 4 (g) of the Bombay Revenue Jurisdiction Act 1876, His Lordship remarked, "Now, this raises to my mind a most important and far-reaching question of jurisdiction and principle because it must be remembered that the Acts in question are not the Acts of the English Parliament, nor are the Acts passed by the Legislative Council of the Empire of India. They are Acts passed by the local Legislature, and moreover they are Acts not passed under the jurisdiction at present given to them by the recent Act of 1920, but under the jurisdiction of past days, when the Legislative bodies were of a very different character from what they are today. Now can it be contended that it is within the jurisdiction of the Bombay Legislature to pass an Act saying that the High Court should have no jurisdiction to decide any case relating to land and that all disputes relating to land should be decided by the Collector and be binding on all parties. Obviously it would be going too far. But it might be argued that the local Government can legislate regarding boundaries. Well, that is a compendious phrase. A boundary does not merely mean a line on the map or through a field or along a fence in a disputed case. It involves the question whether certain lands belong to A or belong to B.

It is unfortunate, I think, that in the decisions which have been hitherto given in this Court, the broad question as to whether these particular Acts were not, in this respect, *ultra vires* of the Bombay Legislature, has never been expressly raised. But if the contention raised by the vendor is correct, then why should our Courts in the past have determined boundary disputes between the parties, when the whole of their labours were liable to be upset at some future date by an executive officer, who in no sense represents a law Court? I may say that we do not propose to determine that point today. We have not heard sufficient arguments to enable us to-day to give a proper opinion on the subject. I only mention it to show that the point has not been overlooked by us, and that if a similar argument to that advanced in this case is raised in others, then the question of *ultra vires* will have to be seriously considered. To my mind, it is not sufficient to deal with this class of cases piecemeal, as has been done in some of the cases cited to us. If really at the bottom there is a question of principle involving a direct challenge to the jurisdiction of this Court, then I say that the matter should be grasped and grasped firmly and that the point should not be evaded and left to puzzle practitioners to find distinctions between this case and that. I

would, therefore, much prefer to thrash this point out once for all. And I only regret that the way in which it has been laid before us prevents us from giving a decided opinion on this important point."

Madgavkar J. expressing a similar opinion, said "The construction of s. 121, clause (b), of the Bombay L. R. Code, presents some difficulties, as was pointed out in *Bhaga v. Dorabji*, 22 Bom. L. R. 1111 (1920). On a literal interpretation of the section, the jurisdiction of the Civil Courts would be barred in a very large number of cases. And the question might well arise in view of so far-reaching a result, whether the taking away of so elementary a right as a recourse to the Civil Courts in dispute as to proprietary rights and its determination by a survey officer were or were not matters within the power of the Provincial Legislature which has enacted the L. R. Code of 1879: *Secretary of State for India v. Moment*, L. R. 40 I. A. 48, 15 Bom. L. R. 27 (1912). In the absence of proper argument, I agree with the learned Chief Justice that we must reserve our opinion on the point."

#### REVENUE OR SURVEY OFFICER'S DECISIONS UNDER SS. 119 AND 121 AND JURISDICTION OF CIVIL COURTS:

**Determinative character of Revenue or Survey Officers' decisions as to boundaries: Meaning of the word 'determinative'.—**In 1877 a dispute arose between plaintiffs and defendant as to the boundaries of certain land, being survey Nos. 88 and 87, of which the plaintiffs and the defendant were respectively occupants under Government. In 1879 the boundaries were fixed by a revenue officer under the orders of the Collector, and the piece of land in dispute was found to belong to the plaintiffs as occupants of Survey number 88. Subsequently, the defendant having encroached upon it and dispossessed the plaintiffs, the present suit was filed. The Court, of first instance awarded the plaintiffs' claim, holding that the decision by the revenue officer was conclusive as to the boundary. The defendant appealed and the lower appellate Court reversed the lower Court's decree. The plaintiffs appealed to the High Court.

The High Court while restoring the decree of the Court of first instance observed:

"The rights here referred to must, from the nature of the dispute necessitating the settlement, be the rights of the landholders *inter se*, and by the word "determinative" (which we may remark is not one of ordinary use in legal documents), we can only suppose was meant "conclusive" as between the parties to the dispute wherever the boundary of the holdings comes in question. We agree, therefore, with the Subordinate Judge that, as the piece of land in question is admittedly within the boundary as fixed by the Collector, and as the defendant does not claim to have acquired since the Collector's decision the right to hold the plaintiffs' land except by adverse possession, which the Subordinate Judge finds not proved, the plaintiffs are entitled to have the possession of it restored to them.—*Bej Ujam v. Valiji Rasulbhai*, 10 Bom. 456.



The case of *Bai Ujan v. Valiji Rasulkhai* was followed in *Lakshman v. Narayan*, P. J. for 1899 p. 11 where the High Court remarked that in *Bai Ujan v. Valiji* it was held that by the word 'determinative' in s. 121 was meant *conclusive* as to the legal rights of the adjoining holders where there had been a settlement of boundaries under s. 119.

In *Lakshman v. Antaji*, 25 Bom. 312 where the original claim was for possession and profits of certain plots of land which plaintiff claimed fell within his thikan and the defendant said were included in his thikan, Ranade J. said:

"S. 121 must be read along with ss. 119, 120. There must be a boundary dispute between the owners of neighbouring numbers, and when there is such a dispute the law gives power to the Collector to make a final determination of the dispute with the help of the survey record and other evidence. There is nothing in this case to show that any dispute was thus raised before the survey officers when the survey map was prepared, nor was there any dispute raised which the Collector had to adjudge under s. 121."

In *Bala bin Joti Shirke v. Nana bin Dhulappa Hunargi*, p. J. 41 (1898) Sir Charles Farran and Mr. Justice Caudy, decided that:

"The jurisdiction of a Civil Court is not ousted by s. 4 (g) of Act X of 1876, in case of a dispute as to the position of the boundary line between two survey numbers as laid down by the survey authorities, the defendant alleging that the boundary marks were changed, the plaintiff alleging that they are in their right position."

In the Court below it was held that the jurisdiction of the Court had been ousted because all matters of boundaries were for the revenue authorities and therefore plaintiffs had come to the wrong Court instead of to the right Court of the revenue authority. That contention was expressly negatived by the High Court. The judgment of the High Court runs:—

We do not, however, agree with the Assistant Judge that in such a case the jurisdiction of a Civil Court is ousted by s. 4 (g) of Act X of 1876. See *Arichmures v. Lakshman* P. J. 191 (1883). The plaintiff sued in ejectment, basing his claim on the alleged fact that the disputed strip of land formed part of his survey number according to the boundaries of that number as laid down by the Revenue Authorities. Defendant replied that by those boundaries the disputed strip formed part of his survey number. The question was thus simply one of fact. What was the boundary laid down by the Revenue Authorities? S. 119 L. R. Code, provides that if a dispute arise concerning the boundary of any survey number after the survey records have been handed over to the Collector, it shall be determined by the Collector whose decision shall be determinative of the proper position of the boundary line or boundary marks, and of the rights of the land-holders on either side of the boundary. Clearly if the boundary so fixed includes the disputed strip in the plaintiff's survey number, plaintiff's right to come to the Civil Court and obtain possession of that strip is not ousted by any provision of the law.

In *Bhaga v. Dorabji*, 22 Bom. L. R. 1111 (1920) the facts were that the Collector had decided that the plaintiff was wrongfully in possession of the land in question and he ordered his eviction therefrom under s. 121 of the Code. In this connection Macleod C. J. said that all that was decided by the Collector was that the boundary line between the two survey numbers was as contended by the defendant and as the defendant had a complete and perfect title to the whole survey number the Collector came to the conclusion that the plaintiff was wrongfully in possession of that portion which was in dispute and which had been, in the enquiry, held to belong to the survey number of the defendant. The plaintiff sued to recover possession in the Civil Court on the ground that he had acquired perfect title to the land in dispute by adverse possession. Both the lower Courts had held that they had no jurisdiction to hear the suit. But the High Court, relying upon *Manak v. Narayan*, S. A. No. 472 of 1917 (1919) quoted at p. 1114, foot-note, held that the Civil Courts have jurisdiction to decide whether the plaint property was as a matter of fact the property of the plaintiff or the defendant according to the facts proved in the case.

In *Manak v. Narayan* S. A. No. 472 of 1917 (1919) quoted in 22 Bom. L. R. at p. 1114 Foot-note there had been a dispute between the owners of two survey numbers, and after the survey numbers had been measured by the Revenue Authorities it was found that the plot in dispute belonged to the Survey Number which belonged to the defendant. The plaintiff claimed that he had acquired a title to the plot in dispute by adverse possession and prayed, therefore, that possession might be restored to him. The High Court came to the conclusion that the order of the Dy. Collector adjudging that the plot in dispute formed part of the survey number which belonged to the defendant did not stand in the way of a Civil Court going into the question of adverse possession. The meaning of s. 121 was considered and the High Court held that when the settlement of the boundary was made by the Collector it did not more than establish where the boundary line lay, and that the owners of the respective survey numbers were entitled to their property according to the boundary lines as fixed by the Collector. The High Court also held that that did not prevent one of the disputing parties filing a suit in a Civil Court on the ground that he had acquired a portion of his neighbour's survey number by adverse possession.

Principles underlying ss. 119 & 121 apply also to survey of lands in towns.—In *Ganesli v. Ramchandra*, 23 Bom. L. R. 1209, (1921) the plaintiff and the defendant were the owners of adjoining properties in the City of Poona, and the dispute had arisen with regard to the stable and the drain mentioned in the plaint. There had been decision by the Enquiry Officer to the effect that the gutter and the stable were common property. The Enquiry Officer had been appointed by Government apparently under s. 131 of the Bom. L. R. Code for the purpose of making a survey of lands in the City of Poona. He was invested with all the powers and duties of a Survey Settlement Officer in charge of a survey, for the purposes of the survey of

the lands other than those used ordinarily for the purposes of agriculture only, within the site of the City of Poona.

Macleod C. J. held : That the principles with regard to the survey of land in a town are just the same, and even stricter than they would be in the case of agricultural lands. It would be the duty of the Enquiry Officer to settle the boundary not even the lands of adjoining house-owners, which would ordinarily be by means of a line drawn on a plan, and that line, according to the provisions of a 131 of the Bom. L. R. Code, would be determinative of the rights of land-holders on either side of the boundary so fixed. But it would not be determinative of any rights which the holder of one number could claim to exercise over the land belonging to the holder of the adjoining number, and I do not think the section can give jurisdiction to the Enquiry Officer to decide, as he has done, that a broad strip of land lying between the two numbers was common to both the adjoining owners.

In *Nirmangji v. Haji Arifai*, 36 Bom. L. R. 1264 (1924) the plaintiffs claimed to be the owners of certain land prescribed in the schedule to the plaint as belonging to estate of Kankapur while the defendants who represented the estate of Debrun contended that the suit was not maintainable as the lands belonged to Debrun Estate. The question before the High Court was whether a suit for alteration of the decision of the Assistant Survey Settlement Officer as regards Debrun and Kankapur was maintainable. The High Court held that the suit was not barred by the provisions of ss. 118 and 121 of the Code and that the dispute substantially related to the title to the several properties.

**Effect of a Survey Officer's decision as to boundaries in a dispute referred to him after the institution of suit in a Civil Court.**—In *Keshavlal v. Jambhale*, 26 Bom. L. R. 1490 (1926) the facts were as follows:— There existed a dispute relating to a piece of land on the border between two alienated villages, Malad and Wadran. In 1918 a Wadran piece of land adjoining the disputed land was purchased by Kanballal (purchaser) from the Inamdar of Wadran. Subsequently he purchased the Malad land adjacent to the piece from the Khot of Malad. Each of the Vendor asserted that the land in dispute belonged to him, and formed part of the holding, sold to the purchaser. The purchaser filed a suit in 1919 against the Khot of Malad to establish his right to the land as purchaser from the Inamdar of Wadran ; in other words he contended that it formed part of the Wadran lands. The Khot of Malad instituted another suit in 1920, against the purchaser Kanballal for a declaration that the land formed part of Malad lands, i. e., it fell within the boundaries of his Malad lands. Subsequently to the filing of the suits, on the application of his Khot to the Court for leave to have the boundary dispute settled under the L. R. Code and to have a Commissioner appointed under O. XXVI, R. 9 of the Civil Procedure Code. A commissioner was appointed who was also the Survey Officer appointed by the local authorities under the L. R. Code. He proceeded to investigate the matter, held a survey and made his award in 1923, finding in

favour of the Khot. The award of the Survey Officer was in due course laid before the Court, and was accepted by the Court as evidenced in the case. The trial Court having upheld the contention of the Khot of Malad there were appeals to the High Court. Martin C. J. quoted the case of *Krishna-rao v. Lazman*, 1883 F. J. 191, and said :

I quote that case as meaning that provided the Collector had not already fixed a boundary, then the case was to proceed in the ordinary way in the Civil Court, which would, in that event, have ample jurisdiction to hear it. But even if the Collector had determined the boundary line, then at any rate, if his decision was in favour of the plaintiff, the plaintiff could come and enforce his rights to that land by claiming possession.

That brings me to what, I think, is the most important distinction in fact between the present case and the other cases which have been cited to us, viz., that both parties had started suits in this Court to determine their relative rights before any application was made to the Collector to determine the dispute under the Bombay L.R. Code. That the Court having once obtained jurisdiction by the acts of both parties, the subsequent award of the Collector could not oust the matter which was thus sub-judice. Accordingly, in our view, on the facts of this particular case, the award of the Collector is not binding on this Court.

Survey Officer *suo moto*, taking action and determining boundaries of adjacent land holders; effect upon Civil Courts' jurisdiction: In *Malkarjunappa v. Anandrao* 31 Bom. L. R. 957 (1929) the dispute between the parties related to a strip of land measuring 2 acres and 37 gunthas. Malkarjunappa the appellant (defendant No. 1) was the owner of survey number 527 Pot No. 3 and Anandrao the respondent (the original plaintiff) was the owner of Survey No. 527 Pot No. 1. Both these pot numbers adjoined a public road. When the Government Surveyor thought that respondent No. 1 cut off the trees on this road, he commenced an inquiry and incidentally in the course of that inquiry he was of opinion that the boundary marks between the Pot numbers 1 and 3 had been wrongly placed during all those years and that it was actually an old water course in which case the strip then in dispute falling to the South of the water course would have belonged to the appellant and not, as it was then thought, to Respondent No. 1. In September 1921, the Dy. Collector held the Respondent guilty of encroachment on the public road. In October 1921 the Respondent asked for a review of that order and that his land might be measured. That order on the part of the Dy. Collector remained. The appellant came to hear of it and hence the suit by Respondent No. 1 for a declaration that the strip was of his ownership and not, as the Authorities since held, of the appellants.

Madgavkar J. in the course of his judgment said " In *Kanhailal v. Ismail-bhai*, 28 Bom. L. R. 1498 (1926) I had occasion to refer to the unsatisfactory wording of s. 121 of the Bom. L. R. Code and the difficulty caused by its wording in general and by the word 'determinative' in particular. It is advisable that the Legislature should make its intentions clearer than they are at present.

It is very doubtful whether the Legislature could intend to give a Surveyor even after the checking by the District Inspector the authority to transfer titles to the lands by the simple process of holding that the old boundary marks were erroneous. This difficulty was in fact anticipated by me in *Kanhailal v. Ismailbhai* (*Ibid*) pp. 1505-06. Taking the Bom. L. R. Code, an enactment of the Provincial Legislature, and ss. 119 and 121 of Chapter IX now in question, I adhere to the opinion that all that the Legislature probably meant was that the Revenue Authorities who are responsible for demarcating and numbering the survey and the Pot numbers, and for the maintenance of roads and boundary marks, should be the persons to decide on these boundaries but it could hardly have intended that they should have power to transfer lands by the simple process as in the present suit. As the learned Chief Justice and I held it is doubtful if the Provincial Legislature could have power to invest, in theory the Collector, in practice not a highly paid surveyor with such authority as to oust the jurisdiction of the Court.

As to whether there is a dispute within the meaning of the second part of s. 119, Bom. L. R. Code, it has been held that "s. 121 must be read along with ss. 119 and 120 of the Code. It is only when a boundary dispute arises between the owners of adjoining lands, and the Collector is called upon to determine the dispute, that his determination becomes final under s. 121 of the Code so as to oust the jurisdiction of the Civil Court": *Lakshman v. Anaji* I. L. R. 25 Bom. 313 (1900). I agree, therefore, following the decision of *Lakshman v. Anaji*, that the word "dispute" in the second part of s. 119 means a dispute between two neighbouring owners and not as in the present case a dispute between the Collector and the owner.

The question whether and how far the jurisdiction of a Civil Court is ousted by the decision of a revenue or survey officer under ss. 119 and 121 was recently gone through and discussed by Patkar & Barlee J. J. in *The Secretary of State v. Jeevchand*, 35 Bom. L. R. 583 (1933). It was decided in that case, on a review of the various previous authorities, that under ss. 119 and 121 of the Bombay Land Revenue Code, 1879, the revenue or survey officer has the right to settle conclusively the boundary dispute between the parties and determine the title of parties flowing from the position of the boundary line. He has no jurisdiction to decide whether or not the holder of one survey number has acquired by prescription title over the land of adjoining survey number by adverse possession. The jurisdiction of the Civil Court is barred so far as the determination of boundary line is concerned. The question of adverse possession arises only when a person who has no title encroaches on the land of another and the true owner does not bring a suit for possession in a Civil Court for more than twelve years. That question must be decided by the Civil Court, and is outside the jurisdiction of the Collector. Nor is the decision of a Civil Court on the rights of parties owning lands on either side of a boundary line, based on adverse possession affected by a 4 (a) of the Bombay Revenue Jurisdiction Act, 1876.

In the *Con res* of their judgment, their Lordships said:—

"Section 119, first clause, refers to the determination of field boundaries at the time of survey, and the second clause refers to the determination of the boundary after the survey or in respect of a field or holding that has not been surveyed. The dispute in respect of a field already surveyed would arise either on account of accidental or intentional obliteration of boundary marks. The legislature has confided the power of determining the boundary line to the revenue authorities. After the boundary line has been determined by the Collector the decision of the Collector is conclusive as to the proper position of the boundary line or boundary marks and of the rights of land holders on either side of the boundary. If the disputed strip of land forms part of the plaintiff's survey number demarcated by the boundary fixed by the Collector, the title of the plaintiff is conclusive and he can bring a suit in the Civil Court on the strength of title and such suit is not barred by ss. 119 and 121 and cl. (g) of Act X of 1876.—See *Bala v. Nana B. J.*, 41 (1898). If a plaintiff brings a suit for possession on the strength of his title before the determination of the boundary by the Collector, and it appears that the question between the parties is a boundary dispute only, the Court may direct one of the parties to apply to the Collector and obtain a decision of that officer according to the decision in *Lazman v. Antaji*, 25 Bom 312 (1900): 2 Bom. L. R. 1083, and such decision of the Collector will be conclusive as to the position of the boundary line. The Civil Court's jurisdiction is barred so far as determination of boundary line is concerned. The question of adverse possession arises only when a person who has no title encroaches on the land of another and the true owner does not bring a suit for possession in a Civil Court for more than twelve years. That question must be decided by the Civil Court, and is outside the jurisdiction of the Collector."

**122.** It shall be lawful for any survey officer, authorized by a Superintendent of Survey, or Settlement officer to [a] specify or cause to be constructed, laid out, maintained or repaired [a], boundary-marks of villages or survey numbers [b] or sub-divisions of survey numbers [b] whether cultivated or uncultivated, and to assess all charges incurred thereby on the holders or others having an interest therein.

[a—a] These words were substituted for the original words by Bom. VI of 1901, s. 14 (1).

[b—b] These words were inserted by Bom. IV of 1913, s. 60 (a).

Such officer may require landholders to construct, [c] lay out, maintain [d] or repair their boundary-marks, by a notification which shall be posted in the chavdi or other public place in the village, to which the lands under survey belong, directing the holders of survey-numbers [b] or sub-divisions [e], to construct, [c] lay out, maintain [d] or repair, within a specified time, the boundary-marks of their respective survey numbers [b] or sub-divisions [e] and on their failure to comply with the requisition so made, the survey officer shall then construct [c] lay out [c] or repair them and assess all charges incurred thereby as hereinbefore provided.

Requisition on landholders to erect or repair boundary-marks.

A general notification, issued in the manner aforesaid, shall be held to be good and sufficient notice to each and every person having any interest in any survey numbers [b] or sub-divisions [e] within the limits of the lands to which the survey extends.

A general notification to be good and sufficient notice of requisition.

[c] The boundary-marks shall be of such description, and shall be constructed, laid out, maintained or repaired in such manner and shall be of such dimensions and materials as may, subject to rules [d] made in this behalf under section 214, be determined by the Superintendent of Survey, according to the requirements of soil and climate.

Description of boundary-marks.

#### Commentary

Notice—Under clause 1 of this section the Survey Officer may give a separate notice (without publication) specifying a time to individuals if only one sub-division is concerned.

[a—c] These words were inserted by Hon. VI of 1901, s. 14 (2).

[b] These words were inserted by Hon. IV of 1913, s. 69 (a).

[c] This paragraph was substituted for the original paragraph by Hon. VI of 1901, s. 14 (3).

[d] Words repealed by Hon. IV of 1913, s. 69 (b), are omitted.

Ordinarily a general notification under the second para. of s. 122 requiring all landholders to repair their boundary marks within a period of 10 days shall be issued for each village 15 days before the Circle Inspector expects to commence the periodical complete boundary mark restoration.—*Administrative Order XXI, given in Land Revenue Rules, 1921.*

It is intended that after the notice period has expired there shall be no further delay before proceeding direct to the final stage of repair by Government. It is intended that the inspection and the restoration should be simultaneous.

**Note.**—If a landholder complains that he would have repaired his marks (and so avoided expense to himself and trouble to Government) if he had known where they were, the answer is that every landholder ought to know the position of the prescribed marks; and if he does not, can find out from the village map and the accountant; and as he has not done that he should now learn where they are from the Circle Inspector's repair and never be in doubt again.

**Waste Inam Fields** on which boundary marks charges are due should be sold annually as grass lands if the Inamdars are not present and the boundary mark charges be liquidated from the proceeds. If the Inamdars are present obviously the payment of money can be enforced as a revenue demand under s. 122 of the Code.—*G. R. 9976 of 17-10-1851.*

When grazing is sold at auction or is granted to villagers free, or at a fixed rate per acre of any survey number which is unoccupied, the boundary marks are kept in repair at Government expense.—*G. R. 8627 of 26-9-1910*; otherwise the purchaser repairs.

The effect of rule 28 (*Land Revenue Rules, 1921*), is that in each village:—

(a) The holders of survey number 1 are responsible for all the marks on the periphery of that survey number.

(b) The holders of survey number 2 are responsible for all the marks on its periphery except those which are also on the boundary of survey number 1.

And so on for all the survey numbers.

(c) In survey number 1 the holder of Hissa 1 repairs all the marks on its periphery. The holder of Hissa 2 repairs all on its periphery, except those which are also on the boundary of Hissa 1.

And so on through all the Hissas.

When a new (non-agricultural) survey number is formed it is the duty of the holder as a new number to put up the mark necessitated by its formation. Obviously this duty which devolves on the first creation cannot be transferred to the other survey numbers under this rule.

The owners of the alienated survey villages should cause boundary marks to be examined by the village officers, to test these examinations themselves or by their agents and should report the result to the Assistant Collector in charge of the taluka.—*J. R. 2581 of 19-6-1865.*



The rules for the repairs of boundary marks are given in the manual of Land Records Department.

Some of the rules for advances and the accounts in connection with the repairs of boundary marks are given in the Manual of Revenue Accounts and the Sub-Treasury Manual.

Assistance to be given by occupants.—It is the duty of Collectors to see that flagholders are furnished by occupants and assistance is rendered by Halutedars (*R. 499-51*) In the Deccan, the Butar carries the 'shanku' (cross-staff) or the Plane Table: the Changula the dastar: the Mahars are chainmen, the Mangs use pick-axe and crowbar: the Chambhars do the whitewashing: the Banadis or other village messengers hold the flags.

Superfluous boundary marks should be instructed to be removed by the village officer or the Circle Inspector.—*G. R. 4560 of 14-3-1884*. If the landholders do not remove them the expense of removing them should be recovered from them.—*G. R. 4658 of 3-6-1885*. The landholders should be impressed with the advantages of speedy and entire obliteration of all superfluous marks and the village officers and the Circle Inspectors should take steps for their complete demolition.—*G. R. 3508 of 13-5-1888*.

Permanent boundary marks of Chunnam and stone may be allowed to be constructed by occupants.—*G. R. 8 of 3-1-1885*.

An occupant may not be compelled to pay for a new survey of his field necessitated by the mistakes of the revised survey.—*G. R. 4693 of 29-8-1887*.

The actual cost to Government of repairing boundary marks should be levied. The charges should include the salary and expenses of the officer, if any employed. In short, they should be actual and reasonable expenses. Copies of survey documents which may be required should be charged for at the rates given to section-writers.—*G. R. 646 of 25-1-1894: G. R. 3202 of 2-12-1924*.

The following boundary marks are authorized:—  
Continuous marks.—

- (1) A boundary strip.
- (2) Barbandhs or hedges and other permanent continuous structures, such as walls.

Discontinuous marks—

- (3) Conical earthen mounds or cairns (buruz) of loose stones.
- (4) Pillars of cut stone, or brick or rubblestone masonry.
- (5) Prismatic or rectangular earthen mounds.
- (6) Roughly dressed long stones.
- (7) Any other marks found suitable for special localities and sanctioned by the Collector or Survey Officer, such as teak posts in the marine marshes on the Gujarat coasts.—*Rule 24. The Land Revenue Rules, 1921.*

In districts to which the experiment authorized in R. 7671-14 is extended the Collector may permit the holders of land to substitute for one kind of mark any other authorized mark within the limits below defined:—

(a) A continuous mark of class (2) may be substituted along the true boundary line for single or discontinuous marks, or *vice versa*.

(b) Single marks (3) or (4) may be substituted for groups of two or more of (5) or (6) on the intersections of the boundaries of 3 or more survey numbers or *vice versa*.

(c) Any sanctioned single discontinuous marks may be inter changed at the corners of beds of the boundary common to only two survey numbers.

Marks so substituted, if themselves in proper repair, shall not be deemed to be marks out of repair. Nor shall it be necessary to alter the map so long as the substituted marks occupy the same position and indicate the same boundary as the marks in the printed map.—*Administrative Order XX; The Land Revenue Rules, 1921.*

Ordinarily a general notification under the second paragraph of section 122 requiring all landholders to repair boundary marks within a period of ten days shall be issued for each village fifteen days before the Circle Inspector expects to commence the periodical complete boundary mark restoration.—*Administrative Order XXI. The Land Revenue Rule 1921.*

**Maintenance of boundary strips.**—(1) Boundary strips or ridges shall not be ploughed up or otherwise injured by cultivation.

(2) The minimum width of boundary strips shall be as follows:—

(a) in dry crop lands.	...	...	1½ feet
(b) in rice and garden lands	...	...	9 inches.

(c) On the frontier lines between British India and Baroda State:— 8 Ft. (on the British side of the exact pillar-to-pillar demarcation line).

This strip shall also be kept free from tree-growth, any young plant being destroyed at inspection time.—*G. R. 9277/24 of 2-2-1928.*

Provided that

(i) Where the boundaries of such lands are well defined by banks, hedges, or the like, the actual width of the strip covered by such bank, hedge, or the like, shall be sufficient for the purpose of this rule;

(ii) Where the boundary of a survey number also forms the boundary of a Native or Foreign State, the minimum width prescribed above shall be maintained for the portion of the boundary strip on the British side; and

(iii) where village boundaries have been defined at the time of survey by double lines of boundary marks, the whole of the intermediate strip shall be maintained as a boundary strip.—*Rule 28, The Land Revenue Rules, 1921.*

**What boundary marks to be considered out of repair and how to be repaired.**—The following boundary marks shall be considered out of repair and shall be repaired in the manner prescribed for each kind as follows:—

(a) A continuous mark (strip, Sarbandh, hedge etc.), if it deviates more than three feet from the true straight line of the boundary. **MODE OF REPAIR**—either the deviation shall be rectified or the continuous mark not being a boundary strip must be replaced or supplemented by discontinuous marks.

(b) Any conical mound or cairn less than 2½ feet in height and 6 feet in diameter at the base. **MODE OF REPAIR**—raise it to 3 feet in height and 6 feet in width at the base.

(c) Any rectangular mound less than 3 feet high, or less than 5 feet long and 4 feet wide at the base. **MODE OF REPAIR**—the mound shall be raised to full dimensions, that is, 2½ feet high, 6 feet long and 5 feet wide at the base.

(d) Any mound, conical or rectangular, within 4 feet of which earth has been dug for repairs, when such excavation has affected the stability of the mark or allows water to lodge. **MODE OF REPAIR**—the excavation shall be filled up.

(e) Any pillar (i) less than 1 foot square or 2½ feet in depth, (ii) broken down, or (iii) rising less than 4 or more than 9 inches clear above the adjacent ground level. **MODE OF REPAIR**—(i) replace by one of proper dimensions, (ii) rebuild, (iii) raise the pillar or clear away or make up the ground.

(f) Any stone less than 2 feet long and 6 inches thick. **MODE OF REPAIR**—a stone of proper size shall be substituted.

(g) Any stone out of the ground, or buried, less than two-thirds of its length and base. **MODE OF REPAIR**—the stone shall be replaced or fixed firmly.

(h) Any mark considerably out of proper position or so repaired or erected as to indicate a materially incorrect line of boundary. **MODE OF REPAIR**—the mark shall be correctly placed.

(i) Any mark overgrown or surrounded by vegetation of any kind so as not to be easily visible. **MODE OF REPAIR**—the vegetation shall be cleared away until the mark is easily visible.

(j) Any sarbandh, or continuous embankment less than 2 feet high and 4 feet wide at the bottom. **MODE OF REPAIR**—the sarbandh shall be made full 2 feet high and 4 feet wide at the bottom throughout unless the occupant prefers the substitution of authorized discontinuous marks.

(k) Any hedge or other continuous mark which by reason of want of continuity or disrepair fails to define the boundary. **MODE OF REPAIR**—the necessary renewals shall be made or other authorized marks substituted.

(l) Any boundary strip or ridge which has been ploughed up or otherwise obliterated or the dimensions of which are less than those prescribed by Rule 28. **MODE OF REPAIR**—the landholder shall be ordered to re-

tore the strip or ridge within a prescribed period by leaving it unploughed and undisturbed; on his failure to comply he may be prosecuted under s. 125.

(m) **Missing marks. MODE OF REPAIR**—new marks shall be erected.

**Proviso as to marks liable to injury from flooding.**—Provided that in any case where a boundary mark cannot, owing to flooding of a nala, or river the breaking away of the bank, or other causes, be kept in repair, another kind of authorised mark may be substituted. Where even that is impracticable the direction of the boundary must be fixed by a pair of discontinuous marks erected at an adequate distance back from the abandoned position; either both on the same side, or one on each opposite side thereof.  
—Rule 27. *The Land Revenue Rules, 1921.*

### INSTRUCTIONS FOR THE MAINTENANCE AND REPAIR OF BOUNDARY MARKS

Instructions for the maintenance and repair of boundary marks have been sanctioned as follows:—

1. The Collector shall arrange the villages of each Circle in five groups of approximately equal area.
2. The boundary marks in each of these groups shall be repaired in five consecutive years.
3. In the villages appointed to be dealt with according to this programme, printed notices shall be issued by the sub-Divisional Officer, Mamlatdar or Mahalkari, not later than November 15th in the case of Kharif villages and February 15th in the case of rabi villages, warning the rayats to repair their marks within 30 days, failing which, the repair will be effected by Government at their (rayat's) expense.

**NOTE**—The Collector may change these dates for reasons to be reported to the Commissioner.

4. On the expiry of 30 days, the Circle Inspector accompanied by the Village Officers, shall proceed to repair the marks by hired labour, defraying the cost from the permanent advance placed at his disposal.
5. The Sub-Divisional Officer shall be responsible for seeing that the funds placed at the disposal of the Circle Inspector are adequate.
6. The number and kind of marks repaired or replaced and the cost thereof shall be entered by the Circle Inspector in village Form No. 4 for each survey number.

The Talati shall see that these amounts are immediately recovered.

7. The Collector, the Sub-Divisional Officer and the Mamlatdar shall be responsible for satisfying themselves by means of sufficient tests and inspections, that the money is properly expended and the work well-done.

8. The Collector shall make due provision in his annual budget for the advance required for his district for the cost of boundary marks recoverable from landholders.—*G. R. 12186 of 30-11-1908.*
9. The amount so provided will be distributed amongst the several Circle Inspectors according to the requirements of each circle and debited in the name of the Circle Inspector in Taluka Form No. 15-B, when the bills are cashed.—*G. R. 12186 of 30-11-1908.*
10. The Circle Inspector should make the payment to the hired labourers or the contractor, as the case may be, in his own presence and obtain their receipts.—*G. R. 12186 of 30-11-1908.*

The mark of the recipient, if illiterate, should be taken in his own hand, in token of his signature.

11. The Mamladar, Mahalkari, and Sub-Divisional Officer should, on their tour, take tests of the repaired marks and of the payments made to the labourers or contractors in at least two villages in each circle.—*G. R. 12186 of 30-11-1908.*

The result of the tests should be noted in the amended Form No. IV at the end of the form.

2. Stones should be substituted for earthen boundary marks in Gujarat, wherever that course is considered advisable by the Collectors, with due regard to the preferences of the people. In some localities stones will apparently be relatively cheap, and the initial expense of putting them up will be compensated by avoidance of labour and expenditure on repair of the marks. Wherever the "boundaries between occupied Survey Numbers" are sufficiently marked by hedges, earthen boundary marks and stones should be dispensed with as unnecessary.

A permanent advance of Rs. 50 should be granted to each Circle Inspector—*G. R. 10527 of 6-11-1908.*

Rules for the demarcation of land permanently occupied for the use of Railways in India.—1. All land permanently occupied for the purposes of a Railway shall have its boundaries defined on the ground in such a manner as to enable such boundaries to be readily ascertained and identified.

2. For this purpose the boundary of the Railway land may be defined by a continuous wall, fence or ditch, or by detached marks, posts or pillars.

3. Where the boundary mark is continuous, the boundary of the Railway land is to be on the outer edge of the wall, fence or ditch—that is to say, the wall, fence or ditch be situated wholly on Railway land.

4. Where detached marks, such as isolated posts or pillars, are used, the boundary of the Railway land will pass through the centres of such marks. Between the marks the boundary will in each case be taken in a straight line from the centre of one mark to the centre of the next mark.

5. Detached marks are in no case to be a greater distance apart centre to centre than one eighth of a mile (660 feet). They are to be of a substantial character, not easily destroyed or moved by accident or mischief, and are to be of such size and form as to be readily found and recognized.

6. Each detached boundary mark is to bear a number, and the position and corresponding number of each detached boundary mark is to be shown on the land plan.

7. Where a fence, wall or ditch is for convenience situated at some distance within the boundary and does mark the actual limit of the Railway land, it will be necessary that in addition to such fence, wall or ditch, the actual boundary of the Railway land shall be properly marked and defined in accordance with these rules.—*G. R.* 6937 of 1-10-1890; and *Order No. 45 Railway Board Circular, No. 27 R. C. of 1907, circulated with G. R. 7953, of 12-8-1907.*

**Notification.**—There is no special form of the notification to be issued under this section. The Collector should issue a proper notification.—*G. R. 4800 of 14-6-1889.*

The Commissioners of Divisions are authorized to write off outstanding balances on account of erection and repairs of boundary marks.—*G. R. 7264 of 13-10-1888.*

When the recovery is to be made by the village Accountants both the sums due and amounts recovered are shown in the proper village accounts.—*G. R. 1789 of 12-3-1898.*

**Expenditure on boundary marks** may be sanctioned by Collectors in Government waste and by the Commissioners on frontier boundary marks.—*See G. R. 279 of 26-1-1903.*

**Bend Marks** are to be maintained only at salient angles and should be dispensed with at minor bends except in case of land adjoining Government waste, all the numbers set apart for special purposes and land subject to special assessment, *e. g.*, for building and other non-agricultural purposes.—*G. R. 1093 of 31-1-1907.*

Expenditure on boundary marks should be provided for in case of private lands in the "estimate of ways and means" the receipts being also credited to the same head. All recoveries should be deducted from expenditure and should not be credited to the receipt side.—*G. R. F. D. 4818 of 7-12-1907.*

Mamlatdars and Prant Officers should show in the test returns accompanying their monthly diaries, the number of boundary marks seen by inspecting officers.—*G. R. 5792 of 23-6-1914.*

Inspection of boundary marks by their numbers and not by survey numbers should be given in the annual Administration Reports.—*G. R. 9303 of 1-10-1914.*

The single mark system should be introduced in every district in the Presidency proper, with the exception of the district of Ratnagiri in the option of the rayat. The type of the mark to be used for main corners and bends will be prescribed by the Commissioner and he will also specify when a type is to be considered as out of repair.—*G. R. 633/B of 13-9-1922.*

The landholders will not be responsible to maintain or keep unploughed boundary stripes in good repair unless they are declared as boundary marks by the Survey Officer or the Collector.—*G. R. L. C. 1831 of 11-9-1925.*

**Responsibility of Inamdars for maintaining and repairing boundary marks:** In the case of personal inam villages to which a survey settlement was extended before the Land Revenue Code, 1879, came into force the inamdar is liable to maintain and repair boundary marks (s. 123). As all survey settlements hitherto introduced into alienated villages have been validated by the Bombay Land Revenue Code (Amendment) Act, 1929 (Act. XV of 1929), the provisions of the Code regarding the maintenance of boundary marks are operative in all such inam villages.—*G. R. 368128 of 8-1-1930.*

**Remedy if an Inamdar fails to abide by this section.**—There is no provision of law or order under which steps can be taken against an alienee for non-compliance with the orders in *G. R. 2581 of 19-4-1925*, which lays down that the owners of alienated villages, which have been surveyed either by virtue of their being held on service tenure or at the express desire of the alienee, should be requested to cause the boundary marks to be examined by the village officers, to test these examinations themselves or by their agents and to report the result to the Assistant Collector in charge of the taluka.

But the provisions of ss. 216 and 217, which apply to alienated villages into which the survey settlement has been introduced, empower the Collector to take all necessary measures under ss. 123 to 125 for the preservation and maintenance of boundary marks.—*G. R. 4799 of 8-8-1922.*

**Application of ss. 122-124 to Talukdari Villages:**—Ss. 122-124 relating to boundary marks apply to all talukdari villages in which the duty of keeping boundary marks in order devolves on landlords (talukdars). If they fail they are liable to make good reasonable expenses incurred by Revenue Officers in repairing or replacing these marks. But a Collector as such is not a Revenue Officer for the purpose of s. 124 in a talukdari village, as a survey settlement is not introduced in a talukdari village. The Collectors of Ahmedabad, Kaira, Panch Mahals and Broach have accordingly been appointed Superintendents of Survey for all talukdari villages in their districts for the purpose of enabling them to act under ss. 122 and 123.—*G. R. 764324 of 24-4-1929.*

Rules 24, 25, 26, 27 & 28 of the Bombay Land Revenue Rules, 1921, regarding boundary marks apply to surveyed alienated villages where the landholders have the same responsibility as occupants and it shall be the duty of the Collector to construct, lay out or maintain, etc., the boundary marks, under s. 124 of the Code and he shall have powers conferred on Survey Officers by s. 123 of the Code.—*G. R. 7169 of 1909.*

These rules apply to Kolaba Khoti villages and also apply to Ratnagiri Khoti villages but with a few exceptions.

In the method of survey by Plain Table on frame-work of triangles, large stones are interred to mark the triangulated points. But these stones cannot

be considered as boundary marks within the definition of s. 3 (10) of the L. R. Code.

It was the original intention of the Survey Officers in the beginning of the introduction of survey to constitute survey numbers as blocks of land demarcated without the slightest reference to rights of occupation, etc., but simply to provide suitable sub-sections of the village map, which being firmly demarcated would suffice for the maintenance and recognition of the internal divisions constituting individual holdings—*Government Selection N. S. No. CCLXXVIII.*

**Boundary Strip.**—The Collector should declare that the unploughed strips between fields as boundary marks under ss. 122 and 124 and must be preserved in all occupied cultivated fields. Rule 26 (1) of the Land Revenue Rules, 1921, assumes that they already exist and in fact they almost everywhere do exist and are sometimes maintained in a less marked degree even between sub-divisions of survey numbers.

The village map is a good index to the relative position of survey numbers and also shows what boundary marks were erected. But in cases where the exact position of a mark is in dispute, the detailed measurement record of the survey number must be referred to. If copies of Tippan are needed occupants may get them on paying the charges.—*G. R. 646 of 1894.*

A strip is laid set apart for a special purpose.—Select Committee on L. R. Code of 1879, and therefore penalty for unauthorized occupation can be levied under s. 61 of the Code.

### MODE OF MAKING RECOVERIES UNDER §. 122

In *Venkatash v. Mhal Pai*, 15 Bom. 67, the plaintiff's sued as the purchaser of land at a revenue sale held for the levy of charges incurred on account of boundary marks, to recover possession of the land from the mortgagees of the occupant.

The High Court on appeal, *held*:—The charges, for the recovery of which the sale was held, are such as can be assessed under s. 122 of the Bom. L. R. Code, 1879, on the holders or others having an interest in the boundary marks for the construction or repair of which the charges were incurred. It is not contended, in the present case, that the charges were not due by the occupant. Under s. 187 of the Code, which occurs in Chap. XI, all charges payable or leviable under the Code must be levied under "the foregoing provisions" of the chapter. In s. 187 such charges are distinguished from sums due on account of land revenue, but they are recoverable under the same provisions. The charges assessed on the occupant of the lands in suit, though not land revenue, were therefore, recoverable under s. 150, which is one of the sections in Chapter XI; and that section provides the following methods of recovery, among others:—*viz.*, by forfeiture of the occupancy or alienated holding in respect of which the arrear of land revenue is due under s. 155 and by sale of the defaulter's, immoveable property under s. 155. If the former method is adopted, then, under s. 153, the Collector may declare the



occupancy or alienated holding, in respect of which the arrear is due, to be forfeited to Government, and sell or otherwise dispose of the same under the provisions of ss. 56 and 57. If the latter is adopted, then the Collector may, under s. 125, cause the right, title and interest of the defaulter in any immovable property, other than the land on which the arrear is due, to be sold. In the former case, the land is sold freed from all incumbrances created by the occupant, as provided in s. 56. In the latter case, the rights of incumbrancers are not touched.

The effect of s. 127 of the Code is clearly to make applicable the provisions of ss. 123 and 56, and also of s. 125, to sales for the recovery of charges assessed under s. 122.

[a] 123. Every landholder shall be responsible for the maintenance and good repair of the boundary-marks of his holding, and for any charges reasonably incurred on account of the same by the revenue officers in cases of alteration, removal, or disrepair. It shall be the duty of the village officers and servants to prevent the destruction or unauthorized alteration of the village boundary-marks.

Responsibility  
for the maintenance  
of boundary-  
marks.

#### Commentary

(1) *Determination of responsibility for maintenance.*—The responsibility of the several landholders for boundary marks on a common boundary lies on the holder of the survey number which is numerically lowest.

(2) Sub-rule (1) is subject to the proviso that when any survey number is unoccupied or assigned for public or Government purposes the responsibility for repair of the marks on its periphery will pass to the landholder on the other side of the boundary. Repairs will be made at Government expenses only when the marks in disrepair lie between survey numbers each of which has no holder except Government.

(3) Within each survey number the holder or holders of each sub-division are responsible for the marks if any have been prescribed on the periphery of that sub-division to the same extent as they would be responsible if 'sub-division' were read instead of 'survey number' in sub-rule (1) and (2).

(4) A mark which is on the common boundary of two or more villages must be repaired by the holder of the land in the village which is under restoration when the marks are found out of repair.—*Rule 22, the Bombay Land Revenue Rules, 1921.*

[a] As to the local modification of section 123, see para. 4 of foot-note (a) on p. 1, *supra*.

**124.** When the survey settlement shall have been introduced into a district, the charge of the boundary-marks shall devolve on the collector, and it shall be his duty to take measures for their [a] construction, laying out [a], maintenance and repair, and for this purpose the powers conferred on survey officers by section 122 shall vest in him.

Collector to have charge of boundary-marks after introduction of the Survey Settlement.

#### Commentary

**Details of boundary marks to be furnished by the Survey Department to the Collector.**—On the introduction of a Survey Settlement, the Superintendent of Survey shall furnish the Collector with a map and statements showing the position and description of the boundary marks erected or prescribed by or under the orders of the Commissioner of Survey. It shall be the duty of the Director of Land Records to amend these maps in accordance with any subsequent alteration of boundaries in a revision survey or in the sub-division of a survey number or any other authorised occasion.—*Rule 24, the Bombay Land Revenue Rules, 1921.*

**125.** Any person convicted after a summary inquiry before the Collector, or before a survey officer, Mamlatdar, or Mahalkari, of wilfully erasing, removing or injuring a boundary-mark, shall be liable to a fine not exceeding fifty rupees for each mark so erased, removed or injured.

Penalty for injuring boundary-marks.

One-half of every fine imposed under this section may be awarded by the officer imposing it to the informer, if any, and the other half shall be chargeable with the cost of restoring the mark.

## CHAPTER X.

### OF LANDS WITHIN THE SITES OF VILLAGES, TOWNS, AND CITIES.

**126.** It shall be lawful for the Collector, or for a survey officer, acting under the general or special orders of Government, to determine what lands are included within the site of any village, town, or city, and

Limits of sites of villages, towns and cities how to be fixed.

[a—a] These words were inserted by Bom. VI of 1901, s. 15.

to fix, and from time to time to vary the limits of the same, respect being had to all subsisting rights of landholders.

### Commentary

**Scope.**—This section empowers the Collector to alter the boundaries of sites of villages, towns and cities and no notification is necessary. But the Collector cannot, under this section, transfer a Survey number from one village to another even in the same taluka. The Collector should, under this section, take action by varying the limits of the site so as to include such land as is already built upon or is likely to come in a few years under brick and mortar owing to an extension of a city. The City survey can then be notified as applying to the new site as determined by the Collector.

"Site of a village town or city" means "Gaathan" and not all lands included in a village, etc.

### VILLAGE SITE SURVEYS

**History.**—As far back as 1896 the need of evidence to protect Government rights in land in village sites and the difficulty of obtaining such evidence was felt. Again in 1901 the need of village site Survey was expressed by Government and was reaffirmed in 1902 and in 1906. In 1909 experiments were ordered to be made but in the same year it was decided by Government that until the Pot Hissar work throughout the Presidency was brought to completion it would be well to postpone the heavy task of surveying village sites. This view was reaffirmed in 1916. By way of experiment the sites of 15 villages have been surveyed as stated above and Chapter X-A of the Land Revenue Code applied to them; and then 11 more village sites were surveyed.

**Procedure.**—The village site (Gaathan) survey can be conducted under Chapters VIII and X of the Code subject to the provision in s. 131 that when the population is less than 2000 the survey officer can call upon the villagers to attend and to give assistance in the operations and provide flag holders, etc., or he can assess the cost thereof but not of surveyors, etc. Likewise under s. 135G (a) and (b) the map of any village site may be made after the Records of Rights (Chapter X-A) has been extended thereto and the full costs can be recovered. In cases where s. 131 is applied an Enquiry can be made but Sanads can be charged for under s. 132 only when the population exceeds 200.

Of the two provisions of law under which village sites can be mapped, s. 131 entitles Government to recover only the cost of flag holders under s. 135G all costs can be recovered except the cost of making the enquiry. Under the former provision Sanads can be issued; under the latter a Record of Rights can be framed which will acquire presumptive value as evidence and there would still be no bar to the application of s. 37 (2) if in the course of the survey there was found to be a dispute between Government and an

occupant. When the survey is done under s. 131, agricultural lands are excluded, and since in many villages there are considerable wedges of agricultural land which penetrate or are enclosed in the village sites, it will at the same time be advisable to map these under the provisions of s. 135G. It is, therefore, considered more expedient to employ s. 135G.

### PRINCIPLES OF CITY SURVEYS AND ASSESSMENT.

(1) **Assessment of land of which the occupancy is to be newly granted.**—Under ss. 45 and 48 of the L. R. Code all land is liable to the payment of land revenue, no matter what purpose it is put to, unless it is exempted under a special contract or by any law for the time being in force. To land of which the occupancy is to be newly given no such exemption can apply. With a view to the settlement of the land revenue Government may direct under s. 95 the survey of vacant lands in village sites. In such a case the Survey Officer fixes the assessment under s. 100. But in respect of land outside the scope of s. 95 the Collector fixes the assessment under s. 52 subject to the rules or orders made in this behalf by Government.—*See Land Revenue Rules.*

(2) **Assessment of lands in village sites already occupied.**—In this respect Government direct survey of all or any of such lands under s. 95, and then the assessment is made under s. 100 by the survey officer or if no such survey is ordered by Government the Collector fixes the assessment under s. 52. However, in either case the following limitations apply; viz., (i) land wholly exempted under the provisions of any special contract with Government or any law for the time being in force must be exempted (s. 45). (ii) All rights legally subsisting in the case of lands partially exempt from land revenue or the liability of which to payment of land revenue is subject to special conditions or restriction have to be respected.—*S. 52, proviso and s. 100, para. 2.*

Occupied lands in village sites may be divided into three classes:—(1) Lands granted under British Rule, (2) Lands held from a time anterior to the British Rule, (3) Lands unauthorisedly occupied since the introduction of British Rule.

In the case of lands granted under British Rule, there being stated terms under a written agreement or lease or similar document, either the first or the second of the two limitations mentioned above would prevent any modifications of those terms.

In the case of lands held from a time anterior to the British Rule it would be difficult to have original documentary titles but in most cases the holders would be able to establish possession from time immemorial and under such circumstances the Civil Courts would presume a valid grant and recognize the claimants' proprietary rights. In these there is every likelihood that the holders would be able to show that they have never been subject to the payment of land revenue.

In the case of holders occupying lands unauthorisedly since the introduction of the British Rule no documentary evidence of course would be forthcoming. All that they would be able to establish will be about sixty years possession and immunity all that time from payment of land revenue.

The City Survey Act ( Bom. IV of 1868 ) confirmed every entire or partial exemption from land revenue proved to have been enjoyed for 5 years previous to the application of the Act or of Bombay Act 1 of 1865 to the town or city. Even in the case of village sites, in the absence of a special contract with Government. If any land in a village site is not exempted from land revenue under any law for the time being in force it is liable to be assessed subject to the orders of Government, either by the Collector under s. 52 or by the Survey Officer under s. 100.

It seems that Act 1 of 1872 and Bom. Acts II and VII of 1863 are not applicable to lands within the sites of villages, towns and cities except to the extent indicated in s. 127 of the L. R. Code. It follows, therefore, that all such lands are liable to be assessed to the land revenue unless they are exempted therefrom under the provisions of any express contract with Government. Therefore, all lands held from a time anterior to the British Rule except those which can establish a documentary title to exemption and all lands unauthorisedly occupied since the introduction of the British Rule are liable to be assessed, under the Law as it now stands, to the land revenue.

**Pardi land.**—(A piece of ground surrounding houses) is subject to the same rules regarding assessment as the house sites which it surrounds, when, however, it ceases to answer to the above description the question of assessing it or putting fresh assessment upon it may be dealt with under s. 48 para 2 of L. R. Code. But if in the village or town in which the land is situated, house sites generally are not subject to assessment it is unreasonable for the Collector to place an assessment upon that piece of land alone.—*G. R. 4344 of 18-6-1896.*

**Non Agricultural Assessments:** These may be of three kinds.

(1) They may have been levied at the original Survey under s. 100 by a Survey Officer (unless he finds a lease or agreement already in existence).

(2) They may have been imposed as original assessment by the Collector under s. 52 upon land which was left unassessed at the time of the Survey, and was then occupied or subsequently granted for non-agricultural uses.

(3) They may have been imposed as an altered assessment in place of an original agricultural assessment under s. 48.

There are also rentals fixed under Rule 52 of the Land Revenue Rules, 1921, and in special agreement or agreements or leases for Hill Stations, etc.

The Collector may also in cases under s. 130 impose a price for the occupation and for unoccupied land also under s. 62 and Rule 43; and fines in special cases for permission to alter the use under the last Clause of s. 65.

The policy of Government is not to assess village site plots at present but Government reserves the right to assess them.—*See s. 7 Regn. XVII of 1827 and G. R. 2626 of 1916.*

**Assessment of lands in village sites.**—In this connection the holdings will have to be divided into three classes, *viz.*—(1) Pre-British Occupancies, (2) Grants made by the British Government (3) Occupation commenced after British Rule, but without any British Government Grant.

Ordinarily all land irrespective of its ownership is liable to assessment unless exempted by a definite grant. This is to be proved by the claimant. Holdings of Class 2 may have been granted free of revenue in perpetuity or for a term, or subject to payment of revenue if at any future time Government demands, or subject to an actual payment reserved in the grant and liable to revision or not, according to the grant. Unless exemption or "other terms not yet expired" can be proved, all holdings in classes (1), (2) and (3) are equally liable to be assessed; but Government will not apply a power to tax under a Taxing Statute unequally and will not arbitrarily tax some plots and not others. (*G. R. 4344 of 1886*). Hence for the present, such plots if not liable to pay under a special grant under class (2) are not taxed unless they fall within the class of recent usurpation defined in s. 130.

In Kolaba and Kanara Districts (Konkan generally) where there are usually no Gaothans or quite inadequate Gaothans all land occupied by a farm or agricultural buildings, prior to the first British Revenue Settlements (about 1856) has been left unassessed (*G. R. 10255 of 1894* and for Kanara *G. R. 1637 of 1891*). Being practically Gaothau it was considered anomalous to tax it. This exemption of all rural buildings is probably due to the difficulty and infructuous results of making distinctions. See also the case of *Mafi Kuecho* referred to elsewhere.

**Note**—A grant or sale of land merely omitting to specify any assessment is considered to be not equivalent to an exemption and it is held that it does not deprive Government of the right to assess the same under s. 45 or 52 at any time.—*Shapurji v. The Collector of Bombay*, 9 Bom. 483.

The Officers who are deemed to have had authority in the past to make grants of land are (1) Collectors (2) Authorities superior to Collectors (3) Officers mentioned in the Schedule to Bom. Act VII of 1863 in the territories subject to them and under the British Government. This declaration was made in *G. R. 7284 of 1911* for Igatpuri under s. 128 (3) L. R. Code and presumably would apply in principle to other places, substituting (for Gujarat) Act II of 1862.

Ss. 128-130 apply only to certain towns brought under Act. IV of 1868 where an inquiry into title was made as follows:—

Ahmedabad (with its suburbs) Broach, Surat, Rander, Bulsar, Karachi, Sukkur, Hyderabad, Dharwar, Hubli.

(viii) In s. 128 is the only exemption prescribed by law. When any survey of a city or town site is carried out an Enquiry Officer is appointed whose duty it is to decide boundary disputes under ss. 119-120 and claims to titles against Government or the Municipality under s. 37 (2), Land Revenue Code, and s. 50A. of the Municipal Act of 1901 (as amended by X of 1912), and also to deal with claims to exemption. Appeals under s. 119 apparently lie to the

Superintendent of Land Records (s. 203) while those under s. 37 (2) and as to exemption lie to the Collector (*R. 8384-15*). It has now been declared that L. F. is leviable on "Masf Karcha" (*R. 1543-21*).

(ix) In Narvadari villages such assessment was actually levied as "gharbhada"; even in talukas where this levy has ceased to be made Government reserve, their right to re-impose it if the necessities of the State should so require (*R. 541-73*).

(x) Another class of land about which there has been much discussion is the Pardi, Wadgi, Udafa or Wada land which is found attached to houses within or sometimes outside the village site. Ordinarily it is used for agricultural purposes, especially for storing produce. Sometimes it contains cattle-sheds etc., and sometimes becomes covered with farm or other buildings (*R. 616 59*). In Kanara and Konkan generally, cocoonuta, turmeric and fibre hemp are almost always cultivated, and often owners of houses occupied by non-agriculturists urge that they are agricultural farm buildings on the ground that the tenants "take care of the palms". The question whether the use is agricultural or non-agricultural is sometimes difficult to decide. The general rule (old Survey and Settlement Manual, Vol II, p. 103) is that such lands were exempted as Masf Karcha from the agricultural assessment up to a certain limit ranging from  $\frac{1}{2}$  to 1 acre provided they were attached to houses of Landholders. Otherwise they were assessed or dealt with under the Summary Settlement Act (*R. 722-76*). In Gujarat the exempted area was deducted from the larger plots (e. g. out of 28 guntas, 10 guntas would be deducted and 18 assessed, but in the Deccan the whole 28 guntas, would be assessed, and as this exemption was an executive, not a legal, act the Superintendent of Survey exercised a wide discretion loosening or tightening the strings at his pleasure. The exempted portion of such land though it has not been assessed to agriculture is still held for agriculture, and cannot be used for non-agricultural purposes without the permission of the Collector under s. 65 (*R. 4583-92*). Also it is liable to assessment when its use becomes Non-agricultural, though it has been incorporated in the accounts as guntas. The assessed portions are still more clearly liable; either immediately on change of use, or at the expiry of the Settlement, being earmarked for that purpose (*R. 2505-26*) if the Non-agricultural use commenced before (a) the Settlement; or (b) the guarantee notification was amended in 1896 (*R. 4344-83*). Its exemption even from agricultural assessment is only an executive act of grace, and can be reversed by Government at any time: *Sandeshi A. Bhal v. Secretary of State (Thana District Court Appeal No. 213 of 1908 to High Court decided in 1913)*.

House-tax and ground-rent in pre-British days.—The Presidency proper came under British control piecemeal between 1805 and 1827; and Sind in 1847. It appears from the Peshwa's Daftar in the Poona Alienation Office that a custom to levy house tax or ground-rent existed under pre-British rule in several places. The rates varied generally from annas 8 to Rs. 1-8-0 per house according as the house was owned by a poor or a rich man. Village sites were granted free of charge but sometimes on ground rent.

In Gujarat, previous to the advent of the British rule, a house tax known as "Jhopadi Vero", or a cess of one rupee upon each hut was levied from non-agriculturists such as fishermen or owners of liquor shops. But with the introduction of British rule this tax was forgone.

**Origin of exemption of village site lands.**—It is quite natural that those who were already paying assessment for their cultivated land should be given some indulgence in respect of the sites of their residences, cattle-stalls, etc. It appears that the exemption of village site lands had its origin in this concession. Moreover, in the early days when population was sparse and the devastation of wars frequent, measures to attract settlers and get land cultivated held a large place in the administration. For instance, the *Mafi kaccho* lands in Gujarat (these are not the house sites but the lands used as farm yards attached to cultivators' houses whether within or without the *gaothan* limits) were excluded from assessment subject to limits as in the case of Pardi.—(*Selection CXXXV, pp. 155-6*).

**Non-taxation of rural house-sites and certain lands attached to rural houses.**—The house sites were always exempt. So also the *Ghar kaccho* was held rent free originally, it seems, as a sort of bonus for a large *Khata* or perhaps more probably it was granted by the *Kamavisdar* to *Dessais* and others to induce settlement and cultivation in the *Mogul* and *Mahratta* days. In *Kolaba* and *Kanara* districts (*Konkan* generally) where there are usually no *gaothans* or quite inadequate *gaothans* all land occupied by a farm or agricultural buildings, prior to the first British Revenue Settlements (*about 1856*) has been left unassessed (*G. R. 10255 of 1894 and for Kanara G. R. 1637 of 1891*). Being practically *gaothan* it was considered anomalous to tax it. This exemption of all rural buildings is attributed to the difficulty and infructuous results of making distinctions.

Another class of land is the *Pardi*, *Wadgi*, *Udafa* or *Wada* lands which are found attached to houses mostly within the village sites. Ordinarily they are used for agricultural purposes, especially for storing produce. Sometimes they contain cattle sheds, etc. and sometimes become covered with farm or other buildings (*G. R. 616 of 1859*). In *Kanara* and *Konkan* generally coconuts, turmeric and fibre hemp are, almost always cultivated in them. The general rule (*old Survey and Settlement Manual Vol. II, p. 103*) was that such lands were exempted as *Mafi Kaccho* from agricultural assessment upto a certain limit ranging from  $\frac{1}{4}$  to 1 acre provided they were attached to houses of land-holders. Otherwise, they were assessed or dealt with under the *Summary Settlement Act*.—*G. R. 722 of 1876*.

**House-tax was however abolished** by *Act XIX of 1844* (*An Act for abolishing Town Duties and Mookants, and all taxes upon trades and professions within the Presidency of Bombay*) and lands occupied by houses and farm buildings of agriculturists were exempt from assessment. It seems that the policy of exempting village house sites was followed during British rule after surveys were introduced, but Government reserved the right to assess them.—*See s. 7 Regulation XVII of 1827 and G. R. 9656 of 1916*.



### ORIGIN AND DEVELOPMENT OF CITY-SURVEYS IN THE BOMBAY PRESIDENCY.

**The First City Surveys**—The necessity for the Survey of towns and cities as an adjunct to municipal administration is sufficiently obvious, and such Surveys were, as a matter of fact, undertaken at an early date in the history of British rule. Thus, the Revenue Survey of Gujarat which took place in the early part of 19th century was extended to the towns also, Surat being surveyed in 1821 and Ahmedabad in 1821. Like the accompanying survey of agricultural lands, however, these City Surveys also were a practical failure and for the same reasons that they were not accompanied by any definite settlement of rights nor was any provision made for the future upkeep of the maps and records.

**The City Survey of Ahmedabad, 1863.**—It was not in fact till the year 1863, that City Surveys of the modern type were introduced. In that year the Collector of Ahmedabad, Mr. (afterwards Sir) T. C. Hope, called the attention of Government to "the very large number of open spaces within the city walls, some with traces of Mahomedan buildings on them, others without, some claimed by various parties other than" while he added that "the prosperity of the city is such as to cause a great demand for building sites, houses are springing up in all directions on ground to which the builders have very doubtful titles or often none at all, cases of encroachment take up a good deal of time of both revenue and municipal authorities and can rarely be decided satisfactorily, and it is to be feared that many important ones are never reported at all, and at the same time the insecurity of tenure and chance of being proceeded against acts as a check on the increase of the city." He suggested, therefore, that "In order to remove the latter, and also secure to Government all its right, it appears very desirable to settle definitely the title to all land; if private, to secure it from interference, and if public, to lay an adequate assessment on it with provisions for redemption at the option of the holders." To achieve this object he proposed that "the map, shewing the land of Chotti Daskroi, which the Revenue Survey Department have made, should be completed for the whole city by some competent officer, who should decide in communication with the Collector and Magistrate, or subject to his confirmation, what land is required, or what should be reserved for streets or squares, and what is the tenure of all the remaining open spaces. This done, the land declared to be Government or subject to Salami should be assessed at suitable rates according to whether it is cultivated or built upon, and permission should be granted to redeem the Government demand on it at so many years' purchase." He further recommended that the right of occupancy of vacant land should be put up to auction and the sale proceeds ceded to the municipality, to be devoted "exclusively to the improvement of the thoroughfares of the city." The proposals made were sanctioned and the survey commenced.

Two years later the Survey was extended to Surat, Bulsar and Broach, and to Bander in 1871.

**The City Survey Rules, 1867.**—At the beginning of the year 1867 an important Code of Rules with reference to the work of Inquiry into Titles, drawn up by Mr. Hope, was sanctioned by *Government Resolution No. 86-E, of 28-2-1867*. These rules form the basis of all future inquiry work, but need not be detailed here, as they became obsolete on the passing of Act IV of 1868. At the end of the same year a scheme was put forward by Messrs. Hope and Beyts for the purpose of re-organising the Gujarat City Surveys and putting them on an effective basis which was sanctioned by *G. R. 3921 of 14-11-1867*.

**Act IV of 1868.**—In the next year an Act was passed to make further provisions regarding the application of (Bombay) Act I of 1865 to Towns and Cities; and to restrict the application of (Bombay) Act II and VII of 1863 " (the Summary Settlement Acts) " in Towns and Cities". The short title of this Act was " An Act for City Surveys and amendment of the Bombay Survey and Settlement Act, 1868 ". By this Act, Acts I of 1865 and—with modifications—II and VII of 1863, were applied to lands in towns and cities and rules and regulations were laid down for the general conduct of Survey operations, the inquiry into and settlement of title to lands and the issue of Sanads.

**City Surveys between 1868 and 1909.**—Under Act IV of 1868, City Survey accompanied by an inquiry into titles of all occupied non-agricultural lands was made in ten of the chief cities of the Presidency (*viz.*, Ahmedabad with its suburbs, Broach, Surat, Rander, Bulsar, all in Gujarat; Dharwar and Hubli in the Southern Mahratha Country; and Karachi, Hyderabad and Sukkur in Sind). Speaking broadly, an occupant had to prove his title to exemption, whether complete or partial, by documentary evidence, or by occupation for a period of not less than five years before the application of Bombay Act I of 1865 or this Act (IV of 1868) to such town or city. If an encroachment was of less than 12 years' standing the Collector could remove it; otherwise he could assess it. All land which could not prove a title to exemption was assessed. Thus, for the future, encroachments without detection became difficult.

Bijapur was surveyed in about 1884 under the Bombay Land Revenue Code, Act V of 1879, which repealed and practically incorporated Act IV of 1868.

**City Surveys after 1909.**—Thereafter there was a lull in city survey activity upto 1909 when the work was again taken in hand. Since that year 88 cities and towns (not counting Bombay City) have been completed. Obviously these surveys were made under Act V of 1879. In the enquiry in the title column under s. 128 occupants had to establish by documentary proof of title the right to exemption from assessment or by proof of possession for 60 years adverse to Government. And it was then recognized by a Sanad issued to the occupant containing a map of his property, and giving the details of tenure on which he held.

There are in the Bombay Presidency (including Sind but excluding the Native States) 67 towns containing more than 10,000 inhabitants. Up to December 1929 city-survey with enquiry into titles has been made in 63 towns (excluding a few cantonments, villages and suburbs). Of the 11 cities surveyed before 1909 all have now been re-surveyed.

The operations of a city survey.—A general description of the operations incidental to a City Survey and of the rules under which these operations are conducted is given below:—

The objects of City Surveys are three-fold which may be described as (1) Administrative, (2) Fiscal (3) and Legal.

(1) The Administrative object is to carry out the Survey of all lands within the site of the area to which the Survey has been extended including all occupied and unoccupied areas, buildings, offices, roads, stands etc., with a view to provide a map of Topographical detail for postal, municipal, sanitary, census, police and military purposes. Schemes for water supply, drainage, tramways, electric light or gas, telephones, and the like, of necessity, require such a map; while maintenance of peace and order which is so essential for the carrying on of Government, the organization of schools, medical relief, and vital statistics, fire protection, Octroi, and Toll administration, all depend upon a map so drawn.

(2) The Fiscal object is to ascertain the revenue due from land, to watch over the development of future revenue, and to determine encroachment upon Government lands.

(3) The Legal object is to enquire into the titles upon which all land is held within the site of the area to which the Survey has been extended and to issue *Sanads* in confirmation of title to landholders. This may in its turn check to some extent litigation between owners or between private claimants and local bodies or Government.

The cost of the Survey is charged by Government upon the owners. Previous to the year 1892 it was the practice for the work to be carried out at the joint cost of Government and the Municipality. The result of the system, however, was constant friction, and in the extension of the Ahmedabad City Survey which took place in 1893 the work was done by Government alone, and this has been the rule ever since. Government does not ask the Municipality now to contribute or even to bear any part of the maintenance.—*G. R. F. D. 863 of 1913 and G. R. R. D. 855 of 1916.*

The funds for carrying out these operations were provided previously by way of an advance on the same principle as the advance for the repair of boundary marks and recoveries were effected by Survey fees in the same way. (*G. R. 8759 of 26-10-1916*). Since the reforms a separate provision for City Survey has become necessary and is made in the (ways and means) budget under "Advances recoverable". The Survey fees recovered under s. 123 of the Code are now credited against the "Advances".

The procedure for introducing City Surveys is that generally the Collector (or the Municipality) advances a proposal that the City should be surveyed. If this is accepted upon general grounds the Governor in Council as a preliminary step under s. 95 L. R. Code, issues an order directing the Survey "of the lands other than those ordinarily used for the purpose of agriculture within the site" of the particular village, town or city.

**Notes**—The determination of what lands are included "within the site" of any particular village, town or city rests under s. 126, with the Collector or Survey Officer acting under the general or special orders of Government, and under the terms of the section the site may be extended to any limit desired. The area to which such a Survey may extend is defined as "the village, town or city site". It should, however, be remembered that the power of the Collector to extend the limit of the site is not intended to authorise the Collector to include great stretches of agricultural or other lands which are not actually occupied by the City or town site. He is empowered to declare how far the site extends only when there is reasonable room for some doubts upon the points. It has, however, to be remembered that the expression "site" occurring in s. 126 means *Gaothan* and not the total periphery of all the village land.—*G. O. 1684 of 27-6-1921.*

Then the Superintendent of Land Records frames an estimate of the probable cost (including the cost of map printing for the issue of Sanads and for the map itself). The Commissioner then obtains the sanction of Government to the Surveys, and should it be desired to extend the survey beyond the stereotyped and ancient boundaries of the *gaothan* or city site, the Collector issue his notification under s. 126, and Government then finally sanctions the survey under s. 131. Having thus been legally sanctioned, it is then provided for in the Budget of Revenue Advances. When this is sanctioned the Superintendent of Land Records arranges to start work as soon as he has staff available.

**The City Survey.**—By section 131, the Survey operations are to be conducted under Chapters VIII and IX of the L. R. Code except that ss. 86, 97, 101, 104 and 118 are not to be considered applicable in towns or cities containing more than 2,000 inhabitants. The general course of the Survey operations is as follows:—

- (a) A main Traverse is first made of the whole area to be surveyed.
- (b) The whole area is then divided into smaller blocks, which are surveyed on Minor Traverses.
- (c) The measurement is next undertaken of all roads and unoccupied lands, whether open or covered with buildings.

During the course of the measurement operations the measurers have to prepare the rough draft of the Survey Register (Enquiry Register) by making inquiries into the names of the owners or occupiers of individual properties.

(d) The results of these operations are finally incorporated in the City Survey Maps. The nature of these maps differs, of course, according to the character of the Survey, but they usually comprise an outline map of the whole area on a small scale and detailed maps for each block on a larger scale.

The actual operations of the City Surveys fall into several parts: (1) there is the actual measuring and mapping which may be described as *traversing and Detailed Mapping*. (2) Then there is the enquiry in which the correct limits and frontages of all properties and their ownership are finally settled; the result of appeals when made must of course be awaited. (3) then alongside the enquiry, maps must be corrected to agree with the limits found by the Enquiry Officer or the appellate authority. (4) Then the detailed maps are traced and printed and a general map is prepared. (5) Then the Sanads will be issued and fees are collected and (6) the property register will be written up upon the final result of the enquiry. Then the whole work is handed over to the Maintenance staff.

A brief description of the Survey operations as given in the City Survey Manual is detailed below:—

**Traversing.**—What is ultimately required is a general map of the whole city on a scale of say 200 feet to the inch. This sheet has to be compiled from a number of detailed sheets on a larger scale of say 40 or 25 feet to the inch, which can be united and reduced into the general map. Each of these detailed sheets must show the exact position of all the properties and unclaimed places, of all streets and buildings and topographical points such as rivers, hills and every thing else which has to be mapped out in the city. Thus the detailed maps are required to show the exact position of every significant point in the city.

**How to lay down the Survey lines.**—A point is uniquely determined when its exact position with respect to a base line is known, if that base line is in turn connected with a mathematically determined frame-work capable of restoration not from any terrestrial point but from the fixed stars alone. The great Trigonometrical Survey consists of a series of triangles so connected. What is wanted in a city is the laying down and preserving a frame work based on Astronomical relations but still demarcated and triangulated so that small portions or sections can be instantly relaid without any thought of Astronomy. The frame-work must consist of lines of known length related to one another by known angles, and in order to assist in finding them the ends of each line have got to be demarcated. Having chosen the points for these lines to run through and about the city all of them must be linked together mathematically so that they can be transferred to paper with such a record that at any time any part of that frame work can be replotted or relaid and thus it can be used to prove strictly and legally the accuracy of the mapping. This operation of going through or traversing the city with survey lines is known as "Traversing."

**Detail mapping.**—The object of detail mapping is to fill in upon the traverse frame-work all the details such as 'the building sites separately held', and to mark wells, privies, tanks in private lands, public lamp posts, water hydrants, tramways, post boxes, etc. etc. In short, within the limits of a property all built over structures have to be exactly shown. So also any tomb or Architectural or Historical remains or anything of that sort have also to be mapped.

**House-numbering:** This numbering is for public use as well as for the Fiscal and Legal purposes of the property register. It is very desirable that the numbering should be useful for the police, the census, the municipality, the post office, and various other interests and for the public in general. In the city Survey maps the names of all principal streets are to be printed. However, it should be remembered that for public and postal purposes it is highly inconvenient to have the houses and shops on opposite sides of the same street differently numbered.

### ENQUIRY

The object of enquiry is to determine for each parcel of land who is entitled to be confirmed in possession, and what possessions are mere encroachments, easements or licenses; then what residue of land vests in the Municipality or Government. If the land is adjudged to be in the legitimate possession of a private individual or body, then the Enquiry Officer's duty is to see whether the Land is liable to pay revenue or not and to whom; and on what terms or tenure it is held; also if it appears to be a recent and illegal occupation, whether any action can be taken to recover it for Government purposes. In dealing with the claims of private individuals among themselves, not only all these questions of possession, limitation, etc. have to be dealt with but also the whole body of the civil law of inheritance, conveyance, mortgage and much else. In fact this is the duty of a judicial officer who is better equipped for dealing with them than a revenue officer. An Enquiry Officer (who is a revenue officer) generally declines to enter into these elaborate questions since in these matters between private parties he is simply a revenue officer acting (usually) under the Record of Rights Law.

All land which is not possessed by or the property of any individual, however large or however small its extent, is the property of Government as declared by s. 37 of the L. R. Code. Government admits the occupiers of lands in village and town sites to the privilege of holding these occupied sites free of taxation (*G. R. 4344 of 1896*), and have fully recognized the heritable and transferable nature of the tenure in which they are held in private possession. But Government still maintain all rights to minerals, and the reserved trees, and residual rights as reversionary and also the right of taxation when they think fit to exercise it.—[s. 45, cl. (2)].

**Encroachments against Government or Municipality.**—See notes and cases in s. 37 under the head.

**Enquiry Procedure:** The Enquiry Officer: The Enquiry Officer is usually an officer of the grade of Mamlatdar or Deputy Collector, who is gazetted

under s. 18 L. R. Code as Survey Officer in charge of the City Survey (*R. 8884-15*). His powers are derived from s. 50A of the District Municipal Act of 1901 and from ss. 3, 37, 119, 189, and 190, of the L. R. Code. He must also prepare a Settlement Register under s. 109, but if the population exceeds 2,000 he does not exercise any power under ss. 96, 97 (impressing labour and charging for it) because Survey Fees are levied, 101 (Irrigation rates), 104 (Remission of Assessment), 118 (village Boundaries). If the population is below 2,000, it is better to make use of s. 135(g) L. R. Code. Under the Municipal Act he decides disputes or doubts regarding the boundary of streets and other spaces which vest in the Municipality and whether streets are public or private; under s. 37 L. R. Code he can decide similarly between private persons and Government; under s. 119 L. R. Code he lays down boundaries between private properties.

**His Procedure.**—As a first step a general notice (not the legal notice in s. 96, L. R. Code, which does not apply) should be issued to all the citizens informing them of the inception of the Survey and Enquiry, and stating its general objects, and especially calling upon mortgagees and absentee owners to take care that their rights are brought before the Enquiry Officer when he makes the enquiry into their individual properties. When a sheet has been mapped and the Enquiry Register with its four columns tentatively filled in by the Measuring staff, the Enquiry Officer will then issue individual notices. A minimum notice of 10 days will be sufficient but it must be understood that if the parties desire longer notice or if they are not able to adduce their full evidence on the day of opening the proceedings, then the Enquiry Officer must grant them all proper facilities either by increasing the minimum period, when he is conscious that it will be insufficient, or by granting adjournments when reasonably demanded. In his proceedings, he will hear evidence and receive documents, and he must remember that the Municipality or Government must prove claims just as well as private parties; he is not a Municipal or Government Advocate, though he may undoubtedly take cognizance of the obvious fact that land appears to be part of the street or that it has been shown in old maps or records as public or Municipal land. He is not bound by quite such rigorous rules as a Civil Court (*R. 579-81*). He is appointed for the very reason that parties may put in their claims and that decisions may be reached in a less formal and expensive way; and it must always be remembered that if ever he does injustice by an unreasonable decision, the party can have recourse to a Civil Court, and in the event of success would win their costs. There is no right of appearance by Pleader before the Enquiry Officer (*R. 849-59*), though he would be ill advised to refuse to hear legal arguments in important contentious or test cases. Parties may, however, always appear by duly authorized agents or representatives. In civil suits brought to set aside the Enquiry Officer's decisions, when the Municipality and Government interests do not conflict, the Government pleader may appear for the municipality also without charging fees.—*R. 8335-19; 1272 20.*

The Enquiry Officer being a 'revenue officer' can summon witnesses to give evidence or produce documents under ss. 189-190 and parties are bound to state the truth before him. He can administer oaths in formal enquiries and (s. 4, India Act X of 1873) in his summary enquiries. The enquiries under ss. 37 (2) L. R. Code and 50A District Municipal Act are formal: others are summary. Both formal and summary enquiries are judicial proceedings for the purpose of ss. 193, 219, 228 Indian Penal Code only (*R. 840-90*; and he is a 'Civil Court').

Before the enquiry commences, all available Municipal or Government records as to leases or past decisions in disputes of title or of possession should be collected and arranged by the Enquiry Officer with the help of the Revenue and Municipal Officers. While recording evidence the Municipality and Government must always be prepared to put in their evidence and records with the same formality as the private parties.

**Settlement of a dispute.**—Whenever there is any decision between the Municipality and the private party, the full procedure should be followed. Disputes cannot arise where a private property is bounded on all four sides by other private properties, but wherever the property is bounded by a street or open space, the notices should be issued, and all cases should be primarily treated as disputed.

**Government claims.**—When the dispute is between Government and the occupant, then the procedure is exactly the same, except that s. 37 L. R. Code is used instead of s. 50A, Municipal Act. The Enquiry Officer must remember in this connection that the limitation against the Government is not 30 but 60 years. (See Limitation Act, s. 26 and Schedule I). In Notified Areas there is no "Municipality" and s. 50A of the Municipal Act does not apply. The Government stands in its place:—(*R. 7976-17*).

Unoccupied spaces claimed by Government might be entered as Government property and there could be no decision under s. 37 (2), because there is no claimant. The Waste Lands Act (India Act XXIII of 1863) provides a special period of limitation of three years (s. 18) for claims to land sold by Government; but cannot be employed unless it is intended to sell the land or unless a claim is raised. It seems, therefore, best that a notice in Form V signed by the Collector should be affixed upon or alongside every such vacant plot, intimating that if any claim is raised it will be adjudicated under s. 37 L. R. Code but if no claim is received it will be entered as Government property. The fact of the issue of this notice should be noted in the Register. Then although the entry would not be conclusive against all possible future claims, still it would operate as good evidence of adverse possession from at least the date of the enquiry.

**Note:**—See notes to s. 37 under the head "Waste Lands Act."

Vacant spaces bordering upon a street and not the property of individuals are Government property, and not Municipal (*G. 871-75*).

**Municipal Claims.**—All public streets vest in the Municipality. It is for the Enquiry officer to lay down what are the limits of the street and to



record his decision. Herein the jurisdiction of the Civil Courts is not taken away, but there is a special rule of limitation enacted with a view to bringing all disputes to a head and to a final settlement.

Nalas and streams vest in the municipality; but this includes only the water, not the bank or dry bed (*R. 4561-85*). In Poona when the municipality had reclaimed a nala bank a grant was made of this area under s. 50(2) (c) but it is not stated whether the grant is revenue-free (*R. 1172-21*).

Tanks whether vesting by the Act [ s. 50 (2) (b) ] or by an order [ s. 50 (2) (e) ] cannot be treated as second class irrigation works (*7324-18*).

**Municipal rights over Lands.**—There is a considerable vagueness as to the Municipal rights over lands. Except when definite grants or purchases have been made, no land is municipal property which has not been dedicated to public uses [ s. 50 (a) to (e) and (f) ] or definitely transferred to the Municipality by an order under s. 50 (2) (e) of the Municipal Act. It would therefore seem that there can be no power in a Municipality permanently to alienate any vested land or to grant it on a rent in perpetuity. It could do so only with land over which it had acquired full proprietary rights free of any encumbrance. When Municipality purchases private land it holds it on the same footing as any other private owner, and could not claim exemption from any assessment to which a private owner would be liable. Nor can it confer any such exemption upon its assignees (*R. 7596-17*). To allow such exemption would constitute an alienation or transfer of revenue, present or prospective, to a local body, and such a transfer is beyond the powers [ *Rule 5 (i) in Financial Notification 2792-7-8-16* ] of the Local Government without the specific sanction of the Government of India or the Secretary of State. Municipalities are, however, ordinarily exempted from payment of revenue on land which they have acquired for public Municipal purposes, (e.g., for a hospital), from which profit is not derived, but if these institutions or land are diverted to new uses which cannot be called public, then their title to exemption would vanish, (e.g., slaughter houses in which the fees charged constitute a source of profit; boarding schools or hospitals for paying patients from which profit is derived in the sense of a surplus of income over expenditure and interest, etc., upon original costs). And certainly when land is leased out for building purposes to private parties upon rent there is no title to exemption.—(*R. 4578-18*) This view was endorsed in *R. 387-20*.

It remains debatable whether the Municipality can be permitted to enjoy revenue from land which originally vested in them for the purposes of the Act but which they alienate. When land vests in a municipality as a public market it would seem illegal for them to levy 'competitive rents' though such staff fees as are devoted to cleansing, lighting, etc., (and do not amount to a tax on trade) would be legitimate. In *R. 2578-18, 13989-17*, it was ruled that when land is not used as a market, it reverts and becomes assessable. When a public street is not to be closed or abandoned, the sale (or lease) of any part of it is a dereliction of the trust under which it vests

in the Municipality (*R. 905-80, 5965-86, R. 1890-91*); except only when under s. 93 its disposal improves the general line of the street. Even Government cannot sell or grant a street. If it is inexpedient to evict an encroacher, his occupation must not be regularised by sale, but left alone (*R. 448-12*). When, however, land ceases to be required as a public street (*G. 2461-91*) the Municipality under s. 90 (1), District Municipal Act III of 1901, has power to sell it by resolution of the General Body; and Government do not claim any share in such sale proceeds of the right of occupation (*R. 3446-11, 447-12*). Such sales are subject always to the sanction required by s. 40 (2) and (3), idem; and moreover they are subject to any unextinguished right the public or any person may be able to establish thereover, *Fazal Haq v. Mahachand*, I. L. R. 1 All. 557. There is a natural presumption that any road or highway or waste land adjoining thereto belongs to the owners of the soil of the adjacent land, *Nihalchand v. Azmat Alikhan*, 7 All. 363, and when no longer required for a road, the owner (usually Government) is entitled to re-claim its possession, *Modhu Sudan Kundu v. Promoda Nath Roy* I. L. R. 20 Cal. 732, or even to divest the municipality; land so vesting is not 'unoccupied' or 'set apart for a separate purpose' (*L. R. C. 81*) but seems to be 'alienated' (*R. L. A. in R. 44-12*). But though the Municipality may perhaps be allowed to sell the occupancy, they are not authorized to lease it. (*G. 447-03, G. 3461-08*) unless it is acquired under s. 90 (2) as necessary for the houses and buildings forming a street (*R. 1025-20*). Such is not street land in the strict sense. A grant reserving a rent or revenue to the Municipality is not a sale but a lease, even if a premium upon entrance is demanded, and such a lease in perpetuity, or in defeat of the reversionary right of Government, is not allowed (*R. 4511-00*). It is true that in s. 90 (2) the Municipal Act gives power to the Municipality to dispose of certain land which it has itself acquired, (*i. e.*, not the vested land) in perpetuity; but this is subject to sanction of the Commissioner, and the perpetual disposal of the tenure must not bar the rights of Government in respect of assessment or the reversionary rights in case the Municipality ceases to exist s. 4 (4). Nor are the Municipality owners of the soil of the public streets which vest in them under s. 50 (2) but apparently only of the surface materials of the street and its pavings, etc., and of the right of occupation of the land which so long as they hold it as a public street, is enjoyed free of revenue (*R. 1890-91*). Their property in these streets does not extend from the centre of the earth "usque ad caelum". *S. Sundaram Ayyar v. The Municipal Council of Madura, etc.* I. L. R. 25 Mad. 635 but is a special right of property created by statute. A lease of land 'not required' as a street is an attempt to reserve a right of re-entry to the lessor to which (since it is no longer required as a street and the trust is at an end) the Municipality is not entitled."

It would seem that Government are entitled to levy revenue upon such land (s. 42 (2) L. R. C.) and are not barred by the fact that it has long vested as part of a public street in the Municipality. Land so held by a Municipality free of revenue becomes liable to Government Land Revenue when the use is changed (s. 48 (3) L. R. C.).

The practice of allowing a Municipality to lease or sell any portion of the public streets for the benefit of their current revenue is opposed to sound policy; they are the custodians of the streets; and their consciences as custodians should not be assailed by the prospect of getting current revenue from such grants, which they do not invariably set apart for productive expenditure in spite of *R. 4342-73, 5878-73, and G. 3031-01*. It seems that when the Municipality and the public do not require the land they may with proper sanction and for capital or productive expenditure (*R. 3044-63*) sell their right of occupation of the land, subject to the right of Government to levy the proper assessment on its new use; just as in the case of unoccupied lands sold for the benefit of certain Municipalities under the arrangements made for certain City Surveys under Act IV of 1868. The Enquiry Officer will often have to investigate and obtain orders on such cases. These views are set out in (*R. 1023-80*) and seem not to be disapproved by Government though no occasion to apply them arose in that case.

**Claims of private parties.**—The City Survey Records are undoubtedly Land Records. Therefore, if at any time after the Survey a dispute arises between occupants as to the settlement of a boundary or the decision of any rights which flow from such determination, it shall be decided, by the Collector in accordance with the provisions laid down in ss. 119 and 121 of the L. R. Code. So can the Municipality under a 113 Municipal Act. If at the time of the Survey the fixing of the boundary is disputed, the Enquiry Officer can decide under ss. 119 and 120 (submission to Arbitration) or the last clause of s. 120 read with the first of s. 119. Such a settlement excludes for the future any other evidence as to the location of the boundary, except in so far as the City Survey Records do not afford satisfactory evidence of the boundary fixed.

The enquiry Officer will thus deal with three kinds of possible disputes, and the fourth possible kind—a dispute between Government and the Municipality—will be decided departmentally under L. R. C. Rules (*R. 7609-86*). But he may also find some land which is still agricultural, yet falling within the limits to which the City Survey has been extended. Such land is entirely outside his jurisdiction, and nothing can be entered in the Register, except that it is "agricultural". Disputes as to such land can be decided and a record of their decision can be made only by the Collector and his staff under the ordinary Revenue Code Rules, for the purpose of the Record-of-Rights, when Chapter X-A, L. R. Code has been applied to the area.

When his decision has been pronounced, a notice thereof must likewise be served under L. R. Code Rules upon the land and upon the parties.

Appeals against the decisions of the Enquiry Officer lie to the Collector only (*R. 6936-15*) and the power of hearing them cannot be delegated (*R. 8021-17*), (though Government can appoint any officer to hear the appeals *R. 1356-18*), and they must be preferred within the period of 60 days prescribed by the Code. (s. 205). When an appeal has been lodged, the Enquiry Officer must wait for its decision before finally closing his Register.

The Enquiry Officer will cause the amended boundary (as per his decision or the appellate order) to be inserted, and when the whole sheet is finally revised he will sign it and date it, and it will then be ready for printing and for the further steps of compiling the Property Register and issuing the Sanads. The Records he will leave will be this corrected map and the Enquiry Register and the files of individual cases.

The Enquiry Officer may also be asked to classify or roughly value the properties for the purpose of assessing the Sanad Fees.

Its results should be given in one additional column to the Enquiry Register.

The form of the Enquiry Register should provide for the following particulars:—

- (1) The current or chalta Number of each property in the sheet.
- (2) Old City Survey, or Municipal or Revenue Survey and Hissa Number.
- (3) Area.
- (4) Supposed name of holder as in Municipal records or otherwise.
- (5) Date of service of notice (a) upon occupants, etc. (b) upon the property.
- (6) Which of the parties were present.
- (7) Is the plan and measurement accepted and confirmed or is it corrected?
- (8) Decision as to (a) tenure (b) rent or assessment, (c) when rent or assessment is to be revised, (d) name of holder, mortgagee in possession, lessee, other right or encumbrance-holders and attached easements.
- (9) Reference to the file of Proceedings when contested.
- (10) Date of service of decision order.
- (11) Appeal order, if any.
- (12) Final City Survey Number of the property.
- (13) Classification for Sanad fees.
- (14) Amount of fee fixed by Collector (with notes of any additional penalties under proviso to s. 133).
- (15) Number of Receipt for collection of fee.

Column 3 will be corrected if the decision require it.

In column 8 when the decision is uncontested a brief note of the ground of decision and of the evidence or admission may be made without, however, infringing ss. 193-4; but if these entries are likely to be lengthy they must be recorded upon the Proceedings File with a reference in Column 9.

It will have been noticed that while the Enquiry Officer will decide disputes as to boundaries between occupants, still he has no authority to decide a dispute as to title when it does not affect boundaries. Disputes regarding titles cannot be settled by him but he has to put down what appears to him to be the *prima facie* rights of parties. His decision, however has no

probative value and carries no presumption of correctness. But if the Record-of Rights Act, Chapter X-A, L. R. Code is applied, then it becomes his duty to settle such disputes as well as he can, though still in an informal way, and his decision is not final; but when he has recorded it and it is not upset by early reference to a Civil Court then under s. 135J, L. R. Code, it acquires a presumptive value, so that the burden of proof is thrown upon the party who contests the correctness of the entry (see also E. 53-17). When such an extension has been made, the Enquiry Officer will, therefore, be required to examine the records of the Sub-Registrar and to note (when properties have been sold or mortgaged) the prices and considerations as nearly as he can ascertain them from the documents and otherwise, and he will insert a reference to the registered documents or other evidence. Here he will be required to record tenancies when they are for a period of 21 years or *over* (R. 685-16). Tenancies not based on a lease or document, but running by custom from year to year are not 'long' tenancies or leases, even though in fact they have lasted for generations. The owner can always terminate such a tenancy by due notice.

After the completion of this Enquiry, the numbering must be finally settled.

While enquiring into titles as between Government and the Municipality and occupants, the Enquiry Officer should ascertain what properties are held free of rent or assessment, and what properties are liable to assessment, and how much they are paying and for what period it is fixed. He should also note those occupancies which he finds to be free of such charges whether they are exempt by law or by specific grant or only by custom. He should, therefore, also determine the boundaries of the old Gaathan within which land is usually exempt from building assessment, and beyond which it is liable to altered assessment under s. 48, even though it may for a long period have inadvertently been unassessed. The Enquiry Officer should not usually be directed to impose the assessment in such cases, but should submit to the Collector Schedules of the different kinds of properties which he finds and suspects to be so liable.

Under s. 100 L. R. Code, the Enquiry Officer has power to assess all land not hitherto assessed and whether occupied or not occupied. If the Enquiry Officer is not directed to make assessments, then all such assessments will be made by the Collector under s. 52, (except in a few cities). Under the proviso to s. 52 the Collector can investigate claims to hold land upon Inam tenure. The Enquiry Officer will, therefore, record the tenure upon which he finds land is actually now held, but will not impose assessments.

He should submit to the Collector schedules of unauthorized occupancies where eviction seems to be required, or of lands liable to assessment or altered assessment. Similarly he should not ignore questions of easements; he may find open Government spaces upon which easements are being allowed to grow up by neglect, such as doors and windows abutting upon

Government land which the house-owner is not entitled to use. The Collector should take care that when spaces are decided to belong to Government but are wholly or partly in possession of any unauthorized persons, eviction should be promptly effected, otherwise the unauthorized possession would certainly ripen into adverse and known possession. Likewise encroachments on streets or other land vesting in the Municipality should be noticed and schedules sent to them for action under s. 113 (3) or 122 (2) District Municipal Act (*R. 3251-17*) according as the encroachment began before or after the land came within the Municipal District. Even if limitation has run for 30 years against them, still on payment of compensation they can evict.—*Dakor Town Municipality v. Travedi Anupram*, I. L. R. 38 Bom. 15.

The Municipality has also power to deal with encroachments upon open spaces, whether they vest in them or not. To deal with these encroachments may take long, and they may ultimately be conceded and not removed. Therefore, they should be mapped as first found; when they have been removed or modified, the map can be corrected. The maintenance staff should see that the schedules are fully dealt with, if not completely disposed of, before the Enquiry Officer finishes his task.

S. 128 L. R. Code will no longer have any operation unless a city once surveyed under Act IV. of 1868 is being revised. When the Collector extends a town site under s. 126 it is doubtful whether the proviso in the last clause would not debar him from bringing any Inam land settled under the Summary Settlement within the town site limits. If it were so brought in, then s. 134 would apply to such Inam land; in some Gujarat cities there is summary Settlement land already within the town site to which that Section does apply. By the old City Survey Act of 1868, power was given to remove all 'encroachments' which could be proved to have been made within 12 years before the enquiry. With this exception all 'existing rights of occupancy' are to be confirmed. This means plainly that no new rights were conferred, the Sanad would not improve the title which the occupant already had and this confirmation was only as against the interest of Government (i.e., against the claim to occupancy price or assessment or rent). No provision was made for finality of decisions, or for limitation against appeals. But the ordinary law of 12 years limitation would apply against all decisions; and section 119 (2), Land Revenue Code, would operate to establish boundaries fixed in the survey.

The original detail map must of course be available for the use of the Enquiry Officer and for inspection by the public during his Enquiry, and extracts or copies thereof should be readily given when applied for, and the fee should be moderate. The ordinary Land Revenue Code Rules for copies of maps do not contemplate such small extracts as the copy of a single small property from the City Survey map. A special fee should be fixed for these extracts required by parties for the purpose of City Survey Enquiry disputes; probably 4 annas will be quite sufficient, in most cases, and a staff of

copyists should be engaged. Frequently the main property and the portion in dispute will be (chalta) numbered as two separate plots while the claimants will claim that they are one property. Fees for two maps should not be charged for such separate portions, and generally it should be remembered that fees to be charged for maps and copies in the City Survey Office should not be made into a source of revenue, which has sometimes occasioned public complaint, but should be sufficient only to meet comfortably the cost of preparing them. But great care must be taken of the original map during these operations, because it has not yet been printed, and it is an indispensable and irreplaceable Record which must not be handled by unauthorized persons, and when taken into the street, must be pinned on a board and covered with a cloth to keep it reasonably clean and dry.

We must also not forget that in some cities there is old Cantonment land. The tenure thereof is special, and not governed by the Land Revenue Code, and care should be taken not to do anything which would have the effect of altering this tenure without proper authority from Government. Such old Cantonments are found in Dharwar, Sholapur, Surat, Satara, Kaira, and numerous other places (*see R. 8391-00, para. 8*). Inadvertently a survey was made of the Non-Agricultural land in the old Shikarpur Cantonment but Sanada could not be issued till the tenure was rectified (*R. 6756-19 letter to Government of India*).

The upshot of all this is that in the Enquiry and Property Registers the Enquiry Officer will have to record numerous possible tenures. They will not be the same in every town. Some kinds exist in one place, but not in another. It will therefore be best for the Enquiry Officer to make out a list of all the kinds of tenures which he encounters. When the Enquiry Officer has prepared this list and before his Enquiry is completed, he should submit it for scrutiny to the Director of Land Records and the Collector, in order that prompt attention may be given to any peculiar or dubitable tenures that are alleged to exist. Such doubts ought to be resolved and properly decided by superior authority before the Enquiry Officer's proceedings are finally closed.

Can the Enquiry Officer revise his own decision? This raises perhaps another question whether the Enquiry Officer can revise or modify his own decision when once recorded, or must he leave all such revision to the appellate authority? It would seem that like all other Courts he might certainly correct a mistake or misapprehension, provided only that he issues fresh notice of his revised decision to the parties concerned. But if he proposes to make an amendment which is disputed or contentious, then it would be better to refer the parties to the Appellate Court in case of disputes under section 50-A (or 37, Land Revenue Code) when the proceedings are formal. But in other matters such as entries of the history of title which are not in dispute with Government or the Municipality but are entries under the Record-of-Rights (if applied) or the Informal Settlement Registers under a 100, it would seem that he may correct his entry at any time, provided he makes the correction perfectly clear and initials and dates it. (*cf. R. 8720-91*).

**Map printing.**—In the maps are printed not only boundaries of properties but also their numbers as finally numbered, and the storeys and the names of streets, and names of public buildings, Government and other Offices, cattle pounds, and so on. Municipal, Gaolhan and village boundaries are shown by distinctive lines. Tramways and Railways are shown by conventional symbols and various other such particulars as might have been decided for any particular town such as the location of the water and drainage mains, reservoirs, the public wells, and so on. Important temples, markets, schools, hospitals (ordinary or infectious), mills or factories employing numerous hands; banks are also mentioned. Sometimes distinctions between ordinary properties and Inam Survey numbers and municipal lands are also shown.

When the sheet has been completely traced and all the names and numbers as above properly inserted there is printed the title and the scale, year of Survey, and an explanatory list of symbols employed on the face, if there is room or if not, on the reverse.

**Contouring.**—One of the most important things which the Sanitary, Water, or Roads Engineer requires to know about a city is its contouring or distribution of levels. A contour means that line running through a city along the ground surface which is everywhere at the same level. In a hilly town the contouring would naturally form rings round each hill and would show deep inundations when they cross a natural drainage stream or river. In a very flat city there would probably be a very few contour lines altogether and these mostly along the banks of the river if there be any, if each line is drawn at an interval of 5 feet.

The object of contouring is not to get exact levels of every fraction of the city, but to give bold and yet not recklessly inaccurate contours which will assist the engineers of the future in fixing pipe lines, new roads, tramways, and so on.

**Property Register.**—Upon the conclusion of the enquiry and the appeals and after the final numbers are assigned, the Property Register is written up. The Property Register is a summation of the results recorded in the Enquiry Register.

**Sanads.**—Sanads are to be issued after the Property Register has been written and the maps printed. Upon a Sanad form the map of the survey number is pasted and care is taken to see that the whole sequence is complete according to the Property Register volume. Then the name of the holder and the tenure as in the Property Register is written and then some of the dimensions as shown on the original detail map sheets are written down. A scale strip is printed on the Sanad, so that any other dimension can readily be ascertained by any one who knows how to use the scale. Then the Sanads are to be signed by the special officer appointed for the purpose by the Local Government (*G. R. 341 of 1918*).

Then the Collector issues notices under s. 132 and the fees fixed are posted in the Enquiry Register (with addition of penalties for taking delivery after the prescribed time).



Issue of Sanads.—S. 132 requires that the Sanads should be given to the holders of "building site" and a separate fee (therefore a separate Sanad) for each such site "separately held;" now the word "Holder" obviously has to be taken to mean the highest Holder where there are more than one. The L. R. C. defines "Holder" as including a tenant. But one could not give the Sanad to the tenant and leave the owner out. Permanent tenants have higher right and are given a copy of the Sanad and if the holder does not pay, recovery of fees is made from such tenants. This is interpreted to mean a Superior Holder. But the words "separately held" need not be so interpreted. Here separate tenancies can certainly be distinguished. A building is included in the term land, but it cannot be called "a building site." So if a building site belongs to A, but the building upon it is the property of B, it is clear that A alone can receive the Sanad and still more when A holds the land and part of the building, but B owns another part of the building (such as the upper floor) without owning any of the land. But if A holds a plot of land divided into portions each of which is let to a separate tenant whether on a long or short lease, or even small houses leased upon monthly tenancies, even so each such separate building site, with the house upon it, being differently tenanted is "separately held" and requires a separate Sanad (*R. 6410-10; 5,000-16*). But in the case of a chawl where only the rooms are let to separate tenants, it is not the building site which is separately held but only parts of the building and here the Sanad will not be divided. When there are co-sharers *G. R. 4180 of 1883* allows duplicates, executed as originals, in favour of each co-sharer. A mortgagee in possession is certainly a holder but he is not a Superior Holder, and the Sanad must be made out in the name of the Mortgagor, though it may be delivered to the mortgagee as his representative, if the mortgagor himself does not come forward to take delivery or to pay the fee.

Many properties consist of what may be called a main block and some extensions or other part which is not held upon the same tenure. The most ordinary case is when the main property is Gaothan land held by custom free of revenue while the extension is a piece of the street or some open space encroached upon or occupied at a known date and for which a rent is paid or which is admitted to be liable to revenue when Government demand it. In such cases tenures are different ("separately held") and separate Sanads are issued. This is done because it is not so much the main properties which cause troubles, litigations, disputes and annoyance to the revenue officers and the general public but it is precisely these small projections and excrescences which are the chief cause of City Survey operations. When the land has been rented by the Municipality that body has to pay the fees for a Sanad given to it confirming its title to all such pieces of land. This is necessary because it is precisely these pieces which are a continuous nuisance to Municipality. Sometimes these excrescences are not even leased as land but exist only as easements or licenses when the person in enjoyment has executed a Nadava Kabulayat (no suit agreement) admitting complete absence of ownership and agreeing to pay an annual fee for the permission

to use or perhaps enjoying the use free but disclaiming any title. Here there is an easement and not any "building site" held by anybody. It would appear that for these the land over which the easement is enjoyed should be excluded from the limits of the dominant property. But upon the Sanade for the main property it should be remarked "together with the easement of a balcony over or a right of way (or door steps or platform or window) opening upon the land to the East (North, South, or West) as indicated in the plan." It might sometimes be necessary to colour to make it explicit.

It may happen that in one property there are two classes of land, e. g. some sold out of the street, some Inam, some originally agricultural held on altered assessment, but it may not be possible to determine the exact areas or the boundary between each portion. Here the Sanad must recite the facts as ascertained, but the whole must be mapped and numbered property.

**Government, Municipal and Railway Lands.**—No Sanads are issued or fees charged for public buildings or spaces or for Government property since there is no object in Government paying fees to itself. But the amount due for Government plots is assessed and deducted from the total cost by writing off part of the advance, so that no charge falls on other owners (*R. 15407-17*). Land held for Municipal purposes is usually free of revenue; it is not however exempted from Sanad fees, and Sanads should be given for each separate plot. But when this land is leased or granted on rent by the Municipality, or even when the rental has been capitalised by sale in perpetuity (e. g. as at Jalgaon), Sanad fees are chargeable to the "holder". If the Municipality has parted with all its rights, then the sub-holder would be the proper person to receive the Sanad and pay the fee, and the Government are not obliged to have recourse to the Superior Holder. But if it is leased for a term only, or if the Municipality is receiving rent, then Sanads are issued to the Municipality and fees charged for each separate occupancy. Land held by the Municipality from Government upon short lease (with or without rent) is Government land, and no Sanad is issued. The terms will be in the property Register.

**Railway lands** if held by State Railway, rank as Government lands. If the Company working a State Railway has an interest in surplus profits then the fees would come out of profits and will be partly, therefore, paid by Government. But if held by private Company (say Barzi Light) then they seem liable under the Code to pay fees for each separate plot. Government have however, ruled in *G. R. 5109 of 1917* that Sanads need not be issued, nor fees charged even to a private Railway Company. The Collector generally excludes the land occupied by a Railway Administration from a "Town Site" under s. 126.

**Fee Calculation.**—While calculating the fees, the Collector first ascertains the net cost. Then he calculates the recoveries. If there is a final deficit after collecting all possible fees including penalties under s. 132 or if the cost per Sanad is deemed to be too high and if Government agree to bear any portion of the total cost then Government can write off any deficit shown by the City Survey account.

**Extension of City Survey Law to lands converted from agricultural to non-agricultural uses within the limits to which City Survey is applied.**—The provisions of the City Survey law apply only to non-agricultural lands within the limits to which the City Survey is applied. The Survey has no effect on the agricultural lands interspersed between the building sites. But as soon as such lands are converted from agricultural to other uses, the City Survey Law is applied, and the individual plots so formed in the blanks or islands left in the original maps are mapped in detail and Sanads are issued and Sanad fee levied from time to time, fresh notice being given under Cl. 2 of a. 132 for each such newly mapped part of the town. It is at the same time usual (*G. R. R. D. 6128 of 1917*) to extend Chapter X-A of the Code (the Record-of-Rights) to all surveyed areas. Therefore, whenever land is subdivided and has to be mapped within such an area (even if the City Survey be held not to apply to it without a fresh Notification) stamp fee for the mapping of the freshly formed plots is to be levied under a. 136 (b).

When an extension is effected under a. 136 and notified, it requires only a routine notification to extend the City Survey to it. The mapping of such additional area can be carried out by the normal maintenance staff and joined with precision on the existing map.

**Importance of maintaining City Survey maps and Property Records upto date.**—Under the influence of weather and white ants and other pests, ordinary houses in ordinary towns do not last more than about 50 years, while even good houses will not last 100 years. There are also fires and fresh enterprises such as roads, railways or extensive remodelling which alter the whole lay-out of considerable areas. Tramways and Railways and new mills and industries produce many alterations in the appearance of the cities. There is also a constant flow of legal changes. In the past, neglect to maintain the City Survey maps and the Property Records almost of these changes has rendered all the surveys useless within 50 years of their completion. The public require and are entitled to have a day to day maintenance which will not be thrown out of gear by any of these changes. The survey should give a starting point with dated maps, the originals of which will not be altered. Therefore, every change must be incorporated in the printed maps as rapidly as it occurs.

A maintenance staff has therefore been provided in every surveyed city and town whose duty it is to keep the maps and records upto date. The maintenance staff is not expected to remain passive or sedentary merely waiting in an office until information is brought, but is expected to move about and look for the changes which are not reported as receiving those which are reported. Throughout the whole of the City Survey operations, the final object and the requirement of Maintenance has to be constantly kept in view.

Under Chapter X-A of Act V of 1873, a Record-of-Rights and liabilities is maintained for every separate property. By law every person acquiring a right must report it to the City Survey Officer under penalty; also the Municipality, if any, reports any change which comes to its notice. Details

of registered transactions affecting the city-surveyed area are received monthly from the Registration Office concerned. All this is supplemented by a periodical review of every property by the maintenance staff by inspection and enquiry on the site, the whole area being covered once every three years. Not only is any encroachment on Government rights thus rendered difficult, but Government have also at hand such information as is obtainable for revising or fixing the Standard rates of assessment in any town or part of a town.

[<sup>a</sup>] 127. Act XI of 1852 and Bombay Acts II and VII of 1863 shall be deemed to be applicable, and to have always been applicable, in the territories to which they respectively extend, to all lands within the limits of the site of any town or city in which an inquiry into titles has been made under the provisions of Bombay Act IV of 1868 [<sup>b</sup>] which have been hitherto ordinarily used for agricultural purposes only; but the provisions of the said Acts shall not be deemed applicable to any other lands within the limits of the site of any such town or city.

Act XI of 1852 and Bombay Acts II and VII of 1863 how far applicable to lands in such sites.

#### Commentary

**Act XI of 1852** is styled "Titles to Rent-Free Estates Act."

**Bombay Act II of 1863** is an Act for the summary settlement of claims to exemption from the payment of Government Land Revenue and for regulating the terms upon which such exemptions shall be recognized in future, in those parts of the Bombay Presidency which are subject to the operation of Act XI of 1852.

**Bombay Act VII of 1863** is a similar Act applying to those parts of the Bombay Presidency which are not subject to the operation of Act XI of 1852.

"Hitherto": The natural meaning of this word would be "prior to the enactment of s. 127 in 1879." *G. O. R. D. 681 of 27-2-1920.*

[a] As to the local repeal of section 127, see para. 5 of foot-note (u) on p. 1, *supra*.

[b] Bom. IV of 1868 is repealed by s. 2 of this Act, which has been repealed by Bom. IV of 1913, s. 5.

[<sup>1</sup>] 128. The existing exemption from payment of land revenue of lands other than lands which have hitherto been ordinarily used for purposes of agriculture only, situate within the sites of towns and cities in which an inquiry into titles has been made under the provisions of Bombay Act IV of 1868, [<sup>2</sup>] shall be continued;

Existing exemption when to be continued in case of certain lands in towns and cities in which Bombay Act IV of 1868 has been in operation.

*1st.*—if such lands are situated in any town or city where there has been in former years a survey which Government recognize for the purpose of this section, and are shown in the maps or other records of such survey as being held wholly or partially exempt from the payment of land revenue;

*2nd.*—if such lands have been held wholly or partially exempt from the payment of land revenue for a period of not less than five years before the application of Bombay Act I of 1865, [<sup>3</sup>] or IV of 1868, [<sup>4</sup>] to such town or city;

*3rd.*—if such lands, for whatever period held, have been held wholly or partially exempt from payment of land revenue under a deed of grant or of confirmation issued by an officer whom Government recognize as having been competent to issue such deed.

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[a] As to the local repeal of section 123, see para. 5 of foot-note (a) on p. 1, *supra*.

[b] Bom. IV of 1868 is repealed by section 2 of this Act, which has been repealed by Bombay IV of 1913, s. 5.

[c] Bom. I of 1868 (except sections 37 and 38) is repealed by s. 2 of this Act which has been repealed by Bom. IV of 1913, s. 5.

[d] Bom. IV of 1868 is repealed by s. 2 of this Act, which has been repealed by Bom. IV of 1913, s. 5.

[\*]129. (1) Claims to exemption under the last preceding section shall be determined by the Collector after a summary inquiry, and his decision shall be final.

Right to exemption to be determined by the Collector.

[<sup>b</sup>](2) Any suit instituted in a Civil Court to set aside any order passed by the Collector under sub-section (1), in respect of any land situate within the site of a village, town or city, shall be dismissed (although limitation has not been set up as a defence) if it has not been instituted within one year from the date of the order. [<sup>b</sup>],

#### Commentary

**Procedure.**—Under cl. 1 of the section claims to exemption are to be determined by the Collector after a summary inquiry and his decision shall be final.

An Inquiry Officer appointed by Government to hold summary inquiry under this section is therefore like an Assistant or Deputy Collector exercising the powers of the Collector.

Appeals against orders passed by such an Enquiry Officer would, therefore, lie to the Collector on the analogy that appeals against orders of an Assistant or Deputy Collector lie to the Collector.

**Note.**—By the Amending Act XI of 1912, s. 135 was repealed and its active provisions were re-enacted in ss. 37 and 129, in such a way as to make the application of the provision clear and definite. In s. 135 the period laid down was one year. As suggested by the select committee the period is extended by making the year run not from the date of the order but from the date of the final order which may be made on appeal from the original order. But this suggestion is carried out only in s. 37. From the discussion of the Bill in the Council one gets the impression that the same facility is to be given so far as s. 129 is concerned. The arguments advanced with regard to s. 37, apply with the same force to s. 129 also (see notes under s. 37 *supra*).

[<sup>c</sup>]130. In towns and cities to which section 128 applies, the holders of any lands other than lands which have hitherto been used for purposes of agriculture only, which have been

Occupancy price payable in addition to assessment in certain cases.

[<sup>a</sup>] As to the local repeal of sections 129 to 131, see para. 5 of foot-note (a) on p. 1, *supra*.

[<sup>b-b</sup>] This sub-section was added by Rom. XI of 1912, a. 2, which also enacted that the original section 129 should be numbered sub-section (1) of section 129.

[<sup>c</sup>] As to the local repeal of s. 129 to 131, see para. 5 of foot-note (a) on p. 1, *supra*.

unauthorizedly occupied for a period commencing less than two years before Bombay Act I of 1865 [°] or IV of 1868 [°] was applied to the town or city in which the said lands are situate, shall be liable to pay [°] a price for the said lands [°] in addition to the land revenue assessed thereupon.

The said [°] price shall be determined according to the provisions of section 62.

**Commentary**

*Interpretation.*—S. 130 in no way modifies s. 61 and should not be read with it.—*G. R. 178 of 18-1-1880.*

[°] 131. If the Governor in Council shall at any time deem it expedient to direct a survey of the lands other than those used ordinarily for the purposes of agriculture only within the site of any village, town, or city, under the provisions of section 95, or a fresh survey thereof under the provisions of section 106, such survey shall be conducted, and all its operations shall be regulated, according to the provisions of Chapters VIII and IX of this Act: Provided that nothing contained in sections 96, 97, 101, [°] 104, or 118 thereof shall be considered applicable to any such survey in any town or city containing more than two thousand inhabitants.

*Survey of lands in such sites how to be conducted.*

*Proviso.*

(a) Bom. I 1865 (except section 37 and 38) is repealed by s. 2 of this Act, which has been repealed by Bom. IV of 1913, s. 5.

(b) Bom. IV of 1868 is repealed by s. 2 of this Act, which has been repealed by Bom. IV of 1913, s. 5.

(c—e) These words were substituted for the original words "the price of the occupancy of the said lands" by Bom. IV of 1913, s. 61.

(d) This words was substituted for the original words "occupancy price" by Bom. IV of 1913, s. 61.

(e) As to the local repeal of sections 129 to 131, see para 5 of foot-note (a) on p. 1, *supra*.

(f) Figures repealed by Bom. IV of 1913, s. 62, are omitted.

### Commentary

**Scope.**—Under this section a City Survey can only be made of lands other than those ordinarily used for agricultural purposes only within the site of a village, town or city.

These surveys are now conducted by the Land Records Department. The maintenance of the register of owners which may eventually constitute a Register of title, is not a duty that can or should be levied on Municipalities. No contribution from them are therefore asked of them.—*G. R. F. D. 968 of 8-3-1913, G. O. R. D. 685 of 20-1-1916.*

*G. R. 995 of 4-2-1910*, lays down that a City Survey is to be made by Cades-tral and not by Topographical method of survey. It also prescribes the duties and procedure of an Enquire Officer.

*G. R. 6315 of 8-7-1914* prescribes the details in City Survey and other village site survey maps.

City Survey maps are not to be granted free of charge to Municipalities.—*G. R. 8308 of 27-6-1923.*

Survey fees may include costs of an Officer to hear appeals.

When a City-Survey is introduced in a City a Record-of-Rights is generally prepared and maintained. Government have directed that in villages and small towns with a population of 2000 and more, city survey should be introduced, but the Record-of-Rights should be dispensed with and the survey should be revised after every 25 years.—*G. R. 351/28 of 30-8-1929.*

[<sup>a</sup>] 132. When a survey is extended under the provi-

sions of the last preceding section to the site of any town or city containing more than two thousand inhabitants, each

holder of a building-site shall be liable to the payment of a survey-fee to be assessed by the Collector under such rules as may be prescribed in this behalf from time to time by Government, provided that the said fee shall in no case exceed [<sup>b</sup>] ten rupees for each building site or any portion thereof held separately[<sup>b</sup>]. The said survey-fee shall be payable within six months from the date of a public notice to be given in this behalf by the Collector after the

[<sup>a</sup>] As to the local repeal of section 132, see para. 5 of foot-note (a) on p. 1, *supra*.

[<sup>b</sup>—<sup>b</sup>] These words were substituted for the original words "rupees five for each survey number" by Bom. IV of 1913, s. 63 (a).



completion of the survey of the site of the town or city, or of such part thereof as the notice shall refer to.

[c]

**Commentary**

**Sanad Fees** should be charged (1) on all lands leased by a Municipality and (2) on building plots which have been sufficiently demarcated.—*G. O.R. D. 1025 of 27-3-1920.*

[p] 133. Every holder of a building-site as aforesaid shall be entitled, after payment of the said survey-fee, to receive from the Collector without extra charge one or more sanads, in the form of Schedule H, [c] or to the like effect [c] specifying by plan and description the extent and conditions of his holding:

Provided that if such holder do not apply for such sanad or sanads at the time of payment of the survey-fee or thereafter within six months from the date of the public notice issued by the Collector under the last preceding section, the Collector may require him to pay an additional fee not exceeding one rupee for each sanad.

Every such sanad shall be executed on behalf of the Secretary of State for India in Council by such officer as may from time to time be lawfully empowered to execute the same.

**Commentary**

**History.**—The old Bom. Act IV 1868 (an Act to make further provision regarding the application of Bom. Act I of 1865 to Towns and Cities; and to restrict the application of Bom. Acts II and VII of 1863 in towns and cities and otherwise to amend Bom. Act I of 1865) by a. X had left it to the choice of the owners or occupiers to apply for a sanad and to obtain it. The complaint was that there were mistakes in measurements and it was optional to take out sanads or not. A man may consider it a questionable

[a] The third paragraph of section 132 repealed by Bom. IV of 1913, s. 63 (b), is omitted.

[b] As to the local repeal of section 133, see para. 5 of foot-note (a) on p. 1, *supra*.

[c-:] These words were inserted by Bom. IV of 1913, s. 64.

benefit and refuse to pay the fees. The High Court had decided that according to the strict wording of the Act the taking out of sanads was not compulsory.

The City Surveys were introduced against the wishes of the people and in many cases they were so conducted that the results obtained were erroneous; that is one of the reasons why people had refused to take sanads.

It was, therefore, proposed in this Act that in place of making the taking out of sanads compulsory there should be a survey fee levied where the Act is introduced, to assist Government in paying the expenses.

When a site was surveyed under Act IV of 1868 and determined to be wholly exempt from payment of Land Revenue under ss. 128-129 of the L. R. Code, it shall continue to be held Revenue-free in perpetuity subject to the provisions of s. 45 para. 2 of the L. R. Code.

The lands within sites of towns and cities are to continue to enjoy exemptions from all Land Revenue in perpetuity if they are found at the time of the introduction of the City Survey under ss. 131 and 95 or s. 101 to be authorizedly in occupation free from payment of Land Revenue.—*G. R. 10347 of 26-10-1909.*

In the case of Gaothaus city surveyed after 2nd May 1927 and in the case of plots for which there are no old sanads, the sanads issued in Form H shall convey clearly that Government reserve the right to levy assessment under s. 45.

Government have directed (i) that in respect to privately owned vacant plots hitherto not assessed to land revenue sanads in the form in Schedule H, as amended in the manner described in para. 1 of *G. R. 4729/24 of 2-5-1927* should ordinarily be issued on the completion of enquiry and should not be delayed until the land has been assessed.

(ii) That in the case of land which has been assessed either to agricultural or non-agricultural assessment the sanad should be in Form of Schedule H, before the amendment and with the alternative wording, *vis.* 'subject to this payment of —' and should state the assessment most recently fixed;

(iii) that unassessed vacant land lying within a gaothan and inside the perimeter of a city survey but not subject to city survey law should be assessed to land revenue as directed in *G. R. 4729/24 of 1927*, but no Sanad should be issued in respect to it until it is used for non-agricultural purposes; and

(iv) that city survey sanads should be issued in addition to the sanads issued under the provisions of rules 51 (1) and 87 (b) of the Land Revenue Rules whenever additional land is brought under city survey law.—*G. R. 4729/24 of 29-8-1932.*

**Sanads.**—The form of sanads for building sites after City Survey are printed.—*G. R. 12160 of 7-12-1914.*

The Inquiry Officer appointed by Government in charge of a City Survey should execute sanads.

Sanads should only recite and set out the nature of each tenure and should in no way alter the tenure.—*G. R. R. D. 9656 of 9-10-1916.*

It is necessary for the validity of a sanad under s. 133 of L. B. Code that it should be executed by the Officer empowered by Government.

Sanads under s. 133 in respect of property lying in City-surveyed area issued in the form of Schedule H or to the like effect. The Collector may add conditions permitting sub divisions of the site and restriction regarding the reservation of the building area in the Sanad.—*G. O. 3214 of 23-11-1920.*

Both inferior as well as superior holders are entitled to get Sanads in respect of building sites in city surveyed areas provided the requisite survey fees are paid. Sanads in the form appended to *G. R. 2307/24 of 8-6-1925*, should, therefore, be granted, on application (and not otherwise), to the tenants of all municipalities. The same form should be used with suitable modifications in the case of other tenants.—*G. Rs. 2307/24 of 8-6-1925; 10-8-1926 and 6-5-1929.*

**Instructions.**—S. 133 allows the Collector to issue Sanads in the form of Schedule H or to the like effect. The words expressly provide for cases where the terms of Schedule H are not strictly applicable to the tenure of the holder. Evidently in revision City Survey the proprietary rights of the owner, (if already recognised under the old survey) are not intended to be altered or affected in any way by the issue of new Sanads. The right of Government to assess such lands is reserved by a 45.—*G. R. 7792/24 of 6-1-1927.*

**Whether Sanads once granted could be cancelled:**—At the time of the revision city survey of Bulsar (Dist. Surat) sanads were wrongly issued in respect of some Government plots under s. 133 confirming the occupancy of the holders in perpetuity whereas the lands were really leased for 7 years. On a reference from the Collector as to whether the sanads could be cancelled it was held as follows:—

Under s. 133 of the Code the Collector issues sanads in the form of, Schedule H to the holders of the building sites. The proceedings of the Collector and his action under the section are subject to revision under s. 211 of the Code. No period of limitation is prescribed for the exercise of revisional powers (see *Dattatraya v. the Secretary of State*, 31 Bom L.R. 1235). It is therefore, open to Government to call for the proceedings and to cancel the sanads wrongly issued. Difficulty, however, will arise in those cases in which sites have been alienated after the issue of the sanads and the rights of third parties have come into existence. In those cases, the question will arise whether Government are estopped from pleading that sites are to be held on temporary leases and the sanads issued granting permanent occupancy rights were *ultra vires*. Before passing the orders of cancellation in the cases, notices should be issued to the persons concerned to show cause why the sanads which were wrongly issued should not be cancelled. Each case should afterwards be decided on its own merits, after

ascertaining whether the defence of estoppel is open to any of the aliens.—*G. R. 8302/28, of 15-5-1931.*

**Ex-parte grant of Sanad at City Survey confers no title.**—Where neither the plaintiff nor the defendant had any document to show his title to the land but where the defendant relied upon his possession of the land in dispute for upwards of one hundred years, on a suit by the plaintiff (who had obtained a Sanad from the City Survey Office showing the land as his property) to restrain the defendant from using the land, the High Court held that there was nothing in the Bombay Land Revenue Code which entitled a person, who gets a Sanad at the City Survey, on his ex-parte application, to turn out a person in possession of the land, unless he shows that he had a better title.—*Trimbak v. Danu, 27 Bom. L. R. 656.*

**A Sanad given after due enquiry is a document of title.**—There was a Survey Number at Dharwar for which the plaintiffs were granted a Sanad in 1902 by the Collector under s. 133 of the Code. On a portion of the Survey number which was an open site the plaintiffs' house was situated; and on another portion stood a house belonging to the defendants and was in their possession but in 1920 the City Survey Officer held in a summary enquiry that it was in defendants' possession. The defendants consequently dispossessed plaintiffs. In 1921 the plaintiffs filed a suit to recover possession on the strength of their Sanad. The defendants could show nothing on which to base their title. The High Court held: "When a Sanad is given after due inquiry in the form in Schedule H, the Sanad itself is a document of title. It contains these words 'you are hereby confirmed in the said occupancy exempt from all land revenue, (or subject to the payment of Rs. .... per annum to land revenue). The terms of your tenure are such that your occupancy is both transferable and heritable and will be continued by the British Government". With regard to the portion of the Survey Number covered by the house, the defendants will have acquired a title by adverse possession. But with regard to the remainder of the survey number the Court would be justified in holding that there was a presumption in favour of the plaintiffs that they were in possession, considering the nature of the land under title given them by the Sanad and it would lie upon anybody disputing the plaintiffs' title to show that they had acquired a title by adverse possession. The Defendants were, therefore, bound, if they wished to dispute the plaintiffs' claim to prove that they had been in adverse possession of the suit land for more than twelve years before the date of the suit. It was not incumbent upon the plaintiffs once they proved the Sanad, to show that they were in possession within twelve years of the date of the suit. The plaintiffs having thus proved the title, possession can be presumed. Otherwise, any trespasser might enter upon the land and when the plaintiffs sought to eject him, he might answer that the plaintiffs would have to show that they were in possession within twelve years of the suit. That, considering the nature of the land, although adjacent to the plaintiffs' house might be an extremely difficult matter for the plaintiffs to prove and

dering the circumstances of the case the plaintiffs ought not to be called upon to prove it against a trespasser."—*Ularappa Basavacamappa v. Gadigera Hugar*, 27 Bom. L. R. 948 (1925).

*Note* :—For form of Sanad for building sites see schedule H.

[<sup>c</sup>] 134. If any land within the site of any village, town, or city, hitherto ordinarily used for agricultural purposes only, with respect to which a summary settlement has been made between Government and the holder under the provisions of any law for the time being in force, be [<sup>f</sup>] used for [<sup>f</sup>] any other purposes, it shall be liable to payment of one-eighth of the rate fixed for unalienated land used for similar purposes in the same locality, in addition to the quit-rent payable under the terms of such summary settlement.

*Assessment of lands hitherto used for purpose of agriculture only used for other purposes.*

### Commentary

*Application of the Section.*—In the absence of a specific condition precluding the levy of non-agricultural assessment, the summary settlement Sanads, which must be read with s. 45, do not debar Government from using this section. The section applies to all lands which have been summarily settled and are within the site of any village, town or city at the time when such lands are converted to non-agricultural use.

The section is not applicable to a summary settled piece of land which is used for non-agricultural purposes while it is outside the Gaonhan and is subsequently included in the Gaonhan area under s. 125.—*G. R. L. C. 3638 of 7-1-1937* and *G. M. L. C. 3838-B of 3-9-1937*.

Gordon Settlement with the holders of Dushpande Watan etc., not being made "under the provisions of any law" does not fall under s. 134 of the L. R. Code.

The 1<sup>st</sup> present standard rate cannot be permanently commuted under s. 134 as it is liable to change after 50 years.

### 135. Repealed by Bom. XI of 1912, s. 2.

[a] As to the local repeal of section 134, see para. 5 of foot-note (a) on p. 1, *supra*.

[b-b] These words were substituted for the original words "appropriated to" by Bom. IV of 1912, s. 65.

[<sup>a</sup>] CHAPTER X-A.

## OF THE RECORD OF RIGHTS.

**135A.** The Governor in Council may, by notification in the *Bombay Government Gazette*, direct that this chapter, or any specified provisions thereof, shall not be in force in any specified local area, or with reference to any lands or any class of villages or lands, or generally.

Exemption from provisions of this chapter.

## Commentary

**History.**—The subject of the Record-of-Rights was first mooted by the Government of India in 1897 but it was intended purely for settlement purposes. Orders to make experiments in this Presidency were received in the following year and experiments were accordingly carried out in 1899. The law as to Record-of-Rights was first enacted in Act IV of 1903, but the Act was repealed and incorporated in Chapter X-A of the Code (ss. 135A to 135L) by Bombay Act IV of 1913. The Record has now also become the basis of the accounts of liability to pay land revenue and also of the audit of alienations of land revenue.

**Scope.**—Chapter X-A of the Code deals first and primarily with the agricultural land and sporadic plots assessed or held for non-agricultural uses outside the usual *gaonthans*. But any Survey number or part thereof formed out of 'gaouthan', and held for non-agricultural or agricultural use (pardi) in town or village site (not under a City Survey) is also covered by the Law. So also those within Municipal limits; but not such leased or sold plots as have not been made into Survey numbers.

**Extensions.**—The first Act extended to all lands except those excluded by *G. R. 283 of 1904* and *3653 of 1904*. It was extended to all sharakati villages by *G. R. 2568 of 1909* and to surveyed Inam villages even if the period of settlement has expired, except those in the Ratnagiri District, by *G. R. 288 of 1913*. All Revenue Survey Numbers or parts thereof used for non-agricultural purposes within Municipal limits are brought under the Act by *G. R. 11581 of 23-12-1913* and agricultural land in various municipalities by a number of notifications. All whole Vanta villages and Vanta blocks in Government villages were excluded by *G. R. 5668 of 1911*.

There is a special form for Kolaba khoti villages and some modifications for bhagadari and narvadari villages. It has not been applied to talukdari villages where the Settlement Register which is a sort of Record-of-Rights is prepared. It is not applied to Ratnagiri khoti villages.—*G. R., R. D. 350 of 13-2-1912*.

[a] This Chapter was inserted by Bom. IV of 1913, s. 66.

When a City Survey under a 131 of the Code is introduced in a Town Site as defined in a 126 the law as to Record-of-Rights applies, *G. R. 5407 of 1916*; but the form in which it is kept is called 'Property Register,' and is dealt with in the City Survey Manual. Tenancies for 21 years and upwards are recorded in the property Register. But no Tenancy Register is kept.

### RECORD OF RIGHTS IN INAM VILLAGES.

On the 11th January 1913, Government issued a notification in the Revenue Department No. 23<sup>a</sup> extending the provisions of the Record-of-Rights Act to Inam villages into which a Survey Settlement had been introduced under Chapter VIII of Land Revenue Code, with the exception of such Inam villages in the Ratnagiri District.

This Record is intended to show the lands in the actual possession of each landholder other than a tenant in a surveyed alienated village and the land revenue payable by him in respect thereof. The Inamdar's consent is not necessary for the introduction of the Record-of-Rights into an Inam village.

Before the introduction of this Record, each survey number was considered a unit with one name entered as a registered holder thereof, who alone was held primarily responsible for the payment of land-revenue. This created difficulties in the collection of land-revenue and involved the forfeiture of a number on account of the registered holder's default.

For the form of the Record-of-Rights, see village forms VI, VII and XII.

*Note.*—In respect of transactions which are evidenced merely by the entries in the Record-of-Rights and for which no document has been executed, no prosecution under the Stamp Act can lie. But the Transfer of Property Act knows of no sale of land for Rs. 100/- or more without a stamped and registered deed and if such deed was forthcoming, any Court would find that there was no sale at all.—*G. R. R. D. 8702 of 15-9-1914.*

In an Inam village the following two sets of relations are involved :—

- (I) Rights as between Government on the one side and on the other side the Inamdars and their sharers, the holders of Kadim Inams and of land that has become Khaba.
- (II) Rights as between the Inamdar and his sharers on the one side and on the other side tenants and Jadid Inamdars.

These different sets of relations can be provided for by dividing the Record-of-Rights Register in two parts. In the first part rights under (I) are recorded, a general heading being added at the top of the Form. A line will then be drawn, and below a second appropriate heading 'rights under (II)' will be entered.

Heirship inquiry by village officers into Jadid Inams for the purposes of the Record-of-Rights should be sanctioned by the Inamdars and not by Government.—*G. R. 11064 of 22-11-1905.*

**Unsettled Inam Village.**—The intention of Government is that the Record-of-Rights (with the necessary survey apart from settlement) should be extended to unsettled Inam villages. The survey should be made according to the Udtara village method.—*G. M. 1301 of 8-8-1919*; *G. R. 1781 of 14-3-1916*; *G. R. 339 of 13-1-1919*. (P. 149 Alienation Manual).

### CONSENT OF INAMDARS IS NOT NECESSARY FOR MAINTAINING RECORD OF RIGHTS IN INAM VILLAGES.

**Chapter X-A** applies to alienated villages. Government is therefore entitled to maintain the Record of Rights in alienated villages without the consent of the Inamdar.—*Raghvendra v. Secretary of State, 28 Bom. L. R. 559*.

The Record-of-Rights in an entire Inam village is prepared in two parts. One part shows the relation of the Inamdar or Inamdars with Government and the other part shows the relations of tenants with the Inamdar.

**Lands and Buildings in Cantonments** do not come under the provisions of the Record-of-Rights.—*G. R. 4186 of 21-5-1915*.

**Record of Rights of Tanks.**—It is not necessary to prepare and maintain a Record-of-Rights for every tank; part X of the Irrigation Act should be extended to really important and efficient tanks only and the preparation of the Record-of-Rights should be confined to them.—*G. R. 5056, of 20-11-1922*.

**Method of extending the Record-of-Rights to a new area.**—General exemption from the application of the Law as to the Record-of-Rights was modified in *G. R. R. D. 263 of 12-1-1904*; the method, therefore, of extending the Record to a new area is not directly to apply the law, but indirectly to withdraw the exemption.—*G. R. 4103 of 1915*.

**What is the Record-of-Rights.**—It is a Register giving, first, in a Diary form, particulars of all private rights over land, whether they have been acquired by Registered or unregistered documents, by succession, by oral agreement or otherwise; rights of owners, occupants, mortgagees, tenants or assignees of the rents or revenue thereof and also some public rights, easements, and Government rights (which are also recorded in village forms I and III see below). The rights are then summarised in the Index of Land in the Serial order of Survey Numbers in each village and every separate occupancy within the survey number is given separate recognition. The Revenue Accounts are also based on this record which thus becomes a record of liabilities as well as of rights; and each separate kadjedar is now directly liable to Government for the assessment or other dues on the parcel of land of which he is in possession. The result has been the disappearance of the 'pokalist khatedar' that is to say of the Khatedar who was not actually in possession of the land recorded in his name. The word 'Khatedar' now means an occupant, who has a Khata in village form VIII (for village forms see below) and there is no Khata without actual occupation. For alienated land, the Record-of-Rights shows which of the holders is responsi-



ble for the Judi. For lands held on lease or other special tenure the person responsible to Government for the dues is treated as 'Kajedar' which term is used to indicate the responsible holder of Khalsa, alienated or any sort of land.

The Record-of-Rights is the most important document in the Bombay Land Revenue System. The importance of the Record-of-Rights, which is also a record of Habilitias as is stated above cannot be too highly estimated. The foundation of society and industry in India is in the land and the maintenance of a complete record of all rights is a great bulwork of public peace and of law and order. Without such a record it is indeed impossible to get true statistics of any species of production or any of the other economic facts connected with the land.

The great support of the Indian administration at present is land revenue. Owing to the pre-eminent position, in every scheme of taxation necessary for the maintenance of a modern State, of the land revenue, survey and classification of land, a full Record of Rights, maintained not spasmodically but every day as every change occurs, is indispensable for the assessment, and the collection of the land revenue.

**Advantages of a correct Record of-Rights in lands.—1.** The security and certainty of title which such a record gives raises the value of land and checks forced sales of it for utterly inadequate prices from which a large number of cultivators suffer much loss.

2. It induces loans to be made at reasonable interests instead of the ruinous rate so common in a country like India.

3. It minimizes the occasions of litigation regarding land which often lead to hopeless bankruptcy, and makes such litigation as is undertaken more speedy and less expensive.

4. It is followed by a system of public transfer and public registration which has the effect of checking forgery and perjury much more effectively.

5. The systematic registration of the terms on which land is held by capitalists and is subtle will greatly assist Government in deciding from whom in default of the registered occupant the assessment should be taken. It will show how far the cultivators are really in beneficial occupation of the land and how far that occupation is passing into the hands of capitalists or speculators, the cultivators having a claim to consideration in unfavourable seasons.

6. It is helpful to the Officers of Government to enable them to recover the Government revenue from persons having the actual beneficial interest in lands. It is moreover, useful for determining the persons who have a claim to compensation for land taken for public purposes and for making apportionments of the amount and for the distribution of agricultural loans (Takavi Loans).

7. It is useful to some extent in deciding questions of rights in litigation between private parties.

**Importance of entries in Record-of-Rights and register of mutations, etc.**—Their Lordships of the Privy Council have decided in an appeal from a decree of the High Court of Bombay in *Gangabai v. Fakirgauda*, A. I. R. 1930 P. C. 93 that the entries in the Record-of-Rights, etc. though not conclusive are evidence of facts recorded therein under s. 35 of the Evidence Act. S. 35 of the Evidence Act states that an entry in a public or an official register or record made by a public servant in the discharge of his official duty, etc. is a relevant fact. Again s. 135J of the Revenue Code lays down that such an entry shall be presumed to be true until the contrary is proved, etc. For these reasons and for the fact that the Code and the rules made thereunder contain careful provision for the entries in the record being checked from time to time, the Courts attach much importance to these records. The selection of one of the two or more claimants to be put on the record has an important legal effect inasmuch as it, in fact, decides who should be the plaintiff and who the defendant if the parties chose to go to the Court. A wrong entry, therefore, by a revenue officer (the village accountant or the Circle Inspector, etc.) or a wrong decision by the appellate revenue authority (the Mamlatdar, the Deputy Collector or the Collector) may mean the ruin of the unfortunate losing party. The unsuccessful party in these summary proceedings has to fight his case in a regular Civil Court and that too at a greater disadvantage than if a resort had been had *ab initio* to that Court, he having the record against him and the opposite party having the entries in his favour. Being the plaintiff the burden of proof also is shifted on to his shoulder and he has to make out an affirmative or positive case in his favour while the opposite party may rest content with a mere denial.

**Objections to the system.**—A common criticism against the present form and practice is that when an occupant mortgages his land to a Sawkar with nominal possession on condition that he shall himself remain in actual possession as the tenant, and pay only an annual instalment towards the liquidation of his debt under the name of rent, the Sawkar is put in as Kabjedar, being mortgagee in possession and the real owner and possessor of the land is relegated to the position of a tenant and is only mentioned in Village Form No. XII.

The present system of Record-of-Rights, though introduced with the object of showing at a glance the persons in actual occupation of every piece of land, has the disastrous effects in encouraging and simplifying the sub-divisions of survey numbers very minutely into such small holdings, that in course of time no agricultural improvements would be possible.

It may be said that sub-division is the result of Hindu and Mohamedan Laws. But in recognising such sub-divisions and changes an impetus is given and the people are led to regard small sub-divisions of land as something which has been sanctioned by law and approved by Government. Such a tendency is most unfortunate to the agricultural progress and improvement of the country.

VILLAGE ACCOUNTS

Village Form I—Laud Register. (Akarband)

*Note*—This exhibits all the lands of the village and shows what fixed revenue is derived from them.

Village Form I-A--Forest Register.

*Note*—This form is required only in villages where there are more than five survey Numbers assigned as Forest.

Village Form II—Register of other fixed revenue.

*Note*—Just as village Form I deals with the ordinary agricultural assessment so this form deals with Non-agricultural and special assessments. It is divided into three sections:—

- (i) Land not included in Survey Numbers but contained in the village site and roads and other such areas as have already been deducted in V. F. I. from the total village area.
- (ii) Land originally included in Survey Numbers (even as Pot Kharab) but now given over for Non-Agricultural use under section 48 and L. R. C. Rules or other authority.
- (iii) Land, assessed or not assessed, which is now given on special terms and at different rates, or free on certain conditions, for agriculture (or for planting fruit trees or Babul without right of property)—*G.R. 3293-87, 4-12.*

These special terms are the "business" grants for reclamation, improvement and so on.

Village Form III—Register of alienated lands.

*Note*—In village form I sometimes several Survey Nos. are shown as alienated. This means that the full agricultural assessment (or Non-agricultural assessment as the case may be) is not levied but a certain portion is granted to an alienee or Inamdar for certain reasons. The amount so granted and reduced is known as the *Nukasa* or balance remaining with the alienee; the remaining amount which he pays to Government is called the *Judi* or *Salami* or quit-rent. Sometimes there is no *Nukasa*, but the alienation is nominal. Sometimes the *Judi* even exceeds the assessment; sometimes it is nil.

All such grants are governed by strict rules and usually continue in virtue of a documentary grant or *Sanak*. There are seven main classes of these grants with some sub-heads under certain classes. They are as follows:—

- I. Saranjam and Political.
- II Personal.
- III Devasthan.
- IV Watan Inam, permanent (war-service).

V Watan Inam (Hereditary).  
Taluka, District Officers (non-service).

VI Village servants—  
(a) Useful to community.  
(b) Useful to Government.

Revenue, Hereditary.

Non-Hereditary.

Police-Hereditary.

Non-Hereditary.

Revenue and Police.

Hereditary.

Non-Hereditary.

VII Miscellaneous—Non-Agricultural for other public purposes.

**Village Form IV**—Detailed statement of miscellaneous items and local fund thereon.

*Note*.—This form provides us with the method of levying and watching the recovery of miscellaneous items. The great majority of miscellaneous items arise out of some circumstances reported by the village officers; a few of them arise out of petitions or orders received from Taluka. In all cases when the Village Accountant first becomes aware of any such item likely to be leviable he has to take a form for fluctuating land revenue and fill up as much as he can and submit his report to the Mamlatdar for orders. If the first instruction has come from Mamlatdar the Village Accountant, when the papers first come to him, fills up the form and returns the case with the form.

**Village Form V**—General Abstract of Area and Revenue (Tharavband).

*Note*.—This form sums up the total demand of the land Revenue both fixed and fluctuating, and also shows the reasons for all changes in fixed revenue as compared with the previous year. This is most important for audit because, in the matter of fixed revenue, only each *change* requires audit; while, in fluctuating revenue each *item* requires audit; and since fluctuating revenue must, of necessity, fluctuate explanations of petty increase and decrease are not required.

**Village Form VI (old)**—Record of Rights.

**Village Form VII (old)**—Mutations Register.

**Village Form VI (Maxwell system)**—Record of Rights.

**Village Form VII (Maxwell system)**—Index of lands *i. e.* Record of Rights and Mutation Register combined.

*Note*.—The principle underlying the Maxwell system is that every event effecting any mutation is posted in a continuous day book or diary and numbered. Then all the entries against all parcels of land affected by it are corrected by being ledgered in the Index quoting the number of the entry. The Index is constantly undergoing

corrections. The Record-of-Rights is never touched even if a false or erroneous entry is made. It is corrected by making a later and a truer entry. The Maxwell System has for its chief advantage that it does not require the dangerous and difficult re-writing of the old 'Record-of-Rights.' That remains permanent and goes on like an endless belt. The Index is re-written but (1) at far long intervals say every ten or fifteen years, than the old quinquennial re-writing of the Record-of-Rights (2) with far less danger; for even if a wrong or false entry is made in the Index as soon as it is challenged it will be re-checked against the Diary and previous Indices and no fraud is possible. Hence such elaborate precautions are not needed as would be needed if the old record were destroyed or rendered unintelligible. Under the Maxwell system there is no 'transfer'; but a mutation entry once made in the Diary stays on the substantive record and is neatly indexed in Village Form VII.

A further development now being introduced in all districts is a combination of Village Form VII, VII-A and XII *i.e.* (a) the Index of land (b) The Records of Tenancies and (c) the Crop Record. (b) and (c) are posted annually for ten years on loose leaf ledger cards—*G. R. 1022/24 of 19-11-1937.*

These forms may be modified to suit the requirements of cities. The principle modification is that, mutations are posted direct into the original Property Register. One or two more columns have been provided in Form O for details of mortgages and leases.

**Explanation**—Village Form VII under this system contains two parts VII and VII-A. V. F. VII contains record-of-rights and mutation register combined. V. F. VII-A is now a Register of Tenancies. It is at once a register of leases and a part of the mutation register under Chapter X-A. Under this system V. F. VI is not necessary.

There is a subsidiary form also called register of diaprates but it comes under the Record-of-Rights.

#### Village Form VIII-A—Khata or Khata Vali.

**Note**—This form shows the whole khata of a man. It shows several pieces of land in a village in possession of one man with its area, assessment, Judi, Nukaan and the current land revenue he has to pay in a year. A copy of this form 'Holding Sheet' can be obtained on payment.

#### Village Form VIII-B—Ledger.

**Note**—This shows land revenue due from a person, the amount paid by the holder, the amount suspended or remitted by the authority so empowered in a year or the levy of further amount if ordered from him. It is the duty of the revenue officer to see that the people

are made aware of suspensions and remissions granted by Government.—See *Land Revenue Rules 114 to 120.*

**Village Form IX—Receipt.**

*Note*—The first and most peremptory rule for the village accountant is that he shall give a receipt, though for some items he has forms of receipt different from V. F. IX (i. e. tagavi, grazing fees, irrigation), for every sum however large or small which he receives on behalf of Government immediately he receives it. If the village accountant on his way from his village to taluka meets a rayat who offers him a payment the village accountant must accept it and if he has not got his receipt book with him he may write a provisional or katcha receipt on any piece of paper he can get, subject to his replacing this by a proper receipt from V. F. IX as soon as he gets back to his office. He should not refuse an amount because it is not the full amount due. The Patil if present should also sign the receipt. But if the Patil is ill, or absent unavoidably, a receipt signed by the Village Accountant only is quite valid. The Patil is responsible only for the cash handed to him and signed for at the day's close; but if he signs a receipt he is also responsible for the statement that that amount was actually received. But of course he is not responsible for details or for bringing the amount properly into the accounts.

**Village Form X—Chalan.**

*Note*—This form shows the Government dues collected and paid by a village accountant in lump in a Government Treasury.

**Village Form X-A—Chalan.**

*Note*—This shows Government dues and other items such as local fund or excise or judi received at the village.

**Village Form XI—Test Balance Sheet.**

*Note*—It is devised to obviate mistakes. The only particular information supplied by this form is the details of arrears.

**Village Form XII (old)—Crop and Tenancies Register.**

*Note*—This is superseded by the combined Form VII, VII-A and XII. See notes under Village Form VI and VII (*anti*).

**Village Form XIII—Register of areas under each crop in a village and the fallows.**

*Note*—A list of all the crops grown in the Presidency are required for Government of India statistics.

**Village Form XIV—Register of Births and deaths.**

*Note*—This form is to be maintained by the Police Patel but if he is illiterate, the village accountant or some other competent person under the Patel's instructions must write it. The Birth of a child should be recorded immediately on getting the information. But

the Patel should wait for a reasonable time after the birth of a child and insert the name in the column reserved for it. This register is very important for the purposes of Schools, Universities, Government Services as evidence of birth and for emigration certificates. Courts of Justice including criminal Courts place much reliance on the entries in this register.

**Village Form XIV-A—Vaccination Register.**

*Note*—This form is to be filled up by the Vaccinator with the help of the Patel. Some reliance is placed on the entries of this register. As it gives the approximate age, the name, the father's name, the surname and the place of residence of the person vaccinated.

**Village Form XIV-B—Infectious diseases register.**

*Note*—Whenever an epidemic breaks out then it becomes necessary to write entries in this form. As soon as an epidemic commences the Patel is required to get information not only of the deaths but attacks and recoveries.

**Village Form XIV-C—Daily Cholera Register.**

*Note*—It is important to send the first report promptly as soon as the existence of this epidemic is reasonably suspected. So long as Cholera is in existence in the village or every day on which a fresh case or death is occurred this report is sent to the Mamlatdar.

**Village Form XIV-D—Horse and Cattle disease returns.**

*Note*—This is a report to be sent whenever cattle disease appears. The report should be despatched on the very first day on which the village officer comes to know that there is any such disease. Further reports of the progress of the disease are sent on every Saturday. On receiving the first report the Mamlatdar has to endeavour to arrange for medical relief or assistance if it is possible.

**Village Form XV—Quinquennial Statement of Cattle and Resources.**

*Note*—This is prepared every 5th year and gives the details of the ploughs and cattle in the possession of one man. Carts also are recorded. Under the head village resources hand-looms, oil presses steam and oil-engines, sugar pans, sugar mills and so on according to the local industries are recorded.

**Village Form XVI—Water Supply.**

*Note*—A river is not regarded as a source but all pata, bhokudja, pumps driven by steam or oil engines or wind mills and other means of using the river water are recorded. There are also recorded Government Canals, private canals, tanks and bandhars, wells and budkia. When any tank or well is employed for irrigation the number of acres irrigated by the same are recorded.

**Village Form XVII—Inward and Outward correspondence register.**

*Note*—In this form the village accountant enters all correspondence received and despatched.

**Village Form XVIII—Register of Books.**

*Note*—This is simply a list of Books, Manuals or printed standing orders which the village accountant and Patel receive for their use and guidance and also of the A circular orders which are intended and marked for permanent and indefinite preservation. B Circulars for temporary observance are entered in V. F. XVII of the principle or Saza village and not in this list.

**135B.** (1) A record of rights shall be maintained in the record of every village and such record shall include the following particulars:—

(a) the names of all persons (other than tenants) who are holders, occupants, owners or mortgagees of the land or assignees of the rent or revenue thereof;

(b) the nature and extent of the respective interests of such persons and the conditions or liabilities (if any) attaching thereto;

(c) the rent or revenue (if any) payable by or to any of such persons;

(d) such other particulars as the Governor in Council may prescribe by rules made in this behalf.

(2) Provided that the said particulars shall be entered in the record of rights with respect to perpetual tenancies, and also with respect to tenancies of any other classes to which the Governor in Council may, by notification in the *Bombay Government Gazette*, direct that the provisions of this section shall apply in any local area or generally.

**Commentary**

In addition to the rights of occupation, mortgages with and without possession, permanent or long term tenancies, and other vested and contingent interests in the land are recorded, and in a separate form tenancies for short terms or at-will. It is, therefore, of high statistical value for purposes of land settlement.

The provisions of Chapter X-A shall apply to the lands included within any site of a village, town or a City (determined under s. 126) if a survey has been or shall hereafter be extended to such site under s. 131 of the Code. In



such a case the provisions of s. 135B will apply to tenancies for a term of 21 years and upwards within such site but a Register of Tenancies shall not be maintained for the lands included within such site.—*G. N., R. D. 13565 of 23-12-1913.*

S. 135B (2) refers to tenancies existing at the time of the introduction of the Record of Rights.

Sections 135C and 135D apply to new tenancies which come into being after the introduction of the Record-of-Rights. In both cases the tenancies to be entered in the Record-of-Rights must either be perpetual or notified under s. 135B (2). Tenancies which are not perpetual or not so notified should be entered in the Register of tenancies as prescribed in No. 113 of the Land Revenue Rules.—*G. R. L. C. 2865, of 18-7-1931.*

Under the Registration Act it is required, in all cases within the Presidency of Bombay to which a survey has been extended, that lands shall, for the purposes of s. 21 of the Registration Act, be described by reference to Government map or survey (i. e. by Survey Numbers).

(ii) Under clause 2 of the rules under s. 22 of the Registration Act lands in those talukas in which mapping under Chapter X-A of the Land Revenue Code, 1879, is completed should, with effect from 1st October 1910, be described in non-testamentary documents presented for registration by reference to the Serial Nos. (po' hissa Nos. as well as Survey Nos.) in the maps prepared under the Record of-Rights Act. The Director of Land Records will inform the District Registrar when such mapping is complete—*G. R. 4355 of 1911.*

(iii) The date from and the name of the taluka in which the provisions of the rule are made applicable, should be communicated by District Registrars to the Inspector-General of Registration.

(iv) Failure to comply with this rule shall dis-entitle a document to be registered.—*G. Notifications 7908-1907, 6112 of 13-7-1910 and 1495 of 16-2-1914 and I. G's Circular 1732-General of 1910.*

(v) In areas where a City Survey is complete the parties should be encouraged to give City Survey Nos. in the deeds. Registration will be refused only when the description of property is insufficient for other reasons than for absence of City Survey Numbers (*Circular 306 General 6-11-16 and P. 23-6-21*).—179, *Standing Orders of the Registration Department, 1925.*

#### RECORD OF RIGHTS

Note.—(The following is the Maxwell system):

The Record-of-Rights and mutations, the Index of lands and the register of disputed cases shall be kept in forms O, P and Q, respectively; provided that in sites surveyed under section. 131, these forms may be modified by the Director of Land Records to suit the requirements of cities, the record-of-rights being termed the "Property Register." After the original preparation of the Record all later entries altering or transferring those rights are termed "mutations."—*Rule 101, Bombay Land Revenue Rules, 1921.*

**Form O (Rule 104 and Rule 113).****Record of Rights.**

A double-page form with sufficiently wide columns for (or cards in V. F. VII-XII ruled to contain) the following particulars:--

1. Serial Number.
2. Survey Number (if inam, the kind of inam).
3. Area.
4. Ordinary or Special Assessment and Judi.
5. Sub-division Number.
6. Area.
7. Assessment.
8. Judi or Special or Non-agricultural Assessment payable.
9. Occupant of Khalsa Land or Holder of Alienated Land.
10. Nature and origin of Title.
11. Other rights or encumbrances with names of right-holder or encumbrancer.
12. References to Mutation Diary, Form P.
13. Remarks.

**Form P. (Rule 104).****Mutation Register.**

A single page form with columns showing the following particulars:--

Serial No. of entry.	Nature of right.	Survey and anti-division Nos. affected.	Initials or remarks by testing officers.
1	2	3	4

**Form Q (Rules 104 and 108).****Register of Disputed Cases.**

Serial No.	Number in Form O or P	Survey No. and Hissa No. (or part).	Date of receipt of objection.	Particulars of dispute with names	Order of Mamlatdar or Collector.
1	2	3	4	5	6

The Record-of-Rights is divided into three parts. Village Form VI, VII and XII. Tenancies at will and for short terms were recorded in village form XII which was once a tenancy register and a crop register and is now being replaced by a combined card index form VII-XII. This contains all the required details in card form, and also the mode or kind of rent-agreement. The cards under this form contain ten years entries. This form is more adapted to being written up in the field itself.

*Nota.*—For further details see the Manual of Revenue Accounts.

(1) When the record of rights is first introduced in any village, as soon as the preparation has begun, the village accountant shall cause notice thereof to be given by beat of drum and shall post up a written notice in the chavdi. He shall also write at the head of the record a certificate that such notice was duly given.

(2) Prior to the preparation of the fair copy of the record-of-rights, the village accountant shall prepare a rough copy of the record in the form of an Index of Lands with all rights noted against each parcel. Until the fair copy is prepared, such rough copy shall be used as and be deemed to be the register of mutations, and the provisions of the Code and of these rules which apply to the said register shall apply so far as may be to such rough copy, and the provisions of rule 111 respecting the introduction of the re-written copy of the index shall apply so far as may be to the introduction of this first fair copy of the record.—*Rule 106, The Bombay Land Revenue Rules, 1921.*

**135C.** Any person acquiring, by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, owner, mortgagee, landlord or tenant of the land, or assignee of the rent or revenue thereof, shall report orally or in writing his acquisition of such right to the village-accountant within three months from the date of such acquisition, and the said village-accountant shall at once give a written acknowledgment of the receipt of such report to the person making it ;

provided that where the person acquiring the right is a minor or otherwise disqualified, his guardian or other person having charge of his property shall make the report to the village-accountant ;

provided further that any person acquiring a right by virtue of a registered document shall be exempted from the obligation to report to the village-accountant.

*Explanation I.*—The rights mentioned above include a mortgage without possession, but do not include an easement or a charge not amounting to a mortgage of the kind specified in section 100 of the Transfer of Property Act, 1882.

*Explanation II.*—A person in whose favour a mortgage is discharged or extinguished, or lease determines, acquires a right within the meaning of this section.

#### Commentary

This section makes it incumbent on every person who acquires any right to report the same within a period of three months of its acquisition. A person who has acquired his right by registered deed is considered to have given such notice. Those who do not register or report according to law are liable to be charged a fee not exceeding Rs. 25 (s. 135F). The plaintiff in every suit concerning land in a village to which the law applies is required to submit a certified copy of the entry in the Record-of-Rights relating to that land (s. 135H) and he cannot, after the mapping of subdivisions, register a document without quoting the Hissa number of the map of the land to which it relates (see notes to s. 135B under the "Registration Act" *supra*). It is, therefore, extremely important that the record should be complete in every respect and accurate. This can only be the case if the village accountant (talati) is always attentive to what is going on in his village and if the people are prompt to report all fresh acquisitions of rights. The duties of the Village Accountant are given in detail in the Manual of Revenue Accounts. The duties of the people may be impressed on them by the levy of the fee for neglect.

As a penalty is provided under section 135F, for not making a report under this section an addition is made to this section requiring the village accountant to give a receipt.—*Report of the Select Committee.*

**Court Fees.**—A report under section 135C regarding the acquisition of a right is not liable to Court fee stamp under the Court Fees Act.—*G. R. 5368/23 of 30-8-1930.*

**135D. (1)** The village-accountant shall enter in a register of mutations every report made to him under section 135C and shall also make an entry therein respecting the

Register of mutations and register of disputed cases.

acquisition of any right of the kind mentioned in [a] the first paragraph [a] of section 135C which he has reason to believe to have taken place and of which a report has not been made to him under the said section.

(2) Whenever a village-accountant makes an entry in the register of mutations he shall at the same time post up a complete copy of the entry in a conspicuous place in the chavdi, and shall give written intimation to all persons appearing from the record of rights or register of mutations to be interested in the mutation, and to any other person whom he has reason to believe to be interested therein.

(3) Should any objection to an entry made under sub-section (1) in the register of mutations be made either orally or in writing to the village-accountant, it shall be the duty of the village accountant to enter the particulars of the objection in a register of disputed cases.

(4) Orders disposing of objections entered in the register of disputed cases shall be recorded in the register of mutations by such officers and in such manner as may be prescribed by rules made by the Governor in Council in this behalf.

(5) The transfer of entries from the register of mutations to the record of rights shall be effected subject to such rules as may be made by the Governor in Council in this behalf: provided that an entry in the register of mutations shall not be transferred to the record of rights until such entry has been duly certified.

(6) Entries in the register of mutations shall be tested and if found correct, or after correction as the case may be, shall be certified by a revenue officer of rank not lower than that of a Mamlatdar's first karkun.

Entries in register of mutation how to be certified.

[a-a] These words were substituted for the original word and figure "sub section (1)" by Bom. II of 1919, First Schedule.

(7) The provisions of this section shall apply in respect of perpetual tenancies and also in respect of any tenancies mentioned in a notification under sub-section (2) of section 135B, but the provisions of this section shall not apply in respect of other tenancies, which shall be entered in a register of tenancies in such manner and under such procedure as the Governor in Council may prescribe by rules made in this behalf.

#### Commentary

(1) Every mutation shall be posted in the Diary by the village accountant and examined by the Circle Inspector and shall be read out and explained by the latter to all persons present.

(2) The Circle Inspector shall initial all entries so examined.

(3) If any person adversely affected admits an entry to be correct, the Circle Inspector shall note the admission.

(4) If any interested person disputes the correctness of an entry, the Circle Inspector shall not erase but shall correct any errors admitted by all parties either by bracketing the errors and inserting the correct entries by interlineation or side note or by an entirely fresh entry, in either case authenticated by his signature; if the error is not admitted, he shall enter the dispute in the Register of Disputed Cases (form Q), and it shall be disposed of under rule 108.—*Rule 108, The Bombay Land Revenue Rules, 1921.*

**Instructions.**—If a sale or other such transfer of land is orally negotiated but no document is executed by the parties it is not lawful even if possession is at once delivered, and could not stand against a registered document (ss. 17 and 49, Registration Act XVI of 1908 and ss. 54, 59, 107, 123 of Transfer of Property Act). Such an oral transaction embodied in the Record if made since 28th May 1913 when s. 135J began to operate (I. L. R. 44 Bom 214), must, however, be presumed by any Court to have taken place, and can be proved by production of a stamped certified copy (if the title to the land is not itself in issue; e. g., in land acquisition proceedings). If a document is executed, then an extract from the Record cannot be used in Court as evidence of the document or its contents.—*G. R. 52 of 1917.*

(1) The entries in the Diary of mutation shall be further tested and revised by a revenue officer not lower in rank than a Mamlatdar's First Karkun.

(2) Any entry found by such officer to be correct shall be certified by him.

(3) Any entry found to be incorrect shall, if no dispute is brought to his notice, be corrected as in rule 106 (4) and certified by him; such correction shall be a new mutation for the purpose of s. 136D (2).

(4) Where such officer finds that there is a dispute regarding any entry examined by him, he shall enter the dispute in the register of disputed cases and the dispute shall be disposed of under rule 108. Such officer shall, wherever possible, himself dispose of the dispute under the said rule forthwith.

(5) One appeal only shall lie against any entry certified under sub-rule (2) or corrected under sub-rule (3) otherwise than by the Collector himself, to the same authority to which an appeal lies in a case decided under rule 108.—*Rule 107, The Bombay Land Revenue Rules, 1921.*

The Land Revenue Code gives to no Revenue Officer power to evict a person in illegal possession unless perchance s. 48 (4), 61 or 79A apply.

Ordinarily the Revenue Officer must concern himself with the facts of actual possession. Under the Record of Rights the Revenue Officer must record who is in actual possession and he may, if satisfied even note that the occupier does not seem to be legally entitled to the possession.

**Appeal.**—There is no appeal against the Collector's Order. S. 135L states that the provisions of Chapter XIII. (appeals and revisions) does not apply to any decision or order under Chapter X-A (Of the Record of Rights).

**Instructions.**—For these reasons papers cannot be called for or proceedings revised otherwise than as provided in Chapter XV (Record of Rights) of the Land Revenue Rules, 1921. However, they can be revised during inspection and test in the village. If an appeal is presented as provided by Rule 107(5) it may be decided by taking evidence, etc., or on local enquiry by the Appellate Officer. An appellate decision may be posted direct to the mutation register (V. F VII) and will operate as the decision of the dispute.

The decisions of the Revenue Officer under the Record of Rights are not final but must bow to the decisions of the Civil Courts if any party thinks it worth while to move them.

In fact all that the Revenue Officer should do is to form an opinion on the facts *prima facie* before him and select one of two or more claimants to put on the record. This has no legal effect except perhaps that of deciding who should be the plaintiff and who the defendant if the parties think it worth while to go to Court.

(1) Disputes entered in the register of disputed cases shall ordinarily be disposed of by the Mamlatdar's First Karkan or by the Mamlatdar, but may be disposed of by the District Inspector of Land Records or by any revenue officer of superior rank to that of First Karkan.

(2) The enquiry shall ordinarily be made in the village in which the land is situate or where the interested parties reside.

(3) The officer making the enquiry shall record his order disposing of the dispute in the said register, and shall then make such entry in the Diary of mutations as may be necessary.

(4) Such officer shall certify the entry in the diary of mutations to be correct.

(5) An appeal against an order under this rule shall, if the order has been passed by the Mamlatdar's first karkun, the Mamlatdar, the District Inspector or a Revenue Officer of lower rank than that of a Deputy Collector, lie to the Sub-Divisional Officer or an officer appointed by Government in this behalf; and if the order has been passed by the Sub-Divisional Officer, the Superintendent of Land Records or by a Revenue Officer of not lower rank than that of a Deputy Collector, to the Collector; and must be presented within 60 days from the day the appellant first knew it had been made. The decision of the appellate authority shall be final. There shall be no appeal against the order of the Collector and no second appeal in any case.

(6) If the appellate order confirms the previous decision, it should be noted in the remarks column, against the confirmed entry. If it alters it, the change shall be entered as a fresh, but not disputable, mutation—*Rule 108 The Bombay Land Revenue Rules, 1921.*

**Note.**—This was the case under the Maxwell System.

Entries in the Diary of mutations shall ordinarily be transferred to the Index of land as soon as certified.—*Rule 109, The Bombay Land Revenue Rules, 1921.*

For the new system (the combined form is used).

The index of lands shall be re-written incorporating all mutations recorded up to the date prescribed by the sub-divisional officer whenever that officer, in view of the number of entries in the Diary of mutations, shall so direct.—*Rule 110, The Bombay Land Revenue Rules, 1921.*

(1) When the re-written Index of land is reported to be complete, the Collector or sub-divisional officer shall fix a date for its inspection and shall cause notice thereof to be given calling upon all persons interested to appear on such date at a specified place in or in the immediate vicinity of the village concerned, and notifying that any such person may before such date inspect the Index on application.

(2) On the date and at the place appointed, the Collector or sub-divisional officer shall compare the new copy with the old Index and the diary of mutations, cause such portions thereof to be read out as any of the persons present may desire to hear, read and make any correction that may be necessary.

(3) Such officer shall then sign the new Index and subscribe below it a certificate that the entries therein have been duly tested and found correct.—*Rule 111. The Bombay Land Revenue Rules, 1921.*

Record of such tenancies as are not perpetual or notified under section 135B (2) shall be kept in form R. The entries therein shall be tested by the Circle Inspector when he examines the crops, and by other officers of higher rank. When any error is discovered by any of these inspecting officers, they may correct it and initial the corrected entry. The Register will be compiled every ten years, but there will be no notification. When any dispute as to such tenancies is found to exist, a note of the fact may be made in the register but no entry will be made in the register of disputed



cases, nor will any revenue officer decide the dispute.—*Rule 113. The Bombay Land Revenue Rules, 1921.*

*Note*—Under the new combined form even annual or short-term tenancies are noted.

After completion the Tenancies are all tabulated under the Modes; and this affords valuable statistics for settlement and for all sorts of valuation and economic enquiry. Finally these tables form the basis of the electoral roll.

The Code provides that all Civil Court decisions even as to tenancies must be incorporated in the Record.

All rights are recorded permanently in V.F. VI and indexed and scheduled in V. F. VII which lasts for ten or more years and is then recopied, all newly acquired rights being incorporated and all cancelled rights being excluded. In order to record all rights which accrue after the first preparation of V. F. VI a mutation Register or Diary V. F. VI is maintained. No change is made in V. F. VII except upon the authority of a tested or admitted mutation. But in the mutation Register the Village Accountant is required to record immediately on obtaining information whether by report or from his personal observation all rights acquired and all claims asserted. In order that these claims may be investigated and disputes invited notice is required to be given to all interested parties. Also in alienated lands in which Government is interested notice is given to Government. Disputes are recorded in a separate register and disposed of by Mamlatdar. The dispute must be between holders; Claims against Government must be decided under s. 37 and the result recorded. They cannot be dealt with under ch. X-A—G. R. 44 of 1920. If there is no dispute and if the party admits the correctness of the entry (an admission to be of value as evidence must be against the interest of the person making it; for instance if a mortgagor or vendor admits having parted with his property his admission is valuable) it is confirmed after enquiry by Circle Inspector and higher officer.

Thus a newly acquired right comes under the investigation before it is transferred into the Index of rights. So the object of every officer must be to maintain the Mutation Register and the consequent Index in a state of accuracy and completeness exactly conforming to the actual enjoyment and possession of the land.

The Patel must assist the Village Accountant in maintaining the record. He is allowed to sign every entry in the record at the time it is made by the Village Accountant and his local knowledge should be a safeguard against false entries. It is his duty to serve all notices or requisitions from the village accountant or Circle Inspector on the persons concerned and to summon the people when they are required to assist in the inspection of record by Superior Officers (s. 135E), and he must see that all transactions which may come to his notice are duly recorded by the Village Accountant. Above all he is required to spread among the people a knowledge of Record-of-Rights and of their obligations in connection therewith. Chiefly that every kalyedar or tenant of land is obliged:—

(1) to report the acquisition of any right over land or the extinction of any encumbrance in his favour within three months of the date of the occurrence;

(2) to produce within one month whenever required, any information or documents needed for the compilation or revision of the record.

**Note:**—For further details see the Manual of Revenue Accounts.

**Instructions.**—The rayat must be warned to be very careful that he himself or his agent pays the assessment of every piece of land of which he is in occupation. If he does not do so it probably means that his land is entered in some other man's name. If he wishes to ascertain the fact the village accountant is bound to show him the entry in the Record-of-Rights and he can also get a copy of Village Form VIII (Holding Sheet) on payment of fees.

The Circle Inspector has to initial all entries he has tested [Rule 106 (2)]. An officer not lower in rank than Aval Karkun is again to test and certify any entry he tests or corrects. Any settlement of a dispute is also to be certified (Rule 108). All challenged entries are dealt with under rule 111 (2).

A Mamlatdar holding an enquiry relating to Record-of-Rights is a Revenue Officer within the meaning of s. 195 (1-C) of the Cr. Pro. Code, 1889. —*Emperor v. Narayan Ganpaya*; 39 Bom. 310.

**Record-of-Rights:** Question regarding the legality of the decisions passed by Enquiry Officers and Appellate Officers in private disputes under the Record-of-Rights Act, when they do not affect boundary disputes (Vide s. 121 L.R.C.):—Under Rule 10 of the Rules under the Bombay Record-of-Rights Act, 1903, which are still in force for the purposes of Chapter X-A of the Bombay Land Revenue Code, 1879, inquiries regarding disputed entries are to be made by the Mamlatdar or by a Revenue Officer of superior rank. There is no provision for an appeal against an Order under Rule 10 except the provisions in Rule 12.

In private disputes (other than boundary disputes under s. 121 L. R. C. as explained by L. R. 10 Bombay 456) under the Record-of-Rights Act, the original order and the order in appeal must be passed by the Mamlatdar and Sub-divisional officer in charge of the taluka, respectively. *G. O. 2625, R.L. of 13-9-1920*. The Record-of-Rights decisions passed by city survey enquiry officers before the issue of new rules should stand as they are, it being left to the parties concerned to take their cases to taluka Mamlatdars and have the decisions formally legalised, if necessary.—*G. O. 1404 of 21-5-1921*.

Where there is no chavdi in a village, the Collector should, for purposes of s. 135D (2), direct under s. 3 (8) what place should be deemed to be a Chavdi.—*G. M. 5055-1929 of 21-7-1930*.

**135E. (1)** Any person whose rights, interests or liabilities are required to be, or have been entered in any record or register under this chapter shall be bound, on the requisition of any revenue officer or village-accountant engaged in compiling or revising the record or register, to furnish or produce for his inspection, within one month from the date of such requisition, all such information or documents needed for the correct compilation or revision thereof as may be within his knowledge or in his possession or power.

(2) A revenue officer or village-accountant to whom any information is furnished or before whom any document is produced in accordance with a requisition under sub-section (1) shall at once give a written acknowledgment thereof to the person furnishing or producing the same and shall endorse on any such document a note under his signature, stating the fact of its production and the date thereof.

#### Commentary

As a penalty is prescribed under s. 135F for failing to furnish information or produce a document, it is essential in the interests of persons furnishing information or producing documents that a written acknowledgment should be furnished in every case.—*Report of the Select Committee.*

Where a revenue officer or a village-accountant issues any summons or notice under section 135E (1) or G, he shall follow the provisions of s. 190 or 191 as the case may be.—*Rule 112, The Bombay Land Revenue Rules 1921.*

**Limitation: Effect of application to record a lease.**—The defendant applied in 1908 to the Mamlatdar to record a lease entitling him to a rent of 400 cocoanuts from the plaintiff. The plaintiff having complained that it was a forgery, the Mamlatdar declined to record it but the Collector on appeal ordered, in 1909, that the lease should be recorded. The Defendant subsequently sued in the Mamlatdar's Court to enforce the terms of the lease and recovered on various occasions the cocoanuts due under it. Within three years of the recovery of the cocoanuts the plaintiff filed a suit to obtain a declaration that the defendant had no nadgi rights over the land and that the plaintiff was not the lessee of the defendant and that the alleged lease

was a forgery. The question was whether the suit was barred under article 93 of the Indian Limitation Act, 1908. The High Court held that an attempt to record is not an attempt to enforce and that as provided by Article 93 of the said Act limitation runs from the time when an attempt to recover the rent under the lease was made.—*Achyut v. Gopal*, 17 Bom. L. R. 635 (1915).

**135F.** Any person neglecting to make the report required by section 135C, or furnish the information or produce the documents required by section 135E within the prescribed period shall be liable, at the discretion of the Collector, to be charged a fee not exceeding twenty-five rupees, which shall be leviable as an arrear of land revenue.

Penalty for neglect to afford information.

#### Commentary

**Delegation of Power to Mamlatdar, etc.**—Under Administrative Order VIII the Collector can delegate the power of charging a fee not exceeding Rs 15, under this section to Mamlatdars, etc.—*G. R. 7623 of 9-4-1924 and 13-4-1924.*

Requisition of assistance in preparation of maps.

**135G.** Subject to rules made in this behalf by the Governor in Council—

(a) any revenue officer or village-accountant may for the purpose of preparing or revising any map or plan required for or in connection with any record or register under this chapter exercise any of the powers of a survey officer under sections 96 and 97, except the power of assessing the cost of hired labour under section 97, and

(b) any revenue officer of a rank not lower than that of an Assistant or Deputy Collector or of a survey officer may assess the cost of the preparation or revision of such map or plan and all contingent expenses, including the cost of clerical labour and supervision, on the lands to which such maps or plans relate, and such costs shall be recoverable as a revenue demand.

**135H. (1)** The plaintiff or applicant in every suit or application as hereinafter defined relating to land situated in any area to which this chapter applies shall annex to the plaint or application a certified copy of any entry in the record of rights, register of mutations or register of tenancies relevant to such land.

*Certified copy of record to be annexed to plaint or application.*

(2) If the plaintiff or applicant fails so to do for any cause which the Court or conciliator deems sufficient, he shall produce such certified copy within a reasonable time to be fixed by the Court or conciliator, and if such certified copy is not so annexed or produced the plaint or application shall be rejected, but the rejection thereof shall not of its own force preclude the presentation of a fresh plaint in respect of the same cause of action or of a fresh application in respect of the same subject-matter, with a certified copy annexed.

(3) After the disposal of any case in which a certified copy of any such entry has been recorded, the Court shall communicate to the Collector any error appearing in such entry and any alteration therein that may be required by reason of the decree or order, and a copy of such communication shall be kept with the record. The Collector shall in such case cause the entry to be corrected in accordance with the decree or decision of the Court, so far as it adjudicates upon any right required to be entered in the record of rights, register of mutations or register of tenancies. The provisions of this sub-section shall apply also to appellate or revisional Court: provided that, in the case of an appellate or revisional decree or order passed by the High Court or the Court of the Judicial Commissioner of Sind, the communication shall be made by the Court from which the appeal lay or the record was called for.

(4) In this section—

(a) “suit” means a suit to which the provisions of  
V of 1908. the Code of Civil Procedure, 1908, or of  
Bom. II of 1906. the Mamlatdars’ Court Act, 1906, apply ;

(b) “application” means an application—

(i) for the execution of a decree or order in a suit ;

(ii) for the filing of an agreement stating a case for  
 the opinion of the Court under the Code of Civil  
V of 1908. Procedure, 1908 ;

(iii) for the filing of an agreement to refer to arbi-  
 tration under paragraph 17 of the Second Schedule to  
 the said Code ;

(iv) for the filing of an award under paragraph 20  
 of the said Schedule ;

XVII of 1879. (v) to a conciliator under section 39 of the  
 Dekkhan Agriculturists’ Relief Act, 1879 ;

(vi) of any other kind to which the Governor in  
 Council may, by notification in the *Bombay Govern-  
 ment Gazette*, direct that this section shall apply.

(c) an application shall deemed to relate to land if the  
 decree or other matter, with respect to which the appli-  
 cation is made, relates to land ;

(d) a suit, decree or other matter relating to land shall,  
 without prejudice to the generality of the expression, be  
 deemed to include a suit, decree or other matter relating  
 to the rent or tenancy of land.

#### Commentary

**Delegation of power to Mamlatdars etc.**—Administrative Order VIII  
 states that the Collector may delegate all his powers under s. 135H to  
 Mamlatdars etc.

**‘Situating in any area to which this chapter applies’.**—These words in  
*cl. (1)* are inserted by the Select Committee to make it clear that this

section does not apply to areas in which the Record-of-Rights has not been introduced.

The whole object of this section is to see that the trial shall not proceed in the absence of the necessary extract from the record of rights so that the Courts may be in a position to know what the entry in the Record of Rights is and to see how far its correctness can be successfully impugned by the party concerned.—*Per Shah J. in Gansak v. Vitthal*, 23 Bom. L. R. at p. 747.

Provisions of the Pensions Act, 1871 compared with s. 135H of the L. R. Code.—The Legislature has laid down that no Civil Court can entertain any suit without the production of a certificate where one under s. 4 of the Pensions Act, 1871. The language is not widely different from that used in s. 135H of the Code except that the Pensions Act is more general in its terms while s. 135H prescribes the result of the non-production of the certificate. As regards the Pensions Act it has been held by the High Court in *Antaji v. Vasapak*, 17 Bom. L. R. 153 (1914) that time may be given for the production of the requisite certificate even in second appeal. There is no reason why the same interpretation should not be placed upon the language used in s. 135H para. 2 of the Code. To allow time is not inconsistent with the object of the Legislature in enacting this section, that is to say, the maintenance of the Record-of-Rights and its correction where any correction becomes necessary by virtue of the decree of the Court.—*Per Crump J. in Gansak v. Vitthal*, 23 Bom. L. R. at pp. 748-49.

The Legislature does not intend that the failure to attach a certified copy of record of rights should render all proceedings null and void if the omission is noticed after the trial has ended. Where in a suit relating to land, the plaintiff omits to annex to his plaint a certified copy of the entry in the record of rights, as provided in s. 135H, but the Court passes a decree it is not open to the Appellate Court to reject the plaint in appeal merely on the ground of the omission; but it could give an opportunity to the plaintiff to produce the entry within a fixed time.—*Girijabai v. Hensraj*, 23 Bom. L. R. 595 (1921).

Where in a suit relating to the land the extract from the record-of-rights required by s. 135H is not produced in the trial Court and in the Court of Appeal the point about the absence of the extract is not pressed in arguments, it is not proper to reject the suit only on that ground but the Court can well exercise its discretion in allowing the extract to be put in appeal.

When the extract from the record of rights is once so put in, no application for review of judgment based on the ground of the absence of the extract can be entertained.—*Gansak v. Vitthal*, 23 Bom. L. R. 745 (1921)

Court-fee on a certified copy of record-of-rights.—Such being a copy or report, statement or account taken out of a Revenue Office (Mamlatdar's or Village Officer's) is liable to court-fee which will have to be paid in the shape of stamps to be affixed to such copy. It is calculated at the rate of eight annas for every three hundred and sixty words or fraction of three hundred and sixty words.—*Art. 9, Sch. I, Court Fees Act (VII of 1879)*.

But in *Haridas v. Subraya*, 9 Bom. L. R. 885 at p. 888 a question was submitted to the High Court for its determination whether a Record-of-Rights' extract which is required to be annexed to a plaint under s. 10 of the Bombay Record-of-Rights Act, 1903 (now s. 135H of the Bombay Land Revenue Code, 1879) is exempt from Court-fees. The High Court referred to order (*R. 8856 of 1903*) in the Gazette of India of the 25th July 1903, Part I p. 604 which exempted such extracts from Court-fees and answered the question in the affirmative.

Certified copies of entries in Record-of-Rights and applications for such copies when required for filing in Court under s. 135H are exempt from Court-Fee Stamps.

Certified copies of extracts from entries in Record-of-Rights when attached to applications for the execution of Civil Court decrees are also exempt from Court-Fee Stamps.—*G. N. 590 of 16-9-1921*.

The levy by village accountants of copying fees per entry or Khata in respect of khatas or holdings (V. F. VIII A) is one anna per khata while in respect of annual khatas of dues and recoveries (V. F. VIII-B) is one anna for each khata.—*G. R. 10809 of 6-9-1917*.

In Gujarat the Talatis of certain villages are allowed the remuneration of four annas per mutation in the record-of rights.—*G. O., R. D. 9211 of 25-9-1918 and 10872 of 6-11-1918*.

**Note**—It is a matter of common experience in villages that ignorant agriculturists are put to a great harassment and expense when they have occasion to obtain any information from the village accountant in regard to survey numbers and boundaries of their holdings. The compulsory production of a certified copy of an entry of the Record-of-Rights along with a plaint has put a new weapon of offence in the hands of village accountants. The keeping and maintenance of the Record-of-Rights, as is well known, has given excellent opportunities to the Talatis of making additions to their illegal gains. It is, therefore, suggested that s. 135H should be so amended as to allow the plaintiff or applicant in the alternative to deposit in the Court or with the officer concerned such amount as may be necessary to cover the expenses required for obtaining a copy of an entry in the record-of-rights, register of mutations or register of tenancies and that the Court or the officer concerned should secure the copy directly either from the Mamlatdar or the village accountant.

**Instructions to Courts**.—A certificate in the following form should be filled in and appended to judgments in suits and applications relating to land to which s. 135H of the Bombay Land Revenue Code, 1879, as amended by Bombay Act IV of 1913 applies, whenever any finding arrived at or decree or order passed necessitates any alteration in or addition to any entry or entries in the Record-of-Rights, Register of Mutations or Register of Tenancies regarding the said land. In the case of an appellate or revisional decree or order passed by the High Court, the communication mentioned in the



certificate should be made by the Court from which the appeal or application for revision lay or the record was called for:—

“CERTIFICATE”

Certified that the extract from the Record-of-Rights, Register of Mutations or Register of Tenancies filed in the suit or application appears from the evidence to be incorrect.....requires to be altered or added to in consequence of the decree or order and that a communication has been made to the Collector of.....having regard to the provisions of s. 135H (3) of the Bombay Land Revenue Code, 1879, as amended by Bombay Act IV of 1913 and that a copy of such communication has been kept with the record of the suit or application.”

(*Vide G. R., R. D. 472/28 of 16-4-1929*).

(*Vide B. G. G. P. I, for 1929 pp. 1392-1393*)—*Addenda and Corrigenda No. 65 to Circular No. 167 of Manual of Civil Circular 1925.*

**135I.** Notwithstanding anything in section 87, the Collector shall refuse assistance to any superior holder under the said section, if his claim to such assistance is not supported by an entry or entries duly made in the record of rights, register of mutations or register of tenancies.

Refusal of assistance under section 87.

**135J.** An entry in the record of rights and a certified entry in the register of mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.

Presumption of correctness of entries in record of rights and register of mutation.

### Commentary

**Probative value.**—S. 135J enacts that entries in the record shall be presumed, in effect, to be a true statement of their content and in the absence of any other evidence the Court under s. 135J would be obliged to be guided by any facts so entered in the Record-of-Rights.—*Anandibai Bhaskar v. Narayan Dhomle*, 17 Bom. L. R. 49.

The Bombay High Court has decided more than once that the Collectors' books are kept for purposes of revenue, and not for purposes of title (*Fatma v. Darya Sadeb* 10 Bom. H. C. R. 187); and that the fact that a person's name is so entered did not establish his title or defeat that of any other person.—*Fatma v. Darya Sadeb* 10 Bom. H. C. R. 189, 192.

All that this section of the Bom. L. R. Code lays down is that an entry in the Record-of-Rights shall be presumed to be true until the contrary is proved; it does not raise any presumption as to the ownership of the land.—*Saif Singh v. Rari Bai*, A. I. R. 1924. (Sind) 17.

The provisions of this section are not retrospective with regard to the entries which for the purposes of determining the rights of the parties were until after the year 1913 innocuous.—*Hathsing v. Kuber*, 22 Bom. L. R. 33.

Entry in Record-of-Rights by itself does not vest the property in the person in whose favour it is made.—According to the ruling in *Nirman Singh v. Lairudra Pratap*, 53 I. A. 220 (P. C.) proceedings for mutation of names are not judicial proceedings in which the title to and the proprietary rights in immoveable property are determined, but are more in the nature of a fiscal enquiry instituted in the interests of the State, and the entry in the Record-of-Rights by itself would not vest the property in the person in whose favour it is made.—*Dhondi v. Appa*, A. I. R. 1928, Bom. 269.

In *Gangubai and others v. Fakirgouda Somaypagouda Desai and others*, Privy Council Appeal No. 143 of 1927 quoted in A. I. R. 1930, Privy Council 93, which was an Appeal from a decree of the High Court of Bombay the point as to how far the entries made under the Record-of-Rights are evidence of facts under s. 35 of the Evidence Act was discussed. Their Lordships referred to the Record-of-Rights Act, 1903 and said :

Various duties were imposed by the Act and the rules framed under it upon the persons responsible for the preparation of the record, and to give wide publicity to such preparation. These entries were prepared by public servants in the discharge of their official duty, and they are relevant under s. 35, Evidence Act, to prove the facts recorded therein. After the Act of 1903 the Bombay Act IV of 1913 was passed, and under s. 135J the entries recording Gangabai as the owner are presumptive evidence of title in her favour. Whether s. 135J of the Act of 1913 applied to the entries made before 1913 or not, they are evidence of the facts recorded in them under s. 35, Evidence Act.

Lord Shaw in delivering the judgment in *Nageshar Balkhsh Singh's case* (1) at p. 69, (of 47 I. A.) said :

“Records of that character take their place as part of the evidence in the case. They do no more. Their importance may vary with circumstances, and it is not any part of the law of India that they are by themselves conclusive evidence of the facts which they purport to record. It may turn out that they are in accord with the general bulk of the evidence in the case ; they may supply gaps in it, and they may, in short, form a not unimportant part of the testimony as to fact which is available. But to give them any higher weight than that might open the way for much injustice, and afford temptation to the manipulation of records, or even of the materials for the first entry.”

Their Lordships do not hold that the entries made under the Bombay Act 4 of 1903 are in any way conclusive, but they are evidence of the facts recorded therein. The pronouncement of Lord Shaw that the importance of revenue records varies with circumstances applies directly to the present case. Their Lordships have already pointed out the manner in which entries

under the Bombay Act 4 of 1903 were made and the strict scrutiny to which they must have been subjected. The entries exhibited in this case spread over a series of years. The Act, as has been pointed out, contains careful provisions for the entries being checked from time to time, and in the circumstances of this case the entries are in their Lordships' opinion cogent, though not conclusive, evidence of the facts recorded therein."

**135K.** Application for certified copies of entries in the record of rights, the register of mutations and the register of tenancies may be made to, and such copies may be given by, the village-accountant, Mahalkari or Mamlatdar.

#### Commentary

The original bill contained a provision that no fee should be charged for any certified copy required for purposes of a. 135H. But the Select Committee removed it as it thought that such a concession would lead to grave abuse. It is to be regretted that such a wholesome provision was not inserted in this section. Government wants compulsorily a certified copy of entries in the Record-of-Rights for certain purposes and not only does Government insist upon payment of fees for the same but there is no penalty provided either in the Rules or on the Act for not furnishing such extracts by the village accountants and Mamlatdars in time.

The public have the right to inspect and claim copies from V. F. VI and VII at any time, and also from the heirship and dispute registers. Certified copies of the Record-of-Rights are required to be attached to every plaint, etc., regarding land. The village accountant must promptly give copies for these and other purposes on payment of fees which he is allowed to keep.—*G. R. 2250 of 1915*. No comparing fee is leviable. The Village Accountant must give a receipt at once for every application for a copy. The public may apply direct to the Mamlatdar for these copies if they experience any difficulty, annoyance or delay in getting them from the Village Accountant.

Exemption from Court Fees.—Applications made to village officers for copies of entries in the Record-of-Rights are exempt from Court Fee Stamps.—*G. N. 591 of 16-9-1921*.

**135L.** (1) No suit shall lie against the Secretary of State or Government or any officer of Government in respect of a claim to have an entry made in record or register that is maintained under this chapter, or to have any such entry

Bar of suits and exclusion of Chapter XIII

omitted or amended, and the provisions of Chapter XIII shall not apply to any decision or order under this chapter.

(2) The correctness of the entries in the record of rights and register of mutations shall be inquired into and the particulars thereof revised, by such Revenue officers and in such manner and to such extent and subject to such appeal as the Governor in Council may from time to time by rules prescribe in this behalf.

### Commentary

One appeal only shall lie against an entry certified as found to be correct by a revenue officer not lower in rank than the Mamlatdar's first karkun.—[ *Rule 107 (2) (5)* ].

One appeal only shall lie against an incorrect entry corrected by the Circle Inspector about which no dispute was brought to his notice.—[ *Rule 107 (3) (5)* ].

An appeal will lie against an order disposing of the dispute in the register of disputed cases of which an entry in the diary of mutations is made. If such an order is passed by the Mamlatdar's first karkun, the Mamlatdar, the District Inspector or a Revenue Officer of lower rank than that of a Deputy Collector, the appeal shall lie to the Sub-divisional officer or to an officer appointed by Government in this behalf, and if the order has been passed by the Sub-Divisional Officer, the Superintendent of Land Records or by a Revenue Officer of not lower rank than that of a Deputy Collector, to the Collector; and must be presented within 60 days from the day the appellant first knew it had been made. The decision of the appellate authority shall be final. There shall be no appeal against the order of the Collector and no second appeal in any case.

If the appellate order confirms the previous decision, it should be noted in the remarks column, against the confirmed entry. If it alters it, the change shall be entered as a fresh, but not disputable, mutation.—*Rule 109, The Bombay Land Revenue Rules, 1921.*

Chapter XIII as to appeals and revision does not apply to the Record of Rights. Therefore papers cannot be called for or proceedings revised otherwise than during inspection and test in the village. If a party presents an appeal it can be decided by taking evidence, etc., or on local enquiry by the appellate officer. The appellate decision is to be posted direct to the mutation register ( V. F. VII ) and operates as a decision of the dispute.

## CHAPTER XI.

OF THE REALIZATION OF THE LAND REVENUE  
AND OTHER REVENUE DEMANDS.

[\*]136. (1) In the case of unalienated land the occupant, and in the case of alienated land the superior holder, shall be primarily liable to Government for the payment of the land revenue, including all arrears of land revenue, due in respect of the land. Joint occupants and joint holders who are primarily liable under this section shall be jointly and severally liable.

(2) In case of default by any person who is primarily liable under this section, the land revenue, including arrears as aforesaid, shall be recoverable from any person in possession of the land:

Provided that where such person is a tenant, the amount recoverable from him shall not exceed the demands of the year in which the recovery is made;

Provided further that, when land revenue is recovered under this section from any person who is not primarily liable for the same, such person shall be allowed credit for any payments which he may have duly made to the person who is primarily liable, and shall be entitled to credit, for the amount recovered from him, in account with the person who is primarily liable.

## Commentary

*Joint Occupants and joint holders.*—These terms are substituted for the terms 'Co-occupants' and 'Co-sharers' respectively because previous to the amendments by Act IV of 1913 when a piece of land, for the assessment of which one registered occupant was responsible was actually held by several persons with independent titles each of these persons might appropriately be termed "Co-occupant". But when all several occupants are separately

[a] This section was substituted for the original section by Bom. IV of 1913, s. 67.

recognised, there will be no Co-occupants. There will on the other hand be joint occupants. To hold land jointly means that the interests of holders are indistinguishable; a group of joint holders is one person.

**Occupant.**—Under s. 3 (16) an occupant is defined to mean an holder in actual possession of unalienated land other than a tenant.

**Superior holder** is defined under s. 3 (13) to mean a landholder entitled to receive rent or land revenue from inferior holders, whether he is accountable or not for the same to Government.

**Voluntary payment on account of land belonging to another.**—If a person voluntarily makes a payment on account of land which belongs to somebody else he is not, therefore, entitled in the absence of contractual relations with that other to recover such payment from him.—*G. R. 4174 of 10-6-1898 Standing Orders of Govt. in R. D. Vol. II p. 1204 (1902). Cf. Jaisingbhai and others v. Hataji and others, 4 Bom. 79 (1879).*

**Recovery of Inamdars' dues:**—Inamdars' dues from their inferior holders cannot be realised by the Collector by using any of the powers under this chapter except upon an application under s. 86 or on reference under s. 90 by an Inamdar holding commission under s. 88—*G. R. 1493 of 24-2-1904.*

**Recovery of land revenue is regulated by rules 114 to 119 and Administrative Orders XXVIII to XLIII.**

Rule 114 states that land revenue is to be paid to the village officer concerned. The same rule allows payment to be made in Government treasury within that district in special cases with the sanction of the Collector. Payment is ordinarily to be made to the patel in the presence of the village accountant.—*G. R. 3345 of 1883.*

**Revenue money orders**—Remittances are however allowed by money orders under the following Government Notifications:—*G. N. 402 of 16-1-1911 and 6050 of 26-6-1911 and 9465 of 28-11-1923, R. D. and Sind (G. N. 582 of 18-1-1915).*

The facility allowed by revenue money order system by Government is chiefly intended for the benefit of the absentee landlords and others. They are primarily intended for the remittance of land revenue and cesses and of any other item which is due on account of land or is ordinarily payable with land revenue. They may also be used for payment of principal and interest due in respect of *tagai* loans. If a holder holds or is interested in land governed by different *khatas* in the same revenue village, he may remit the land revenue due on all such *khatas* by a single R. M. O. but the amount paid in respect of each such *khatas* should be separately entered. Amounts due for different villages are not to be included in one order.

R. M. O's are only payable to the Mamltdars (Mahalkaris also) of the taluka, but they will be delivered in the first instance without cash, to the village accountant of the village in which the land is situated through the post office by which the village accountant's village is served. The village

accountant will, after crediting the amount of each R. M. O. in the village accounts, forward the R. M. O. to the Mamlatdar with his next remittance to the sub-treasury, treating each R. M. O. as cash for the amount for which it is issued. The Mamlatdar will present these R. M. O's at the post office (head or sub) at his headquarters for payment by book transfer.

Rules 115 and 116 provide for the dates on which agricultural revenue is to be paid. For this purpose villages in the several districts (except Sind, Ratongiri, Kolaba, Thana and Kanara) are classified in three classes. (*Rule 115*). Under Rule 116 agricultural revenue is allowed to be paid in equal instalments on the dates specified under that rule. Land revenue other than due on agricultural land is to be paid as directed in Rule 117. Village officers are to warn landholders of the dates on which instalments are due and they are directed to use their influence by Rule 119 (A) in securing prompt payment. Village officers have to report to Mamlatdars names of landholders in whose cases precautionary measures under ss. 140 145 may be necessary, to enable them to adopt such measures in time if necessary.

In the case of a tenant as laid down in the proviso the amount recoverable from him would be twice the assessment of the land, that is to say, the assessment of the current year plus one year's assessment out of the suspended revenue if there be any. They do not include arrears of previous years. It was proposed at the time when the Amending Act IV of 1913 was on the legislative anvil that only that amount should be recoverable from a tenant which would be payable by him to the landlord in reference to the dues of the year and if he has actually paid to the landlord at a time when he should not have made any default it is just that the only amount that should be recovered from him should be the amount, which is due by him to the landlord.

The demands of the year include the assessment of the lands for the then current year and also include so much of suspended revenue as may be ordered for collection in that year. Suspended revenue is not arrears. Arrears are revenue which is demanded and is not paid; revenue which is suspended is not demanded and is therefore not arrears. The demand upon the owners is, by the orders of Government under the suspension and remission rules, in no year more than twice the assessment which is assessed on any land that is to say, out of suspended revenue, you may recover one year's assessment and no more in addition to the assessment of the current year.—*Debates in the Bom. Leg. Council; B. G. G. pt. VII of 20-5-1913 p. 173y.*

137. The claim of Government to any moneys

recoverable under the provisions of this chapter shall have precedence over any other debt, demand, or claim whatsoever, whether in respect of mortgage, judgment-decree, execution,

Claims of Government to have precedence over all others.

or attachment, or otherwise howsoever, against any land or the holder thereof.

### Commentary

The priority of Government claims is regulated in some such order as is given below:—

(1) land revenue for the current year (this has priority of claims on the crop in case of agricultural lands.—S. 138. Under s. 140 the Collector may prevent removal of crop from that land until revenue for current year has been paid.—S. 140). (2) Land revenue for past years. (3) Tagavi under the Land Improvement Act. (4) Tagavi under Agriculturists' Loans Act. (5) Irrigation rates. (6) Claims of other departments such as Abkari, forest, etc.

Where a Court attaches any property of a person who is liable for the payment of land revenue the present practice is that the Collector appears before the Court by a pleader and obtains such an order as the Court may legally make in favour of Government.—*G. R. 13 of 3-1-1913* and *G. R. 9188 of 23-9-1916*.

**Priority of dues under the Abkari Act.**—For unpaid instalments of foreign liquor license, Government has priority over the rights of persons to whom the stock of wine is *already pledged*. By s. 34, Bom. Abkari Act the amount due to Government can be recovered as if it was an arrear of land revenue. S. 187 of Code lays down that sums on account of land revenue and sums declared by the Code or by any other Act to be leviable as an arrear of land revenue shall be levied under the provisions of chapter XI of the Code. S. 137 which forms part of Chapter XI and gives Government priority relates to the levy of such sums.

**138.** In all cases the land revenue for the current year of land used for agricultural purposes, if not otherwise discharged, shall be recoverable, in preference to all other claims, from the crop of the land subject

The liability of the crop for the revenue of the land.

to the same.

### Commentary

The expression 'Land Revenue for the current year' includes suspended revenue payable in that year as well as revenue for that year.—*G. R. 6461 of 14-6-1915*.

**Recoveries of Land Revenue—how to be accounted.**—Land revenue recovered before the date of the first instalment should be credited against the arrears of past years, if any revenue recovered on or after the date of the first instalment, should first be credited against the demand of the current year and the balance, if any, against the arrears of previous years.—*G. R. 5387/28 of 16-3-1932*.



**139.** The land revenue shall be leviable on or at any time after the first day of the revenue year for which it is due; but, except when precautionary measures are deemed necessary under the provisions of sections 140 to 141, payment will be required only on the dates to be fixed under the provisions hereinafter contained.

Land revenue may be levied at any time during the revenue year.

**Commentary**

**Object.**—S. 31 of the Bom. Act IV of 1868 had provided for the levy of additional charges or account of interest, etc. On the failure of the payment of instalments on dates fixed. But until the instalment became due the Government could not demand their revenue. The object of this section is to give Government the right to demand payment of their revenue notwithstanding that the instalments may not have fallen due.—*Debates in the Council, 1877 Vol. XVI, p. 115.*

Interest due to holders of War Loan scrip whether in the form of Promissory Notes, Stock certificates or bearer bonds, no matter whether they are original applicants or their transferees may be credited to their land revenue accounts direct if they apply to the Treasury Officer of the district in which they reside to that effect.—*G. O. F. D. 2030 of 13-7-1916.*

**[\*] 140.** When the crop of any land or any portion of the same is sold, mortgaged or otherwise disposed of, whether, by order of a Civil Court or other public authority or by private agreement, the Collector may prevent its being removed from the land until the demands for the current year in respect of the said land have been paid, whether the date fixed for the payment of the same under the provisions hereinafter contained, has yet arrived or not.

Removal of crop which has been sold, etc., may be prevented until revenue paid.

But in no case shall a crop or any portion of the same, which has been sold, mortgaged or otherwise disposed of, be detained on account of more than the demands of the year in which the detention is made.

[a] This section was substituted for the original section by Bom. IV of 1913, s. 68.

### Commentary

**Object.**—The new section is necessitated by the system of granting suspensions of land revenue in years of scanty rainfall. Amounts suspended in one year become part of the next year's demand if the next year's crops are good and in the recovery of such sums Government are entitled to the same measure of protection as in the recovery of land revenue which has not been suspended.

The Collectors and Dy. Commissioners may delegate their powers under ss. 140 to 143 and 145 to specially selected Mamlatdars and Mukhtyarkars.—*Cf. G. R. 8048 of 7-8-1908 and G. R. 5295 of 1-6-1911.* These powers are to be expressly delegated to each Mamlatdar upon his being newly appointed to a Taluka.—*G. R. 7773 of 21-8-1913.*

S. 140 is one of the group of sections authorising precautionary measures to prevent the removal from land of a crop which has been sold, mortgaged or otherwise disposed of, until the current year's revenue is paid. The powers contained in those sections do not authorise the detention of anything but the crop of the land or the seizure of the crop or any other goods after removal from the lands.—*Per Scott C. J. in Gangaram v. Dinkar, 15 Bom L. R. 665 (1913).*

"S. 4 (c) of the Revenue Jurisdiction Act, 1876 is not a bar to a suit in which there is a claim arising out of the alleged illegality of the proceedings taken for the realisation of land revenue. Where the legality of the proceedings initiated by a Revenue Officer is in question the Court has to enquire under s. 6 whether the act complained of was done bona fide by the officer in pursuance of the provisions of any law. The recognition by Civil Courts of claims against Government in respect of certain illegal levies is expressly provided for by s. 5 of the Revenue Jurisdiction Act, 1876"—These remarks were passed by Scott C. J. in *Gangaram v. Dinkar, 15 Bom. L. R. p. 670 (1913)* where the facts were that a suit was brought by G to recover damages from the defendant Mamlatdar on the allegation that the latter when Mamlatdar of Khanapur (Dist. Satara) attached without authority five carts containing 100 pieces of jaggery belonging to G on the Karad-Nagar road in 1910. The High Court held as above and remanded the case for an enquiry as to the damages suffered owing to the illegal seizure of the plaintiff's property by the defendant. On the strength of this ruling Government had issued *G. R. 239 of 10-1-1914* which directed that the delegation of powers of a Collector to Mamlatdars, Mahalkaris, etc., under ss. 86 and 87 does not carry with it delegation of all powers of the Collector under chapter XI. A Mamlatdar cannot, therefore, dispose of an application for assistance by way of precautionary measures under s. 86 unless he has been delegated the necessary powers under s. 140.

**Note.**—S. 4 (c) of the Revenue Jurisdiction Act, 1876 provides that Civil Courts should not exercise jurisdiction over claims connected with or arising out of any proceeding for the realisation of land revenue or their rendering

of assistance by Government of any officer duly authorized in that behalf to superior holders or occupants for the recovery of their dues from inferior holders or tenants.

Overdue water rates payable under a 57 of the Bombay Irrigation Act 1879 can only be recovered like arrears of land revenue, the provisions of ss. 140, 145 of the L. R. Code for securing the recovery of land revenue by measures to be taken before it is in arrear are therefore not applicable to such water rates. —*G. R. 2932 of 9-4-1895.*

In order to secure the land revenue the Collector may prevent the reaping of the crop, or

**141.** It shall be lawful for the Collector, in order to secure the payment of the land revenue by enforcement of the lien of Government on the crop—

(a) to require that the crop growing on any land liable to the payment of land revenue shall not be reaped until a notice in writing has first been given to himself or to some other officer to be named by him, in this behalf, and such notice has been returned endorsed with an acknowledgment of its receipt ;

(b) to direct that no such crop shall be removed from the land on which it has been reaped, or from any place in which it may have been deposited, without the written permission of himself or of some other officer as aforesaid ;

(c) to cause watchmen to be placed over any such crop to prevent the unlawful reaping or removal of the same, and to realize the amount required for the remuneration of the said watchmen, at such rate not exceeding the rate of pay received by the peons on his establishment as he may deem fit, as an arrear of land revenue due in respect of the land to which such crop belongs.

#### Commentary

Delegation of powers to Mamlatdars, etc.—All his powers under this section may be delegated by the collector to Mamlatdars, etc., according to Administrative Order VIII.—*G. R. 8046 of 1908 and 7773 of 1913.*

The honest removal of moveable property from the physical possession of another does not amount to an offence either under ss. 378 or 424 of the Penal Code. But the removal of a property by lessee from the guard of a watchman appointed under ss. 86 and 141 of Bom. L. R. Code gives rise to an offence punishable under s. 142.—*Lekhraj v. Imambuz*, 5 S. L. R. 130; 12 I. C. 987; 12 Cr. L. J. 611.

D was owner of some wheat which he had placed on the village threshing ground. But by general orders, promulgated by village revenue authorities under cl. (b) s. 141 cultivators were prohibited from removing crops from the threshing ground before payment of assessment in respect of the land in which the crops were raised. The acts committed by the accused were that the said D removed from the village threshing floor some wheat the produce of his land but the removal of which had been prohibited and over which a watchman had been placed under provisions of s. 141 of the L. R. Code and had placed it in the house of second accused with the permission of the latter: Now the very first requirement for the offence of theft is that there shall be a removing with an intention to take dishonestly property out of the possession from some person. Now in the present case the possession was not with the Government but with the owner of the crop. All that the Collector did and all that he could do under the Act was to direct that the crop should not be removed and to cause watchmen to be placed over the crop to prevent the removal and realise the amount required for the remuneration of the said watchmen as arrear of land revenue. This does not amount to taking possession of the crop by the Collector on behalf of Government or even to an attachment or distraint of the same but the possession remains with the owner who has to look after it and safeguard it and may exercise any act of ownership over it so long as it he does not remove it. If he removes it, he does not commit theft in respect of it. He commits disobedience of the order—an act which is specially provided for in s. 142 of L. R. Code. He may also commit the offence described in s. 424 (dishonest or fraudulently concealing or removing any property of himself or any other person) of the Indian Penal Code, if the removal be dishonest. In this case the conviction was altered to one under s. 424 of the Penal Code, with regard to accused No. 1 while accused No. 2 was acquitted.—*Queen Empress v. Dayakarsan*, 1 Bom. L. R. 515 (1899).

**Note.**—The decision in this case raises an important question whether when special procedure and penalty is provided for certain offences the general law should be availed of so as to bring it under its provisions? The Legislature must be presumed to have in mind the the general law and as they have provided a special procedure it does not seem desirable to adopt another course.

An Inamdar holding commission enabling him to exercise the power under cl. A of s. 88 is entitled to take such precautions as the Collector is authorised to take under ss. 141 to 143; obviously this refers to the recovery of the dues of the current year only.—*G. R. 2301 of 15-4-1880* [ *Standing Orders of Government in R. D. Vol. II, p. 1218 (1902)* ].

The following forms of orders to be issued under a. 141 have been sanctioned by Government in their resolution 674 of 27-1-1901 *Standing Orders of Government in R. D. Vol. II, p. 1199 (1901)* :—

(a) Form of order preventing the reaping of the crop.

It is hereby directed under a. 141 (a) that no crop growing on the lands following ( that is to say )

Survey No.                      in the village of                      shall be reaped until notice in writing given to                      has been returned to                      endorsed with acknowledgment of its receipt.

Notice of the above order is hereby given to ( all the holders of land paying revenue to Government in the village of                      ( or to you A. B. Holder of the lands aforesaid in the village of )                      , ( as the case may be )

Given under my hand and the seal of the office                      dated the day of                      19                      .

Mamladar,

(b) Form of order preventing the removal of the crop.

It is hereby directed that no crop reaped on the following lands ( that is to say ) survey No.                      in the village of                      shall without the written permission of                      be removed from the said lands or from any other place wherein it may have been deposited.

Notice of the above is hereby given to ( all the holders of land paying revenue to Government in the village of                      or to you A. B. holder of the lands aforesaid ) in the village of                      as the case may be.

Given under my hand and the seal of the office                      dated the day of                      19                      .

An Inamdar is not bound to issue a notice of demand before proceeding to attach his defaulter's property in exercise of powers conferred on him under a. 86 (a). But if he issues such a preliminary notice he would not be entitled to recover afterwards as land revenue demand, the cost of issuing and serving such notice.—*G. R. 2901 of 15-4-1886, Standing Orders of Government in R. D. Vol. II, p. 1218 (1902)*.

Instructions—Precautionary measures under aa. 141 and 142 should be taken only in extreme cases so as to avoid unnecessary hardship.—*G. R. 690 of 30-1-1892*. Rs. 141-143 are intended for the purposes of current year's demands. Revenue for the past years can be recovered as arrear by attachment and sale of the crops ( balance after paying the current year's demand ) as immovable property under cl. (d) of a. 150 if they are standing and under cl. (c) of a. 150 if they are reaped.—*G. R. 488 of 24-1-1901*.

**142.** The Collector's orders under either clause (a) or clause (b) of the last preceding section may be issued generally to all the holders of land paying revenue to Government in a village, or to individual holders merely.

Collector's orders under last section how to be made known.

If the order be general, it shall be made known by public proclamation to be made by beat of drum in the village and by affixing a copy of the order in the chavdi or some other public building in the village. If it be to individual holders, a notice thereof shall be served on each holder concerned.

Any person who shall disobey any such order after the

Penalty for disobedience of order. same has been so proclaimed, or a notice thereof has been served upon him, or who shall, within the meaning of the Indian Penal Code, abet the disobedience of any such order, shall be liable, on conviction after a summary inquiry by the Collector, to a fine not exceeding double the amount of the land revenue due on the land to which the crop belongs in respect of which the offence is committed.

XLV of 1860.

### Commentary

General prohibitions not to remove crops without permission should be sanctioned by the Collector only in special cases.—*G. R. 118 of 7-1-1898.*

Disobedience of the order by removal of the crops from the threshing floor may amount to an offence under this section and not an offence of theft as described in the Penal Code.—*Queen Empress v. Dayakarsan, 1 Bom. L. R. 515 (1899).*

Note.—Refer to page 688 for details of the case.

The honest removal of moveable property from the physical possession of another does not amount to an offence either under s. 378 or s. 424 of the Indian Penal Code. But the removal of property by a lessee from the guard of a watchman appointed under ss. 86 and 141 of the Bom. L. R. Code, gives rise to an offence under s. 142 of that Code.—*Lekhruij v. Imambuz, 5 S. L. R. 130.*

Delegation of power to Mamlatdara, etc.—As per Administrative Order VIII the Collector can delegate all his powers under this section to Mamlatdars, etc.—*G. R. 8046 of 1905 and 7773 of 1913.*

Fine is not a Revenue demand.—A fine imposed on a person under s. 142 for disobedience of an order passed under s. 141 is not an arrear of land revenue in respect of any occupancy, and therefore forfeiture of the offender's land under s. 153 for recovery of the fine is not lawful.—*G. R. 5968/28. of 31-10-1930.*

**143.** The Collector shall not defer the reaping of crop, nor prolong its deposit unduly, so as to damage the produce; and if within two months after the crop has been deposited the revenue due has not been discharged, he shall either release the crop and proceed to realize the revenue in any other manner authorized by this chapter or take such portion thereof as he may deem fit, for sale under the provisions of this chapter applicable to sales of moveable property in realization of the revenue due and of all legal cost, and release the rest.

Reaping, etc. not to be unduly deferred.

Crop when to be released.

**Commentary**

*Delegation of Powers.*—According to Administrative Order VIII the Collector may delegate all his powers under s. 143 to Mamlatdar's, etc.—*G. R. 2046 of 1908 and 7773 of 1913.*

**144.** If owing to disputes amongst the sharers, or for other cause, the Collector shall deem that there is reason to apprehend that the land revenue payable in respect of any holding consisting of an entire village or of a share of a village will not be paid as it falls due, he may cause the village or share of a village to be attached and taken under the management of himself or any agent whom he appoints for that purpose.

Temporary attachment and management of a village or share of a village.

The provisions of section 160 shall apply to any village or share of a village so attached, and all surplus profits of the land attached, beyond the cost of such attachment and management, including the payments of the land revenue and the cost of the introduction of a revenue survey, if the same be introduced under the provisions of section 111, shall be kept in deposit for the eventual benefit of the person or persons entitled to the same, or paid to the said person or persons from time to time as the Collector [a] may direct.

Powers of manager, and disposal of surplus profits.

[a] Words repealed by Com. IV of 1927, Second Schedule, are omitted.

### Commentary

Where an *Iuamdar* does not pay the *Judi* the Collector can recover it from those below him. He can recover from the co-sharers or from the *rayats* or lands if such are assigned to co-sharers individually upto the point each co-sharer is required to pay.—*G. R. 9920 of 21-12-1904, referred to under s. 87.* The necessity for attaching a village may, therefore, arise only in extreme cases.

**Right of Government to recover proportional assessment from holders of rent-free lands.**—In a case where the plaintiff held rent-free lands from the *Talukdar* of a village who paid to Government assessment for the village in a fixed lump sum, the Government attached the village under s. 144, *Bombay Land Revenue Code*, on the *Talukdar* failing to pay up the assessment. The Collector levied proportional assessment from the plaintiff under s. 160 of the Code. The plaintiff sued to restrain him from doing so.

It was held by the High Court that the Government had the right to levy the assessment on the lands of the plaintiff in the village, for the grant of lands rent-free by the *Talukdar* did not affect the right of Government to assess the lands.—*Tulla v. Collector of Kaira, 20 Bom. L. R. 748.*

**145.** The precautionary measures authorized by the last five sections shall be relinquished if the person primarily responsible for the payment of revenue or any person who would be responsible for the same if default were made by the person primarily responsible shall pay the costs, if any, lawfully incurred by the Collector up to the time of such relinquishment, and shall furnish security satisfactory to the Collector for the payment of the revenue, at the time at which, or in the instalments, if any, in which it is payable under the provisions hereinafter contained.

Precautionary measures to be relinquished on security being furnished.

### Commentary

**Delegation of powers:** According to Administrative order VIII the Collector may delegate all his powers under this section to *Mamlatdar's* etc.—*G. R. 8046 of 1903 and 7773 of 1913.*

**Notes.**—It is only from large and solvent *rayats* in whose cases there may be some doubt about their willingness to pay, that Security bonds may be taken. However, it is for the Collector to decide as to what should be done in the matter.—*G. R. 6954 of 11-12-1875.*



Form of Security bond sanctioned by—*G. R. 674 of 27-1-1891* is as follows:  
 Whereas A. B. residing at \_\_\_\_\_ in the Taluka of \_\_\_\_\_ the  
 District \_\_\_\_\_ is responsible to Govt. for the payment of revenue or  
 in the instalments following viz:—

On the.....day of  
 On the.....day of

I residing at.....village in the.....taluka of the.....District hereby  
 declare myself for the said A. B. and do hereby bind myself and all my  
 heirs and the executors that the said A. B. shall duly and punctually pay to  
 the.....the said sums on the dates on which they are respectively here-  
 inbefore stated to be payable by him and in case of the said A. B. making  
 any default in any of the instalments in respect of any of the said sums or  
 any part thereof, I do hereby bind myself and all my heirs and executors to  
 pay the.....the whole of the said sums or such part thereof as the said  
 A. B. may have failed duly and punctually to pay as aforesaid.

Signature of surety

In the presence of

**146.** Land revenue, except when it is recovered under  
 the provisions of the foregoing sections  
 140 to 141, shall be payable at such times  
 in such instalments to such persons and  
 at such places as may from time to time  
 be determined by the orders of Government.

[<sup>1</sup>] **147.** Any sum not so paid becomes thereupon an  
 arrear of land revenue, and the persons  
 responsible for it, whether under the pro-  
 visions of section 136 or of any other  
 section, become defaulters.

Arrear.

Defaulters.

#### Commentary

The word 'defaulter' is defined in the Revenue Recovery Act, I of 1890,  
 which extends to the whole of British India, to mean 'a person from whom  
 an arrear of land revenue is due,' and to include 'a person who is responsible  
 as surety for the payment of any such arrear or sum.' *S. 2 (3) of Act I of 1890.*

[<sup>2</sup>] **148.** If any instalments of land revenue be not  
 fully paid within the prescribed time, it  
 shall be lawful for the Collector to im-  
 pose liabilities incurred by default.

[a] As to the local modification of section 147, see para. 5 of foot-note (a)  
 on p. 1, *supra*.

[b] This section was substituted for the original section by Bom. IV of  
 1913 s. 69.

pose as a penalty or as interest such charge on such instalments, and on the aryears, if any, of former years, as may be authorised according to a scale to be fixed from time to time under the orders of the Governor in Council, and further to proceed to levy at once the entire balance of land revenue due by the defaulter for the current year:

Provided that no such charge shall be imposed on any instalment, the payment of which has been suspended by order of Government, in respect of the period during which the payment remained suspended.

#### Commentary

**Delegation of Powers:** According to Administrative Order VIII the Collector can delegate all his powers under this section to Mamlatdars etc.—*G. R. 7176 of 1912*.

**Rent is not land revenue** and the fact that a Talukdari settlement officer exercises, under s. 33 (2)(c) of Gujarat Talukdar's Act certain powers of the Collector under the Bombay Land Revenue Code during the period of his management, does not *ipso facto* or necessarily make rent land revenue. S. 148 under which alone the penalty upto 25 per cent. could be imposed in terms applies only in case of default of the payment of land revenue within the prescribed time and not for default of rent. As observed in *Jinabhai v. Collector*, A. I. R. 1926 Bom. 325; 94 I. C. 752; 28 Bom. L. R. 417, the term land revenue is nowhere expressly defined. Taking it in its plain meaning land revenue must be taken to mean money payable to Government in respect of land. The rent in the present suit is not payable to Govt. but to the Talukdari Settlement Officer who pays to Government from the rent paid by the lessee.—*Secretary of State v. Govarikandas*, A. I. R. 1931 Bom. 464.

A Watandar whose services were commuted under the Gordon settlement before the Land Revenue Code (V of 1879) became law, cannot be fined under s. 148 of the L. R. Code as there was no provision in Reg. XVII of 1827 corresponding to s. 148 of the Code. *G. R. 5377 of 1922*. Payment due under the Gordon settlement cannot, therefore, be recovered as an arrear of land revenue under s. 187 of the Code and would have to be sued for or enforced by cancellation of the Sanad, one of the conditions of which is payment of the fixed yearly dues.—*G. R. 8528 of 1923*; *G. R. 8523 of 16-8-1924*.

**Arrears** means revenue that has not been paid and remains unpaid without any order of Government sanctioning its remaining unpaid. When Government issues any order suspending the payment of revenue that revenue ceases to be due until the order comes for its collection and therefore, while the order of suspension is in force the revenue is not in arrears because it is no longer

under demand. The demand being suspended the revenue is not payable. In non-payment, therefore, does not constitute arrears. What constitutes arrears is, the non-payment of revenue which Government has not ordered to be suspended. Suspended revenue is not arrears.—*Per Hon. Sir Richard Jackson in the discussion on r. 69 of Bars. Act IV of 1915, B. G. C. for 20-5-1915 p. VII p. 119.*

Whether an amount is suspended, the suspension shall always be conditional upon the payment of the amount which is not suspended. When, for instance, half the revenue is suspended, but any revenue-payer defaults in respect of any remaining unsuspended revenue the suspension shall be cancelled so that the suspended amount also becomes "due for the current year."

#### —*Administrative Order XXX.*

**Notes.**—This order does away with the technical distinction between suspended and unsuspended revenue as soon as there is an unauthorized default. It thus enables the suspended revenue to be dealt with in the same processes as the other revenue. If, for instance, half the revenue of 1910-11 is suspended and the remaining half is duly paid, but the suspended revenue of the previous year (even though not ordered for collection from other occupants in 1911-12) will become due and pass to the category of unauthorized arrears. Also since it is demanded for the first time in 1911-12 it will be due for that current year and subject, therefore, to the preference accorded by a 12A and 140, but it would not be liable to the penalty prescribed in a. 148, unless further default is committed after the suspension has been formally cancelled.—*G. R. 6681 of 1915.*

Suspended revenue becomes due in the year to which it is postponed. Arrears can then be given, if applied for within that year, since it is not "arrears."—*G. R. 6419 of 1906.*

As between back years the Collector can allocate a payment as he pleases, even though the payer specifies it for a particular year.—*Gangadhar Singh v. Mahomed Jau, 33 Cal. 1193 (1906).*

When revenue is not suspended, but the Collector abstains from collecting it in order to avoid undue severity, it remains "unauthorized." Therefore, Government retain the right to collect even after a suspension of had years. If normal seasons follow, there is no practical difference between suspended and unauthorized; but there is the legal difference pointed out above, especially if poor years follow. Hence the suspension order in *G. R. 8230 of 1913* actually increased the theoretical portion of arrears; also it avoided the loss of the preference accorded by ss. 139 and 140.

#### IMPOSITION OF A PENALTY OR CHARGING OF INTEREST:

**Scope.**—This section as amended in 1913 extends the scope of the old section 145 so as to allow the imposition of a charge as a penalty or by way of interest on unauthorized arrears of past years as well as on arrears of the current year.

The old section limited the claim to arrears of the current year, but it was thought there is no reason why Government should not claim interest on arrears of past year also.

**Arrear of Tagavi.**—Penalty can be imposed for non-payment of Tagavi etc. recoverable as an arrear of land revenue.

**No penalty is to be imposed** on suspended arrears for the period during which the payment remained suspended.

**A Maximum penalty** not exceeding  $\frac{1}{4}$ th of the amount of land-revenue over-due should be fixed, and resort had to the provisions of this section in the case of the rayat who is known to be able to pay but wilfully delays to do so. The penalty imposed may be remitted if the officer imposing it afterwards finds that the rayat was not able to pay punctually.—*G. R. 2485 of 27-3-1883.*

**Interest on Penalty:** Interest or penalty under s. 148 of the L. R. Code should be levied only in cases or proved contumacy.—*G. R. 194 of 9-1-1884.*

(1) **For default in payment of land revenue or rent due to superior holders,** interest not exceeding 9 per cent. may be levied in assistance suits and it will be handed over to the superior holders concerned. The interest becomes due from the date the decretal amount is due.

(2) In the case of contumacious default, penalty in lieu of interest not exceeding 25 per cent. of the arrears, due, may be levied, and the whole of it should be paid to the superior holder.

(3) The 25 per cent. limit is the maximum rate and the actual amount should correspond to the wilful and persistent character of default.—*G. Rs. 2693/24 of 13-3-1926, 17-4-1926 and 22-10-1926.*

Interest or penalty cannot be levied in respect of the recovery of judi or quit rent from inamdars holding sanads under Bombay Act II of 1865.—*G. R. 5377 of 16-9-1922.*

The power of imposing  $\frac{1}{4}$ th fine is delegated to Mamlatdars.—*G. R. 5295 of 1-6-1911.*

Sub-divisional officers have the power to assess or to remit the  $\frac{1}{4}$ th penalty.—*G. R. 5295 of 1-6-1911.*

The provisions of this section are not to be neglected either in Government or in alienated villages to the encouragement of contumacy.—*G. R. 6288 of 4-7-1911.*

**149.** A statement of account, certified by the Collector or by an Assistant or Deputy Collector, shall, for the purposes of this chapter, be conclusive evidence of the existence of the arrear of the amount of land revenue due, and of the person who is the defaulter.

On receipt of such certified statement, it shall be lawful for the Collector of one district to proceed to recover the demands of the Collector of any other district under the provisions

Certified account to be evidence as to arrears.

Collectors may realize each other's demands.

of this chapter as if the demand arose in his own district.

A similar statement of account certified by the Collector of Bombay may be proceeded upon as if certified by the Collector of a district under this Act.

### Commentary

**History.**—The Revenue Recovery Act (I of 1890) which extends to the whole British India enables the Collector of a district of one Presidency to recover an arrear of land revenue due on lands situated in districts belonging to any other Presidency. S. 3 of Act I of 1890 runs as follows.—

(1) Where an arrear of land-revenue, or sum recoverable as an arrear of land revenue is payable to a Collector by a defaulter, being or having property in a district other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate in the form, as nearly as may be of the Schedule, stating—

(a) the name of the defaulter, and such other particulars as may be necessary for his identification, and

(b) the amount payable by him and the account on which it is due.

(2) The certificate shall be signed by the Collector making it, and, save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated.

(3) The Collector of the other district shall, on receiving the certificate proceed to recover the amount stated therein as if it were an arrear of land revenue which had accrued in his own district.

Revenue cannot be realized outside British India by coercive courses.—*G. R. 3302 of 20-4-1894.*

When an amount recoverable as land revenue (but not necessarily itself land revenue) due in one district is to be recovered from a person residing in any other district of the Bombay Presidency to which the Bom. L. R. Code applies a certificate under s. 3 (1) of the Revenue Recovery Act would be necessary.—*G. R. 518 of 29-1-1901.*

**Delegation of power to Mamlatdars, etc.**—Administrative order VIII states that the Collector may delegate to Mamlatdars the power to issue certificates under this section direct to other Mamlatdars (apparently in the same or other districts of the Presidency.)—*G. R. 5295 of 1-6-1911.*

**Process for recovery of arrears.** **150.** An arrear of land revenue may be recovered by the following processes:—

(a) by serving a written notice of demand on the defaulter under section 152;

[<sup>a</sup>](b) by forfeiture of the occupancy or alienated holding in respect of which the arrear is due under section 153;

(c) by distraint and sale of the defaulter's moveable property under section 154;

(d) by sale of the defaulter's immoveable property under section 155;

(e) by arrest and imprisonment of the defaulter under sections 157 and 158;

[<sup>b</sup>](f) in the case of alienated holding consisting of entire villages, or shares of villeges, by attachment of the said villeges or shares of villeges under sections 159 to 163.

#### Commentary

**Land Revenue:** There is no definition of the term "Land Revenue" in the L. R. Code, although in s. 2 of the Bombay Revenue Jurisdiction Act which was passed three years before the L. R. Code, "Land Revenue" is defined as meaning "all sums and payments, in money or in kind, received or claimable by or on behalf of Government from any person on account of any land held by or vested in him, and any cess or rate authorized by Government under the provisions of any law for the time being in force:

The meaning of the term "Land Revenue" in s. 150 cannot be restricted to one particular kind of land revenue, that is to say, assessment, so that if any other kind of revenue from land is payable to Government by any person on account of any land held by or vested in him, and he falls in to arrears in the payment of such revenue, it cannot be recovered from him under s. 150.—Per *Macleod C. J. in Junabhai v. The Collector and T. S. Officer*; 27 Bom. L. R. 416 at p. 418.

Under s. 136 of the Bom. L. R. Code the person primarily responsible to Government for the Land revenue is the registered occupant. *Prima facie* under the L. R. Code the liability to pay the assessment falls on the *Khatidar*.—*Abdul Rehman v. Vinayak*, 29 Bom. L. R. p. 1056 (14-2-1927).

A government officer in the temporary management of a talukdar's estate has, under s. 33 of the Gujarat Talukdar's Act, the same powers which the Collector has in an unalienated village, to recover arrears of revenue inclusive of rent.

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[a] As to the local repeal of section 150, clause (b), see para. 4 of foot-note (a) on p. 1, *supra*.

[b] As to the local modification of section 150, clause (f), see paras. 4 and 5 of foot-note (a) on p. 1, *supra*.

"The issue of a notice under a. 152 is not compulsory before any other kind of coercive process is undertaken"—*G. M. 6557-E:29 of 16-1-1931.*

It may in some cases, be impossible to assign an arrear of land revenue to one particular survey number out of several entered in the name of one registered occupant, as for instance, if one instalment of the land revenue due on all the numbers has been paid and the other instalment left unpaid, in such a case all the survey numbers in respect of which the second instalment was unpaid would be forfeited under a. 153.

When an alienated holding is legally declared forfeited to Government, the land can be fully assessed just as in a case of a resumption of an Inam by Government.—*G. R. 6567 of 20-6-1939.*

Whether Land Revenue can be collected by distraint upon money in the hands of a Civil Court under a. 149 by sending a certificate to the Sub-Judge is a doubtful matter. The Government Pleader should rather be instructed to appear in the Court.—*G. R. 9158 of 1916.* The breaking open of a door to attach property though permitted under the Civil Procedure Code is not advised in the collection of Land Revenue; and even in view of a. 62 (2), Civil Procedure Code, the practice is condemned.—*G. R. 7673 of 1918.*

For powers of distraint given to village officer, see *G. R. 7958 of 1931*, or *Bind G. R. 2396 of 1931* and to Mamlatdars *G. R. 5856 of 1931*. For restrictions upon distraints, see a. 60 (4), Civil Procedure Code V of 1908. There is no form of distraint order *G. R. 9401 of 1931* and *1902 of 1939*. Dwelling houses may not be broken open *G. R. 9922 of 1884.*

"For rules regulating entry into any premises by an officer empowered under a. 154 of the L. R. Code for the distraint of moveable property of a defaulter, see *G. R. 4112 of 11-11-1939.*

Instruction as to the procedure regarding distraint.—In all cases before making any distraint an express order must be obtained from the Mamlatdar, Mahalkari or other officer, duly empowered under a. 154 and any violation of this rule by the village officers will meet with severe punishment. When asking for orders in such cases the village officers should state amount of arrears due, the approximate outturn of the defaulter's crop the extent of his general means, and the reason for supposing him to be contumacious. In proposing the attachment of cattle, the area of the holding and the number of cattle that will remain should be noted.

A separate register should be kept in every village of all distraints made by the village officers with a note of the orders authorising the same. An abstract of the entries in this register should be forwarded annually to the taluka to form the basis of Jambanki Form No. 9. The village register of coercive processes and the taluka returns should be most carefully examined by Assistant or Deputy Collectors and compared with the various cases with the object of securing that all cases of distraint are brought on record, and no distraints are made without full legal authority.

The attachment of such articles as cots, children's cradles, household utensils, grinding stones, and the like should not be permitted in future, except with the permission of the sub-divisional officer, which should be given only when a special reason, such as removal of more valuable property is shown.—*G. R. 8932 of 23-12-1901.*

**Recovery of arrears of land revenue.**—An arrear of land revenue may be recovered by the several processes mentioned in this section. With regard to the process of sale of the defaulter's immovable property other than the land on which the arrear is due, it should be noted that the sale is subject to all encumbrances, or tenures or alienations effected by the occupant before the sale. The sale is just like the sale in execution of a money decree of a Judgment-debtor's immovable property and the purchaser acquires only what the occupant could have honestly disposed of on the date of the sale. In this case the rights of encumbrancers are not touched. (See *Venkatesh v. Mhal Pai*, 15 Bom. 67). The surplus after deducting the expenses of the sale and the arrears due shall be paid to the occupant whose property is thus sold, as required by s. 183 *post*.

**Recoveries of profits from Land, assessments, emoluments or penalties under the Watan Act**—These may be made in the same way as provided by the law relating to the recovery of Land Revenue—See s. 81 of the *Hereditary Offices Act, 1874.*

**151.** The said processes may be employed for the recovery of arrears of former years as well as of the current year, but the preferences given by sections 137 and 138 shall apply only to demands for the current year :

Revenue demands of former years how recoverable. **Provided that** any process commenced in the current year shall be entitled to the said preferences, notwithstanding that it may not be fully executed within that year.

**152.** A notice of demand may be issued on or after the day following that on which the arrear accrues.

When notice of demand may issue. The Commissioner may from time to time frame rules for the issue of such notices, and with the sanction of the Governor in Council shall fix the costs recoverable from the defaulter as an arrear of revenue, and direct by what officer such notices shall be issued.



### Commentary

**Delegation of powers.**—According to the Administrative Order VIII the Collector can delegate the power to issue notices and remit notice fees levied by mistake under s. 152 to Mamlatdars, etc.—*G. R. 5295 (73) of 1911.*

**Notice of demand.**—For form of the notice see form B appended to the Bombay L. R. Rules 1921.

**Rules regarding issue of notice.**—The following rules have been framed and issued by the various Commissioners:—

1. Notices of demand shall be issued by the Mamlatdar or Mahalkari within whose charge an arrear accrues or by their Head Karkuna.

2. Such notices shall not usually be issued until ten days after the arrear has accrued.

3. The costs of issuing notices of demand shall be leviable in the shape of a fixed fee of four annas for each notice, if the amount of the arrear does not exceed Rs. 5 and eight annas in any other case.—*Note: By G. R. 1823 of 25-5-1923, these fees are doubled.*

4. The Collector, or the Assistant, or Deputy Collector in charge of a Taluka may, at his discretion, remit the fee in any case if it shall appear to him that its levy will occasion undue hardship. The Mamlatdar or Mahalkari may remit the fee in any case in which it is charged by mistake.

5. Notwithstanding anything contained in the foregoing rules, in the Talukas of Karwar, Askola and Honavar and the Petha of Bhatkal in the Kanara District where an order has been passed under s. 87 for payment of rent or land revenue and such rent or land revenue is not paid within 10 days of passing such order, a notice shall issue as prescribed in rule and a notice-fee of half an anna in the rupee shall be levied on the amount recovered in pursuance of such notice.

Provided that this rule shall not apply to assistance suite by Inamdars to recover survey assessment in alienated villages of the aforesaid talukas and petha in which a survey settlement has been introduced and survey assessments are collected by hereditary village officers.

Indiscriminate issue of notices is to be avoided as much as possible, as it is apt to be considered a great proof of difficulty in collecting the revenue.—*G. R. 3813 of 15-4-1877.* Notices must only be issued with proper precautions to prevent any abuse of the system and any Talatis who would be found needlessly harassing the rayats will render themselves liable to punishment.—*G. R. 4438 of 23-8-1879.* The Commissioners should issue strict instructions warning the Talatis and Kulkarnis that if in any instance it is found that notices for the realization of Government demands have been unnecessarily or indiscriminately issued, the Talatis or Kulkarnis concerned will be very severely punished.—*G. R. 4921 of 26-3-1881.* When real poverty is the cause of a cultivator's failure to pay up his assessments regularly it is obviously inexpedient to add notice-fees to his other liabilities, as long as it can be avoided.—*G. R. 4551 of 3-11-1881.*

**Duties of Village Officers.**—It shall be the duty of the village officers to warn land holders verbally from time to time of the dates on which their instalments are due, and to use their influence in securing prompt payment without resort to notices of demand or other compulsory processes.—*Rule 119(a), The Bombay Land Revenue Rules 1921.*

Government have again and again invited the attention of all district officers to this important rule as it is hoped that by observing this the use of notices and coercive processes would become practically unknown.—*G. R. 7175 of 2-10-1893.*

**Issue of notice necessary before distraint under s. 153.**—It would be an extreme measure to issue a threat of forfeiture in every instance in which the occupant delays payment of assessment for a few days, and Government does not approve of the suggestion to dispense with notice under s. 152 and to issue a declaration of forfeiture under s. 153 in all cases in which a notice is necessary.—*G. R. 10724 of 31-10-1907.*

**Service of notice.**—A notice of demand under s. 152 may be served through the postal agency. But since practical difficulty is likely to arise if a notice sent by registered post is refused, the issue of a registered notice in such cases should be supplemented by the procedure prescribed in s. 191 of the Code, of affixing a copy of the notice to some conspicuous place on the land to which the notice refers.—*G. R. 5688/28 of 15-9-1930.*

**Notice Fees.**—The practice of charging fees only when the notices are actually served is not in accordance with the rules. The levy of fees for all notices issued, whether they are actually served or not, should be the practice. A notice should be held to be issued when it has been signed and dated.—*G. R. 954 of 31-1-1898 and G. R. 1194 of 16-2-1898.*

Inamdars, even if commissioned, cannot charge notice fees.—*G. R. 2901 of 1886.*

Permission has been given in parts of Kanara on the coast to levy notice fees in Assistance cases under s. 86 at the rate of half an anna per rupee (3½ p. c.) and to apply the proceeds to remunerate village officers employed in executing the processes.—*G. R. 4531 of 1911.*

[<sup>a</sup>] 153. The Collector may declare the occupancy [<sup>b</sup>] or alienated holding in respect of which an arrear of land revenue is due, to be forfeited to Government, and sell or otherwise dispose of the same under the provisions of sections 56 and 57, and credit the proceeds, if any, to the defaulter's accounts.

[<sup>a</sup>] As to the local repeal of section 153, see para. 4 of foot-note (a) on p. 1, *supra*.

[<sup>b</sup>] As to the local modification of the word "occupancy," see para. 5 of foot-note (a) on p. 1, *supra*.

[\*] Provided that the Collector shall not declare any such occupancy or alienated holding to be forfeited—  
 Proviso.

(a) unless previously thereto he shall have issued a proclamation and written notices of the intended declaration in the manner prescribed by sections 165 and 166 for sales of immoveable property, and

(b) until after the expiration of at least fifteen days from the latest date on which any of the said notices shall have been affixed as required by section 166.

#### Commentary

**Delegation of power under this section.**—Under the provisions of Administrative Order VIII the Collector can delegate the power to issue notices threatening forfeiture under s. 153, proviso (a) to Mamlatdars, etc.—*G. R. 5295 (14) of 1-4-1911.*

**The Proviso.**—The proviso was added to this section by Bombay Act VI of 1901, s. 16, in order to provide against the possibility of an occupancy or alienated holding being declared forfeited and disposed of without the fact coming to the knowledge of persons who might otherwise avail themselves of the remedies against forfeiture under ss. 80 and 81.—*Report of the Select Committee on Bill No IV of 1901. para. 6 (2). B. G. pt. V p. 250.*

**Instructions:** Forfeiture being a very severe and extreme form of compulsory process the Collectors should always keep themselves fully informed of the extent to which such measures were employed as also of the special reasons if any as to why they were necessitated.—*G. R. 5603 of 8-9-1901.* And when once a forfeiture is lawfully made it becomes absolute and there is no legal obligation on the Collector to cancel it even though the arrears be afterwards paid.—*G. R. 7855 of 31-8-1910.*

**Interpretation of Section.**—Under the survey settlement in force in this Presidency, land revenue assessment is fixed separately on each survey number and not collectively on all the survey numbers held by the occupant. Thus in a case where default was made in payment of land revenue in respect of 13 survey numbers held by a person in whose name they were shown in the record of rights, and the Mamlatdar issued a notice under s. 153 requiring the payment of land revenue and the local fund cess in respect of all the survey numbers and intimating that in default of payment the lands (only 4 of the 13 survey numbers) mentioned in the notice would be forfeited, the land revenue in respect of the four survey numbers mentioned in the notice was paid in time but that in respect of the other survey

[a] This proviso was added by Bom. VI of 1901, s. 16.

numbers was not paid, as the land revenue in respect of the 4 S. Nos. mentioned in the notice was paid, those S. Nos. were not the lands on account of which land revenue was in arrear, and they were, therefore, held not liable to forfeiture under s. 153.

The position in such cases briefly stated is that where the assessment or part of it, on a survey number is in arrear, the arrear may be recovered under s. 150 (b) of the L. R. Code by forfeiture of that survey number, because, as a specific assessment was fixed upon it, that survey number is the occupancy (ss. 3, 17) in respect of which the arrears is due. The special feature of forfeiture is that it frees the occupancy from encumbrances (s. 56). The Collector can of course sell other immovable property belonging to the defaulter; for instance, other survey numbers entered in his name. But he cannot forfeit such other property and the property is sold subject to encumbrances.

In cases, therefore, in which the assessment is due on several survey numbers, the whole of these numbers should be entered in the notice as to be forfeited in default of payment, and the discretion allowed under rule of the rules under s. 214, L. R. Code should be exercised at the time when the final order is being passed. It should also be borne in mind that where a statute confers a right or power, with a direction that certain regulations or formalities shall be complied with, their non-observance would invalidate the whole proceedings. S. 153 of the L. R. Code makes the observance of the formalities therein mentioned imperative and leaves no option or discretion to the revenue authorities.—*G. R. D. 11876 of 3-10-1917.*

**Forfeiture.**—Ordinarily, forfeiture implies the loss of a legal right by reason of some breach of obligation and thus we find it said by Blackstone in Chapter XIV of his Commentaries, that "Forfeiture is a punishment annexed by law to some illegal act or negligence in the owner of lands, tenements or hereditaments, whereby he loses all his interests therein, and they go to the party injured as a recompense for the wrong which either he alone or the public together with him hath sustained," per Jenkins C. J. in *Amolak v. Dhondi*, 8 Bom. L. R. 360: I. L. R. 30 Bom. 466,

The Code does not define the consequences of a forfeiture in itself. Ordinary legal signification should be given to the word "forfeiture" In *Amolak v. Dhondi*, 8 Bom. L. R. 360, the High Court has laid down that the land, after forfeiture and disposal otherwise than by sale, remains subject to the control of equities arising out of the conduct of the parties to cases arising under s. 56, L. R. Code. In that case lands in possession of a holder under a mortgage were forfeited for non-payment of assessment by the khatedar. Subsequently those lands were re-granted by Government to the holder. On question arising as to the relations between the original mortgagee and holder, it was laid down that when arrears of assessment are levied by sale, then s. 56 of the L. R. Code empowers the Collector to sell, "freed from all tenures, incumbrances and rights created by the occupant.....or any of his predecessor-in-title or in any wise subsisting as against such

occupant."Should the Collector otherwise dispose of the occupancy, the section affords no such protection, and the legal relations must be determined by reference to the ordinary law. So judged, the effects of a forfeiture and subsequent acquisition of the forfeited property are subject to the control of equities arising out of the conduct of the parties.

**Summary of provisions relating to forfeiture:** S. 56 declares a defaulter's holding liable to forfeiture. S. 153 lays down that when default is made the Collector may declare the occupancy or alienated holding to be forfeited to Government. When forfeiture has been thus effected, s. 57 empowers the Collector to take immediate possession of the land. Ss. 56 and 153 next authorize the Collector to sell the holding (occupancy or alienated holding) or otherwise dispose of it under rules or orders made in this behalf by Government under s. 214 (e); If the forfeited holding (occupancy or alienated holding) is sold, the proceeds must be credited to the defaulter's account (s. 153), and the surplus, if any, over and above the expenses of the sale and the amount of the arrears must be paid to him (s. 183). If the forfeited holding is not sold it remains, nevertheless, forfeited and can be disposed of either at once or at any subsequent time in such manner as the Collector, subject to the rules or orders of Government, thinks fit. S. 57 empowers the Collector to place the purchaser or other person entitled to hold the forfeited holding in possession. If a forfeited holding (occupancy or alienated holding) is not put up for sale, or if it is put up for sale and is not sold, so that it yields no proceeds, the arrear due by the defaulter is still recoverable by any of the means allowed by Chapter XI. In every case of default of payment of arrears of land revenue the holding should be forfeited.—*G. R. 3786 of 21-7-1880.*

**Local fund cess and provisions of s. 153.**—Although local fund cess is recoverable as an arrear of land revenue, it is not land revenue which is due in respect of an occupancy or alienated holding. Therefore an occupancy or alienated holding cannot be forfeited for recovery of arrears of local fund cess.—*G. R. 3673/28 of 28-8-1930.*

**Watan lands and forfeiture:** Watan land is "alienated land" within the meaning of s. 2 (19) of the L. R. Code, and when an arrear of land revenue is due in respect of any such alienated holding, the Collector has, under this section, power to declare such lands forfeited to Government. *G. R. 3016 of 10-6-1890.* These provisions apply to all alienated lands and in every case of default of payment of arrears of land revenue the holding should be forfeited.—*G. R. 3786 of 21-7-1880.*

**Forfeiture illegal while attachment under s. 159 exists:** Talukdari villages fall under the description of "alienated holding" as defined by the Code, and hence where a Talukdari village was attached under s. 159 for arrears of land revenue, an order of forfeiture under s. 153 was held to be illegal so long as the attachment remains in existence.—*Samaldas v. Secretary of State, I. L. R. 16 Bom. 453.*

**Sale without declaration of forfeiture under s. 153.**—If a holding of a defaulter is sold for default of payment of assessment and the sale is duly confirmed by the Collector, it is not invalid and illegal simply because there is not on record a declaration of forfeiture by the Collector prior to the sale.—*Ganapati v. Gangaram*, I. L. R. 21 Bom. 381.

**Forfeiture by a Saranjandar:** Forfeiture by Government only is recognised by the Code. Hence if lands are sold by a *Saranjandar* for default to pay the revenue due to him they will be sold subject to the lien of others if any and the jurisdiction of Civil Courts to decide such claims or liens is not taken away by s. 4 (c) of the Revenue Jurisdiction Act (Act X of 1876)—*Mahadu v. Lakshman*, I. L. R. 17 Bom. 681.

**Suit to set aside a forfeiture: computation of period of limitation.**—For failure to pay arrears of assessment, the plaintiff's land was forfeited by the Collector on 26-5-1911, after which he applied first to the Collector and then to the Commissioner to set aside the order. Eventually he filed a suit on 14-10-1915 for a declaration that the proceedings held by the revenue authorities in respect of the forfeiture were illegal and *ultra vires*.

*Held*, that the suit was barred by limitation, since if the plaintiff wished to have a decision of the Court upon the legality or illegality of the order of forfeiture, he was bound to put his plaint on the file within one year from 26-5-1911 under s. 11 of the Revenue Jurisdiction Act. It cannot be argued that if the party aggrieved is appealing to the revenue authorities, that time should be excluded.—22 Bom. L. R. 212; I. L. R. 44 Bom. 451.

**Payment of money under protest when notice under s. 153 was issued.** **Period of limitation for suit to recover money paid.**—In 1911-12, the Court of Wards, representing the estate of a minor Jahagirdar, served a notice of demand upon the plaintiffs, permanent tenants, calling upon them to pay a higher rent or assessment. Nothing further happened till 1916, when the Collector, on behalf of the Court of Wards, issued under s. 153 L. R. Code, a notice asking the plaintiffs to pay the arrears of the increased rent and threatening to forfeit the holding in case of non-payment. The plaintiffs paid the amount under protest in 1919, and sued in 1920 to recover the amount so paid. The defendant having contended that the suit was barred by limitation:—

*Held* that the suit was within time, for although the fact that the demand for increased payment so made might have given rise to a cause of action to enable the plaintiff to seek for a declaration that the particular demand was unauthorized, it did not affect their right to file the present suit in which the relief claimed was on a different cause of action arising from the payment under protest made by them under s. 153 of L. R. Code.—*Suryajirao v. Sidhanath*, 27 Bom. L. R. 645.

**Writing off irrecoverable arrears:** Collectors have the power of authorizing Prant Officers selected by name to write off irrecoverable arrears of land revenue up to Rs. 25 in each case.—*G. R. 6042 of 3-4-1922*.

**Note:** See commentaries to s. 56.

Distrain and sale of defaulter's moveable property.

154. The Collector may also cause the Defaulter's moveable property to be distrained and sold.

Such distraints shall be made by such officers or class of officers as the Commissioner under the orders of Government may from time to time direct.

By whom to be made.

#### Commentary

**Delegation of the Collector's power under this section.**—According to Administrative Order VIII the Collector may delegate the power to distrain and sale moveables in unalienated villages under this section to Mamltdars, etc.—*G. R. 5054 of 31-8-1891.*

**Persons who can execute the distraints.**—Distraints under this section can be executed by Taluka Karkuns, Kulkarnis, Talatis and Patels. But they should be persons who are able to read and write. In special cases, however, the warrant may be directed by the Collectors and their assistants to any person whom they consider competent to execute it.—*G. R. 7858 of 23-12-1881.* In Sind the Tapedars and Munshis may make distraints under this section provided they are able to read and write.—*G. R. 3396 of 13-6-1891.* And no warrant is necessary to enable a Tapedar or a Munshi who can read and write and who is acting under the orders of the Collector or the Mahalhari to distrain.—*Emp. v. Gulabrai, A. I. R. 1921, (Sind 51).*

**No specific form of warrant.**—As a matter of fact there is no provision in the Code which requires any standard or prescribed form of warrant for distraint. Nor is such a form necessary or expedient for use by revenue officers. And the order of distraint may even take the form of an ordinary order in the course of correspondence.—*G. R. 9401 of 21-12-1883 and G. R. 1302 of 13-8-1890.*

**Property that can be distrained under this section.**—It has been held in *Gangaram v. Dinkar, 27 Bom. 592*, that this section will apply only when the distrained property is the moveable property of the defaulter and the burden of proving this lies upon the officer who effects the seizure. It is now well established that cash and particularly currency notes (being moveable property and liable to sale) may be distrained and sold under this section. *Emp. v. Gulabrai, A. I. R. 1921 (Sind 51); 83 I. C. 899.* Ornaments also can be distrained and sold in the same way. *Dalchand v. Gulabhai, 18 Bom. L. R. 223.* But, where account books were seized by a Mamltdar in order to ascertain the liability of the owner to pay income-tax it was held that the seizure was authorized and the Mamltdar was liable to pay damages for wrongful seizure.—*Dalchand v. Gullabhai, 18 Bom. L. R. 223.*

**Seizure of property.**—A seizure for distraint of property under this section may be either actual or constructive. It is not necessary that the goods must be actually touched or handled. Thus where a Mamlatdar made a declaration and a panchuama that he had taken possession of certain buffaloes belonging to defaulters and exercised the right of possession by forbidding the defaulters from removing them, and when the defaulters removed the buffaloes, it was held that the Mamlatdar had made a valid seizure and was in possession and hence the defaulters were guilty of the offence of theft.—*Emp. v. Lallo Waghji*, 21 Bom. L. R. 251 : 43 Bom. 550.

**Rules regarding entry into premises for the purposes of distraint.**—By *G. R. R. D. 4112 of 11-11-1930* government have made the following rules for the purpose. The resolution says : “In exercise of the powers conferred by sub-section (1) of section 214 of the Bombay Land Revenue Code, 1879 (Bom. V of 1879), the Governor in Council is pleased to make the following rules regulating entry into any premises by any officer empowered under s. 154 of the said Code for the distraint of moveable property of a defaulter :—

1. **Service of Notice.**—Where an officer in exercise of his power of distraint under s. 154 of the Bombay Land Revenue Code, 1879, intends to enter any building used as a human dwelling, the notice required by the proviso to s. 200 shall be served by presentation to the defaulter or to any adult male member of his family present in the building, or failing either of the aforesaid methods, by being affixed to any prominent part of the building.

2. **Breaking open doors.**—An officer in exercise of the aforesaid power of distraint may break open, at any time between sunrise and sunset, the gate of any private street or any outer or inner door or window of any premises, if he has reasonable grounds for believing that such street or premises contain any property liable to distraint as aforesaid, and if after notifying his authority and purpose and duly demanding admittance, he cannot otherwise obtain admittance ;

Provided that such officer shall not enter, or break open a door or window of any apartment in the actual occupation of a woman who according to custom does not appear in public, until he has given notice to such woman that she is at liberty to withdraw and has given her every reasonable facility for withdrawing.

3. **Forcing open of receptacle.**—An officer in exercise of the aforesaid power of distraint may break open any closed receptacle found on any premises entered in exercise of the said power, if he cannot otherwise, after demand duly made from the persons, if any, occupying the said premises to open the receptacle, obtain inspection of the contents of the same.

4. **Value of property distrained.**—The estimated sale proceeds of the property distrained shall be as nearly as possible equal to the amount in respect of which the defaulter has made default.

5. **Inventory.**—An officer in distraining any property from any premises shall make an inventory thereof ; and shall supply a copy of the inventory



to the defaulter, or to any adult male member of his family present; if neither the defaulter nor any such member is present, the officer shall affix a copy of the inventory to a prominent part of the premises from which distraint has been made.

**155.** The Collector may also cause the right, title and interest of the defaulter in any immoveable property other than the land on which the arrear is due to be sold.

Sale of defaulter's  
immoveable prop-  
erty.

#### Commentary

*Difference between a forfeiture under s. 153 and sale under this section.*—It is only the occupancy or alienated holding in respect of which an arrear of land revenue is due, that can be forfeited under s. 153. Whereas it is only the right, title and interest of the defaulter in any immoveable property other than the land on which arrear is due that can be sold under s. 155. The forfeiture and sale of any other land but the occupancy or alienated holding in respect of which the arrear of land revenue is due is not legalised by any of the provisions in the Land Revenue Code relating to forfeiture. *G. R. 4587 of 30-8-1899*. Secondly, in the case of a sale under s. 155 encumbrances created by the occupant remain, whereas in the case of a forfeiture and sale under s. 153 they are extinguished.—*G. R. 6391 of 8-8-1890*.

The effect of a sale under this section is the same as that of a sale held by a Civil Court in execution of its decree. If the land is not sold owing to want of bidders it is only kept under attachment but it cannot be kept waste nor can the occupant be evicted.

*Section 155 and dues of Co-operative Societies.*—The immoveable property of a defaulter which is put up for sale under the Land Revenue Code is not attached in execution and cannot therefore be transferred to a Co-operative Society for recovery of its dues under s. 59 (2) of the Bombay Co-operative Societies Act, 1925. A Co-operative Society should in such cases offer an adequate bid and purchase the right, title and interest of the defaulter in the property. In special cases, however, in order to set an example, the Collector may in the absence of outside bidders transfer the right, title and interest of the defaulter in immoveable property to a Co-operative Society on a purely nominal bid.—*G. Rs. 4373/28 of 23-4-1930, 8-12-1930 and 13-8-1932*.

*Note.*—For a further discussion on the Commentary on the Bombay Co-operative Societies Act with Rules by the writer.

**156.** All such property as is by the Civil Procedure Code exempted from attachment or sale in execution of a decree, shall also be exempt from distraint or sale, under either of the last to preceding sections.

Exemption from  
distrain and sale.

V of 1908.

The Collector's decision as to what property is so entitled to exemption, shall be conclusive.

#### Commentary

**Delegation of Powers.**—According to Administrative Order VIII the Collector may delegate the power to determine what property is exempt under this section to Mamlatdars, etc.—*G. R. 4347 (17) of 1902.*

**Property exempted by the Civil Procedure Code**—S. 60 (1) proviso lays down what property is exempt from attachment and sale in execution of a decree. It mentions the following particulars:—

(a) The necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;

(b) tools of, artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;

(c) houses and other buildings (with materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him;

(d) books of account;

(e) a mere right to sue for damages;

(f) any right of personal service;

(g) stipends and gratuities allowed to pensioners of the Government, or payable out of any service family pension fund notified in the Gazette of India by the Governor-General in Council in this behalf, and political pensions;

(h) allowances (being less than salary) of any public officer or of any servant of a railway company or local authority while absent from duty;

(i) the salary or allowances equal to salary of any such public officer or servant as is referred to in clause (h), while on duty, to the extent of—

(i) the whole of the salary, where the salary does not exceed forty rupees monthly;

(ii) forty rupees monthly, where the salary exceeds forty rupees and does not exceed eighty rupees monthly; and

(iii) one moiety of the salary in any other case;

Provided that where the decree-holder is a society registered or deemed to be registered under the Co-operative Societies Act, 1912, and the judgment-debtor is a member of the society, the provisions of sub-clause (i) and (ii) shall be construed as if the word 'twenty' were substituted for the word 'forty' wherever it occurs and the word 'forty' for the word 'eighty'.

(j) The pay and allowances of persons to whom the Indian Articles of War apply;

(k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1897, for the time being applies in so far as they are declared by the said Act not to be liable to attachment;

(l) the wages of labourers and domestic servants whether payable in money or in kind;

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(n) a right to future maintenance;

(o) any allowance declared by any law passed under the Indian Councils Acts, 1861 and 1892, to be exempt from liability to attachment or sale in execution of a decree; and

(p) where the judgment-debtor is a person liable for the payment of land-revenue, any moveable property which under any law for the time being applicable to him is exempt from sale for the recovery of an arrear of such revenue.

**Explanation.**—The particulars mentioned in clauses (g), (h), (i), (j), (l) and (o) are exempt from attachment or sale whether before or after they are actually payable.

**Note.**—It should here be noted that no kind of agricultural produce has been exempted from attachment under s. 61 of the Civil Procedure Code.

**Exemption of materials of houses belonging to agriculturists.**—The materials of a house or other building belonging to an agriculturist are exempted from distraint and sale under s. 156 of the Bombay Land Revenue Code.—*G. R. 2179 of 26-3-1907.*

**Exemption of houses dwelt in by agriculturists.**—The expression 'houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him' used in s. 60(c) of the Civil Procedure Code is intended to exempt from attachment and sale the house dwelt in by an agriculturist as such and the farm buildings appended to such dwelling. The exemption does not extend to other houses not in the physical possession of an agriculturist owner, as a dwelling appropriate or convenient for his calling. The exemption extends, after the death of an agriculturist debtor, to his representative who occupies the house in good faith as an agriculturist, and who does not take it up merely with the view of defrauding his creditor.—*Radhakisan v. Balwant Ramji*, 7 Bom. 530, see also *Jiras v. Hira*, 12 Bom. 366.

**157.** At any time after an arrear becomes due, the defaulter may be arrested and detained in custody for ten days in the office of the Collector or of a Mamlatdar or Mahalkari,

Arrest and detention of defaulter.

unless the revenue due together with the penalty or interest and the costs of arrest and of notice of demand, if any, have issued and the cost of his subsistence during detention, is sooner paid.

If, on the expiry of ten days, the amount due by the defaulter is not paid, then, or if the Collector deem fit on any earlier day, he may be sent by the Collector with a warrant, in the form of Schedule C, for imprisonment in the civil jail of the district:

Imprisonment in Civil Jail.  
Defaulters not to be detained in custody longer than debtors may be detained by the Civil Court.

Provided that no defaulter shall be detained in imprisonment for a longer period than the time limited by law in the case of the execution of a decree of a Civil Court for a debt equal in amount to the arrear of revenue due by such defaulter.

### Commentary

**Principle**—As has been shown elsewhere that previously land had no value and therefore recovery of land revenue could not be made by sale of land. The land revenue was pitched high and the method resorted to was to use violence and illtreatment and as a last resort not by selling the land but the owner into slavery. It will actually be found from selections from Government Records that slaves figured in the first British census; these were obviously slaves not captured in war, but slaves sold for arrears of land revenue. So too Moreland has shown that the Raja of a certain state kept his own fleet of ships to take these slaves annually to the spice Islands for sale. The power survives in this section of the Land Revenue Code for putting the defaulter in civil jail.— *See p. 108 of facts and fallacies about the Bom. L. R. system by Anderson, (1929 ed).*

**Power of Arrest by whom to be exercised**.—Government are not in favour of arrest of defaulters except in extreme cases. The power of arrest should be exercised by the Collector or the Assistant or Deputy Collector in charge of a taluka to whom the power has been specially delegated by the Collector.—*G. R. 1743 of 1-3-1883.*

**Imprisonment of defaulter: Limits and conditions of detention in civil jail in execution of a decree**.—

(1) Every person detained in the civil prison in execution of a decree shall be so detained,—

(a) Where the decree is for the payment of a sum of money exceeding fifty rupees, for a period of six months, and,

(b) in any other case, for a period of six weeks:

Provided that he shall be released from such detention before the expiration of the said period of six months or six weeks, as the case may be,—

(i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or

(ii) on the decree against him being otherwise fully satisfied, or

(iii) on the request of the person on whose application he has been so detained, or

(iv) on the omission by the person, on whose application he has been so detained, to pay subsistence allowance:

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii) without the order of the Court.

(2) A judgment debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison.—S. 58 of the Code of Civil Procedure (V of 1913).

Note: It should be noted that in the case of a detention under s. 157 L. R. Code, the period of 10 days mentioned in para 1 of that section is to be computed as part of the period of 6 months or 6 weeks as the case may be. And the subsistence allowance is to be paid by the Mamlatdar which should be recovered from the defaulter along with the arrears, notice fees, fine and costs of arrest.

Govt's Priority over pledgee's rights —S. was indebted to the Govt. on account of unpaid instalments of a foreign liquor licence, but the stock of wines was already pledged to P. Bank. The Judicial Commissioner of Sind held that Government had priority over P. Bank as pledgee. This section was applicable to this case although the priority of Government as stated in this section is over any claim against any land or holder thereof.—*People's Bank of Northern India v. Shabani Brothers*, A. I. R. 1930 Sind 185.

An agriculturist debtor may be arrested and imprisoned under this section.—S. 59 (1) (b) of the Bombay Co-operative Societies Act states that the orders passed by liquidators, arbitrators, etc., may be executed according to the law and under the rules for the time being in force for the recovery of the arrears of land revenue on an application being made to the Collector, etc. Govt. in G. R. R. D. 8237/25 of 15-7-1932, have laid down that it is open to a Society after obtaining the prescribed certificate of the Registrar or the Assistant Registrar to apply to the Collector for the recovery of any sum due under such an order by any of the processes prescribed in s. 150 of the Bom. L. R. Code. 1879; that an application for the arrest and imprisonment of the defaulter under ss. 157 and 158 of the Code is clearly tenable; that there is no provision in the Bom. L. R. Code or the Rules framed thereunder

that an agriculturist cannot be arrested and imprisoned under ss. 157 and 158 of the Code; that none of the orders referred to in s. 59(1) of the Co-operative Societies Act is a decree for money and therefore s. 21 of D. A. R. Act has no application in such an execution. Government, however, have directed by the same *G. R. (i. e. 8281/28 of 18-1-1932)* that arrest and imprisonment of an agriculturist defaulter should be effected only in exceptional cases.

**Notes.**—To hold the view that an agriculturist debtor against whom action is being taken under s. 59 (1) (b) of the Bombay Co-operative Societies Act may be arrested and detained under s. 157 of the Code would, in my opinion, amount to putting too technical a construction upon the object of the Legislature in framing s. 59 (1) (b). In enacting cl. (b) of s. 59(1) the Legislature wanted to invest the powers under that clause with a view to expediate the recovery procedure. It was not the intention to allow Revenue officers to use the powers of arrest and imprisonment under ss. 157 and 158 of the Bom. L. R. Code for the purposes of a Co-operative Society. Those powers may be necessary for the purposes of recovery of Crown debts due to Government or in other words for recovery of sums due on account of land revenue which is a Crown demand.

Now, the debt due to a Co-operative Society cannot by any means be treated as a Crown debt or a Government demand. The dictum that 'It is presumed that the legislature does not intend to deprive the Crown of any prerogative, right or property, unless it expresses its intention to do so in explicit terms or makes the inference irresistible' has therefore, no application. The debts due to Co-operative Societies stand on no better footing than ordinary debts (see in the matter of *Jan Mahamed Ibrahim*, A. I. R. 1930 Sind, 263) and there is no reason why any extraordinary procedure should be allowed in their cases. Obviously in enacting ss. 157 and 158 of the Bom. L. R. Code in 1879 the Legislature had in view only the demands due to Government. If s. 150 of the Bom. L. R. Code is pushed to all its logical consequences the Collector can even sell off immovable property belonging to an agriculturist.

Great hardship is being caused by the provision in the Co-operative Laws that disputes between a Co-operative Society and its members, etc., (the majority of whom are bound to be agriculturists) must be referred to arbitration, etc. There are also the uncontrolled powers given to a liquidator appointed in the case of Co-operative Societies. In addition to all these if Co-operative Societies through Revenue Officers are allowed to put agriculturists in prison, practically all the difference between a Co-operative Society and a Government Department will disappear. A Co-operative Society will be looked upon as a Government concern financed, controlled, managed and conducted by Government only.

**N. B.**—For further discussion see commentaries on the *Dekkhari Agriculturists' Relief Act, 1879* and the *Bombay Co-operative Societies Act, 1925*, by the writer.

158. The commissioner may, with the sanction of the Governor in Council, from time to time, declare by what officers, or class of officers, the powers of arrest conferred by section 157 may be exercised, and also fix the costs of arrest and the amount of subsistence-money to be paid by Government to any defaulter under detention or imprisonment.

Power of arrest by whom to be exercised.

Commentary

Rules relating Arrest and imprisonment of defaulters.—(1) The powers of arrest conferred by s. 157 may be exercised by Collectors and by any Assistant or Deputy Collector in charge of Talukas specially empowered by the Collector in this behalf and by subordinate officers acting in each case under the express authority of a Collector or of any such Assistant or Deputy Collector.

(2) The costs of arrests shall be according to the following scale.

	Rs.	a.
If the amount for the recovery of which the arrest is made, does not exceed Rs. 25	0	8
exceeds Rs. 25 but does not exceed Rs. 100	1	0
entitled to def. " " " "	500	2 0
-The Collector of Aho...	1,000	4 0
" " " "	5,000	8 0
plus profits of the		16 0

(3) The subsistence of arrest conferred by Assistant or Deputy limits, viz:—

	Not Less than	Not more than.
the cost of such Government to any defaulter by the Collector, or by the Assistant or Deputy ment, including the arrest within the following limits, viz:—		
and the cost of the	Rs. a.	Rs. a.
the same be introduc	1 0	1 8
If the default [ ] shall be applied		
If the default of Portugal	0 8	1 0
The village or st	0 3	0 12
In any other		

—See G. N. 2 of 18-10-1911; attached. of shall be R.N. 8714 of 18-2-1911; G. N. 2283 of the manag's.

159. prior holder on a respect of which an arrear is ation to the Collasts of an entire village, or of a defaulter's twelve years from a village, and the adoption of and take it management tent: ae other processes before specified

ed inexpedient, the Collector may, with the previous s. and dis of the Commissioner, cause such village or share of a .illage to be attached and taken under





### Commentary

**Modification.**—S. 160 when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Pauch Mahals to which the Gujarat Talukdars' Act ( Bom. VI of 1888 ) extends, is subject to modification as per s. 33A (2) g, of the said Act.

**A khot's right to sue for possession of khoti Nisbat lands.**—A watandar khot, whose lands are under attachment by Government under s. 160, L. R. Code is competent to sue for possession of khoti Nisbat lands which are forfeited to him on account of their alienation by the tenant without his consent. The temporary attachment of a village by Government does not affect the rights which the khot has independently of the right of management, such as giving of consent to alienation of khoti Nisbat lands by tenants. There is a presumption that the khot's permission to an alienation of khoti Nisbat lands is necessary in any khoti village in the Kolaba District.—*Parashottam v. Ganapati*, 28 Bom. L. R. 750.

**Extent of Collector's demand.**—The Collector of Ahmedabad attached the village G. and undertook the management of the estate of the Thakore of G. under s. 144 L. R. Code. The plaintiffs were the tenants of the Thakore of G. and it was held that as tenants they were liable to pay to the Collector the stipulated rent only. And that, the Collector under s. 160, L. R. Code was not entitled to demand anything more from them, as for example Local Fund.—*The Collector of Ahmedabad v. Moan*, 1892 P. J. 323.

**161.** All surplus profits of the lands attached, beyond Applications of surplus profits. the cost of such attachment and management, including the payment of the current revenue, and the cost of the introduction of a revenue survey, if the same be introduced under the provisions of section 111 [c] shall be applied in defraying the said arrear.

[c] **162.** The village or share of a village so attached shall be released from attachment, and Restoration of village so attached. the management thereof shall be restored to the superior holder on the said superior holder's making an application to the Collector for that purpose at any time within twelve years from the first of August next after the attachment:

[a] Words repealed by Bom. III of 1886 are omitted.

[b] As to the local modification of section 162, see paras. 4 and 5 of footnote (a) on p. 1, *supra*.

if at the time that such application is made it shall appear that the arrear has been liquidated;

or if the said superior holder shall be willing to pay the balance, if any, still due by him, and shall do so within such period as the Collector may prescribe in that behalf.

The Collector shall make over to the superior holder the surplus receipts, if any, which have accrued in the year in which his application for restoration of the village or share of a village is made after defraying all arrears and costs; but such surplus receipts, if any, of previous years shall be at the disposal of Government.

#### Commentary

**Modification:** When applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act (Bom VI of 1888) extends, or to any village in the Districts of Kolaba and Ratnagiri to which the Khoti Settlement Act (Act I of 1880) extends, this section is subject to certain modifications.—See *s.33A (2)g of Bom. VI of 1888* and *s.39 of Bom. I of 1880*.

**Rights of khot in a khoti Village:** The position of a khot in the villages to which the Khoti Settlement Act (Bom. I of 1880) has been extended, is that of a superior holder, and in the event of attachment of this village his rights in respect of khoti profits, on his resuming the management of the village would be regulated by *cl. (1)* of this section. Under this section the village, or share of a village so attached, shall be released from attachment, and the management thereof shall be restored to the superior holder on the said superior holder's making an application to the Collector for that purpose at any time within 12 years from 1st August next after the attachment. The Collector shall make over to the Superior holder, the surplus receipts, if any, which have accrued in the year in which his application for restoration of the village, or share of a village is made, after defraying all arrears and costs. But such surplus receipts, if any, of previous years shall be at the disposal of Government. But this rule does not hold good where the village attached is one in the Kolaba District to which the khoti Settlement Act has not been extended, unless the khots therein are Saundi or Vataandar khots.—*Bhikaji v. Nizam Ali Khan*, 8 Bom. 525.

**NOTE:** Surplus receipts accrued in the year in which application for restoration is made.—It was suggested during the debate in the Council by Hon. Mr. Mandik that if a village was attached simply on account of arrears

of revenue and the owners (for instance khots) applied for restoration there was no reason why they should not in addition to the surplus proceeds of one year have also the surplus of the previous years. The Council were asked to pass a new law limiting the right of restoration to 12 years, where as formerly a man could ask to be reinstated after 36 years: and if they were going to limit the right of restoration they might well consent to the return of the surplus, if any of all the years of attachment.

[\*] 163. If no application be made for the restoration of a village or portion of a village so attached within the said period of twelve years, or if, after such application has been made, the superior holder shall fail to pay the balance, if any, still due by him within the period prescribed by the Collector in this behalf, the said village or portion of a village shall thenceforward vest in Government free from all incumbrances created by the superior holder or any of the sharers or any of his or their predecessors in title, or in any wise subsisting as against such superior holder or any of the sharers, but without prejudice to the rights of the [†] persons in actual possession of the land [‡].

Village, etc., to vest in Government if not redeemed within twelve years.

164. Any defaulter detained in custody, or imprisoned, shall forthwith be set at liberty, and the execution of any process shall, at any time, be stayed, on the defaulter's giving before the Collector or other person nominated by him for the purpose, or if the defaulter is in jail, before the officer in charge of such jail, security in the form of Schedule D, satisfactory to the Collector, or to such other person or officer.

But all processes to be stayed on security being given.

[a] As to the local repeal of section 163, see para. 5 of foot-note (a) on p. 1. *supra*.

[b-b] These words were substituted for the original words "actual occupants of the soil" by Bom. IV of 1913, a. 76.

And any person against whom proceedings are taken under this chapter may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment the proceedings shall be stayed.

Or on amount demanded being paid under protest.

**165.** When any sale of either moveable or immoveable property is ordered under the provisions of this chapter, the Collector shall issue a proclamation, in the vernacular language of the district, of the intended sale, specifying the time and place of sale, and in the case of moveable property whether the sale is subject to confirmation or not, and, when land paying revenue to Government is to be sold, the revenue assessed upon it, together with any other particulars he may think necessary.

Such proclamation shall be made by beat of drum at the head-quarters of the taluka, and in the village in which the immoveable property is situate, if the sale be of immoveable property; if the sale be of moveable property the proclamation shall be made in the village in which such property was seized, and in such other places as the Collector may direct.

**166.** A written notice of the intended sale of immoveable property, and of the time and place thereof, shall be affixed in each of the following places, *viz.*, the office of the Collector of the district, the office of Mamlatdar or Mahalkari of the taluka or mahal in which the immoveable property is situate, the chavdi or some other public building in the village in which it is situate, and the defaulter's dwelling-place.

In the case of moveable property, the written notice shall be affixed in the Mamlatdar's or Mahalkari's office, and in

the chavdi or some other public building in the village in which such property was seized.

The Collector may also cause notice of any sale whether of moveable or immoveable property to be published in any other manner that he may deem fit.

**Commentary**

**Delegation of power to Mamlatdar, etc.**—Administrative order VIII states that the Collector may delegate all powers in respect of such sales as he has himself power to make under s. 106 (3) to Mamlatdar, etc.—*G. R. 5295 (78-9) of 1911.*

**Sale by whom to be made.** **167.** Sales shall be made by auction by such persons as the Collector may direct.

**No such sale shall take place on a Sunday or other general holiday recognized by Government, nor until after the expiration of at least thirty days in the case of immoveable property, or seven days in the case of moveable property, from the latest date on which any of the said notices shall have been affixed as required by the last preceding section.**

**Postponement of sale.** The sale may from time to time be postponed for any sufficient reason.

**168.** Nothing in the last three sections applies to the sale of perishable articles. Such articles shall be sold by auction with least possible delay, in accordance with such orders as may from time to time be made by the Collector either generally or specially in that behalf.

**169.** If the defaulter, or any person on his behalf, pay the arrear in respect of which the property is to be sold and all other charges legally due by him at any time before the day fixed for the sale to the person appointed under section 146 to receive payment of the land revenue due, or to the officer appointed

to conduct the sale or if he furnish security under section 164, the sale shall be stayed.

#### Commentary

**Giving security does not affect forfeiture**—Although proceedings could be stayed under ss- 164 and 169 if security were given or the arrears paid, the forfeiture would not thereby be cancelled. The holding of a defaulter cannot be sold unless it is first declared forfeited.—*G. R. 4891 of 16-9-1880.*

It should be noted that under this section a defaulter is at liberty to pay the arrears in respect of which the land is to be sold, *at any time before the day fixed for the sale.* If he pays the arrears after the day fixed for the sale, the amount of arrears should be refunded to him.—*G. R. 6130 of 20-11-1880.*

The expenses of sales are, however, to be recovered even though the sales have not been completed on account of the arrears due having been paid up on the day fixed for the sale.—*G. R. 9482 of 3-12-1892.*

**170.** Sales of perishable articles shall be at once finally concluded by the officer conducting such sales. All other sales of moveable property shall be finally concluded by the officer conducting such sales, or shall be subject to confirmation, as may be directed in orders to be made by the Collector either generally or specially in that behalf. In the case of sales made subject to confirmation, the Collector shall direct by whom such sales may be confirmed.

Mode of payment for moveable property when sale is concluded at once.

**171.** When the sale is finally concluded by the officer conducting the same, the price of every lot shall be paid for at the time of sale, or as soon after as the said officer shall direct, and in default of such payment the property shall forthwith be again put up and sold. On payment of the purchase-money the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute as against all persons whomsoever.

Ditto when sale is subject to confirmation.

**172.** When the sale is subject to confirmation, the party who is declared to the purchaser shall be required to deposit immediately twenty five per centum on the amount of

his bid, and in default of such deposit the property shall forthwith be again put up and sold. The full amount of purchase money shall be paid by the purchaser before sunset of the day after he is informed of the sale having been confirmed, or, if the said day be a Sunday or other authorized holiday, then before sunset of the first office day after such day. On payment of such full amount of the purchase-money, the purchaser shall be granted a receipt for the same, and the sale become absolute as against all persons whomsoever.

#### Commentary

*Effect of sale without forfeiture.*—It cannot be assumed that the Collector has declared under s. 153 the holding to be forfeited from the mere fact that, that would be the legal consequence of failure to pay assessment. If there has been no forfeiture, a mere sale does not extinguish existing incumbrances, not does it create an absolute title in the purchaser under s. 172.—*Govind v. Bhira*, 1895 P. J. 70.

*NOTES*—This section applies to moveable property only.

**173.** In all cases of sale of immovable property, the party who is declared to be the purchaser shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and sold.

**174.** The full amount of purchase-money shall be paid by the purchaser before sunset of the fifteenth day from that on which the sale of the immoveable property took place, or, if the said fifteenth day be a Sunday or other authorized holiday, then before sunset of the first office day after such fifteenth day.

#### Commentary

*Note*—The words 'shall be paid' in s. 174 and the words 'shall be resold' in s. 75 leave no option to accept the balance of 1 of the purchase money after the prescribed period.

*Payment before conclusion of sale.*—The period of 15 days for the payment of the balance of purchase-money should be counted from the date of

the conclusion of the sale by the Mamladar. The payment of a deposit of 25 p. c. to the karkum before the conclusion of the sale is an inequality.—*G. R. 808 of 4-2-1898.*

**175.** In default of payment within the prescribed period of the full amount of purchase-money, whether of moveable or immoveable property, the deposit, after defraying thereout the expenses of the sale, shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

**176.** If the proceeds of the sale, which is eventually made, be less than the price bid by such defaulting purchaser, the difference shall be recoverable from him by the Collector as an arrear of land revenue.

Effect of default.

Liability of purchaser for loss by re-sale.

#### Commentary

**Application to the section:** S. 176 relates only to a purchaser who makes default under s. 174. It cannot legally, be applied to the case of bidders who fail to deposit 25% of the amount of the bid. Under s. 173 a bid in such a case is null and void, and no penalty is provided by the L. R. Code for such a bid, nor is any needed, seeing that the only result is the delay of a few minutes in the completeness of a sale. A person who deliberately causes inconvenience by making a bid without intending to fulfil the conditions is liable to punishment under s. 185 of the Indian Penal Code.—*G. R. 6334 of 20-8-1895.*

**Recovery of deficit on re-sale: power of Manager under Sind Encumbered Estates Act:** The Manager, Encumbered Estates put up to auction the lease of certain lands under his management. The plaintiff's brother being the highest bidder, the lease was knocked down to him, and he having failed to take up the lease, the same was again auctioned by the Manager, on his account. The plaintiff's brother being dead at the time of the re-sale, the Manager issued a warrant for the recovery of the deficit on the re-sale from the plaintiff who paid the same under protest and filed a suit for its recovery.

It was held that under s. 10 of the Sind Encumbered Estates Act (XX of 1881) read with s. 176 of the L. R. Code, the Manager has the power of a Collector only for the purpose of recovering rents and profits due in respect of property under his management. The deficit on re-sale being merely damages for breach of contract, does not fall under the section and the warrant was, therefore, illegal.—*Bashomet v. the Manager Encumbered Estates in Sind. 2. S. L. R. 20.*



*Forfeiture of deposit and re-sale of property.*—In a case where at a revenue sale the auction purchaser failed to make full payment according to his bid, and hence the deposit made by him was forfeited to Government under s. 175 L. R. Code and the property was again put up to sale but no bidders appeared, it was decided that as there was no bidder at the second auction, no sale of property was effected and s. 176 was inapplicable. Hence the Collector cannot recover the balance from the defaulting purchaser inasmuch as no second sale was made. The Collector was therefore ordered to refund the amount (being  $\frac{1}{2}$  the of the amount of the former bid) which he had already recovered from the defaulting purchaser.—*G. R. 4779 of 5-7-1888.*

**177.** Every re-sale of property in default of payment of the purchase-money, or after postponement of the first sale, shall, except when such re-sale takes place forthwith, be made after the issue of a fresh notice in the manner prescribed for original sales.

**178.** At any time within thirty days from the date of the sale of immoveable property application may be made to the Collector to set aside the sale on the ground of some material irregularity, or mistake, or fraud, in publishing or conducting it;

but except as is otherwise provided in the next following section, no sale shall be set aside on the ground of any such irregularity, or mistake, unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof.

If the application be allowed, the Collector shall set aside the sale, and direct a fresh one.

**179.** On the expiration of thirty days from the date of the sale, if no such application as is mentioned in the last preceding section has been made, or if such application has been made and rejected, the Collector shall make an order confirming the sale: provided that, if he shall have reason to think that the sale ought to be set aside notwithstanding

that no such application has been made, or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside the sale.

#### Commentary

**Review of order annulling sale.**—A Commissioner or any Revenue Authority has no power to review his order annulling a sale held for arrears of Government revenue.—*Bajinath v. Nand Kumar*, 34, Cal. 677 (1907).

**180.** Whenever the sale of any property is not confirmed, or is set aside, the purchaser shall be entitled to receive back his deposit or his purchase-money, as the case may be.

Refund of deposit or purchase-money when sale set aside.

**181.** After a sale of any occupancy [a] or alienated holding has been confirmed, in manner aforesaid, the Collector shall put the person declared to be the purchaser into possession of the land [b] and shall cause his name to be entered in the [c] land records [c] as occupant [a] or holder in lieu of that of the defaulter, and shall grant him a certificate to the effect that he has purchased the [d] land to which the certificate refers.

On confirmation of sale purchaser to be put in possession.

Certificate of purchase.

#### Commentary

**Delegation of powers.**—According to Administrative Order VIII the Collector can delegate the power to put in possession and give certificate under s. 181, to Mamlatdars, etc.—*G. R. 5295 (80) of 1911*.

**Certificate of sale.**—A certificate of sale granted by a Revenue Officer (like one granted by a Civil Court) is liable to Stamp Duty. And it should be engrossed on impressed stamp papers.—*G. Rs. 3009 of 15-8-1880 and 6023 of 15-8-1883*. A copy of such certificate must be sent to the registering officer

[a] as to the local modification of the words "occupancy" and "occupant" see para. 5 of foot-note (a) on p. 1, *supra*.

[b] Words repealed by Bom. IV of 1913, s. 71, are omitted.

[c—c] These words were substituted for the original words "revenue records" by Bom. IV of 1913, s. 71.

[d] This word was substituted for the words "occupancy or alienated holding" by Bom. IV of 1913, s. 71.

within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situate for the purpose of being filed in that office.—*Cf. s. 89 (4) of the Indian Registration Act ( XVI of 1908 ).*

**When certificate to be granted.**—The certificate shall be granted only when the purchaser produces a stamped paper of the proper value according to the Stamp Act, and not otherwise.—*G. R. 1266 of 11-2-1885.*

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

#### Commentary

**Constructive.**—The provisions of this section are to be construed strictly and they do not bar a suit where the plaintiff, although originally a benamidar came honestly into possession.—*Rajhu v. Vishnu*, 5 Bom. L. R. 329.

This section provides that no suit shall lie against the certified purchaser on the ground that the purchase was made on behalf of the plaintiff. In other words, it is only in suit against the certified purchaser as defendant that such purchaser is to be conclusively deemed to be the real purchaser. But if the real owner is honestly and actually in possession, and a suit is brought by the certified purchaser as plaintiff against the real owner for possession or for rents and profits of the property of which he is the certified purchaser, the real owner may resist the suit on the ground that the certified purchaser was only a benamidar. A suit by such purchaser as plaintiff for a declaration that he purchased the property on his own behalf and not benami for another, is not barred under this section.

**183.** When any sale of moveable property under this chapter has become absolute, and when proceeds of sale. any sale of immoveable property has been confirmed, the proceeds of the sale shall be applied to defraying the expenses of the sale and to the payment of any arrears due by the defaulter at the date of the confirmation of such sale, and recoverable as an arrear of land revenue,

and the surplus (if any) shall be paid to the person whose property has been sold.

The expenses of the sale shall be estimated at such rates and according to such rules as may from time to time be sanctioned by the Commissioner under the orders of Government.

#### Commentary

**Application of the section:** This section applies to cases in which the land is forfeited and its disposal is by way of immediate sale. It has no application in cases in which the Collector forfeits the land and disposes of it by entering it as Government waste under s. 56.

What happens in such a case is that the Collector closes the account of the defaulter and remits the arrears payable by him. Hence if the land is subsequently sold, then all the sale proceeds go to Government, as it has become absolute owner of the land.

**Expenses of sale:** The expenses of a sale shall be taken to be two annas in the case of moveable property and four annas in the case of immoveable property or in either case  $\frac{1}{64}$ th of the amount, if any, realized by the sale whichever is the greater. Fractions of a rupee are to be neglected in calculating expenses. But by *G. R. 7323 of 25-6-1923* these expenses have been doubled.

**Remission or reduction of expenses:** Collectors are authorized to remit or reduce the amount of expenses of sale under this section.—*G. Rs. 6575 of 19-10-1900 and 5295 of 1-6-1911.*

**Position of Co-operative Societies:** When land held on restricted tenure and mortgaged to a co-operative society by its member passes into the Society's possession by default, the question is whether the society as a mortgagee can sale the land without the intervention of a Civil Court? The Land, after the award is made, will be disposed of in accordance with s. 59 of the Bombay Co-operative Societies Act, 1925.

Whether a defaulting member is entitled to the surplus which may accrue after the society's dues are paid from the sale proceeds or not? As the land can be disposed of on restricted tenure only, the society becomes either an absolute owner in the cases of a mortgage by conditional sale or an English mortgage, or an auction purchaser. In the former case, the society is legally entitled to all the money by sale by auction of the mortgaged property. In the latter cases the property is a security for the money advanced, and the surplus over the amount due the society will go to the mortgagor.—*G. R. 501-A of 8-3-1928.*

**Note:** Lands on restricted tenure when forfeited should be sold on the restricted tenure. If no proper bid is offered at the sale the land should be entered as Government waste.—*G. R. 5964 of 23-6-1911.*

**184.** The said surplus shall not, except under an order of a Civil Court, be payable to any creditor of the person whose property has been sold.

Surplus not to be paid to creditors, except under order of Court.

Commentary

**Claims of condition:** *G. R. 5730 of 27 10-1879* states that after the arrears have been recovered from the sale proceeds under s. 183, the excess, if any, must be treated as a sum to the defaulter's credit and is claimable by his creditors.

[c] 185 Notwithstanding anything in section 136, the person named in the certificate of title as purchaser shall not be liable for land revenue due in respect of the land for any period previous to the date of the sale.

[a] This section was substituted for the original section by Bom. IV of 1913, s. 72.

Commentary

**Delegation of powers:** According to Administrative Order VIII the Collector may delegate all his powers in respect of such sales as he has himself power to make under s. 185, to Mamlatdars etc.—*G. R. 5295 (78-B) of 1911*.

**Liability of certified purchaser:** The liability of an auction purchaser at a sale (held under Act XI of 1859, Revenue Sale Law) to pay arrears of Government revenue arises from the date of the sale, when the title vests in the purchaser (and not from the date of the sale certificate).

Laws regulating the relations of an ordinary creditor and debtor do not apply to the realization of land revenue, when therefore a proprietor of an estate makes a payment expressly for a later period, when there were earlier arrears, the Collector was fully competent to set off the amount paid against the earliest arrears due.—*Ganga Bihau Singh v. Mahomed Jan*, I. L. R. 33 Cal. 1193 (1904).

**Sale proceeds and Local fund cess:** On the Sale of a forfeited occupancy, neither the purchaser is required to pay Local fund cess on the amount realized at the sale nor can such cess be recovered from the whole sale proceeds of such sale. But as the cess is chargeable on arrears of land revenue and recoverable as such, if there be any arrears of such cess, they could be recovered from the sale proceeds before any surplus is paid to the defaulter.—*G. R. 3002 of 10-3-1893*.

**Position of purchaser of a forfeited occupancy:** The purchaser at a revenue sale of a forfeited occupancy does not succeed either to the rights or to the liabilities of the previous occupant and in order to bind him he must enter into responsibility on his own account by a fresh agreement.—*G. R. 2800 of 31-3-1893*.

**Sale proceeds of Lands granted free of occupancy:** Persons to whom Government have granted lands for cultivation free of occupancy price on condition that the lands should be resigned to Government in case the occupants do not want to retain them, but not to transfer them to any other person, are not entitled to the balance of sale proceeds of such lands, if they

are put to sale for the recovery of Government revenue, after the Government demands have been satisfied.—*G. R. 6806 of 6-10-1887.*

**186.** If any claim shall be set up by a third person to moveable property attached under the provisions of this chapter, the Collector shall admit or reject his claim on a summary inquiry held after reasonable notice.

Claims to attached moveable property how to be disposed of.

If the claim be admitted wholly or partly, the property shall be dealt with accordingly. Except, in so far as it is admitted, the property shall be sold and the title of the purchaser shall be good for all purposes, and the proceeds shall be disposable as hereinbefore directed.

#### Commentary

Delegation of power to Mamlatdar, etc.—Administrative Order VIII states that the Collector may delegate all the powers under s. 186 to Mamlatdar, etc.—*G. R. 8785 of 19-11-1889.*

**181.** All sums due on account of land revenue, all quit-rent, nazranas, succession duties, transfer duties and forfeitures, and all cesses, profits from land, emoluments, fees, charges, penalties, fines, and costs payable or leivable under this Act or under any Act or Regulation hereby repealed, or under any Act for the time being in force relating to land revenue ;

What moneys leivable under the provisions of this chapter.

and all moneys due by any contractor for the farm of customs-duties, or of any other duty, or tax, or of any other item of revenue whatsoever and all specific pecuniary penalties to which any such contractor renders himself liable under the terms of his agreement ;

and also all sums declared by this or by any other Act or Regulation at the time being in force [a] or by any contract with the Secretary of State for India in Council [a] to be leivable as an assessment, or as a revenue demand, or as an arrear of land revenue ;

[a—a] These words were inserted by Bom. IV of 1905, First Schedule.

shall be levied under the foregoing provisions of this chapter [f] and all the foregoing provisions of this chapter shall, so far as may be, be applicable thereto.

[g]

And all persons who may have become sureties under any of the provisions of this Act or of any Act or Regulation hereby repealed, or for any such contractor as aforesaid for any sum of money shall on failure to pay the amount or any portion thereof for which they may have become liable under the terms of their security-bond, be liable to be proceeded against under the provisions of this chapter as revenue-defaulters [c] and all the foregoing provisions of this chapter shall, so far as may be, be applicable to such persons [e].

On resumption of a farm no payments made to contractor in advance to be admitted.

And in the event of the resumption of any such farm as is aforesaid, no person shall be entitled to credit for any payments which he may have made to the contractor in anticipation.

[d] And any person who has received from Government a free grant of money for any agricultural purpose, subject to the proviso that he shall refund the same on failure to observe any of the conditions of the grant, shall, on failure to observe any such condition and to repay the said sum to Government be liable to be proceeded against under the provisions of this chapter as a revenue-defaulter ; and all the foregoing provisions of this chapter shall, so far as may be, be applicable to such person.

[a—s] These words were added by Bom. IV of 1913, s. 73 (1).

[b] Words inserted by Bom. I of 1920, s. 2 have been repealed by Bom VII of 1923 act.

[c—e] These words were added by Bom. IV of 1913, s. 73, (2).

[d] This paragraph was added by Bom. IV of 1913, s. 73 (3).

### Commentary

**The effect of the section.**—The intention of the framers of the Code that all the processes of recovery mentioned in this Chapter should be available for the collection of the dues mentioned in this section, is carried out by this new section as it now stands in its amended form.

**Amounts payable by Inamdars.**—Ss. 17 and 28 of the Bombay Hereditary Officers Act ( III of 1874 ) read together with s. 187 of the L. R. Code have the effect of providing that the amounts payable by Inamdars to Watandars, on account of their remuneration, if not duly paid, are recoverable as arrears of land revenue under the provisions of s. 187.—*G. Rs. 3378 of 2-5-1883 and 1186 of 13-2-1886.*

**Dues which cannot be recovered under this Section: Penalty under Irrigation Act.**—There is nothing in the Irrigation Act ( Bom. VII of 1879 ) which would authorize the recovery, as an arrear of land revenue, of the penalty alluded to in the form of the security bond required to be executed by an applicant who is not the registered occupant of the land he wishes to irrigate.—*G. R. 22 W. I.—105 and 23 W. J.—106, P. W. D. of 19-1-1892 and G. R. 8882 of 11 11-1892.* Similarly a penalty for neglecting to remove trees by a specified date is not recoverable under this section.—*G. R. 4064 of 7-5-1894*; as also the fine imposed by the Divisional Forest Officer upon contractors for the breach of their contracts is not recoverable as an arrear of land revenue.—*G. R. 6934 of 18-8-1894.*

**Charges in connection with boundary marks.**—The effect of s. 187 is to make the provisions of ss. 153 and 156 and also those of s. 155, applicable to sales for the recovery of charges assessed under s. 122 in connection with boundary marks.

Such charges may be recovered either by forfeiture of occupancy in respect of which the arrear is due, or by sale of the defaulter's immoveable property other than the land on which the arrear is due. In the former case the land is sold free from all incumbrances created by the occupant. In the latter case the rights of incumbrancers are not touched.—*Venkatesh v. Mhal Pai, I. L. R. 15 Bom. 67.*

**Distribution of moneys recovered for other departments.**—In cases in which the recoveries of revenue or moneys due to other Departments are made by the Officers of the Revenue Department under the provisions of this section, the notice fees, cost of arrest and expenses of sale leviable under ss 152, 158 and 183 respectively, should be credited to "Land Revenue," and the penalty or interest leviable under s. 148 should be credited to the Department for which the recovery is made —*G. R. 9587 of 4-12-1884.*

## CHAPTER XII.

### PROCEDURE OF REVENUE OFFICERS.

**188.** In all official acts and proceedings a revenue officer

Subordination of revenue officers.	shall, in the absence of any express provision of law to the contrary, be subject as
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to the place, time, and manner of performing his duties to the direction and control of the officer to whom he is subordinate.

**189.** Every revenue officer not lower in rank than a Mamlatdar's first karkun, or an Assistant Superintendent of Survey, in their respective departments, shall have power to summon any person whose attendance he considers necessary either to be examined as a party or to give evidence as a witness, or to produce documents for the purposes of any inquiry which such officer is legally empowered to make. A summons to produce documents may be for the production of certain specified documents, or for the production of all documents of a certain description in the possession of the person summoned.

All persons so summoned shall be bound to attend, either in person or by an authorized agent, as such officer may direct: provided that exemptions under [\*] sections 132 and 133 of the Code of Civil Procedure, 1908 [\*] shall be applicable to requisitions for attendance under this section;

and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements,

and to produce such documents and other things as may be required.

#### Commentary

**Exemptions.**—(1) Women who according to the customs and manners of the Country, ought not to be compelled to appear in public shall be exempt from personal appearance in Court.—S. 132 (1), *Code of Civil Procedure, 1908*.

(1) The Local Government may, by notification in the Local Official Gazette, exempt from personal appearance in Court, any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption.

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[a—s] These words were substituted for the original words "sections 640 and 641 of the Code of Civil Procedure" by Bom. IV of 1913, s. 74.

(2) The names and residences of the persons so exempted shall, from time to time, be forwarded to the High Court by the Local Government and a list of such persons as reside within the local limits of the jurisdiction of each Court Subordinate to the High Court shall be kept in such subordinate Court.

(3) Where any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.—S. 133, *Code Civil Procedure, 1908.*

According to *G. R. 1327 of 25-8-1902* and *G. R. R. D. 10134 of 7-11-1910*. District Inspectors of Land Records can exercise all the powers under this section.

Section 189 does not empower a Mamlatdar to summon any person to attend before a Deputy Collector, who was making certain inquiries about the appointment of a Patil for a certain Inam village. And a failure to attend in obedience to such a summons is not an offence under s. 174 I. P. C.—*Q. Emp. v. Vidyadhar, B. H. C. R. 52 of 22-8-1889.*

A Mamlatdar holding an enquiry relating to Records of Rights, under Chapter XII of the L. R. Code is a Revenue Court within the meaning of s. 125(1)(c) of the Criminal Procedure Code, 1898.—*Emp. v. Narayan* 16 Bom. L. R. 678.

**190.** Every summons shall be in writing, in duplicate, and shall state the purpose for which it is issued, and shall be signed by the officer issuing it, and if he have a seal shall also bear his seal ;

Summons to be in writing signed, and sealed.

and shall be served by tendering or delivering a copy of it to the person summoned, or, if he cannot be found, by affixing a copy of it to some conspicuous part of his usual residence.

how to be served.

If his usual residence be in another district, the summons may be sent by post to the Collector of that district, who shall cause it to be served in accordance with the preceding clause of this section.

Service in district other than that of issuer.

#### Commentary

*G. R. 5205 of 1-6-1911*, lays down that Summonses and notices may be sent for service by one Mamlatdar to another Mamlatdar direct.

**191.** Every notice under this Act, unless it is otherwise expressly provided, shall be served either by tendering or delivering a copy thereof to the person on whom it is to be served or to his agent, if he have any ;

or by affixing a copy thereof to some conspicuous place on the land, if any, to which such notice refers.

No such notice shall be deemed void on account of any error in the name or designation of any person referred to therein, unless when such error has produced substantial injustice.

**192.** In any formal or summary inquiry if any party desires the attendance of witnesses, he shall follow the procedure prescribed by the [°] Code of Civil Procedure, 1908, for parties applying for summonses for witnesses [°].

Mode of serving notices.

Notice not void for error.

Procedure for procuring attendance of witnesses.

V of 1908.

#### Commentary

**Inquiries under the Code.**—Revenue Officers are generally empowered under Chapter XII of the Code, s. 189, to summon any person whose attendance may be considered necessary in any enquiry which such officers are legally empowered to make.

Such enquiry must either be a formal enquiry or a summary enquiry or an enquiry which the Act does not require to be either formal or summary (ordinary s. 197).

A formal or summary enquiry is, under s. 196, deemed to be a "judicial proceeding" and the officer holding it is deemed a Civil Court for the purposes of such enquiry. And according to s. 192, in such enquiries any party desiring the attendance of witnesses is required to pay the necessary expenses of such witnesses into the Court. Officers holding such enquiries can be deemed Revenue Courts and the process fees sanctioned by Government for Revenue Courts are applicable to them. It is for the Court to direct by whom the costs of each party are to be paid, whether by himself or by any other party to the enquiry and whether in whole or in what part or proportions. Such costs can be levied under provisions of ch. XI L. R. Code.

[a-a] These words were substituted for the original words "Code of Civil Procedure, section 160" by Bom. IV of 1913, s. 75.

Other enquiries under the Code are not deemed to be "judicial proceedings" and the officers conducting them are not "Revenue Courts". They are conducted according to general or special rules prescribed by the Governor in Council, or in the manner provided in s 197. In such enquiries no process fees are chargeable.—*See G. R. 3007 of 27-5-1881 and G. R. 4468 of 10-7-1882.*

**Note.**—For rules regarding summoning and attendance of witnesses see *First Schedule, Order XVI of the Code of Civil Procedure, (V of 1908).*

**Serving of Process.**—The processes in summary and formal enquiries under the L. R. Code should be served by means of persons temporarily employed and the charge incurred on account of such processes should be debited to "Land Revenue".—*G. R. 7350 of 21-10-1882.*

**Granting of Bhatta to witnesses.**—The proposal for granting "Bhatta" to witnesses summoned by Revenue Courts is negatived.—*G. R. 1204/24 of 17-6-1924.*

**Cases in which it is desirable in the interests of Government to hold enquiry** (as for instance, cases of complaints of injury done to Survey marks,) should not be dismissed through default of the parties in furnishing Court fee, Bhatta to witnesses, etc. In such cases the best course for the Revenue Authority is to accept the petition or complaint and summon the witnesses *proprio motu*. The procedure to be followed when a judge himself summons the witness in a suit may be adopted by the Revenue Authority holding as such a judicial proceeding.—*G. R. 6737 of 11-11-1881.*

**193.** In all formal inquiries the evidence shall be taken down in full, in writing, in the language in ordinary use in the district, by, or in the presence and hearing and under the personal superintendence and direction of, the officer making the investigation or inquiry, and shall be signed by him.

Mode of taking evidence in formal inquiries.

In cases in which the evidence is not taken down in full in writing by the officer making the inquiry, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by such officer with his own hand, and shall form part of the record.

If such officer is prevented from making a memorandum as above required, he shall record the reason of his inability to do so.

When the evidence is given in English, such officer may take it down in that language with his own hand, and an authenticated translation of the same in the language in ordinary use in the district shall be made and shall form part of the record.

Taking evidence given in English. Translation to be on record.

194. Every decision, after a formal inquiry, shall be written by the officer passing the same in his own hand-writing, and shall contain a full statement of the grounds on which it is passed.

Writing and explanation of decisions.

195. In summary inquiries the presiding officer shall himself, as any such inquiry proceeds, record a minute of the proceedings in his own hand in English or in the language of the district, embracing the material averments made by the parties interested, the material parts[\*] of the evidence, the decision, and the reasons for the same:

Summary inquiries how to be conducted.

Provided that it shall at any time be lawful for such officer to conduct an inquiry directed by this Act to be summary under all, or any, of the rules applicable to a formal inquiry, if he deem fit.

#### Commentary

**Summary and formal inquiries.**—The Code requires that inquiries to be held under ss. 87, 87, 91, 93, 127, 129, 142, 186 and 202, should be "summary" while those under s. 118 (Rule 2) should be "formal". But under the second clause of this section an inquiry which the Code directs to be "summary" may, if the inquiring officer deems fit to do so, be conducted under all or any of the rules applicable to a "formal inquiry".

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[a] In the authentic copy of the Code the word "parties" occurs here and is obviously a misprint for "parts".

**196.** A formal or summary inquiry under this Act shall be deemed to be a "judicial proceeding" within the meaning of sections 193, 219, and 228 of the Indian Penal Code, and the office of any authority holding a formal or summary inquiry shall be deemed a Civil Court for the purposes of such inquiry.

Formal and summary inquiries to be deemed judicial proceedings.

XLV of 1860.

Every hearing and decision, whether in a formal or summary inquiry, shall be in public, and the parties or their authorized agents shall have due notice to attend.

Hearing and decisions.

Notice to parties.

**197.** An inquiry which this Act does not require to be either formal or summary, or which any revenue officer may on any occasion, deem to be necessary to make, in the execution of his lawful duties, shall be conducted according to such rules applicable thereto, whether general or special, as may have been prescribed by the Governor in Council, or an authority superior to the officer conducting such inquiry, and, except in so far as controlled by such rules, according to the discretion of the officer in such way as may seem best calculated for the ascertainment of all essential facts and the furtherance of the public good.

Ordinary inquiries how to be conducted.

#### Commentary

**Entry in the Revenue Registers due to misunderstanding : Nature of inquiry.**—Where the entry in the Revenue Registers was due to a misunderstanding of a certain order, it was held that the cause of the error, being of the same nature with "oversight" falling within the description of errors in s. 109 L. R. Code, the rectification of the Register so as to bring it in accord with the order made after hearing both the parties was not contrary to natural justice. It was a case in which the Revenue Officer concerned was authorized under s. 197 of the said Code to dispense with any judicial or quasi-judicial inquiry.—*Vasudeo v. Govind*, 36 Bom, 315; 14 Bom. L. R 124.

198. In all cases in which a formal or summary inquiry is made, authenticated copies and translations of decisions, orders, and the reasons therefor, and of exhibits, shall be furnished to the parties, and original documents used as evidence shall be restored to the persons who produced them or to persons claiming under them on due application being made for the same, subject to such charges for copying, etc., as may, from time to time, be authorized by Government.

Copies and translations, etc., how to be obtained.

#### Commentary

**Return of Documents to parties:** In all cases under the L. R. Code the subject matter of which concerns private individuals only, the documents produced in evidence, whether they are in original or are certified copies shall be returned to the person entitled to receive them back.

But if the application for the return of such documents is made before the time for appeal has expired or before the disposal of the appeal if one is already preferred, certified copies of such documents should be kept in the record at the expense of the applicant before the documents are returned to him.—*G. R. 4482 of 2-7-1932.*

**Remission of Court fees:** An application for the return of any document filed by a person in any Court or public office is exempt from Court-fee stamp.—*Government of India notification No. 2111 of 22-4-1937.*

**Scale of copying fees:** The Government have sanctioned the following scale of copying fees:—

No. of village form.	Description of form.	Rate of copying fee.
I	Land and Assessment Register.	one anna per entry of a survey number or pot number.
III	Register of alienated land.	One anna per entry.
VIIIA	Khatas of holding.	One anna per khata having 5 survey numbers or less and one and half anna for khata of more than 5 survey numbers.
VIIIB	Annual Khatas of dues and recoveries.	One anna for each khata.
IX	Day and Receipt book.	One anna for each entry in the day book.
XI	Trial balance sheet.	One anna per entry.
XII	Register of Crops and tenancies.	Do.
XIII	Birth and Death Register.	Do.
XIV	Cattle census.	Do.

See *G. R. 1050 of 6-2-1917.*

**199.** Whenever it is provided by this Act that a defaulter, or any other person may be arrested, such arrest shall be made upon a warrant issued by any officer competent to direct such person's arrest.

Arrest of a defaulter to be made upon a warrant.

**200.** It shall be lawful for any revenue officer at any time, and from time to time, to enter, when necessary, for the purposes of measurement, fixing, or inspecting boundaries, classification of soil or assessment, or for any other purpose connected with the lawful exercise of his office under the provisions of this Act, or of any other law for the time being in force relating to land revenue, any lands or premises, whether belonging to Government or to private individuals, and whether fully assessed to the land revenue or partially or wholly exempt from the same:

Power of revenue officer to enter upon any lands or premises for purposes of measurement, etc.

Provided always that no building used as a human dwelling shall be entered, unless with the consent of the occupier thereof, without a notice having been served at the said building not less than seven days before such entry; and provided also that, in the cases of buildings of all descriptions, due regard shall be paid to the social and religious prejudices of the occupiers.

Proviso.

**201.** The Governor in Council may declare what shall, for the purposes of this Act, be deemed to be the language in ordinary use in any district.

The Governor in Council to determine the language of a district.

**202.** Whenever it is provided by this, or by any other Act for the time being in force, that the Collector may or shall evict any person wrongfully in possession of land, such eviction shall be made in the following

Collector how to proceed in order to evict any person wrongfully in possession of land.

manner, viz:—



by serving a notice on the person or persons in possession requiring them within such time as may appear reasonable after receipt of the said notice to vacate the land, and,

if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and,

if the officer removing any such person shall be resisted or obstructed by any person, the Collector shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause, and that such resistance and obstruction still continue, may, without prejudice to any proceedings to which such person may be liable under any law for the time being in force for the punishment of such resistance or obstruction, issue a warrant for the arrest of the said person, and on his appearance commit him to close custody in the office of the Collector or of any Mamlatdar or Mahalkari, or send him with a warrant, in the form of Schedule I, for imprisonment in the civil jail of the district for such period not exceeding thirty days, as may be necessary to prevent the continuance of such obstruction or resistance.

#### Commentary

**Procedure:** Mamlatdars and Mahalkaris should sign notices of eviction when Prant Officers have ordered eviction.—*G. R. 5295 (85) of 1-4-1911.*

**Persons in wrongful possession.**—Holders of lands which have been appropriated for unlawful purposes as stated in ss. 48 and 66 of the L. R. Code may be treated as wrongfully in possession and be summarily evicted in the manner provided in this section. The principle underlying being that the appropriation of land for unlawful purposes as stated in ss. 48 and 66 is a breach of the conditions of occupancy. The land is held on certain conditions, the effect of which is to defeat the estate in case of a breach of any one of them being committed. In both sections the Law gives the Government as land lord the power of re-entry on breach of the particular conditions contemplated in those two sections.

So also on failure of payment of rent the Government has the power of re-entry. Forfeiture follows breach of any of the conditions, which forfeiture Government can waive or enforce as it chooses.—*G. R. 5211 of 9-9-1881.*

Certain lands were continued by the Peishwa Government to the plaintiff's ancestors as *pasaita*. They were at first settled by the British Government as *chakarait* but later as *pateil*. In the land alienation register the revenue was shown as alienated to the Patel and continued so long as services were rendered to Government. In 1916, the then Patel was removed from his office and the appointment went to a stranger to the family. It was further ordered that the old Patel should vacate the lands and hand-over possession to the new Patel. The old Patel filed a suit for a declaration that he had a right to hold and occupy the lands so long as he paid the full assessment to the Government and that the Government had no right to evict him:—

*Held*, that the land being *pasaita*, the result of the settlement was that plaintiff's claim to hold the lands free of land revenue was allowed so long as the services of the *patelkiship* were rendered; that when the plaintiff's family ceased to hold the *patelkiship* their claim to exemption from paying the land revenue came to an end but it by no means followed that their right to possession was at an end; and that the plaintiff had a right to hold and occupy the lands so long as he paid full annual assessment to the Government.—*Bhaban v. Secretary of State*, 23 Bom. L. R. 259.

**Adverse possession is not "wrongful possession":**—A portion of a talukdari estate was granted by the original Talukdar to a cadet of his family as *jivai*. The grantee mortgaged one of such lands with possession to R's father on 19-4-1889. In 1894 the mortgagor died and in 1895 the mortgagee died; but the land mortgaged remained all along in mortgagee's possession. In November 1907, the Talukdari Settlement Officer sent a notice to R under s. 202 of the L. R. Code calling upon him to vacate the land in question; and evicted him under s. 79-A of the Code as amended by s. 33 of the Gujarat Talukdars' Act. In a suit by R to recover possession of the land it was held that:—

Under s. 79-A (a) of the Bombay L. R. Code, supplemented by s. 33 (2), cl (cc) of the Gujarat Talukdars' Act, the Collector can interfere only when the occupation is wrongful or in contravention of the provisions of the Act. That the possession of the incumbrancer claiming by virtue of adverse possession would not be an occupation in contravention of any if the provisions of the Gujarat Talukdars' Act, 1888, referred to in s. 33 (2), cl. (cc) of the Act. And hence the plaintiff was entitled to succeed as he had been in adverse possession claiming title as an incumbrancer for more than 12 years since the death of the mortgagor.—*Talukdari Settlement Officer v. Rikhavadas*, 15 Bom. L. R. 378.

**Suit to restrain officer from acting under s. 202 and s. 79-A: want of notice fatal to the suit:**—A notice was served upon the plaintiff by the Talukdari Settlement Officer to evict him summarily from certain lands

under s. 33 (2) (cc) of the Gujarat Talukdars' Act read with s. 79-A of the L. R. Code. The plaintiff sued the officer to restrain him from doing so. No notice was given under s. 80 of the Civil Procedure Code:—

*Held*, that want of notice under s. 80 of the C. P. Code was fatal to the suit, inasmuch as the service of notice which led to the suit was the first act in the process of eviction provided by s. 202 of the L. R. Code and the suit having been brought to restrain the accomplishment of the acts of eviction was a suit against a public officer in respect of an act purporting to be done by him in his official capacity.—*Bhavanishankar v. Talukdari Settlement Officer*, 16 Bom. L. R. 766. See also *Talukdari Settlement Officer v. Bhajibai*, 14 Bom. L. R. 577.

NOTE:—Vide commentary to 79-A p. 371.

## CHAPTER XIII.

### APPEALS AND REVISION.

203. In the absence of any express provision of this Act, or of any law for the time being in force to the contrary, an appeal shall lie from any order passed by a revenue officer to his superior, or from any decision or order passed by a revenue officer under this Act, or any other law for the time being in force, to that officer's immediate superior, whether such decision or order may itself have been passed on appeal from a subordinate officer's decision or order or not.

#### Commentary

The procedure is laid down in Chapter XIX of the Bom. Land Revenue Rules, 1921. That Chapter, however, does not apply to appeals under the Record-of-Rights, for appeals under the Record-of-Rights see rules 107 and 108, Bom. L. R. Rules 1921. See Appendix A for Rules and orders.

**Form and Contents.**—(1) Every appeal shall be made in the form of a petition addressed to the authority to whom an appeal lies, and shall be drawn up in concise, intelligible and respectful language; and shall bear the signature or mark of the appellant or of his duly authorized agent.

(2) The petition should give the following particulars:—  
the name, father's name, occupation and place of residence or address of the appellant;  
the name and address of the writer of the petition.

(3) The petition should also contain a brief and unexaggerated statement of the facts on which the appellant relies in support of his appeal and the

grounds of the appellant's objection to the order or decision appealed against.—*Rules 130 Land Revenue Rules 1921.*

**Presentation.**—(1) Appeals may either be presented to the authority to whom an appeal lies in person or be forwarded to him by post.

(2) Where an appeal is sent by post, the postage on the cover containing it must invariably be fully prepaid.—*Rule 131 of Land Revenue Rules 1921.*

**Rejection of appeals without enquiry into their merits.**—Inattention in any material respect to the requirements of rules 130 or 131 will render an appeal liable to be rejected without enquiry into its merits.—*Rule 132 of Land Revenue Rules. 1921.*

**Notice of demand is not a decision or order.**—The Talukdari estate of Bhankoda in the Virangam Taluka belonged to defendants Nos. 3 to 38. It included the village of Kauj. There were about 2500 acres of land in the village which were claimed as of absolute ownership by Nathuram and others (plaintiffs). The plaintiffs held the land free of rent or assessment. In 1873 a decree was obtained by the plaintiffs' predecessors against the Talukdars whereby the land was declared to be of plaintiff's ownership and Nakari (i. e. tax-free). In 1912 the Talukdars relinquished s. No. 656 claimed by the plaintiffs as their own.

Notice of demand was issued against the plaintiffs by the Mamlatdar that a certain amount was due for the payment of the land revenue and that if it was not paid within a certain period (say 10 days) from the receipt of the notice, steps would be taken according to law to forcibly recover the whole amount for the current year's land revenue which had not been paid. The plaintiff filed a suit praying for declaration and injunction. On a preliminary issue whether the suit was barred under s. 11 of the Revenue Jurisdiction Act, the High Court *held*:—There was no order of the Collector directing that that particular Survey number was liable to pay assessment and consequently there could be no order from which an appeal lay. It was, however urged on behalf of the Secretary of State that in the absence of the order of the Collector assessing the land, the notice of demand by the Mamlatdar was an order within the meaning of ss. 203 & 204. Now the plaintiffs could have appealed to a higher authority objecting to the notice of demand issued by the Mamlatdar, but it does not follow that because they could have endeavoured by a resort to higher authority to get that notice of demand revoked, therefore, it was an order within the meaning of ss. 203 & 204 of the L. R. Code. Again it may be said that a notice of demand which, if not complied with, can be made effective by execution proceedings, may be considered as akin to an order, but that could only be because of the results following from it. But it is not strictly logical to find that because the same results follow from two particular kinds of documents they are of the same kind also. One has to look to the wording of the document; and it appears that it would be going too far to say that this notice of demand, which admittedly is the natural consequence of an order imposing assessment upon land, can be treated as an order or decision within the meaning of ss. 203 & 204 of the

Code. The plaintiffs were allowed to continue to hold the land rent free and yet apparently no opportunity was given to them after the demand to pay land assessment was issued, to state their case for their being allowed to continue to hold rent free, whether the land was relinquished or not. It seems that this is a case to which s. 11 of the Bom. Revenue Jurisdiction Act does not apply and that the suit would lie.—*Natharam v. The Secretary of State for India*, 24 Bom. L. R. 402 (1921).

Applications for compassionate allowances treated as appeals.—Applications for compassionate allowances from discharged Revenue Officers are treated as "appeals".—*G. R. 4997 of 1908*.

Collector dealing with Civil Court Darkhast.—In dealing with Civil Court Darkhast, the Collector is not subject to appeals to, or revision by the Commissioner but only by the Court. The Collector cannot set aside a darkhast sale, but can confirm or refuse to confirm it.—*G. R. 2172 of 1915*.

Omission to file an appeal. Civil Suit barred.—Plaintiff's application for a Sanad as a purchaser of certain property having been refused by the Collector he did not prefer any appeal under s. 203 of the Bombay Land Revenue Code but filed a suit. Held that s. 11 of the Revenue Jurisdiction Act clearly prevented the Court from entertaining any suit on account of the Collector's refusal to grant the plaintiff a Sanad as the plaintiff had failed to prove that previously to his filing this suit he had presented all such appeals allowed by the law for the time being in force as it was possible for him to present within the period of limitation allowed for bringing such suit.—*Patal Ambaras Kuberias v. Secretary of State for India* (1923), A. L. R. Bom. 416.

Right of appeal irrespective of being party.—Under s. 203 of the Bom. L. R. Code the right of appeal against an executive order of a Revenue Officer is vested in every person aggrieved by the order irrespective of his being a party to the inquiry wherein the order was passed.—*Mukhand Tilokchand v. Haradai Saramahamad*, 43 L. C. 335; 11 S. L. R. 124.

No appeal against ejectment necessary previous to filing a suit.—Where the plaintiff having been dispossessed by the order of the Collector sues for possession, without appealing against the said order, his cause of action is the ejectment and not the order and s. 11 of the Revenue Jurisdiction Act (X of 1876) is no bar to the action. The Land Revenue Code while providing for appeals against orders and decisions contains no provision for an appeal from a physical act such as an ejectment.—*N. H. Sir Agakhan v. Secretary of State*, 5 S. L. R. 46; 10 L. C. 203.

Order of Collector under s. 23 Bombay Irrigation Act falls within purview of s. 203 L. R. Code and an appeal against such order lies to the Commissioner in Sind. The Jurisdiction of the Civil Court to entertain a suit against such order is barred under s. 11 of Revenue Jurisdiction Act. (X of 1876). S. 67, Irrigation Act, does not amount to an express provision to the contrary as said in s. 203, Bom. L. R. Code.—*The Secretary of State for India v. Serandias*, 6 S. L. R. 241; 19 L. C. 726.

**Appeals under the Watan Act.**—The provisions of chapter XIII of the Code apply to the appeals under the Bombay Hereditary Officers Act, 1874 — *G. R. 1920 of 1882.*

**Orders passed by the Collector in execution proceedings transferred to him** under s. 320 of the Civil Procedure Code, 1882 (i. e. ss. 68, 70 and 71 of the Civil Procedure Code, 1890) are subject to an appeal to the Commissioner or the Government as provided by s' 203 etc. of the L. R. Code and no appeal lies to the High Court from such an order passed by the Collector. The reason is that s. 70 (s. 320 of the Civil Procedure Code 1882) of the Civil Procedure Code, 1908, specially provides that an appeal shall lie from the order of the Collector to such authorities as the Local Government : by rules, prescribe — *Mancherji v. Thakurdas*, 7 Bom. L. R. 682.

**Appearance by pleaders.**—High Court Vakils and District Pleaders can practice before the public officers in proceedings under ss. 109, 118, 119, 125, 129 and 203 and chapter X-A of the Code, provided the parties to the proceedings have or are allowed the right to appear by legal practitioners. Now, under s. 4 of the Legal practitioners Act High Court Vakils can represent parties to an appeal in a revenue Office where parties are allowed by custom or law to appear by legal practitioners. *G. O. 1302 of 17-5-1927.* It was previously held that Government Officers may allow representation by lawyers, whenever such a course was likely to be helpful in appeals under the L. R. Code. Bombay Government Gazette 1st V for 1920 p. 23.

S. 203 does not expressly give the party to an appeal the right to be heard, much less does it give him the right to be heard by a pleader. Still it is one of the commendable rules of procedure which ought to be followed, that if any party is entitled to present an appeal to the higher authority he is entitled to be heard either in person or through a pleader before his appeal is dismissed off. *Gopal v. Maruti*, 27 Bom. L. R. 1115.

**204.** An appeal shall lie to the Governor in Council from any decision or order passed by a Commissioner or by a Survey Commissioner, except in the case of any decision or order passed by such officer on appeal from a decision or order itself recorded in appeal by any officer subordinate to him.

Appeal when to lie to the Governor in Council.

### Commentary

**Decision or Order.**—A notice of demand by a Mamlatdar to pay assessment is not a decision or order within the meaning of this section. *Nathuram v. Secretary of State*, 46 Bom. 811; 24 Bom. L. R. 402,

NOTE.—For facts of the case see Commentary on Last section.

**205.** No appeal shall be brought after the expiration of sixty days if the decision or order complained of have been passed by an officer inferior in rank to a Collector or a Superintendent of Survey in their respective departments ; nor after the expiration of ninety days in any other case.

*Periods within which appeals must be brought.*

In computing the above periods, the time required to prepare a copy of the decision or order appealed against shall be excluded.

**206.** Any appeal under this chapter may be admitted after the period of limitation prescribed therefor, when the appellant satisfies the officer or the Governor in Council to whom he appeals, that he had sufficient cause for not presenting the appeal within such period.

*Admission of appeal after period of limitation.*

No appeal shall lie against an order passed under this section admitting an appeal.

**207.** Whenever the last day of any period provided in this chapter for the presentation of an appeal falls on a Sunday or other holiday recognized by Government, the day next following the close of the holiday shall be deemed to be such last day.

*Provision where last day for appeal falls on a Sunday or a holiday.*

**208.** Every petition of appeal shall be accompanied by the decision or order appealed against or by an authenticated copy of the same.

*Copy of order to accompany petition of appeal.*

**209.** The appellate authority may [°] for reasons to be recorded in writing[°] either annul, reverse, modify or confirm the decision or order of the subordinate officer appealed against, or he may direct the subordinate officer to make such fur-

*Powers of appellate authority.*

[a-a] These words were inserted by Bom. III of 1932, s. 2 (1).

ther investigation or to take such additional evidence as he may think necessary, or he may himself take such additional evidence:

[<sup>a</sup>] Provided that it shall not be necessary for the appellate authority to record reasons in writing

(a) when an appeal is dismissed summarily, or

(b) when the decision or order appealed from is itself a decision or order recorded in appeal, or

(c) when an appeal is made to the Governor in Council under section 204. [<sup>a</sup>]

**210.** In any case in which an appeal lies, the appellate authority may, pending decision of the appeal, direct the execution of the decision or order of the subordinate officer to be suspended.

**211.** The Governor in Council and any revenue officer, not inferior in rank to [<sup>b</sup>] an Assistant or Deputy Collector [<sup>b</sup>] or a Superintendent of Survey in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate revenue officer, for the purpose of satisfying himself as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer.

The following officers may in the same manner call for and examine the proceedings of any officer subordinate to them in any matter in which neither a formal nor a summary inquiry has been held, namely—[<sup>c</sup>] a Mamlatdar, a

[a-a] This proviso was added by Bom. III of 1932, s. 2 (g).

[b-b] These words were substituted for the original word "Collector" by Bom. IV of 1913, s. 76 (a).

[c] Words repealed by Bom. IV of 1913, s. 76 (b), are omitted.



Mahalkari, an [°] Assistant Superintendent of Survey, and an Assistant Settlement Officer.

If, in any case it shall appear to the Governor in Council, <sup>And to pass or to such officer aforesaid, that any decisions thereupon.</sup> sion or order or proceedings so called for should be modified, annulled or reversed, he may pass such order thereon as he deems fit.

[°] Provided that an Assistant or deputy Collector shall not himself pass such order in any matter in which a formal inquiry has been held, but shall submit the record with his opinion to the Collector, who shall pass such order thereon as he may deem fit.

#### Commentary

**Power of Commissioner to revise khalayats under section 60 or 62.**—Orders for the sale of unoccupied land and permission to occupy that land under ss. 60 and 62 of L. R. Code (V of 1879) come within the scope of a. 211 and the Commissioner has jurisdiction to call for and revise and pass such orders thereon as he deems fit. And there is no cause of action against Government on account of that officer having exercised his lawful powers under that section.—*Paraps v. The Secretary of State*, P. J. 1891, p. 230.

**No period of limitation.**—Where certain orders were passed by the District Deputy Collector in connection with 'Sberi' lands in Malvan Taluka in Ratnagiri District in 1914 and where the Collector in 1917 acting under the revisional authority conferred by a. 211 set them aside. The High Court held that since no period of limitation was laid down for the making of an order under a. 211 the Collector had a right to interfere in the matter.—*Dattatraya v. Secretary of State*, 31 Bom. L. R. 1235 (1929).

*G. R. 6902/28 of 15-5-1931* also states that no period of limitation is fixed for the exercise of revisional powers.

**Commissioner's power to modify Collector's orders.**—In *Secretary of State v. Anant Krishnaji Nalkar and others*, the facts were briefly as follows:—

On May 21, 1919 a Collector made an order granting to the first defendant certain Government lands, which he assessed at over Rs. 100, on the terms that the lands should be held free from payment of occupancy price, and free from assessment until they were brought under cultivation. The first respondent entered into possession. On December 6, 1921 the commissioner made an order that there should be recovered from the first respondent the

[a] "An" was substituted for "and" by Act XVI of 1895.

[b] This proviso was added by Bom. IV of 1913, a. 76 (c).

full market value of the lands on May 21, 1919, and the ordinary land revenue from the year 1919-1920. The grantee paid the assessment to revenue, but not the occupancy price; in consequence an order of forfeiture was made and he was evicted. He sued the Government claiming possession of the lands.

It was held that the suit failed, (1) because the Collector had no power under r. 19 of the rules of 1905 made under the Land Revenue Code, 1879, s. 214. (nor r. 39) to make the order of May 21, 1919 in the absence of the previous sanction of the Commissioner; (2) because under s. 211 of the Code the Commissioner had power to modify the order of the Collector, and by his Order of December 6, 1921, had done so.—*Secretary of State v. Anant Krishnaji Nulkar*, L. R. 61, Indian Appeals, 70; 36 Bom. L. R. 242 (P.C.)

**212.** Wherever in this Act, it is declared that a decision or order shall be final, such expression shall be deemed to mean that no appeal lies from such decision or order.

Rules as to decisions or orders expressly made final.

The Governor in Council alone shall be competent to modify, annul, or reverse any such decision or order under the provisions of the last preceding section.

#### Commentary

S. 212 does not bar jurisdiction of Civil Court in-as-much-as the reference to finality in s. 212 is confined to finality under the L. R. Code, for there are no words expressly excluding the jurisdiction of Civil Courts as in the sections of Acts framed to that end per Murphy J. in *Dattatraya v. The Secretary of State*, 31 Bom. L. R. 1235 (1929).

### CHAPTER XIV.

#### MISCELLANEOUS.

**213.** Subject to such rules and the payment of such fees as the Governor in Council may from time to time prescribe in this behalf, all maps and [a] land records [a] shall be open to the inspection of the public at reasonable hours, and certified extracts from [b] the same [b] or

Maps and land records open to inspection. Extracts and copies shall be given.

[a—a] These words were substituted for the original words "survey records and all village accounts and registers" by Bom. IV of 1913, s. 77.

[b—b] These words were substituted for the original words "such maps, registers and accounts" by Bom. IV of 1913, s. 77.

certified copies thereof shall be given to all persons applying for the same.

#### Commentary

**Rules.**—For rules relating to copies, inspection and searches see Chapter XXII, rules 13, to 145 of the Bombay Land Revenue Rules, 1921, printed as appendix A at the end.

Survey records are open to public inspection and copies are available under s. 213 of the Bom. L. R. Code.—*Abudomal v. Ali*, 5 S. L. R. 49; 10 I. C. 554.

By "survey records" is meant completed documents prepared under s. 106 and referred to in ss. 3 (b), 95 and 119, and not the field books (such as, measurement and classification books) or other official memoranda the results of which are recorded. The section gives a right of inspection only of the completed documents, and provides that certified extracts or copies should be given only in the case of "maps"; registers and (village) accounts.....The expression "survey records" used in this section means only such records as are prepared in the form of registers, based on information supplied by preliminary papers (such as measurement and classification field books, Bagait Taktaa, etc.) The inspection, extracts or copies of such preliminary records cannot therefore be claimed as a matter of right.—*G. R. 5138 of 14-7-1933*.

Extracts from the Register of *Sauaris* may be given on payment of the fees prescribed in the rules under s. 213 of the L. R. Code and s. 91 of the Registration Act. A copy of a sanad cannot be granted.—*G. R. 4180 of 2-7-1933*. But the Commissioner in Sind is authorized to grant a duplicate sanad in cases in which a sanad has been lost or destroyed.—*G. R. 1245/24 of 4-8-1925*.

[\*] 214. (1) The Governor in Council may, by notification published in the *Bombay Government Gazette*, make rules not inconsistent with the provisions of this Act to carry out the purposes and objects thereof and for the guidance of all persons in matters connected with the enforcement of this Act or in cases not expressly provided for therein.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may be made—

(a) regulating the appointment of revenue officers and the exercise by them of their powers and duties. ;

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[a] This section was substituted for the original section by Bom. IV of 1913, s. 78.

(b) regulating the assesment of land to the land revenue and the alteration and revision of such assessment and the recovery of land revenue ;

(c) prescribing the notice to be given in the case of enquiries and orders under section 37 ;

(d) prescribing the purposes for which unalienated land liable to the payment of land revenue may or may not be used, and regulating the grant of permission to use agricultural land for non-agricultural purposes ;

(e) regulating the disposal of land and other property vesting in Government ;

(f) regulating the disposal of forfeited land ;

(g) prescribing the terms and conditions on which, and the periods for which, unoccupied unalienated land may be granted ;

(h) fixing the maximum amount of fine leviable under section 61 ;

(i) regulating the conduct of surveys and settlements of land revenue and prescribing the notice to be given under section 108 before the introduction of a settlement ;

(j) regulating the division of survey numbers into sub-divisions and the fixing of the assessment of sub-divisions under section 117A ;

(k) regulating the construction, laying out, maintenance and repair of boundary marks ;

(l) regulating the compilation, maintenance and revision of the record of rights and the registers of mutations, disputed cases and tenancies, and prescribing the forms in which they are to be compiled and the officers by whom the said records and registers are to be tested and revised ;

(m) regulating the exercise by village-accountants and revenue officers of the powers of a survey officer and the assessment of costs and expenses under section 135G ;

(n) prescribing the mode, form and manner in which appeals under Chapter XIII shall be drawn up and presented;

(o) prescribing the records, registers, accounts, maps and plans to be maintained for the purposes of this Act and the manner and forms in which they shall be prepared and maintained.

(3) The power to make rules under this section shall be subject to the condition of previous publication.

#### Commentary

**Grant of Suspension and remission of land revenue and the method of valuation of crops.**—According to the recommendation of the Land Revenue Assessment Committee, Bombay, Government brought a Bill in Council, Bill No. XIV of 1923, to amend s. 214 of the Code so as to include suspensions and remissions and the process of valuation of crops in order to determine such suspensions and remissions as matters the regulation of which may be made by the Governor in Council by rules under the section. However the bill was not proceeded with.

**NOTE.**—Suspensions and remissions of Land Revenue and valuation of crops are now regulated by an executive order, viz., by *G. R. 4966/24 of 1-3-1929*.

The rules regarding "Suspensions and Remissions" were embodied in the Land Revenue Rules, under the Code by *G. R. 1790/24 of 13-5-1927*.

The Government Rule mentioned above is included in Government Order XXX of the Land Revenue Rules, 1921, by Mr. Anderson. See page XLIV of App. A of this book, for the above named Government Order.

[**215.** It shall be lawful for the Governor in Council, Penalty for breach in making any rule under section 214, to of rules. prescribe that any person committing a breach of the same shall on conviction by a Magistrate be punished with imprisonment for a term not exceeding one month or with fine not exceeding five hundred rupees, or with both, in addition to any other consequences that would ensue from such breach.

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[a] This section was substituted for the original section by Bom. IV of 4913, s. 73.

Chapters VIII to X how far applicable to alienated villages. [a] 216. (1) The provisions of Chapters VIII to X shall be applicable to—

(a) all unalienated lands situated within the limits of an alienated village ;

(b) unalienated shares of villages of which a definite share defined by metes and bounds is alienated ;

(c) alienated villages the holders of which are entitled to a certain amount of the revenue, but of which the excess above such amount belongs to Government.

(2) Save as is otherwise provided in section 111 and in this section, no provision of the said Chapters shall be applied to any other alienated village except for the purposes of fixing its boundaries and of determining any disputes relating thereto, unless the extension of the provision is authorised by the Commissioner acting on the written application of the sole holder, or, if there be more than one holder, of the holder or holders representing in the aggregate not less than one-half of the total interests in the village in respect of its alienated revenue. If any share of the village is unalienated the prescribed proportion of one-half shall be reckoned as if the village were wholly alienated, Government being considered as the holder in respect of the unalienated share.

(3) In any case in which action under sub-section (2) is taken lawfully by the Commissioner on the application of some only of the holders of the village, any covenant or agreement relative to the extension of the said Chapters or incidental thereto, entered into by such holders shall also be binding on the remaining holders of the village in respect of their shares in the revenue of the village as if such covenant or agreement had been entered into by them.

[a] This section was substituted for the original section by Bom. XV of 1929, s. 2.

(4) All survey settlements heretofore introduced in alienated villages shall be valid as if they had been introduced in accordance with the provisions of this section.

#### Commentary

Old law.—S. 216 stood as follows before 1929:—

216. Save as is otherwise provided in section 111 and hereinafter in this section, the provisions of Chapters VIII to X shall not be applied to any alienated village except for the purposes of fixing the boundaries of any such village, and of determining any disputes relating thereto. But the provisions of the said chapters shall be applicable to

- Chapter VIII to X  
Save for a village to  
alienated villages.*
- (a) all unalienated lands situated within the limits of an alienated village,
  - (b) villages of which a definite share is alienated, but of which the remaining share is unalienated.
  - (c) alienated villages the holders of which are entitled to a certain amount of the revenue, but of which the excess, if any, above such amount, belongs to Government.

But it shall be lawful for the Commissioner, on an application in writing being made by the holder of any such village to that effect, to authorize the extension of all or any of the provisions of the said chapters to any such village.

Originally when the Bombay Land Revenue Code was framed in 1879 the inamdars being private owners, provision was made to exclude alienated villages and unless they wished, Government was unable to force the introduction of survey; therefore it is provided that unless the holders applied, those provisions would not be extended to alienated villages.

**Object of amendment.**—Without survey, classification and settlement, there can be no proper land revenue administration. Without proper records no rights whether of the superior or of the inferior holders can be known. Without survey there will be no maps, no known areas, and no such records as are indispensable in the maintenance of the record of rights. The classification of the land according to its natural capacity and the fixing of the settlement rates according to true area and according to natural capacity is an immense benefit to every person who has any dealings with the land.

Now in an alienated village where there were a number of sharers, it happened that a sharer holding an insignificant share of the village did not consent to the introduction of the survey settlement or revision survey settlement and under the old law, survey settlement or revision survey settlement could not be introduced when such a sharer raised an objection even though a majority of sharers and in fact large share holders and Government were willing to have it.

For instance, there was a case where a person had less than a one-anna share and his share of the revenue of the village was almost negligible. But

he was on bad terms with the principal inamdars. They had been applying for a survey and settlement, while he, purely because he desired to injure their interests, refused his consent. It was against such obstruction that a remedy had to be found.

**Sub-clause (1).**—This merely reiterates the provisions of a portion of the old s. 216. The only change made is in the wording of part (b) of s. 216 in order to bring out clearly that chapters VIII to X of the Code are applicable to the unalienated share of only those villages of which a definite share defined by metes and bounds is alienated.

**Sub-clause (2).**—The consent of holders representing in the aggregate not less than one-half of the total interest in the village in respect of its alienated revenue, is considered sufficient.

**Sub-clause (3)** is consequential on sub-clause (2).

**Sub-clause (4).**—In one or two cases where Government had introduced settlement in villages under clause (b) of the old section the High Court had expressed the opinion that it was doubtful whether that clause authorised Government to introduce survey because they possessed an indefinite share. One interpretation was that unless the share was definite it did not enable Government so to do. The other ruling doubted the first interpretation. Hence there were occasions in which settlement had been introduced and accepted by the inamdar. By this clause retrospective effect is sought to be given and the survey settlements introduced before 1929 in wholly or partially alienated villages are validated.

**Application.**—This section does not apply to the States in the districts of Ahmedabad, Kaira, Broach or Pauch Mahals to which the Gujarat Talukdar's Act, 1888 applies.

The original settlements are at present made only in Inam villages where the survey and settlement were not introduced—This work is now done by the Superintendent of Land Records of the Division in which the village is situated. Generally the factors enumerated above are taken into account, but the most important factor is that of leases. Leases and rental statistics are verified by the Superintendent of Land Records on the spot by making enquiry with the kalfedars and tenants in the field. There are no Talatis in Inam villages. There being no Record-of-Rights, no statistics are prepared by the Kulkarni, so the Superintendent has himself to collect all the information and data necessary for formulating his proposals. The rate which obtains in the surrounding villages of similar groups and with the same conditions is usually applied.

**Procedure in the Survey of Inam Villages.**—The holder of the Inam village who wishes the extension of the provisions of Survey and Settlement etc. of the L. R. Code, to be made to his village, makes an application in writing to the Commissioner as provided by s. 216 of the Code. He has also to pass an agreement in the prescribed form, consenting to pay the village officers at the scale fixed by Government and to pay them at the Government rates for the collection of local fund cess and to furnish such revenue and



vital statistics from time to time as may be required by the Collector. He has further to agree to allow remissions and suspension of land revenue to his ryots on the same scale as that fixed in Government villages under similar circumstances.

After the holders pass the requisite agreement, a notification extending the provisions regarding survey, assessment etc. is issued by the Commissioner. The measurement and classification operations in the village are then undertaken by the survey party under the control of Superintendent of Land Records. The rates of assessment for the village are fixed by the Superintendent. They are ordinarily the same as those sanctioned for the adjoining Government villages. Final orders sanctioning the rates are then issued by Government. The introduction of the settlement into the said village is then announced. The settlement guarantee is usually fixed so as to expire at the same time as that of the Government villages in the Taluka in which the Inam village is situated. The cost of these operations in Inam villages (except those held on Political or Saranjam Inam tenure) is borne by Government. In the case of Inam villages held on political or Saranjam tenure, the Inamdar has to bear the cost of the introduction of the Survey and settlement in his village.

When survey is once introduced on a written application no further written application is necessary for the purpose of introducing a revision survey: A written application for the introduction of survey settlement in a certain Inam village was made in 1889 by the then Inamdar's guardian, and Chapters VIII and IX of the Code were accordingly extended to the village. The first revision settlement of the village was sanctioned by the Survey Commissioner in 1897 but was not introduced as the Inamdar refused to accept it. A second revision settlement was sanctioned by Government in 1925. A question was then raised whether the previous sanction regarding the extension of chapters VIII and IX had lapsed and a fresh application was required. Government were advised that the provisions of the Code made applicable in 1889 still continued to be in force, and it was open to Government to take action for the introduction of a revision settlement without a fresh application from the Inamdar.—*G. R. 4934/28 of 25-4-1930.*

It was similarly laid down that if the original survey was introduced after the L. R. Code, no fresh application was necessary but the Settlement Commissioner should be written to for the survey.—*G. R. 12958 of 21-12-1908.*

**Expenses of Survey:** According to the rules of 13th March 1857 the costs of surveying alienated villages is undertaken by Government on the condition that the alienee accepts and adheres to the terms of the settlement. *G. R. 373 of 21-1-1875* states that Government will defray the expenses of revision operations in cases where the rules and rates have been adhered to and where a guarantee to this effect is given for the future. But as regards Jahagirs or Estates held on political tenure Government can no longer consent to bear the costs.

Inamdars who desire it may be allowed to pay the survey expenses in two equal instalments. *G. R. 563 of 12-2-1852.* Inamdars who accept the survey

settlement should, as regards payment of the expenses of the survey of their villages, be treated in all respects as Judi Inamdars.

**Survey of Inam Villages : Conditions.**—No Survey operations are to be commenced in an alienated village until action has been taken by the Inamdar and the Commissioner under s. 216. Inamdar's written application is necessary. If survey operations are conducted in an alienated village with the Inamdar's consent merely they will have no legal value. The Inamdar's written application and Commissioner's sanction are necessary in the first instance.—*G. R. 6225 of 2-3-1884.*

As regards a *Sharakati* Inam village it was at one time thought that the Inamdar's consent was not necessary to introduce survey into such village but, the High Court of Bombay has ruled that a survey settlement cannot be introduced in a *Sharakati* Inam village a definite share whereof is alienated, but not divided by metes and bounds, without the consent of the Inamdar. *Gangadhar v. Morbhat*, I. L. R. 18 Bom. 575 and *Sitaram v. Laxmanu*, I. L. R. 45 Bom. 1260 : 23 Bom. L. R. 749.

**NOTE.** The amendment to s. 216 in 1929 has now made this point clear once for all.

**S. 216 not applicable to isolated lands held by an Inamdar in an unalienated village.**—In an unalienated village, to which the survey has been extended, isolated lands held by an Inamdar, either absolutely free from payment of revenue or merely on payment of a portion of the revenue, cannot be brought within the purview of s. 216 of the L. R. Code, 1879.—*Sitaram v. Tukaram*, 23 Bom. L. R. 395.

**Introduction of Survey in an Inam village under the Management of Court of wards.**—If it is proposed to introduce a survey settlement in an Inam village placed under the management of Courts of wards a written application by him under s. 216 and a notification should be issued as in the case of other alienated villages to which chs. VIII and IX are applied, at the request of the Inamdar.—*G. R. 7698 of 7-8-1909.*

*G. R. 9819 of 12-12-1884* states that in cases in which application has been made for the extension of chapters VIII to X, chapters VIII and IX should be extended. When no chapters are mentioned in the application, it should be returned with an intimation that the extension of the provisions of chapters VIII and IX should be applied for.

When Chapter X of the Code is brought into operation in any alienated village under s. 216, the introduction of a city survey in the village under s. 131 requires the sanction of the Governor-in-Council.—*G. R. 9544/24 of 29-10-1927.*

**Survey in Indian States.**—No pressure should be put on Native Chiefs to adopt British Survey rates, but every encouragement should be given to them to adopt the methods of classification and survey followed in the British territory.—*G. R. 4280 of 9 7.1887.* But no survey should be commenced in any Native State without the special sanction of Government, unless the State undertakes to defray the entire cost.—*G. R. 2579 of 6-7 1868.* The pension and leave contribution of the survey establishment employed

in any surveys of Native States should be charged to the State in addition to the total cost of the Survey operations.—*G. R. 8068 of 30-11-1889.*

**Rules relating to the Survey of alienated villages :**

I. The boundaries of all alienated villages are to be surveyed at the expense of Government.

II. The lands of alienated villages held on hereditary tenure, of which the alienee makes the annual settlement, are not to be subjected to the usual revenue survey operations excepting at the request of the alienee, and his expressing his intention to adopt the rates fixed by the Survey Department and sanctioned by Government.

III. In the event of the alienee fulfilling his intention, the expenses of the operations are to be borne by Government; in the event of his not doing so, the alienee.

IV. Villages held on service tenure by hereditary officers to be subjected to the revenue survey operations, but the holders of such villages need not be constrained to introduce the survey rates.

V. The lands of villages which have been declared already liable to assessment on account of Government (khalsa) but the levy of land revenue in which has been deferred as an indulgence during the life time of the present incumbent, are to be surveyed and classed at the same time as the lands of the khalsa villages in the District, but the new rates are not to be imposed against the will of the alienees until their decease. The occupants are, however, to be answerable for the maintenance of the field boundary marks.—*cf. Rs. 1223 of 16-8-1851; 3479 of 29-12-1855 and 3613 of 28-9-1866.*

**Agreement by Inamdars to pay remuneration to village officers:** Before the survey rates are introduced in an alienated village an agreement on a properly stamped paper should be taken from the alienee binding himself and his successors to pay the village officers who are not paid by Government according to the scale in force in Government villages. *G. Rs. 6401 of 6-12-1880; 7322 of 3-12-1891 and 7229 of 23-7-1907.* A standard form of agreement has been prescribed by Government for this purpose (*G. R. 4011 of 9-5-1892*) which should not be departed from under any circumstances. *G. R. 9381 of 29-11-1892.* Still *G. R. 6630 of 30-8-1895* says that the form is intended for cases in which the cost of Survey and Settlement is borne by Government, but there is no law or rule under which an agreement must be taken in this form in all cases in which, Chapters VIII to X of the L. R. Code are extended to alienated villages, nor are Government in any way bound to bear the cost of Survey and Settlement in all cases in which the holder of an alienated village agrees to pay the village officers according to scale. An agreement should be taken in accordance with the actual facts containing all stipulations to be made by the alienee according to the form above referred to, but containing no undertaking on the part of Government to bear the Cost of Survey and Settlement.

**Introduction of survey settlement: Consent of new coming sharers not necessary:** When the provisions of Chapter VIII and IX of the Code have

once been extended to an Inam village with the assent of all the then existing co-sharers and on their application in writing under s. 216, it is not necessary to again extend those provisions to the village in case the number of co-sharers subsequently increases. A subsequent increase in the number of co-sharers in the village will not affect in any way the rights and responsibilities which on the introduction of a survey settlement attach to all the holders therein under s. 217. Among these rights and responsibilities must be included the rights and responsibilities of the holders arising on a fresh revenue survey and revision being directed under s. 106 in Chapter VIII of the Code.

It is only in the case of Survey Settlements introduced into an Inam village prior to the passing of the Code that on the expiry of the term fixed for the same, the mutual relations of the Inamdar and his rayats revert to the *Status quo ante*. But when a survey settlement has once been introduced under s. 216 into an alienated village, all the provisions of the Act relating to occupants and registered occupants become applicable to the holders of all lauds therein and the subsequent dissent on their part or on the part of their successors cannot annul the operation of the law. S. 217 has barred the right of Inamdars to enhance their rayat's rents beyond the Survey Assessment.—*G. R. 693 of 26-1-1893.*

**Fixing of survey rates for Inam villages:** The Survey Department should, in the case of Inam villages determine what are the survey rates as fixed according to general rules to be levied. Government can, if they think proper, sanction an addition to them in any particular case, but Survey Department should not introduce rates which produce a revenue equal to the Inamdar's demand (if such demand is in excess of the survey assessment), without fully explaining the grounds for the adoption of such rates and without obtaining the sanction of Government to their introduction. Under s. 217 of the Code an Inamdar is bound to levy only the Survey rates introduced into his village by the Survey Department whatever they may be. It may be the case that the effect of insisting that Inamdars should adhere to the ordinary survey rates would be to deter them from applying for the extension of the survey settlement to their villages under s. 216 of the Code, but this is not a sufficient ground for the adoption in the case of Inam villages of a principle different from that followed in the case of Government villages.—*G. R. 3436 of 12-5-1886.*

The usual practice in the case of Inam villages is that when the settlement is introduced they should be assessed at the same rates as the neighbouring villages except in so far as it is necessary to ensure justice to the Inamdar. The rayat of an Inam village deserves the same protection as the rayat of a Government village, and if the rates are the same as in adjoining similar Government villages, the Inamdar can have no cause of complaint.—*G. O. No. 1540 of 3-6-1921.*

**Relations between Inamdars and their Rayats when the period of guarantee expires:** In cases in which the survey rates are lower than mamul assessment the Inamdars try to revert to the Mamul rates on the

expiration of the survey guarantee. But the general rule in this respect is that survey rates introduced after the passing of Act I of 1865 remain in force for ever pending the introduction of a Revision Survey. The Inamdars cannot change such rates. They can revert to Mamul rates *only* in cases in which the term of settlement began *before* the passing of Act I of 1865 i. e. before 21st January 1865.—*G. R. 1327 of 7-3-1912.*

An Inam village was settled before Act I of 1865. The settlement was subsequently validated by s. 3 of the Act and its provisions extended by s. 31. The settlement expired in 1882-83 and no revision settlement was thereafter introduced. The relations between the Inamdar and tenants will however continue to remain as they were during the currency of the survey settlement introduced in 1866-61.—*G. R. L. C. 1657-B of 20-4-1925.*

A holder of an alienated village cannot subsequently decline to accept a survey which he has applied for: When on the application of the holder of an alienated village made in accordance with the provisions of s. 216, the extension of the provisions of Chapters VIII to X of the Code to that village has been sanctioned by Government, the holder has then no option but must have the provisions of those chapters extended to, and enforced in, that village, whether the effect of any of those provisions be acceptable to him or not. Thus when on the expiration of the original settlement introduced into an alienated village, the holder thereof made an application under s. 216 to have the provisions of Chapters VIII to X of the Code extended to the village with a view to revision survey rates being introduced into it. The application was granted and after the necessary preliminary operations revised rates were proposed and sanctioned for that village. Before the formal introduction of those rates, however, the holder of the village expressed his unwillingness to accept those rates and as the original settlement lease had expired, commenced to levy assessment at the Mamul rates, i. e. the rates prevailing before the introduction of the original settlement, it was laid down that the survey rates must prevail and be enforced whether the rates are acceptable to the Inamdar or not.—*G. R. 3000 of 26-5-1897.*

Survey of Inam villages for the purposes of summary settlement. Inamdar's consent is not necessary.—S. 216 of the L. R. Code does not in any way affect the provisions of Bombay II of 1863 or Bombay VII of 1863. Although chapters VIII to X of the Land Revenue Code cannot apply to wholly alienated villages, except subject to the provisions of s. 216, the provisions of s. 2, rule 1, of Bom. II of 1863, and s. 6, rule 1, of Bom. VII of 1863 are unaffected by that section. Therefore, in cases in which Summary Settlement Sanads have been issued, the consent of the owner or holder is not necessary to empower Survey Officers to enter and fix and make an assessment, if an attempt to effect an amicable arrangement has been made and failed. Thus the estates of Inamdars who have not voluntarily applied for a survey can be roughly surveyed for the purposes of fixing the *judi*, without their consent.—*Opinion of the Remembrancer of Legal Affairs to the Government of Bombay, quoted in G. R. 7363 of 6-11-1888.*

[<sup>a</sup>] 217. When a survey settlement has been introduced under the provisions of the last section or of any law for the time being in force, into an alienated village, the holders of all lands to which such settlement extends shall have the same rights and be affected by the same responsibilities in respect of the lands in their occupation as [<sup>b</sup>] holders of land [<sup>b</sup>] in unalienated villages have, or are affected by, under the provisions of this Act, and all the provisions of this Act relating to [<sup>b</sup>] holders of land in unalienated villages [<sup>b</sup>] [<sup>c</sup>] shall be applicable, so far as may be, to them.

Holders of land in alienated villages.

#### Commentary

**Application.**—This section does not extend to the estates in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdar's Act ( Bom. VI of 1889 ) applies.

S. 217 applies at once to alienated lands which have been settled by the Survey Department under Act I of 1865, and no application from the alienee under s. 216 is requisite. The application by the Inamdar contemplated by the last paragraph [now Sub-clause (2)] of s. 216 is required only for future extension of the Survey to an Inam village.—*G. R. 6386 of 6-12-1880.*

**Effect of extension of Chapters VIII and IX.**—When the provisions of chs. VIII & IX are extended to an inam village by notification, the Inamdar is precluded from levying more than the rates fixed by the Survey Department.—*G. R. 623 of 28-1-1888.*

**Rights of Holders of alienated villages.**—Holders of alienated villages to which a revenue settlement has been applied under Bombay Act I of 1865 have the rights of occupants equally when the settlement is under the Code. The *status quo ante* is reverted to on the expiry of the term of the settlement introduced when there was no law in force.—*G. R. 5735 of 29-7-1895.*

**Change by Bom. IV of 1913.**—Bom. IV of 1913 substituted the words "holders of land" in place of the word "occupants" in s. 217. The effect of this substitution is that when a survey settlement is extended to an alienated village the holders of lands therein, if they are tenants therein, will remain tenants and will not become occupants ( which word does not include a tenant ).

[a] As to the local repeal of section 217, see para. 5 of foot-note (a) on p. 1 *supra*.

[b—b] These words were substituted for the original word "occupants" by Bom. IV of 1913, s. 80 (a).

[c] Words repealed by Bom. IV of 1913, s. 80 (b) are omitted.

Thus, Inamdars have no fear now that by a survey settlement the holders, if tenants, will be raised to the status of occupants having a right to pay to the Inamdar nothing more than the survey assessment.—*G. R. 5527 of 12-9-1913.*

As the amendment does not say that it should apply only to villages settled after 1913, it does not save any rights acquired prior to 1913. In other words the amendment has retrospective effect.—*G. R. 7358/84 of 20-7-1937.*

**Who can claim the benefit of s. 217?**—A person who wants to claim the benefit of s. 217, L. R. Code, must show that he was a "holder" within the meaning of s. 3 of the Code at the date of the Settlement. Mere user by rice land tenants of adjoining waste land with the leave and permission of the Inamdar does not make them holders of that Varkas land.—*Wasudev v. Goemil*, 14 Bom L. R. 124.

**"Holders of Land"**.—There is no accurate definition of holders of land in alienated village. The meaning varies according to the context. In s. 217 the word "holders" refers to inferior holders, in s. 88 it refers to Superior holders, and in s. 78 it refers to Superior holders.

It is desirable that the legislature should express its intention clearly as to the effect of the introduction of survey settlement in ordinary and sharakati inam villages on the rights of different kinds of holders and tenants in alienated villages paying either stipulated rent or old assessment.—*Nilaji v. Nagindas*, A. I. R. 1933, Bom. 168.

An Inamdar has no right to enhance assessment when the period of settlement under the Survey Settlement Act (Bom. I of 1865) has expired.—Survey settlement was extended to an alienated village in 1870 on the application of the Inamdar under Bom. Act 1 of 1865. The period of the settlement having expired in 1898, the Inamdar recovered from 1895 to 1910 higher assessment than that allowed by the survey settlement. The Commissioner objected to his doing so in 1910, whereupon the Inamdar sued to charge higher assessment.

*Held*, that the Inamdar had no such right, since s. 217 of the Bom. L. R. Code applied when a survey settlement had been introduced into an alienated village with the consent of the alienee under Bom. Act 1 of 1865 and when the period of settlement had expired after the Land Revenue Code came into force.—*Dhondo v. Secretary of State*, 22 Bom. L. R. 247.

**Kadim Inamdar also is bound by a Survey Settlement.**—A Kadim Inamdar who is a grantee, by a kadim grant, of the soil of a small part of the village, and who has consented to or acquiesced in the introduction of the survey settlement into the village is, by s. 217, L. R. Code, precluded, equally with the Inamdars who hold the rest of the village and on whose application the survey settlement is introduced in the village, from enhancing the rent of his Mirasdar tenant beyond the amount of the land revenue fixed by the survey settlement.—*Pandu v. Ramchandra*, 22 Bom. L. R. 665.

**Inamdar's right to enhance rent.**—In *Pandu v. Ramchandra*, 20 Bom. L. R. 16, Beaman J. adopted the view that an out and out alienee (i.e. one

to whom Government has granted all its rights in the soil as well as its other pecuniary interests) is in a different and a freer position than the alienee of the share of Royal Revenue only and that he was intended to be exempted from the operation of s. 217, and he held that an Inamdar to whom Government had granted all its rights in the soil of a village where a survey settlement has been introduced, is entitled to raise the rents of permanent tenants even when such permanent tenancies commenced before the alienation.

This view was not accepted in *Daloo v. Dinkar*, 20 Bom. L. R. 887. There also the Government had transferred to the Inamdar not merely the right to receive the land revenue but also the entire property in the soil. The High Court held that the words "transferred in so far as the rights of Government to payment of the rent or land revenue are concerned" in the definition of 'alienated' in s. 3 (20) L. R. Code, prescribe a certain minimum requirement, and where that minimum requirement is satisfied the definition of alienated is also satisfied, notwithstanding that the transfer may cover certain other interests over and above those contained in the minimum requirement. Therefore the village in question was an alienated village and s. 217 applied to the case and the effect of the introduction of survey settlement was that thereafter the holders of the land had the same rights in respect of those lands in their occupation as holders of land in unalienated villages had and have, under the provisions of the Code.

**S. 217 and pre-existing rights.**—The provisions of s. 217 do not affect contractual rights arising before the introduction of the Survey. As far back as *Laxman v. Govind*, 5 Bom. L.R. 694, Chudavartkar J. has held that the effect of s. 217 of the Code is to render the occupants in alienated villages subject to a settlement like the occupants in unalienated villages, but that the section does not take away any legal right which any occupancy tenant may have acquired independently of his bare status as an occupancy tenant, liable to pay land revenue according to survey rates. It was similarly laid down in *Kismal v. Jananajaya*, 30 Bom. L. R. 992 that s. 217 does not take away pre-existing rights. The case of *Damodhar v. Kashinath*, 24 Bom. L. R. 1040, also lays down the same principle namely that the special rights which a holder claims in virtue of any grant or contract between him and the Inamdar, are not in the slightest degree affected by s. 217. The principle was again enunciated in the recent case *Nilaji v. Nagindas*, 35 Bom. L. R. 150; A. I. R. 1933, Bom. 168. There the Inamadars of the village of Anjur (a Sharakati village) the plaintiffs in the case were alienees of the royal share of revenue to the extent of two-thirds. In 1853 they leased khar lands in the village on Mafi Istava terms, i. e., rent-free for the first 27 years, rent on a sliding scale for the next five years, and on full rent permanently thereafter. At the survey settlement introduced into the village in 1861, the lands were assessed at Rs 266-9-0 which was increased to Rs. 283 at the revision survey settlement in 1896. The tenant having failed to pay the assessment to Government, the lands which stood in the name of the tenant as a khatedar in the books of Government were sold and were purchased by the predecessor of the defendants subject to the terms of the lease of 1853.



As the tenant had to pay assessment to Government the *Mis* (free rent) period of lease was extended to 1891. At first defendants paid the rent but failed to do so afterwards. In 1914, the defendants gave notice to the plaintiff relinquishing the lands determining the lease. The plaintiffs sued in 1922 to recover arrears of rent for six years before suit.

Upon these facts it was held among other things that the introduction of the survey settlement into an alienated village did not confer on a tenant the rights which belonged to an occupant in an unalienated village, under s. 217; that the authority of *Nemalder v. Collector of Faizra*, 12 Bom. L. R. 767, (1910) was weakened by the change in s. 217 of the Code and the decisions in *Kandi v. Firdaus*, 28 Bom. L. R. 424 and *Saryajines v. Sidhansh*, 27 Bom. L. R. 645; that, therefore, the defendants who had acquired the rights of permanent tenants continued to be permanent tenants and liable to pay rent according to the contractual liability between the parties; and that the plaintiffs also were similarly prevented from avoiding their contractual liability and demanding a higher rent according to the survey rates from the defendants.

In *Nemalder v. Collector of Faizra*, it was held that s. 217 of the Bom. L. R. Code was not restricted in its application to registered occupants only; it involved the holders of land in alienated villages with the same rights and imposed upon them the same responsibilities in respect of lands in their occupation that the occupants in unalienated villages had and that the term "holders" was wide enough to include even a tenant who had entered into possession under an occupant.

In the course of his judgment Patkar J. observed that that case related to a permanent tenant who was liable to pay the customary rent and the suit was brought for the enhancement of the rent, and it was held that the right to cultivate the land vested in the tenant, and the right carried with it a right to hold during the continuance of the settlement at no higher rent than the survey assessment as soon as, by the will of the landlord, the settlement was introduced into the village. That decision related to a permanent tenant who paid the customary rent and not to a tenant who had entered into contractual relations with the landlord. But the authority of that decision is weakened by the change in s. 217 and the decisions in *Kandi v. Firdaus* and *Saryajines v. Sidhansh*.

In s. 217, the words "holders of land" have been substituted for the word "occupants." The result of the amendment is that the holders in general have the same rights in alienated villages after the settlement as they have in unalienated villages. It was held in *Kandi v. Firdaus* that a person holding lands in an alienated village as a permanent tenant under a B3 of the Bom. L. R. Code becomes, on the introduction of the survey settlement into the village, entitled to the rights and affected with the responsibilities of a holder in an unalienated village by virtue of s. 217 of the Bom. L. R. Code, and that he remains what he was, a tenant, and does not become an occupant and is liable, therefore, to pay enhanced rent to the landlord.

Under s. 3, cl. (16) of the Bom. L. R. Code, "Occupant" means a holder in actual possession of unalienated land, other than a tenant, and "holder of land" under s. 3, cl. (11), means a person who is lawfully in possession of land, whether such possession is actual or not, and therefore, where a person is a permanent tenant he continues to be a holder, that is, a tenant and not an occupant, and therefore, not entitled to the rights embodied in s. 68 of the Bom. L. R. Code including the right to hold the land on payment of land revenue only. *The introduction of the survey settlement does not confer on a tenant a right which belongs to an occupant in an unalienated village.*

In *Suryajirao v. Sidhanath*, where there was an agreement between the Inamdar and the tenant to receive a fixed rent of Rs. 87 and odd, it was held that the Inamdar could not, after the introduction of the survey settlement enhance his rent. It was held that in unalienated villages it is competent to Government to enter into contractual relationship with tenants or occupants who might acquire fixity of tenure and fixity of rent, and that in an alienated village, when the alienee has entered into a contract with his tenant granting not only fixity of tenure but also fixity of rent the provisions of s. 217 of the Bom. L. R. Code do not enable such alienee to avoid his contractual liability and enforce against his permanent tenants the payment of assessment levied on occupancy land.

It would, therefore, follow from the changed phraseology in s. 217 that the defendants who had acquired the right of a permanent tenant would continue to be permanent tenants and not occupants, and therefore would not be entitled to the benefits of s. 68 of continuing in possession of the land on payment of only the Government assessment, and that a tenant continues as a tenant liable to pay rent according to the contractual liability between the parties and not as an occupant as was held in the previous case of *Nanabhai v. Collector of Kaira*.

To sum up, therefore the contractual relations between the Inamdar and the tenant are not in any way interfered with by the introduction of the survey settlement, and the Inamdar is prevented from avoiding his contractual liability and demanding a higher rent according to the survey rates. As the provisions of s. 217 do not enable alienee Inamdar to avoid his contractual liability and enforce against his permanent tenants the payment of assessment levied on the land, which is higher than the fixed rent contracted between the parties it would follow that the provisions of s. 217 would not enable the permanent tenant to avoid his contractual liability and enforce against the Inamdars the right of having only the assessment which is lower than the stipulated rent levied against him.

To put the whole thing in a nutshell, when a survey settlement is introduced into an alienated village where there are previous contractual relations between the Inamdar and the landholders regarding the payment of the land revenue dues, two kinds of cases might arise regarding the recovery of revenue dues by the Inamdar from the holders of lands in such villages. In some cases the Inamdar might stand to gain by demanding an amount equal

to the survey rates, as for example when the contractual rates are lower than the survey rates; in others the tenant might stand to gain by demanding that he should be asked to pay only the survey rates, as for example when the contractual rates are higher than the survey rates. But so long as the previous contractual relations exist, in neither of these cases will the law allow the parties to take advantage of the survey rates in contravention of the previous contract. The terms of the contract, whatever they may be, must be adhered to and s. 217 will have no application to such cases.

**218.** Nothing in this Act, which applies in terms to Construction of unalienated land or to the holders of un-this Act. alienated land only, shall be deemed to affect alienated land, or the rights of holders of alienated land or of Government in respect of any such land, and no presumption shall be deemed to arise either in favour, or to the prejudice, of any holder of alienated land from any provision of this Act in terms relating to unalienated land only.

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## SCHEDULE A.

*Repealed by Bom. IV of 1913, section 81.*

## SCHEDULE B.

FORM OF BOND TO BE REQUIRED UNDER  
SECTION 23.

WHEREAS I,

inhabitant of

have been appointed to the office of

and have been called upon to furnish security under the provisions of section 23 of the Bombay Land Revenue Code for the due discharge of the trusts of the said office, or of any other office to which I may be hereafter appointed, and for the due account of all moneys, papers and other property which shall come into my possession or control by reason of any such office, I hereby bind myself to pay to the Secretary of State for India in Council, the amount of any loss or defalcation in my accounts, and to deliver up any papers or other property within such time, and to such person as shall be demanded by the person at the head of the office to which I belong, such demand to be in writing and to be left at my office or place of residence, and in case of my making default therein I bind myself to forfeit to the Secretary of State for India in Council the sum of . Rupees

[<sup>a</sup>] Provided always that nothing herein contained nor the security hereby given shall be deemed to limit my liability in respect of the matters aforesaid to the forfeiture of the said sum of

rupees only, and that should that sum be insufficient to recoup the Secretary of State for India in Council in full for any loss or damage sustained by him in respect of the matters aforesaid I agree to pay to him on demand such further sum as shall be deemed by the person at the head of the said office necessary in addition to the said sum to cover such loss or damage as aforesaid.

*Dated* .

(Signature)

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[<sup>a</sup>] This proviso was added by Bom. IV of 1905, First Schedule.

( Schedule C. )

FORM OF SECURITY TO BE SUBJOINED TO THE BOND OF  
THE PRINCIPAL

We hereby declare ourselves sureties for the abovesaid  
that he shall do and perform all that he  
has above undertaken to do and perform, and in case of his making  
default therein we hereby bind ourselves to forfeit to the Secretary  
of State for India in Council [\*] the sum of \_\_\_\_\_ rupees,  
in which the abovesaid \_\_\_\_\_ has bound  
himself, or such smaller [\*] sum as shall be deemed sufficient by  
the \_\_\_\_\_ to cover any  
loss or damage which the Government may sustain by reason of  
such default

Dated

(Signature)

SCHEDULE C.

FORM OF WARRANT TO BE ISSUED BY THE COLLECTOR  
UNDER SECTION 25 OR 157.



To

THE OFFICER IN CHARGE OF THE CIVIL JAIL AT

WHEREAS A. B. of \_\_\_\_\_ was on the \_\_\_\_\_ day of \_\_\_\_\_ 187 .  
ordered by \_\_\_\_\_ to (*here state the substance of the demand made*): and whereas the said A. B. has neglected to comply with the  
said order, and it has therefore been directed, under the provisions  
of section \_\_\_\_\_ of the Bombay Land Revenue  
Code, that he be imprisoned in the Civil Jail until he obey the  
said order or until he obtain his discharge under the provisions of  
section 25 or 28 (*or section 157 or 164 as the case may be*) of the  
said Code: you are hereby required to receive the said A. B. into  
the Jail under your charge and to carry the aforesaid order into exe-  
cution according to law.

Dated this

day of

187

(Signature of Collector.)

[\*—a] These words were substituted for the original word "such" by Bom. IV of 1905.  
First Schedule.

(Schedule D.)

## SCHEDULE D.

FORM OF BOND TO BE REQUIRED UNDER  
SECTION 28 OR 164.

WHEREAS I,  
have been ordered by  
to (*here state the nature of the demand*) and whereas I dispute the  
right of the said to make the said order, I  
hereby bind myself to file a suit within fifteen days from the date of  
this bond in the District Court of  
to contest the justice of the demand, and do agree that in the event  
of a decree being passed against me I will fulfil the same and will pay  
all amounts including costs and interests, that may be due by me, or  
that if I fail to institute a suit as aforesaid, I will, when required,  
pay the abovementioned amount of

Rupees (or will deliver up the above-  
mentioned papers or property, *as the case may be*), and in the case  
of my making default therein, I hereby bind myself to forfeit to the  
Secretary of State for India in Council the sum of  
Rupees.

Dated

(signature.)

FORM OF SECURITY TO BE SUBJOINED TO THE BOND  
OF THE PRINCIPAL.

WE  
hereby declare ourselves securities for the abovesaid  
that he shall do and perform all that he has  
above undertaken to do and perform, and in case of his making  
default therein we hereby bind ourselves to forfeit to the Secretary  
of State for India in Council the sum of Rupees

Dated

(Signature.)

(Schedule E.)

## SCHEDULE E-

(See section 84.)

I.—FORM OF NOTICE TO BE GIVEN BY LANDLORD TO TENANT  
TO QUIT.

To

A. B.

I do hereby give you notice that I do intend to enter upon and take possession of the land (*here give the description*) which you now hold as tenant under me, and you are therefore required to quit and deliver up possession of the same at the end of this current year, terminating on the            of            187 .

(Signed) C. D.

Dated this            day of            187 .

II.—FORM OF NOTICE TO BE GIVEN BY TENANT TO LANDLORD  
OF HIS INTENTION TO QUIT.

To

C. D.

I do hereby give you notice that I shall quit and deliver up to you, at the end of this current year terminating on the            of            187 , the land (*here give the description*) which I hold from you.

(Signed) A. B.

Dated this            day of            187 .

SCHEDULE F.

FORM OF COMMISSION TO BE ISSUED TO A HOLDER OF ALIENATED  
LANDS OR VILLAGES OR HIS AGENT, UNDER SECTION 89.

Seal.

The [a] Commissioner, by virtue of the powers vested in him by the Bombay Land Revenue Code, is pleased to confer on you *Jagirdar, etc., or Agent, etc., as the case may be,*) power to

in (or in respect of) the villages and lands specified in this Commission, in the manner prescribed in (or in section of) the said Code.

The villages and lands over which the power thus conferred upon you extends are as follows :—

*(Here enter the description.)*

The within delegated power is vested in you during the pleasure and subject to the recall of the said [a] Commissioner.

(Signed)

SCHEDULE H.[b]

*(See section 133.)*

FORM OF SANAD FOR BUILDING SITES.

*(Royal Arms.)*

THE SECRETARY OF STATE IN COUNCIL.

To

WHEREAS His Excellency the Governor of Bombay in Council, with a view to the settlement of the land revenue, and the record and preservation of proprietary and other rights connected with the soil, has under the provisions of the Bombay Land Revenue Code, directed a survey of the lands within the of

and ordered the necessary inquiries connected therewith to be made, this sanad is issued under section 133 of the said Code to the effect that—

[a] This word was substituted for the original words "Governor in Council of Bombay" by Bom. IV of 1913, s. 82.



there is a certain plot of ground occupied by you in the  
 division of the  
 of register No. in  
 the map marked sheet No.  
 and facing towards the the road  
 leading from to  
 containing about  
 square yards, and of the following shape and about the following  
 dimensions :—

You are hereby confirmed in [a] the said occupancy [a] exempt  
 from all land revenue (or subject to the payment of Rs.  
 per annum to the land revenue).

The terms of your tenure are such that your occupancy is both  
 transferable and heritable, and will be continued by the British  
 Government, without any objection or question as to title, to who-  
 soever shall from time to time be its lawful holder (subject only to  
 the condition of the payment annually of the above land revenue  
 according to the provisions of the Bombay Land Revenue Code or  
 of any other law for the time being in force, and to the liability to  
 have the said rate of assessment revised at the expiration of a term  
 of  
 years reckoned from the  
 and thereafter at successive periods of  
 years in perpetuity, and to the necessity for compliance with the  
 provisions of the law from time to time in force as to the time and  
 manner of payment of the said assessment, and to the liability of for-  
 feiture of the said occupancy and of all rights and interests connected  
 therewith in case of your failure to pay the said assessment as  
 required by law).

This sanad is executed on behalf of the Secretary of State for  
 India in Council by order of the Governor in Council of Bombay,  
 by and under the hand and seal of this day of  
 one thousand eight hundred and A. D.

( Signed )

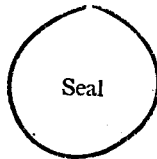
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(b) There is no Schedule G.  
 (a- a) These words were substituted for the original words "the occupancy of the above des-  
 cribed ground" by Bom. IV of 1913, s. 83.

(Schedule I.)

## SCHEDULE I.

FORM OF WARRANT TO BE ISSUED BY THE  
COLLECTOR UNDER SECTION 202.



To the Officer in charge of the Civil Jail at

WHEREAS *A. B.* of

has resisted (or obstructed) *C. D.* in removing *E. F.*  
(or himself, that is, the said *A. B.*) from certain land in the village  
of \_\_\_\_\_ in the \_\_\_\_\_ taluka, and whereas  
it is necessary, in order to prevent the continuance of such obstruction  
(or resistance) to commit the said *A. B.* to close custody;  
You are hereby required under the provisions of section 202 of the  
Bombay Land Revenue Code to receive the said *A. B.* into the Jail  
under your charge, and there to keep him in safe custody for

days.

Dated this

day of

187 .

(Signature of Collector.)

# APPENDIX A

## The Land Revenue Rules, 1921.

(as amended up-to-date)

WITH

Land Revenue Administrative Orders

and

FORMS

(up-to-date)

N. B.—Land Revenue Administrative Orders are interspersed among the Rules in the logical sequence of their subject matter. The orders are serially numbered with Roman numerals from I to LII.

## Appendix A.

# The Land Revenue Rules, 1921

Secretariat, Fort, Bombay, 26th January 1921

No. B-205—In exercise of the powers conferred by sections 213 and 214 of the Bombay Land Revenue Code, 1879 (Bombay V of 1879), and of all other powers enabling him in this behalf, and in supersession of Government Notifications in the Revenue Department No. 7368, dated the 6th December 1894, No. 8366 dated the 27th November 1903, No. 5223 dated the 29th June 1905, and No. 5641 dated the 5th June 1907, and all notifications amending the same, the Governor in Council is pleased to make the following rules:—

### CHAPTER I.

#### INTRODUCTORY.

1. *Short title and extent of application.*—These rules may be called the Land Revenue Rules (1921). Rules 7 to 10 inclusive, 21 clause (2), 23, 25 to 27 inclusive, 39 and 70 shall not apply to Sind.

2. *Interpretation.*—In these rules, unless there is anything repugnant in the subject or context,

(a) "Chapter" and "Section" mean a chapter and a section of that Code.

(b) "Mamlatdar" includes Mahalkari and (in Sind) "Mukhtyarkar."

(c) "Public Document" has the same meaning as in section 74 of the Indian Evidence Act I of 1872.

(d) "Chavdi" (in Sind) includes a Tapedar's Dora.

### CHAPTER II.

(Administrative Orders only.)

#### POWERS AND DUTIES OF OFFICERS.

I. The general superintendence of all the administration of the Code is entrusted to the Divisional Commissioner. Except for the powers expressly reserved by the Code to Government, the Commissioner can exercise all the other powers. He sanctions the grant of revised or renewed Saunds for land or Cash allowances [R. 4941 (16)-02] and sanctions alterations in Saunds for alluvion or diluvion [R. 8993 (13)-10]. He can revise the limits of sub-divisions of districts (R. 2594-01). When Government have approved the surrounding Khalsa settlements he used to sanction settlements and revisions of Inam villages (R. 2691-02) but Government withdrew this power in R. 5248-17. The functions of Commissioner of Survey (sec. 18, etc.) are vested in the Settlement Commissioner and Director of Land Records

(R. 5370-01): and those of Superintendent of Survey and (Assistant) Settlement Officer are conferred on officers from time to time, as required, by notification (see paragraph 12, Government Selections, CCXXVII, new series).

II. Power to reduce the sanctioned assessment either on account of deterioration of the soil or misjudgment in the classification (R. 1788-04, 8046-08) or on account of the sub-division of survey numbers (R. 1698-10) is reserved by Government, subject to the delegations to the Director of Land Records in R. 524, 4972-14 and 787-16, which cover all reductions due to clerical and arithmetical mistakes without limit of amount, and the general delegation to the Divisional Commissioner in G. 7569-07, R. 6490-10 and 4164-16, which extends to an annual assessment of Rs. 20 (20½25 years=500) (R. 4495-16). The Collector of Ratnagiri is given power to reduce assessments in Salt lands (R. 10624-14-4-24). No officer has been empowered to reduce non-agricultural rates once fixed or imposed (R. 476-03); but Rules 81 (2) and (with the Commissioner's sanction) 81 (3) and 82 (iv) give the Collector discretion in first fixing the rates.

"The Commissioner in Sind and the Commissioners of Divisions are delegated the power to sanction a reduction of assessment consequent upon the reclassification of agricultural land up to Rs. 100 per annum when reclassification operations are confined to a single village and to Rs. 500 per annum when they extend to more than one village in a taluka."—*G. R. R. D. 8798/23 of 2-5-1932.*

The Code confers no power expressly to remit land revenue, but the power to impose implies also the power to remit, and is reserved to Government, except in so far as they formally delegate it. The orders empowering the Collector to remit and suspend ordinary agricultural land revenue are given in Chapter XVI, but non-agricultural or miscellaneous revenue and judi on inam land exceeding Rs. 100 (R. 6862-83) can be remitted only by the Commissioner. The Collector can remit quarry fees when stone, etc., is wanted for religious or charitable purposes (R. 5295 (115)-11). He also can remit the assessment on land assigned or acquired for a public purpose (R. 9193-11), but this is only a natural consequence from the assignment or acquisition. He can also remit sale expenses under section 183 (R. 6575-00 and 5295 (81)-11). But grazing fees under the pass system can be remitted only by the Commissioner (R. 9084-06) who also makes grants of timber for certain prescribed objects from non-forest waste land up to Rs. 250 (R. 8811-07): the Collector up to Rs. 50 (R. 3736-09).

The Collector may remit fines under section 61 (R. 4347 (21)-02) and the imposing officer (Collector, Assistant, or even Mamlatdar) may remit fines under section 148 (*chauthai*) (R. 2485-83).

III. While the Code gives almost all executive powers in the first place to the Collector (who *signs* sanads for most alienations, H. 7119-II of 27-9-29, it reserves a few to the Commissioner. The Collector fixes irrigation rates

under section 55 within the maximum sanctioned by Government (R. 4347 (5)-02). The Collector hears appeals from Survey Officers below grade of Superintendent of Survey under section 37 (2) (R. 6884-15), and read with section 20B, this also gives him appellate power in respect of section 50A, District Municipal Act. The Collector can make reductions for diluvion (R. 1332-16) and may postpone instalments under R. 8046 (7)-08 but only with the Commissioner's sanction. He may transfer Government land to other Departments (R. 4347 (19) 02) and make all assignments under section 38 (Act IV of 1906).

For signing deeds, see also order VI.

IV. While the Collector cannot sanction the employment of permanent establishment (section 21) he can make all appointments to sanctioned posts on the district staff, except Mamlatdars and Head Accountants: and he may in certain cases create and fill temporary appointments. The most important of these cases is in respect of the staff of Circle Inspectors, peons and labourers for partition and sub-division measurement work, and for repairing boundary marks when the cost is recoverable from the parties (R. 737-00, 8067-07, 8557-11, 9545-11)

V. The Collector can write off amounts of irrecoverable revenue of all kinds not exceeding Rs. 100 in each case without reference to higher authority (R. 6862-83, 1714-04 and 11221 (27)-12), and the Commissioner provided no defect of system or procedure requiring Government orders is disclosed and there has been no serious negligence which might require disciplinary action (F. 4513 (8)-08) can write off without limit irrecoverable dues for boundary mark repairs (section 122-3; R. 11289-10) and all kinds of revenue and tagai without limit (R. 1704-04), and irrecoverable value of stores or public money up to a limit of Rs. 500 (F. 3977-11) and unserviceable dead stock to any amount, sending an annual statement to the Accountant General (R. 3116-61). This last power was extended to the Collector by R. 5941-02. For delegation of his powers as to boundary marks see R. 5296 (60, 61)-11.

Irrigation arrears (though not land revenue) can be written off with the consent of the Executive Engineer (P. W. A.-I. 30-04).

VI. Generally speaking all powers of the Collector under the Land Revenue Code or any other law are also exercised under section 10 by the Assistant or Deputy Collector in respect of the talukas in his charge (R. 5941-02). But the Collector may always reserve any power he thinks fit. In particular, Government have directed that powers under Rule 82. (We should now understand 81 and 82) should not ordinarily be delegated (R. 8459-08). There should be no "unnecessary" reservations (R. 7048-03). The power of arrest is to be exercised only when specially delegated (R. 1743-83). The Assistant or Deputy has certain powers of executing contracts and leases under home Deptt. Resolution 7119-II of 27-9-29 and sanads for tree planting in open sites in villages. He may sue wataai village revenue officers (R. 10431-12); and (in Ahmedabad) appoint, punish, and dismiss mukhis and police patels (subject to control of the District Magistrate) in talukdari villages (R. 1276-21).

VII. Finally the Code provides that the Mamlatdar should exercise such powers as the Collector may delegate to him. But these delegations must be made "under the general or special orders of Government"; and also they must be made in all cases by name and not merely in virtue of the office held (R. 7773-13, 239-14). These ex-officio powers are given in order XI. Therefore it is desirable that a printed form should be used by every Collector as follows :—

"To Mr. A. B.

"Whereas you have been appointed to be (or to do duty temporarily as) Mamlatdar (Mahalkri) of——you are hereby authorized during the tenure of that office to exercise the following powers :—

( Here print the powers below detailed.)

( The Collector should strike out whatever powers he elects to reserve.)

Collector of——."

VIII. The powers which may be delegated are these :—

Section	Extent of power	Authority.
25, 26 32 and Watan Act...	All To five hereditary or stipendiary village revenue officers.	R. 5295 (9)-11. R. 2116 and 4100-83, 1953-93 5891-03, 5595-08.
42, 43, 70 48 (4), 61 (6), 79A... and 202.	All To sign eviction notices approved by the Assistant or Deputy	R. 4347 (17)-02. R. 5295 (85)-11.
80, 86	All. [Mukhtyarkars in Sind included. R. 8048 (1)-08 ]	R. 2598 and 6024-83, 9901-86.
90	To sanction sale of movables in alienated villages.	R. 5295 (47)-11.
91	To accept security from defaulting inferior holders.	<i>Under this order.</i>
117B 155F	All Up to a limit of Rs. 15	<i>Under this order.</i> R. 7623—9-4-24 & 13-4-24.
135H (3)	All	<i>Under this order.</i>
141-143, 145	All	R. 8046-08, 7773-13.
148	All	R. 7176-12.
149	To issue certificates direct to other Mamlatdars (apparently in the same or other districts of the Presidency).	R. 5295 (71)-11.
152	To issue notices and remit notice fees levied by mistake.	R. 5295 (73)-11
153, proviso (a)	To issue notices threatening forfeiture	R. 5295 (74)-11.
154	To distrain and sell movables in unalienated villages.	R. 5954-91
156	To determine what property is exempt	R. 4347 (17)-02.
185, 186 (3)	All, in respect of such sales as he has himself power to make.	R. 5295 (78-9)-11.

Section	Extent of power	Authority
121	... To put in possession and give certificate.	R. 5295 (80)-11.
1-6	... All.	... R. 8785-89.
129 (2)	... All.	... R. 5295 (83-84)-11.
<i>L. R. Rules—</i>		
Rule 41 (& sec. 68)	All (khasli sales)	... R. 5295 (36)-11
Rule 58	... Permit tree cutting in watan land	... R. 5295 (22)-11.
59 (and sec. 65)	... To specially selected Mamlatdars	... R. 3459-08, 5295 (32)-11,
37, 42, 64, 65, 66 (and sec. 170).	To confirm sale at any auction when the Collector has previously fixed (Rule 128) an upset price which is realized. (For powers as to auctions, see Chapter XVIII.)	R. 3520-12.
Revised Rule 81 (and sec. 60)	To All Mamlatdars and Mahalkaris. To grant permission to use land for S. A. purposes in Class II villages subject to the conditions laid down by the Collector.	R. 6406/28 of 11-11-31.
18, 19, 133, 61 and 23	To Hazur Mamlatdar of Surat and Broach. Ahmedabad. Ohulia, Jalgaon, Nasik and Bijapur.	G. R. R. D. 8587/28 of 14-4-32. ... G. R. R. D. 8587/28 5-7-32. G. R. R. D. 8587/28 30-8-32.
L. R. Rule 51 (2)...	To Hazur Mamlatdar of Ahmedabad. Bijapur.	G. R. R. D. 8587/28 5-7-32. ... G. R. R. D. 8587/28 30-8-32.
18, 19, 133, 61 and 23?	To Hazur Mamlatdar of Thana.	... G. R. R. D. 8537/28 of 1-10-32.

Under other laws and rules, powers have been given to Mamlatdars:—

- (1) to enter the heirs of Summary Settlement (Class II unstarred) Inams;
- (2) to appoint, give leave, and determine heirs of inferior village servants (F. 53-1867);
- (3) to permit cutting of trees in uncommuted service lands [R. 5295 (22)—11]

IX. In issuing his delegation order to the Mamlatdar the Collector can reserve any power he thinks fit, which will then be exercised only by the Prant Officer. In delegating to a Mahalkari, he will probably reserve more powers, and he will also specify whether the Mahalkari is to be considered the immediate subordinate of the Mamlatdar or of the Assistant Collector for the purposes of section 203 (appeals, etc.). The Collector can also



appoint a Mahalkari and assign certain powers to him without specifying the local limits of his Mahal ( R. 6824-14 ), but the necessity of such appointment shall be reported to Government ( sec. 13 ). In such a case he will be practically a Deputy Mamlatdar within the taluka, exercising such power as may be given to him; and he will not be "below the rank of an Aval Karkun" for the purposes of the Record of Rights.

Survey Mamlatdars are appointed by the Commissioner of Survey ( R. 113-16 ), but their powers are those of revenue officers under Chapter X-A ( Record of Rights ), not of survey officers under sec. 18.

The D. I. L. R. is a revenue officer ( R. 1327-02 ) and can issue summonses for evidence or documents, but the Superintendent is a survey officer; supervising Tapedars in Sind are survey officers ( 6415-08 ); but Circle Inspectors are not. The D. I. L. R. has power to order measurement on the application of parties and to levy fees for it ( R. 1318-20 ). Both S. L. R. and D. I. L. R. can levy fees under sec. 135-F ( R. 1457-21 ).

X. An Extra Aval Karkun is frequently treated as such a Mahalkari. He has power to try Assistance ( sec. 86 ) ( R. 8616-91 ) and possessory suite ( under section 3 of the Mamlatdars' Courts Act ) ( R. 72-00, 8269-06 ).

XI. The powers of a Mamlatdar's First or Aval Karkun are regulated by sec. 14. He has been specially given power to sign notices of demand under sec. 152 and may remit the fees if wrongly charged [ R. 5295 (72) and (73)-11 ] and to receive rajinamas under sec. 74 ( R. 1743-89, 7423-05 ). He can also levy fees up to a maximum of Rs. 15 in each case under sec. 135 ( F ) ( R. 7623 9-4-24 and 13-4-24 ). An Aval Karkun can exercise in the absence of the Mamlatdar any powers specifically given by the rules to Mamlatdars [ see Ruls 54, 67-69, 74 (2), 96, 108 and 138 ]. A substitute appointed under sec. 15 can now exercise powers under the Mamlatdars' Courts Act by sec. 3 as amended by Act II of 1906 ( I. L. R. 25 Bom. 318, 36 Bom. 277 ) R. 8507-07 gave the Aval Karkun power to try rent suits up to a limit of Rs 50; which is now raised to Rs. 100 by R. 208-21. The Collector may also delegate the power to selected *Treasury* Head Karkuns R. ( L. C. ) 541-2-9-23.

XII. The revenue officers hereinbelow mentioned shall, previously to entering upon their office, furnish security ( sec. 23 ) to the following amounts:—

	Rs.
1. Head Accounts	5,000
2. Mamlatdars	3,000
3. First Karkuns to Mamlatdars ( G. N. 733-2-3-20	3,000
4. Special Head Karkuns for payment of Military pensions ( R. 8436-14 )	1,000
5. Treasury Nagdi Karkuns ( to Mamlatdars and Mahalkaris ) ( F. 520-21 )	500
6. Mahalkari with treasury ( F. 520-31-8-31 )	3,000
7. First Karkun to Mahalkari with treasury ( F. 38-21 )	1,000
8. Shroff Karkuns to Mahalkari of Kohistan and Keti Bandar ( R. 3608-06 )	1,000

	Rs.
9. Mahalkari without treasury ... ..	500
10. Treasurer at Poona ... ..	80,000
11. Treasurer at Kanara, Kolaba (R. 10466-06) and Ratnagiri ... ..	20,000
12. All other Treasurers ... ..	40,000
13. First Karkuns to Treasurers of Kanara, Kolaba and Ratnagiri ... ..	1,000
14. All other First Karkuns to Treasurers ... ..	2,000
15. Second Karkun to Poona Treasurer ... ..	2,000
16. Karkuns other than any of the foregoing employed in Husar Mamlatdars' or Mahalkaris' (R. 3608-06) offices on shroff's work ... ..	1,000
17. Karkuns for payment of Military pensions (R. 8436-14) ... ..	500
18. Supervising Tapedars in Sind (R. 7568-12) ... ..	1,000
19. Tapedars in Sind ... ..	1,000
20. Stipendiary Patels or Village Accountants appointed under sec. 16, and Japtidars appointed by the Collec- tor to manage attached Khoti villages (R. 3451-08, 8811-16) ... ..	200
21. Karkuns or Clerks who write the registers of copying, comparing, search and inspection fees and of bhatta and permanent advances and take charge of moneys deposited for those purposes in Revenue Courts ... ..	200
22. Headquarter Assistants in Survey Offices (R. 2245-99) ... ..	200
23. Accountant in the office of the Commissioner in Sind (R. 7978-15) ... ..	1,000
24. City Maintenance Surveyors (R. 4737 of 5-5-22) ... ..	200

*Provided that in the case of the officers specified in Nos. 3 and 16 the amount of security to be furnished may be raised by the Commissioner to such amount not exceeding five thousand rupees as he thinks fit: and in No. 20, he may exempt in special cases, e. g., Khoti villages (R. 39-17).*

After the issue of R. 4418-16 all powers of Government under sec. 23 are delegated to the Commissioner in Sind under Act V of 1968.

One Government servant should not be allowed to stand as surety for another for the purposes of section 23, Land Revenue Code. (R. 6064/28 of 1st November 1930).

In Sind a Government servant serving in one department should be permitted to stand surety for a Government servant serving in another department, provided, in the case of Hindus, that they are not members of the same joint family.

2. Retired Government servants and servants of local bodies should not be debarred from standing sureties for Government servants. (G. R., R. D., No. 6084/28 of 2-12-31.)

**XIII.** When any person is appointed to any office specified in Order XII, whatever may be the probable duration of his tenure thereof, he shall, before entering thereon, furnish security to the amount specified or to such smaller amount as the Collector may, in the particular case, deem reasonable and sufficient.

Security to be furnished before entering on appointment.

**XIV.** Where he executes a bond, the number of sureties shall be one or more, at his option, if the amount of security does not exceed one thousand rupees; and otherwise shall be not less than two.

Number of sureties.

**XV. (1)** Heads of offices in which any officer required to furnish security is serving will be held responsible for seeing that the necessary security is duly furnished, and that it is good and sufficient both at the time it is first furnished and thereafter, until it is no longer required.

Duties of heads of offices in respect of securities.

(2) For this purpose heads of offices shall carefully scrutinize the security and satisfy themselves as to its sufficiency both when it is first offered and also once a year after it has been accepted, and if they deem it insufficient, shall require the officer concerned to furnish additional or fresh security.

(3) Care must be taken that no one person is accepted as surety on behalf of a disproportionately large number of officers, whether such officers belong to the same office or department or not.

(4) No Karkun should ordinarily have in his custody more than the amount for which he has given security: surplus should be placed in the treasury (R. 4431-01).

**XVI. (1)** The Collector shall keep a register (Appendix O-A) (R. 2497-99) of all securities furnished by each officer in his district in accordance with Order XIII for scrutiny by the Commissioner during his tour, and shall submit annually to the Commissioner, on 1st October, a certificate that all such securities are good and sufficient.

A register of securities to be kept by Collector.

(2) This register shall contain such particulars as the Commissioner may from time to time direct. A column must be added in all cases in which to record immediately on receipt notices of withdrawal (section 39) of a surety (R. 257-10).

(3) For the purposes of section 31 (2) an annual declaration of all land-revenue property is required from all officers (G. 3000-03).

## CHAPTER III. REVENUE SURVEYS.

### Survey and assessment of agricultural land.

**3. Survey numbers and sub-divisions.**—(1) Every holding not less in area than the minimum fixed under section 98 shall be separately measured, classified, assessed and defined by boundary marks, and entered in the land records as a survey number.

(2) Every holding of which the area is less than such minimum shall be separately measured, classified, and assessed and entered in the land records as a sub division of that survey number in which it is directed to be comprised; it may also be separately demarcated if the Commissioner of Survey so directs, provided that the said Commissioner may require the persons interested in such holding to prepay the costs, or such portion of the costs as he thinks fit, of so defining the holding.

4. *Record of measurements.*—All measurements shall be recorded in a book or embodied in a plane table map kept in such form as shall be prescribed by the Commissioner of Survey for each survey. The said books or maps shall be preserved as a record of the survey.

5. *Test of measurements.*—The original measurements made by the subordinate survey officers employed for the purpose shall be tested by the officers in charge of measuring establishments in such manner and to such extent as the Commissioner of Survey shall deem sufficient.

6. *Village maps.*—Village maps shall be prepared under the orders of the Commissioner of Survey showing each survey number and its boundary marks.

7. *Classification of Land.*—For the purposes of assessment all lands shall be classed with respect to its productive qualities. The number of classes and their relative value reckoned in annas shall be fixed under the orders of the Commissioner of Survey with reference to the circumstances of the different tracts of country to which the survey extends and to the nature of the cultivation.

8. *Field-books.*—Every classer shall keep a field-book and record therein the particulars of his classification of each survey number and sub-division and the reasons which led him to place it in the particular class to which in his estimation it should be deemed to belong. Such field-books shall be preserved as permanent records of the survey.

9. *Test of classification.*—A test of the original classification made by the subordinate officers employed for this purpose shall be taken by the officers in charge of classing establishments, in such manner and to such extent as may be directed by the Commissioner of Survey.

XVII. The said test shall be an independent test, that is to say, it shall be made by the testing officer in entire ignorance of the original classer's proceedings or record until it has been completed and its results have been finally determined, when only the original classing valuation and the test valuation shall be compared and their separate results recorded.

XVIII. When any classing operations are undertaken, notice shall be given to the rayats to enable them to represent defects and point out their own improvements (R. 7447-86).

10. *Assessment.*—When rates of assessment have been sanctioned by Government, the assessment to be imposed on each survey number or sub-division shall be determined according to the relative classification value of the land comprised therein.

**XIX.** In order to afford the people an opportunity of knowing and filing their objections to his proposals, the Settlement Officer shall publish a notification in the vernacular in Form O-B (R. 7447-86, 12161-14, 344-15 and 8914-16), in which the proposed increase or decrease in rates in annas and pice per rupee is stated with a short abstract of his reasons translated into the vernacular; also a copy of his report is deposited for inspection at the Taluka Office. Petitions of objection received by the Collector within two months are submitted to Government for consideration with his proposals. If Government raise (or in an inam village lower) the rates proposed by the Settlement Officer, a fresh notice issues and a fresh opportunity of objection is afforded before the orders become final (R. 6141-03-15544-17.).

**10-A.** All agricultural assessments (or judi) shall be calculated out to the nearest pie at the rate (per acre or otherwise) sanctioned upon the area chargeable and rounded off in the following manner:—

When the assessment (or Judi)

(a) does not exceed *one rupee* the nearest half anna shall be taken neglecting 3 pies and under and counting 4 pies and 5 pies as 6 pies, in case of all districts, except the Koukan and below-ghat talukas of Kanara, where the nearest 3 pies shall be charged. For example, in the Thana, Kolaba, Ratnagiri districts and the below-ghat talukas of Kanara—

- an assessment of Re. 0-10-4 shall be taken as Re. 0-10-3;
- an assessment of Re. 0-10-5 shall be taken as Re. 0-10-6;
- an assessment of Re. 0-0-2 shall be taken as Re. 0-0-3;

**Elsewhere**

- an assessment of Re. 0-8-3 shall be taken as Re. 0-8-0;
- an assessment of Re. 0-9-4 shall be taken as Re. 0-9-6.

(b) exceeds *one rupee*—

the nearest anna shall be taken in all cases, neglecting 6 pies and under and counting 7 to 11 pies as one anna, for example—an assessment of Re. 1-3-6 shall be taken as Re. 1-3-0;

- an assessment of Re. 1-3-7 shall be taken as Re. 1-4-0;

Provided that—

(1) when the calculation results in the sum total of the new assessments (or Judi) of all sub-divisions of a survey number being greater or less than the whole assessment (or Judi) or that number, the difference shall be equitably distributed over the sub-divisions by deduction or addition in the largest shares, so as to make the total equal to the assessment (or Judi) on the survey number;

(2) Subject to proviso (1), the assessment of a sub-division shall in no case be less than a pie and every fraction of a pie shall be considered as one pie, the addition being counterbalanced by deduction in the assessment of any of the other sub-divisions of the same survey number in an equitable manner.

(3) No new assessment (or Judi) on a survey number or sub-division of a survey number shall be less than 3 pies in the Thana, Kolaba and Ratnagiri Districts and in the below-ghat talukas of the Kanara District, or less than 6 pies elsewhere, but this provision shall be subject to the condition that the total of the assessments of all the sub-divisions of a survey number shall not exceed the assessment (or Judi) of that survey number. Where this condition cannot be fulfilled, any assessment of less than 3 pies or 6 pies, as the case may be, may be retained subject to proviso (2).

11. *Amalgamation*.—(1) Any survey number or sub-division of a survey number may be amalgamated with any other coterminous survey number with the sanction of the Collector and upon the application of the holder, whenever all the parcels of land proposed for amalgamation are held by the same holder upon the same tenure.

(2) Any sub-division may be amalgamated without prior sanction with any coterminous sub-division of the same survey number held by the same holder upon the same tenure.

(3) When such amalgamation is effected, the two or more portions of land shall become one entry in the land records, bearing the same distinguishing number as the first in series of the amalgamated numbers. Any boundary marks placed between the amalgamated holdings shall be removed: and the village map corrected accordingly.

12. *Application of rules 3 to 11*.—(1) Rules 3 to 11, unless otherwise directed by Government, shall be observed in the conduct of revenue surveys of lands used, or which may be used, for the purposes of agriculture.

(2) *Form and details*.—Matters of detail not provided for in the foregoing rules shall be determined in each survey in accordance with such general or special orders as the Commissioner of Survey, acting under the general control of Government, may, from time to time, issue.

#### Survey and assessment of non-agricultural land.

13. *Non-agricultural land not to be classified in accordance with foregoing rules*.—(1) Land of any of the kinds specified in sub-rule (2) shall be measured and mapped in accordance with rules 3 to 6 inclusive, but shall not be classified or assessed in accordance with rules 7 to 10.

(2) The lands referred to in sub-rule (1) are the following:—

(a) occupied unalienated lands, which are situated within an area in which a survey under rules 3 to 11 is in progress and which are used for any non-agricultural purpose;

(b) unoccupied unalienated lands, situated within any such area, which are deemed to be likely to be more in demand for building or industrial purposes than for agriculture; and

(c) all lands to which a survey is extended under section 131.

14. *Assessment of non-agricultural land*.—The Collector on receipt of a schedule of the lands referred to in rule 13 (2) shall assess them at the same rates and for the same period as if he were altering an agricultural assessment under whichever of Rules 81 to 85 has been applied to the locality.

Provided that land wholly or partially exempt from assessment under the proviso to section 52 or under section 128 or otherwise shall not, so far as it is so exempt, be assessed.

And also provided that land held under unexpired leases shall become liable to the rate of assessment in force for the locality only upon the expiry of those leases.

14-A (1) All non-agricultural assessments, rents and fines leviable under rules 43, 47, 49, 51, 80-83, 92, 93 and 99-103 shall be calculated out to the nearest pie at the rate (per acre or otherwise) sanctioned upon area chargeable: but any sum so calculated that—

(i) is less than two annas, shall be raised to 2 annas;

(ii) exceeds two annas, and is not an exact multiple of two annas, shall be rounded off, upwards or downwards, and when equidistant upwards, to the nearest multiple of two annas—*e. g.*,

an assessment (fine or rent) of one anna and 3 pies will be charged as two annas;

an assessment (fine or rent) of 2 annas and 11 pies will be charged as two annas;

an assessment (fine or rent) of 3 annas will be charged as four annas;

an assessment (fine or rent) of Rs. 8-9-5 will be charged as Rs. 8-10-0;

an assessment (fine or rent) of Rs. 8-10-7 will be charged as Rs. 8-10-0;

an assessment (fine or rent) of Rs. 8-11-0 will be charged as Rs. 8-12-0.

15. *Maintenance of records.*—For all lands which have in the past been surveyed or assessed, or which shall be hereafter surveyed or settled under the provisions of the Code and these rules, it shall be the duty of the Director of Land Records—

(1) to cause to be corrected any arithmetical or clerical error whenever discovered;

(2) to cause to be incorporated punctually in the land records all changes in boundaries, areas, tenures and assessments either of survey numbers or of their sub-divisions which are made under orders of competent authority as defined in the Code and these rules or any other Act:

Provided that where the assessment of survey number has been fixed by a declaration under section 102, such assessment shall not be raised upon the discovery of any mistake in classification until the term of such declaration expires.

16. Detailed instructions and forms shall be drawn up and maintained by the Director of Land Records, subject to the orders and approval of Government from time to time for the proper carrying out of Rule 15.

#### Introduction of settlements of land revenue.

17. *Notifications of Settlements and of period of guarantee.*—(1) Where the assessments have received the sanction of Government under section 102, a notification shall be published in the district or portion of the district to

which the Settlement extends in form A, if such district or portion of the district is situate in the Bombay Presidency excluding Sind or in form A A, if it is situate in Sind, as the case may be, and when the Governor in Council has, under section 102, declared such assessments, with any modifications which he may deem necessary, fixed for a term of years, such declaration shall be notified in the official *Gazette*.

(2) Where a Settlement is introduced into a part of a taluka of which part has been already settled the guarantee will be restricted to the unexpired portion of the period for which the assessments in the already settled part of the taluka were fixed.

18. *Notice of execution and announcement of assessments.*—(1) The notice required by section 103 shall be given by beat of drum in the village for which the assessments have been sanctioned and a written notice shall be posted in the chavdi or some other public place in the village.

(2) Such notice shall be given by or under the orders of the officer in charge of the survey, referred to in section 100, or the Collector.

(3) Persons affected by the assessments who do not attend at the time and place specified in the notice shall be subject to the same liabilities as if they had attended.

#### Survey Fees in Towns and Cities.

19. *Survey fees in towns and cities.*—(1) Where a survey is extended to the site of a town or city, the survey fees payable under section 132 shall ordinarily be so fixed that the total sum payable in respect of such site shall cover the cost of the survey and preparation of the Record of Rights thereof.

(2) In fixing the fees for each building site or any portion thereof held separately the Collector shall have regard to the provision of sub-rule (1) and to the position, value (or rental), and area of such building site or portion thereof, but such fee shall not exceed ten rupees.

## CHAPTER IV.

### SUB-DIVISION OF SURVEY NUMBERS.

20. *Notices to be issued.*—Before field operations a notice shall be issued by the Mamlatdar and posted in the village chavdi and proclaimed by beat of drum, stating that the sub-divisions of survey numbers in the village are about to be measured according as they have been divided by the holders, and daily notices shall be given as far as possible specifying the numbers or parts of numbers which are to be measured next day and warning landholders to be present.

21. *Boundaries to be laid down.*—(1) When there is no dispute the boundary of each sub-division shall be laid down according to the statements of the holders.

(2) Where there is any dispute, the boundary to which the dispute relates shall be measured and mapped in accordance with the claims of both disputants, and the dispute entered in the register of disputed cases. After the



dispute has been settled under sections 37 and 119-120, or Rule 108 as the case may be, the map shall be corrected accordingly and the areas finally entered into the land records.

22. *Fees.*—The fees to be recovered for making sub-divisions in cases to which section 135G (b) applies shall, unless Government in any case otherwise direct, be such as will cover the entire cost of measuring, assessing and mapping the sub-division; they shall be assessed by the Collector.

23. *Assessment.*—The proportionate assessment of sub-divisions to the land revenue settled upon the survey number shall be calculated subject to the proviso to section 117A (2) according to the relative classification value of the several parts of the survey number as directed in rule 10. Detailed instructions shall be prescribed by the Commissioner of Survey subject to the approval of Government, and may provide for the rounding off of fractions of annas.

## CHAPTER V. BOUNDARY MARKS.

24. *Details of boundary marks to be furnished by the Survey Department to the Collector.*—On the introduction of a Survey settlement, the Superintendent of Survey shall furnish the Collector with a map and statements showing the position and description of the boundary marks erected or prescribed by or under the orders of the Commissioner of Survey. It shall be the duty of the Director of Land Records to amend these maps in accordance with any subsequent alteration of boundaries, in a revision survey or in the sub-division of a survey number or on any other authorized occasion.

25. The following boundary marks are authorized:—  
Continuous marks—

- (1) A boundary strip.
- (2) Sarbandhs or hedges and other permanent continuous structures, such as walls.

Discontinuous marks—

- (3) Conical earthen mounds or cairns (*buras*) of loose stones.
- (4) Pillars of cut stone, or brick or rubble-stone masonry.
- (5) Prismatic or rectangular earthen mounds.
- (6) Roughly dressed long stones.
- (7) Any other marks found suitable for special localities and sanctioned by the Collector or Survey Officer, such as teak posts in the marine marshes on the Gujarat coasts.

XX. In districts to which the experiment authorized in R. 7671-14 is extended the Collector may permit the holders of land to substitute for one kind of mark any other authorized mark within the limits below defined:—

- (a) A continuous mark of class (2) may be substituted along the true boundary line for single or discontinuous marks, or *vice versa*.

(b) Single marks (3) or (4) may be substituted for groups of two or more of (5) or (5) on the intersections of the boundaries of 3 or more survey numbers or *cir cercas*.

(c) Any sanctioned single discontinuous marks may be inter changed at the corners or banks of the boundary common to only two survey numbers.

Marks so substituted, if themselves in proper repair, shall not be deemed to be marks out of repair. Nor shall it be necessary to alter the map so long as the substituted marks occupy the same position and indicate the same boundary as the marks in the printed map.

XXI. Ordinarily a general notification under the second paragraph of section 122 requiring all landholders to repair their boundary marks within a period of ten days shall be issued for each village fifteen days before the Circle Inspector expects to commence the periodical complete boundary mark restoration.

35. *Maintenance of boundary strips.*—(1) Boundary strips or ridges shall not be ploughed up or otherwise injured by cultivation.

(2) The minimum width of boundary strips shall be as follows:—

(a) in dry crop lands ... 1½ feet.

(b) in rice and garden lands ... 9 inches.

(c) On the frontier lines between British India and Baroda State:— 3 ft. (on the British side of the exact pillar-to-pillar demarcation line).

This strip shall also be kept free from tree-growth, any young plant being destroyed at inspection time.

Provided that—

(i) where the boundaries of such lands are well defined by banks, hedges, or the like, the actual width of the strip covered by such bank, hedge, or the like, shall be sufficient for the purpose of this rule;

(ii) where the boundary of a survey number also forms the boundary of a native or Foreign State, the minimum width prescribed above shall be maintained for the portion of the boundary strip on the British side; and

(iii) where village boundaries have been defined at the time of survey by double lines of boundary marks, the whole of the intermediate strip shall be maintained as a boundary strip.

37. *What boundary marks to be considered out of repair and how to be repaired.*—The following boundary marks shall be considered out of repair and shall be repaired in the manner prescribed for each kind as follows:—

(a) A continuous mark (strip, sarbandh, hedge, etc.) if it deviates more than three feet from the true straight line of the boundary. *Mode of repair*—either the deviation shall be rectified or the continuous mark not being a boundary strip must be replaced or supplemented by discontinuous marks.

(b) Any conical mound or cairn less than 2½ feet in height and 6 feet in diameter at the base. *Mode of repair*—raise it to 3 feet in height and 6 feet in width at the base.

(c) Any rectangular mound less than 2 feet high, or less than 5 feet long and 4 feet wide at the base. *Mode of repair*—the mound shall be raised to full dimensions, that is, 2½ feet high, 6 feet long and 5 feet wide at the base.

(d) Any mound, conical or rectangular, within 4 feet of which earth has been dug for repairs, when such excavation has affected the stability of the mark or allows water to lodge. *Mode of repair*—the excavation shall be filled up.

(e) Any pillar (i) less than 1 foot square or 2½ feet in depth, (ii) broken down, or (iii) rising less than 4 or more than 9 inches clear above the adjacent ground level. *Mode of repair*—(i) replace by one of proper dimensions, (ii) rebuild, (iii) raise the pillar or clear away or make up the ground.

(f) Any stone less than 2 feet long and 6 inches thick. *Mode of repair*—a stone of proper size shall be substituted.

(g) Any stone out of the ground, or buried less than two-thirds of its length and loose. *Mode of repair*—the stone shall be replaced or fixed firmly.

(h) Any mark considerably out of proper position or so repaired or erected as to indicate a materially incorrect line of boundary. *Mode of repair*—the mark shall be correctly placed.

(i) Any mark overgrown or surrounded by vegetation of any kind so as not to be easily visible. *Mode of repair*—the vegetation shall be cleared away until the mark is easily visible.

(j) Any sarbandh, or continuous embankment less than 2 feet high and 4 feet wide at the bottom. *Mode of repair*—the sarbandh shall be made full 2 feet high and 4 feet wide at the bottom throughout, unless the occupant prefers the substitution of authorized discontinuous marks.

(k) Any hedge or other continuous mark which by reason of want of continuity or disrepair fails to define the boundary. *Mode of repair*—the necessary renewals shall be made or other authorised marks substituted.

(l) Any boundary strip or ridge which has been ploughed up or otherwise obliterated or the dimensions of which are less than those prescribed by Rule 25. *Mode of repair*—the landholder shall be ordered to restore the strip or ridge within a prescribed period by leaving it unploughed and undisturbed; on his failure to comply he may be prosecuted under section 125.

(m) Missing marks. *Mode of repair*—new marks shall be erected.

*Proviso as to marks liable to injury from flooding.*—Provided that in any case where a boundary mark cannot, owing to flooding of a nala, or river, the breaking away of the bank, or other causes, be kept in repair, another kind of authorised mark may be substituted. Where even that is impracticable the direction of the boundary must be fixed by a pair of discontinuous marks erected at an adequate distance, back from the abandoned position; either both on the same side, or one on each opposite side thereof.

28. *Determination of responsibility for maintenance.*—(1) The responsibility of the several landholders for boundary marks on a common boundary lies on the holder of the survey number which is numerically lowest.

(2) Sub-rule (1) is subject to the proviso that when any survey number is unoccupied or assigned for public or Government purposes the responsibility for repair of the marks on its periphery will pass to the landholder on the other side of the boundary. Repairs will be made at Government expenses only when the marks in disrepair lie between survey numbers each of which has no holder except Government.

(3) Within each survey number the holder or holders of each sub-division are responsible for the marks if any have been prescribed on the periphery of that sub-division to the same extent as they would be responsible if 'sub-division' were read instead of 'survey number' in sub-rules (1) and (2).

(4) A mark which is on the common boundary of two or more villages must be repaired by the holder of the land in the village which is under restoration when the marks are found out of repair.

## CHAPTER VI

### ENQUIRIES UNDER SECTION 37.

29. *Notice of enquiry.*—(1) (a) Before an enquiry under section 37 a written notice in form B of the proposed enquiry and of the time and place and subject-matter thereof shall be affixed not less than ten days before the enquiry at the chawdi or some other public place in the village in which the property is situate; and in a conspicuous position upon the property with respect to which the inquiry will be held.

(b) A copy of the notice shall also be served not less than ten days before the enquiry on all persons who are known or believed to have made any claim to the subject-matter of the enquiry, and every such notice shall be served in the manner provided in section 190 for the service of a summons.

*Notice of decision* (2) (a):—Written notice in form C of any order passed under section 37, specifying briefly the subject-matter, contents and date of the order passed, shall be served in the manner specified in clause (b) of sub-rule (1) upon the persons referred to in that clause.

(b) Such written notice shall also be affixed in the places specified in clause (a) of sub-rule (1).

**XXII.** Where the right to any piece of ground is in dispute between a Municipality and Government, the Collector shall endeavour to decide the dispute and with special regard to Rule 53. Where the Collector is in doubt or the Municipality does not accept his decision, the case shall be referred to the Commissioner. To secure finality the ultimate order should be made under section 37 (2).

Questions of rights between Government and Municipality how to be dealt with.

## CHAPTER VII

THE DISPOSAL OF LAND VESTING IN GOVERNMENT,  
AND EXEMPTION FROM LAND REVENUE.

30 (a) The right of Government to mines and mineral products which is reserved by section 69 shall not be disposed of without the sanction of Government, and in all grants of land the right to mines and mineral products and full liberty of access for the purpose of working and searching for the same shall be deemed to be reserved unless Government direct to the contrary and unless such right and liberty are expressly granted.

(b) No land situate within port limits shall be disposed of without the written concurrence of the Collector of Salt Revenue and without the reservation as to the tree-growth provided for in rule 58 (d).

(c) In all grants and disposals of land the right of occupation and use only subject to the provisions of the Code shall be granted: and not the proprietary rights of Government in the soil itself.

31. Land may not be granted free of land revenue without the sanction of Government except as hereinafter provided.

## Gifts of the possession and the revenue.

32. *Limits of revenue-free grants for different purposes.*—(1) Land may be given free of price and free of revenue, whether in perpetuity or for a term, for any purpose hereinbelow mentioned, by the authorities and to the extent specified in this table :—

Purpose.	Estimated revenue-free value.		
	By the Governor in Council	By the Commissioner.	By the Collector
(1) For sites for the construction at the cost of Local or Municipal Funds, of—			
(a) Schools, or Colleges			
(b) Hospitals,			
(c) Dispensaries and			
(d) other public works	10,000	5,000	250
from which no profit is expected to be derived.			
(2) For sites for the construction at the cost of other than Local or Municipal funds, of any of the works referred to in item (1) above and for religious use.	1,000	500	50
(3) To any private individual for Services—			
to be performed or already rendered to the State	1,000	...	...
to be performed to the community	...	500	...

*Proviso as to land near railway stations.*—Provided that the land in the neighbourhood of railway stations shall not be granted for dharmashalas

under head (2) in the table unless when erected they are to be in the charge of the Local Board of Municipality concerned.

(2) Such gifts shall ordinarily be made in form D.

33. (1) When it is clear that such a sale is preferable to any other course on grounds of obvious convenience to Government no less than to the parties concerned :—

(a) any land wherever situate, of which the estimated revenue-free value does not exceed one hundred rupees, and

(b) with the previous sanction of Government, any land included in a village site of which the estimated revenue-free value does not exceed five hundred rupees

may be sold revenue-free by the Collector to a private person for a private purpose.

(2) The previous sanction of the Government of India is required to the sale of land revenue-free to a private person for a private purpose in any case not provided for by this rule or by rule 49.

#### Gifts of the possession only.

34. *Grants in the Dharwar District to shetnanadis for remuneration.*—(1) In the district of Dharwar whenever unoccupied land is available for the purpose, the Collector may give such land to any shetnanadi who is willing to accept remission at the rate of one rupee of the assessment in exchange for two rupees of the usual annual cash remuneration :

Provided that no such land shall be given if the estimated occupancy value thereof exceeds five hundred rupees.

(2) Where a grant is made under this rule no sanad need be issued to the grantee, but it is to be a condition of his tenure that the land is granted revenue-free to the agreed extent only in consideration of the shetnanadi's services, and that it is resumable at the pleasure of Government.

#### Gift of the revenue only.

35. (1) The Collector may exempt from payment of land revenue without any limit lands used for sites of hospitals, dispensaries, schools and for other public purposes, so long as such lands are used for such purposes and yield no return to private individuals or local bodies.

(2) Lands used for sites of buildings solely devoted to religious or charitable purposes may be exempted from payment of land revenue by the authorities and to the extent specified below, so long as such lands are used for such purposes and yield no return to private individuals or local bodies :—

By the Collector—upto an amount of Rs. 10.

By the Commissioner—upto an amount of Rs. 50.

By the Governor-in-Council—upto any amount.

(3) Such exemptions shall ordinarily be made in form E.

**Conditions attached to grants under foregoing rules.**

36. *Conditions attached to grants under rules 32, 34 or 35.*—(1) Every grant under rules 32 or 34 shall be made expressly on the following conditions in addition to any others that may be prescribed in particular cases, namely:—

(a) that the land with all fixtures and structures thereon shall be liable to be resumed by Government if used for any purpose other than the specific purpose or purposes for which it is granted, or if required by Government for any public purpose, and that a declaration under the signature of the Commissioner that the land is so required shall, as between the grantee and Government, be conclusive ;

(b) that, if the land is at any time resumed by Government under condition (a), the compensation payable therefor shall not exceed the amount ( if any ) paid to Government for the grant, together with the cost or value at the time of resumption, whichever is less, of any building or other works authorizedly erected or executed on the land by the grantee.

(2) Where exemption from revenue is granted under rule 35 on land already occupied by the grantee, the following condition shall be imposed, in addition to any others that may be settled in particular cases, namely, that if the land is used for any purpose other than the specific purpose or purposes for which exemption is granted, it shall, in addition to the assessment to which it becomes liable under section 48, become liable to such fine as may be fixed in this behalf by the Collector under the provisions of section 66, as if the land having been assessed or held for the purpose of agriculture only had been unauthorizedly used for any purpose unconnected with agriculture.

XXIII. In all cases a sanad in such form as may from time to time be prescribed by Government shall be issued to the grantee by the Collector.

Where any land is granted revenue-free with the sanction of Government for any purpose not mentioned in Rules 32, 34 and 35, the form of sanad to be issued by the Collector will be specially prescribed by Government.

Every sanad issued under this rule shall be registered in the register prescribed by section 53, in the form of Appendix O.-C. (R. 5634-83).

The Collector and all Revenue Officers subordinate to him shall exercise due vigilance to prevent the terms of any such sanad being either exceeded or evaded.

**Grant of land for agricultural purposes.**

37. *Survey numbers (how to be disposed of).*—(1) Any unoccupied survey number not assigned for any special purpose may, at the Collector's discretion, be granted for agricultural purposes to such person as the Collector deems fit, either upon payment of a price fixed by the Collector, or without charge, or may be put up to public auction and sold subject to his confirmation to the highest bidder.

(2) In the case of such grants an agreement in form F shall ordinarily be taken from the person intending to become the occupant.

(3) When the land is granted on inalienable tenure the clause specified in form I shall be added to the agreement.

(4) When the land is granted on impartible tenure an agreement in Form F (1), and, when it is also granted on inalienable tenure, an agreement in Form I (1), shall ordinarily be taken from the person intending to become the occupant.—*Cl. (4) was added by R. 4708/24 III of 18-3-1931.*

(5) The declaration below the agreement shall be subscribed by at least one respectable witness and by the patel and village accountant of the village in which the land is situate.

38. *Survey number not already assessed to be assessed before it is disposed of.*—Where any survey number disposed of under rule 37 has not already been assessed, it shall be assessed by the Collector (after reference to the Superintendent of Land Records) at the rates placed on similar soils in the same or neighbouring villages; and the assessment so fixed shall hold good for the period for which the current Settlement for the village in which the land is situated has been guaranteed, and shall be liable thereafter to revision at every general settlement of the said village.

39. *Where survey numbers may be given at reduced assessment.*—Where it appears that the bringing of any survey number under cultivation or its reclamation for other purposes will be attended with large expense, or where for other special reasons it seems desirable, it shall be lawful for the Collector (with the previous sanction of the Commissioner, in cases where the assessment on the land included in the total grant exceeds one hundred rupees) to grant the survey number revenue free or at a reduced assessment for a certain term, or revenue-free for a certain term and at a reduced assessment for a further term, and to annex such special conditions as the outlay or other reasons aforesaid may seem to him to warrant, and to cancel the grant or levy full assessment on breach of these conditions.

Provided that, on the expiry of the said term or terms, the survey number shall be liable to full assessment under the rules then in force for lands to which a settlement for agricultural use has been extended or which are assessed for other uses.

(2) Form G1 may generally be used in cases under this rule.

40. *Grants of salt-marsh lands for reclamations.*—Salt land or land occasionally overflowed by salt-water, which is not required or likely to be required for salt manufacture, may, after consultation with the Commissioner of Salt, be leased for purposes of reclamation by the Collector, subject to the confirmation of the Commissioner, on the following maximum terms, and with such modifications in particular cases as may be deemed fit:—

(a) no rent shall be charged for the first ten years;

(b) rent at the rate of four annas per acre shall be levied for the next twenty years on the whole area leased, whether reclaimed or not;

(c) after the expiry of 30 years the lease shall be continued in the case of reclaimed lands at the rate at which they would be assessed to land revenue from time to time if they were subjected to survey settlement; and in the case



of unreclaimed lands, if any, at the average rate of the reclaimed lands (Notification No. 372-B. of 17th April 1923);

(d) any portion of the land used for public roads shall be exempt from the payment of rent;

(e) if the reclamation is not carried on with due diligence within two years, or if half the area is not reclaimed so as to be in a state fit for use for agricultural purposes at the end of ten years, and the whole at the end of twenty years, or if any land once reclaimed as aforesaid is not maintained in a state fit for use for agricultural purposes, the lease shall be liable to cancellation at the discretion of the Collector;

Provided that the lessee shall be at liberty during the first ten years to relinquish any area which he cannot reclaim.

(f) if the land reclaimed is used for any non-agricultural purpose, its rent shall be liable to be revised according to the rates under whichever of rules 81 to 85 has been applied to the locality notwithstanding that any of the periods specified above may not have expired;

(g) Form G2 may generally be used in cases under this rule.

41. *Land in beds of river.*—Land situated in the bed of a river and not included in a survey number shall, save as otherwise provided in sections 46 and 64, ordinarily be leased annually by auction to the highest bidder for the term of one year or such further period as the Collector thinks fit. The accepted bid shall be deemed to be the land revenue chargeable on such land. But in Sind the Collector may grant it for cultivation to those holders who have lost land by erosion.

#### Grant of land for non-agricultural purposes

42. *Disposal of land for building and other purposes.*—Unoccupied land required or suitable for building sites or other non-agricultural purpose shall ordinarily be sold after being laid out in suitable plots by auction to the highest bidder whenever the Collector is of opinion that there is a demand for land for any such purpose; but the Collector may, in his discretion, dispose of such land by private arrangement, either upon payment of a price fixed by him, or without charge, as he deems fit.

43. *Conditions of grants or building.*—(1) Save in special cases in which the Collector with the sanction of Government otherwise directs, or in localities falling under rule 44, land for building sites shall be granted in accordance with the following provisions:—

(a) The land shall be granted in perpetuity subject to the provisions of the first paragraph of section 68, and shall be transferable.

(b) Where the land has already been assessed for agriculture, the assessment shall be altered under whichever of rules 81 to 85 has been applied to the locality.

(c) Where the land has not been assessed the Collector shall fix the assessment in accordance with the principles laid down for alteration of assess-

ment in rules 81 to 86 and the provisions of the said rules shall, as far as may be, apply.

(d) All such assessments shall be fixed for the period specified in Rule 87 (a) and may be commuted when they do not exceed one rupee in accordance with the provisions of rule 88.

(2) In the case of such grants an agreement in form F or form H, as the Collector may deem fit, shall ordinarily be taken from the person intending to become the occupant, and in the case of land in development schemes undertaken by Government in the Bombay Suburban District an agreement shall be taken in form HH.

(3) When the land is granted on inalienable tenure, the clause specified in form I shall be added to the agreement.

(4) The declaration below the agreement shall be subscribed by at least one respectable witness and by the patel and village accountant of the village in which the land is situate.

43-A. *Terms on which land intended for future building sites may be temporarily disposed of.*—Unoccupied lands which are eventually intended for building sites within the Bombay Suburban District or any other area, to which Government may by notification in the *Bombay Government Gazette*, extend this rule but of which the immediate disposal for the said purpose appears to the Collector to be undesirable, may be let under written leases in a form approved by Government for short terms not exceeding in any case seven years at a ground rent equal to double the standard rate of non-agricultural assessment in force in the locality, or at a ground rent which may in special cases or localities be fixed with the sanction of the Commissioner.

44. *In hill stations.*—In hill stations and such other localities as Government may direct land shall not be granted for building except on such conditions as are considered desirable regarding the style of building, the period for construction and the observance of municipal or sanitary regulations. Such conditions should be embodied in the instrument (Form H).

45. *Establishment of entirely new village site.*—Where an entirely new village site is established, or an addition is made to an existing site, the disposal of the lots therein shall be made under such of the rules 42, 43 or 44 as may be applicable.

46. *Substitution of a new village site for an old one.*—Where a new village site is established, in lieu of a former one which it is determined for any reason to abandon, an agreement shall be taken in form J, from each occupant before he is permitted under section 60 to enter into the occupation of any lot.

47. *Conditions of grant of land for non-agricultural purposes other than building sites and alteration of assessment.*—Where unoccupied land is granted for non-agricultural purposes other than building sites, the Collector shall annex such conditions to the grant as may be directed by Government or, in the absence of any orders of Government, may annex such conditions thereto

as he thinks fit, subject to the control of the Commissioner ; and where the land has already been assessed for the purpose of agriculture, the assessment of such land shall, in the absence of any order of Government to the contrary, be altered in accordance with the provisions of rules 81 to 85. Where it has not been assessed, its assessment shall be fixed by the Collector, as far as may be in accordance with the principles laid down for alteration of assessment in the said rules.

XXIV. (1) Where unoccupied land of the kind described in Rules 42 to 47 is to be disposed of, it shall, in the first instance, be marked out in convenient lots and mapped in such a manner that persons desirous of becoming occupants may clearly know what plots are available.

(2) Due provision should be made in the plans for roads and approaches and access of air and light, and careful regard should be had to sanitary requirements.

#### Special rules for certain city surveyed areas.

48. *Special rules for the sites of Ahmedabad, Broach, Surat, Rander, Bulsar and Godhra, and certain other places.*—Except as may be otherwise specially directed by Government, nothing in rules 37 to 47, both inclusive, shall be applicable to the grant of any lands to which a City Survey has been extended under Bombay Act IV of 1868 or under section 131 and which do not vest in the municipality, within the sites of the towns and cities of Ahmedabad (inclusive of its suburbs of Saraspur, Dariapur Kajipur, Rajpur Hirpur, Asarwa, Kochrab, Chhadavad, Changispur and Paldi), Broach, Surat, Rander, Bulsar, Godhra, Igatpuri, Bandra-Danda and Ahmednagar, Tando Adam (Nawabshah) (R. 7080-B[24-27th November 1920]) or of any other town or city to which Government may by notification in the official *Gazette* extend this rule : and nothing in rules 81 to 85 shall apply to any agricultural land lying within the same sites, but to which a City Survey cannot by law extend.

The granting of such lands for building sites, and the granting of permission to use such lands (when assessed for agricultural use) for non-agricultural purposes, shall be regulated by the following rules 49 to 52.

49. *Disposal of strips of land adjacent to existing building sites.*—Whenever the holder of a building site desires to acquire any small strip of ground belonging to Government which is adjacent to his site and which could not reasonably be disposed of by the Collector as a separate site, the Collector may, if he thinks fit and notwithstanding anything to the contrary contained in rule 33, sell such strip to the said holder on the same tenure on which he holds the said site, and on payment of ground rent or assessment at the same rate, if any.

50. *Mode in which other lands may be disposed of.*—(1) Any unoccupied land to which rule 49 does not apply and which is not assigned for special purposes may be granted to such person as the Collector deems fit either for purposes of agriculture only or for other purposes.

(2) *Lands to be ordinarily sold by auction.*—Any such land shall ordinarily be sold by auction to the highest bidder; but the Collector may in his discretion sell the same by private agreement.

61. *Terms on which building sites may be disposed of.*—(1) Unoccupied land shall be granted for building sites and permission under section 65 to use for non-agricultural purposes lands occupied and assessed for agriculture shall be given by an instrument in a form approved by Government, for terms expiring on the date fixed in this behalf by Government for each city or town, at a rent or altered assessment, as the case may be, of two pies per square yard per annum, or such other rate as Government may prescribe for any particular site or portion thereof.

(2)(a) *Terms on which land intended for future building sites may be temporarily disposed of.*—Unoccupied lands which are eventually intended for building sites, but of which the immediate disposal for the said purpose appears to the Collector to be undesirable, may be let under written leases in a form approved by Government for short terms not exceeding in any case seven years at a ground rent of not less than one anna per square yard per annum.

(b) Unoccupied lands under clause (a) shall ordinarily, subject to the provisions of the said clause, be let by auction to the highest bidder; but the Collector may in his discretion let any such land by private agreement ( *G. R., R. D. No. 5189/23 dated 13-1-23* ).

62. *Terms on which lands may be disposed of for agricultural purposes only.*—Unoccupied lands may be leased for purposes of agriculture for terms of one year. An agreement in form F, with such modification as may be necessary, shall be taken from every person who is to become an occupant of land under this rule, and the provisions of sub-rules (2) to (4), inclusive, of rule 37 shall be applicable to every agreement so taken.

63. *Unoccupied building sites, etc., within municipal limits to be distinguished from lands forming part of public streets.*—(1) In municipal districts, building sites and plots of open ground, which have not been dedicated to public use or already transferred to the municipality, are hereby declared to be specially reserved by Government within the meaning of sub-section (2) of section 50 of the Bombay District Municipal Act, 1901.

This reservation does not apply to small pieces of ground lying between the houses and the road-way in an irregular street or road of varying width, which should be recognised as forming part of the street and vesting in the municipality unless private individuals have rights thereto. But separate vacant sites between houses do not vest in the municipality even though they are unenclosed unless they have been transferred to the municipality by Government.

#### Both for Agricultural and non-Agricultural grants

54. *Form of written permission to occupy under section 60.*—The permission in writing to be given by a Mamlatdar under section 60 to enable an intending occupant to enter upon occupation shall be in form K or Form K.K.

XXV. No such permission shall be given until the Mamlatdar has ascertained that either a lease or an agreement has been duly executed and delivered under one of the Rules 37 to 47, 51 or 52 as the case may be.

XXVI. The Mamlatdar who takes the said agreement will be held responsible for exercising due care in ascertaining the identity of the persons signing the same, and their fitness to be accepted as occupants responsible for the payment of land revenue notwithstanding that the agreements have been duly endorsed by witnesses.

#### Exceptional cases.

55. *Disposal of land to which foregoing rules are inapplicable.*—Unalienated land to which none of the foregoing rules is applicable and concerning which no other rules have been framed by Government, shall be disposed of in such manner, for such period and subject to such special conditions, if any, as the Collector, subject to the control of the Commissioner, deems fit.

56. *Special forms.*—The forms appended to these rules shall be used where applicable, but where a grant is made on special terms and none of such forms is suitable and a special form has not been sanctioned, the orders of Government shall be obtained regarding the form to be used.

57. *Records.*—The document evidencing a grant shall be drawn in duplicate and one copy, which shall be retained by the Government officer concerned or by Government, shall be signed by the grantee.

## CHAPTER VIII

### TREES AND FOREST RIGHTS

58. *General reservations.*—The extent to which the right of Government to trees is generally conceded to occupants under the third paragraph of section 40 shall be specified in the notification issued under rule 17. The said general concession will ordinarily extend to all trees, except the following:—

- (a) all road side trees planted by or under the orders of Government;
- (b) teak, blackwood, and sandalwood;
- (c) trees, the produce of which has hitherto been disposed of by Government:

Provided that whenever any land is disposed of after the first introduction of a settlement of land revenue, such trees shall also be disposed of under section 62;

- (d) any trees specially reserved in the terms of the grant of the land.

59. *Special reservations.*—Trees in groves, trees round temples or places of encampment declared to be such by the Collector, and trees other than teak, blackwood or sandalwood, which for any reason are of special value or utility shall be specially reserved at the settlement and entries to that effect made in the settlement records.

60. *Disposal of trees on occupied lands.*—(1) Subject to the provisions of rule 63 the disposal of trees on land occupied or being given out for occupation shall be regulated by the following sub-rules:—

(2) Of the trees to which the rights of Government are reserved such number or kinds as Government may from time to time direct will be at the disposal of the Forest Department. Lists shall be kept of all occupied numbers, over the trees in which the Forest Department has any control or lien; the clearing of these numbers by the Forest Department shall be arranged in concert with the Collector, and every number when cleared shall be recorded as exempt from all interference in the future on the part of the Forest Department. In districts, where there is no Forest Officer, these functions will be discharged by the Collector alone.

(3) All other reserved trees shall be in charge of the Collector who may dispose of the same or of their produce as he may deem fit, subject to the general rules for the disposal of Government property.

(4) In talukas in which the demarcation of forests has been completed, when any unoccupied land containing jungle or valuable trees which have not been included in any forest reserve is granted to any person for cultivation, the Collector may offer the trees, or such of the trees as he may see fit, to the occupant. If such person agrees to purchase the same, the value shall be recovered from him by the Collector and credited as land revenue. If the occupant refuses to buy under this sub-rule (3) then the Forest Department should clear the land of trees.

(5) In talukas in which the demarcation of forest reserves has not been completed, the Collector may, if he thinks fit, consult the Conservator of Forests before any land containing jungle or valuable trees is granted; and if any such land is granted to any person the provisions of sub-rule (4) shall apply; in no case shall land be granted which is likely to be required for forests.

(6) In Sind the clearance of reserved trees under sub-rule (1), and of trees not accepted by the new occupant under sub-rule (4) shall be effected by the Collector.

61. Whenever the right to unreserved trees in any land is at the disposal of Government simultaneously with such land all such trees shall invariably be disposed of to the same person who acquires the holding and not to any other person.

62. When the right of Government to the trees in a holding has been once disposed of to the occupant, or when all the reserved trees have been once cut and removed either—

(a) at the grant of the land, or

(b) after such grant, or

(c) in Sind, at any time before such grant, or

(d) elsewhere than in Sind, within five years before such grant, Government will have no further claim to trees which may afterwards grow in the holding, or which may spring up from the old roots or stumps, so long as the land continues in occupation.

63. *Exception of reserved trees in varkas and beta lands in certain districts from rules 60-62*—(1) Nothing in rules 60 to 62 inclusive shall be deemed to apply to varkas lands in the districts of Thana, Kolaba and Ratnagiri and beta lands in the district of Kauara, or to any land in the Dindori Taluka or the Peth Taluka of the Nasik District or to any land on the banks of streams and nalas in the Godhra Talukas of the Panch Mahals District, or to any riverside jambul trees growing in occupied lands on the banks of the rivers Mula, Pravara, Mhais and Mhalungi in the Parner, Rahuri, Sangamner and Akola Talukas of the Ahmednagar District; or (pending the completion of the acquisition of all occupied lands within the sanctioned demarcation limits of the forest in the Haveli, Purandbar and Junnar Talukas and the Ambegaon Petha of Poona District) to any teak trees in such unalienated land.

(2) In the said lands the trees on which the rights of Government are reserved shall be available for cuttings to be made from time to time by or under the orders of the Forest Department, in consultation with the Collector.

(3) The sale of any such tree or of the timber thereof will confer no right to the after-growth from the root or stump of the tree so cut. The reservation of the rights of Government over the trees will extend to all such after-growth also.

### CHAPTER IX.

#### DISPOSAL OF GRAZING AND MINOR PRODUCTS OF LAND.

64. *Sale of produce of Government trees*—(1) The produce of trees belonging to Government may be sold by auction annually or for a period of years.

(2) Where any such trees are sold under section 41, the sale shall be by auction or otherwise as the Collector may direct.

65. *Grazing and other similar produce to be ordinarily disposed of by sale for periods not exceeding five years*—(1) The grazing or other produce of all unoccupied land vesting in Government whether a survey settlement extends to such land or not, and whether the same is assessed or not and of all land specially reserved for grass or for grazing (except land assigned to villages for free pasturage), may be sold by public auction or otherwise, as the Collector deems fit, year by year, or for any term not exceeding five years, either field by field or in tracts, and at such time as the Collector shall determine.

Provided that the purchasers' rights over such land shall entirely cease on the dates respectively fixed in the following table, unless, under special circumstances, the Collector deems it necessary to alter the time so fixed:—

Collectorates	Waste assessed Dry-crop Land.	Waste assessed Rice Land.	Reserved Kurans and unassessed Waste.
All in Sind ...	31st July ...	31st July ...	31st July.
Thana ...	31st March ...	31st March ...	31st December.
Dharwar ...	31st March ...	31st December...	1st May.
All others ...	31st March ...	31st March ...	1st May.

66. *Disposal of earth, stone, etc., by the Collector.*—(1) The Collector may, at his discretion, sell by public auction or otherwise dispose of the right to remove earth, stone, kankar, sand, muram, or any other material which is the property of Government for such period and in such quantities and on such terms as he thinks fit :

Provided that such sale or other disposal shall be made subject to the privileges conceded by rules 67 to 70 inclusive.

(2) The rate charged by the Collector under this rule, when the right in question is not put up for sale by public auction, may be either a lump sum, or so much per cubic foot of excavation, or in the case of a Railway Company requiring land for excavating ballast, so much per mile of the railway line for which ballast is obtained, or otherwise as the Collector thinks fit.

67. *Removal of earth, stone, etc., by villagers for their own use without fee with permission of the revenue patel.*—(1) With the previous permission in writing of the revenue patel, or where there is no such patel, of the Mamlatdar or (in Sind) of the Tapedar, but without payment of fees (a) any potter or maker of bricks or tiles may, for the purposes of his trade, (b) any person may, for his domestic or agricultural purposes, remove earth, stone, kankar, sand, muram or other material from the bed of the sea or from the beds of creeks, rivers and nalas or from any unassessed waste land not assigned for special purposes within the limits of the village in which he resides or in which the land for the benefit of which the materials are required is situated.

(2) Nothing in this rule applies to any case falling under rule 69, and where it appears to the revenue patel or Tapedar that any case in which application is made to him under this rule falls under rule 69 he shall refer the application to the Mamlatdar for orders.

68. With the previous permission in writing of the Mamlatdar but without payment of fee, any person may for the purpose of building a well, remove stone from any of the sources specified in sub-rule (1) of rule 67 if those sources are within the limits of the taluka in which he resides.

69. *Excavation.*—(1) In any case where excavation of the soil is likely to damage or destroy any valuable building or any land required for any special or public purpose or any boundary mark, the previous sanction of the Mamlatdar to any such removal shall be required and he shall refuse permission to the extent necessary to prevent such damage or destruction.

(2) *Ports.*—No patel or Mamlatdar may permit any removal under rule 67 or 68 from land within port limits, or on the banks or shore of any port, without the written concurrence of the Collector of Salt Revenue, and under such conditions, if any, as he may impose.

(3) *Bricks, etc.*—In any case where it appears to Mamlatdar that the trade carried on by any potter or maker of bricks or tiles is sufficiently extensive and lucrative to render such a charge fair and equitable, he may grant permission only on payment of fees at such rates as may be prescribed by the Collector in this behalf under rule 66.



(4) In such cases or localities as he thinks fit, the Collector may prohibit the Mamlatdar, the Tapedar or the revenue patel from giving permission without obtaining his previous sanction; and in any such case all applications for permission shall be referred to the Mamlatdar for the Collector's order.

(5) Where the revenue patel or Tapedar refuses permission when the same is applied for under rule 67 or does not refer the application to the Mamlatdar under sub-rule (4) an appeal shall lie to the Mamlatdar.

70. *Removal of earth, etc., from village tanks.*—Any person may, with the sanction of the revenue patel, take free of all charge from village tanks as much earth, stone, kankar, sand, muram or other material as he requires: provided that no stones shall be removed that may have fallen from the banks of built tanks, and that no excavation shall be made within 10 cubits of the foot of the embankment of any such tank.

## CHAPTER IX-A.

### DISPOSAL OF WATER VESTING IN GOVERNMENT.

70-A. No person shall without the previous permission of the Collector in writing make use of any water of a river, stream or nala which is the property of Government, for the purpose of irrigating by a *budki* or a pumping plant land other than that subject to the existing nala-chad.

70-B. The Collector may grant permission for the use of the water of a river, stream or nala which is the property of Government and for which no water-rate is levied under the Bombay Irrigation Act, 1879, for the purpose of irrigating by a *budki* or a pumping plant land other than that subject to the existing nala-chad, on payment of such water-rate as he may deem fit, but not exceeding the rate per annum per acre which may have been fixed for the locality by Government for occasional irrigation by *Pats* under section 55 of the Bombay Land Revenue Code, or where no such special rate has been fixed, the maximum *Patasthal* rate sanctioned in the current settlement for the group in which the village in which the land in question is situated may have been included. Provided that in precarious tracts irrigation by *budkis* or pumping plant shall be exempt from the water-rate leviable under this rule.

70-C. Any person who, without the previous written permission of the Collector, makes use of any water of a river, stream or nala which is the property of Government and for which no water-rate is levied under the Bombay Irrigation Act, 1879, for the purpose of irrigating by a *budki* or a pumping plant land other than that subject to the existing nala-chad, shall be liable to pay such water-rate as the Collector may deem fit, but not exceeding Rs. 50 per annum per acre of land so irrigated.

70-D. The water-rates payable under rules 70-B and 70-C shall be recoverable as arrears of land revenue.

## CHAPTER X.

## ALLUVION AND DILUVION

71. *Holders of land with shifting boundaries may occupy up to such boundaries.*—When a holding is bounded on any side by the bank or shore of a river, creek or nala or of the sea, the holder will be permitted, subject to the provisions contained in sections 46, 47, 63 and 64, to occupy and use the land up to such bank or shore, notwithstanding that its position may shift from time to time.

72. *The Collector to dispose of claims under section 47.*—(a) Claims to decrease of assessment on account of diluvion under section 47 shall be disposed of by the Collector.

(b) It shall be the duty of the village officers to ascertain and to record the increases due to alluvion and losses due to diluvion in every holding subject to such changes. They shall also report to the Mamlatdar for orders when the area of any newly formed alluvial land or island, or of any abandoned river bed, or land lost by diluvion exceeds the limits prescribed in sections 46, 47 and 64.

## CHAPTER XI.

## ASSIGNMENT OF LAND FOR SPECIAL PURPOSES.

73. *Cattle stands and dhobis' and potters' grounds.*—(1) Gurcharan (gairan) or grazing ground for cattle, burial and burying grounds, spots near villages on which the village cattle stand, and lands for the use of village dhobis and potters, and for other recognised public needs may be assigned by the Collector for these purposes respectively, according to the reasonable requirements of the villagers without charge; and he may for sufficient reasons at any time revoke such assignment.

(2) Orders under this rule shall be passed in writing and recorded.

## CHAPTER XII.

## RELINQUISHMENTS.

74. *Endorsement as to identity required below rajinamas.*—(1) Every notice given under section 74 shall be in Form L and the declaration below the notice shall be subscribed by two respectable witnesses.

(2) The Mamlatdar who receives any such notice will be held responsible for exercising due care in ascertaining the identity of the person who has signed the same, notwithstanding that such notice has been duly endorsed as hereinbefore required.

XXVII. All notices received under sec. 74 shall be kept in the records of the village accountant until the expiry of one year after the end of the year in which they were given and afterwards in the records of the Mamlatdar for at least 12 years. Entry will at once be made in the Diary of Mutations and certified in due course; this will ensure sufficient record.

## CHAPTER XIII.

## RESTRICTIONS ON USE OF LAND.

75. *Cultivation of unarable land in survey number when prohibited.*—(1) Land included as unarable (*pot kharab*) in a survey number assessed for purposes of agriculture only is of two kinds:—

(a) that which is classed as unfit for agriculture at the time of survey including the farm buildings or threshing-floors of the holder;

(b) that which is not assessed because it is reserved or assigned for public purposes; or because it is occupied by a road or recognized footpath, or by a tank or stream used by persons other than the holder for irrigation or for drinking or domestic purposes, or used for a burial or burning ground by any community, or by the public; or because it is assigned for village potteries.

(2) Class (a) may be brought under cultivation at any time by the holder and no additional assessment shall be charged therefor.

The cultivation of class (b) is hereby prohibited under section 48, subsection (4):

Provided that this prohibition shall not apply in the case of a tank or stream when such tank or stream is used for irrigation only and waters only land which is in the sole occupation of the holder, or when the privilege of cultivating the dry bed of the tank or stream has been specially conceded to the holder.

76. *Use of land for the manufacture of salt prohibited except on certain conditions.*—(1) No occupant of unalienated land shall use the same or any part thereof for the manufacture of salt without the previous permission in writing, first of the Collector of salt revenue and then of the Collector of the district.

(2) The Collector of the district may, in any case where such permission is granted, either

(a) require the occupant to relinquish his rights of occupation, and to enter into an agreement that such land shall be placed at the disposal of the Salt Department, subject to a lease in favour of the applicant on such terms as the Deputy Commissioner of Salt Revenue under the general orders of Government may require; or

(b) permit the use applied for without requiring the occupant to relinquish his rights of occupation on the following conditions:—

(i) that the occupant shall pay such fine as the Collector may deem proper, not exceeding one-tenth of the amount which would be leviable under section 66 in a case of unauthorized use, and

(ii) that the occupant shall execute an agreement that he will pay in lieu of the existing assessment and Local Fund cess, such amount or rate as may be imposed by the license to be granted by the Deputy Commissioner of Salt Revenue in accordance with the general and special orders of Government, and shall also in respect of the land used conform to all the conditions of such license; and

(iii) that whenever the Deputy Commissioner of Salt Revenue declares that the land, or any part thereof, is not used or has ceased to be used for the manufacture of salt, such land shall forthwith become liable to the survey assessment which was chargeable upon it immediately before it was permitted to be used for the manufacture of salt.

77. *Removal of earth, stone, etc., prohibited, if injurious to cultivation and for purposes of trade, etc.*—Have as provided in section 65 and rule 76, no occupant of land assessed or held for purposes of agriculture only, and no person claiming under or acting by authority of any such occupant, shall excavate or remove earth, stone other than loose surface stones, kankar, sand, muram or any other material of the soil thereof, or make any other use of the land so as, in the opinion of the Collector, thereby to destroy or materially injure the land for cultivation or for purposes of trade or profit, or any other purpose except his own domestic or agricultural purposes.

78. *Removal of earth, stone, etc., from building site prohibited except on certain conditions.*—No holder of land assessed or held as a building site, or lease-holder of a building site in a hill station, and no person claiming under any such holder or lease holder, shall, subject to any special provision in the conditions annexed to his holding under section 62, section 67 or otherwise, or prescribed by his lease, excavate or remove for any purpose whatever earth, stone other than loose surface stones, kankar, sand, muram or any other material of the soil thereof, except with the previous permission in writing of the Collector, and in accordance with such terms (including the payment of fees for any such excavation or removal) as the Collector in each case thinks fit to prescribe.

79. *Excavation of unalienated land within site of village, town or city prohibited except for certain purposes.*—(1) No unalienated land within the site of any city, town or village shall be excavated without the previous written permission of the Collector, for any purpose except the laying of foundations for buildings, the sinking of wells and the making of grain-pits.

(2) When permission is granted by the Collector to excavate any such land as aforesaid for any purpose other than those above mentioned, such excavation shall not be made otherwise than in accordance with such terms (including the payment of fees for any such excavation) as the Collector in each case thinks fit to prescribe.

## CHAPTER XIV.

### THE USE OF LAND FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT HAS BEEN ASSESSED

#### Alteration of assessment in the case of unalienated lands.

80. *Alteration of assessment when land assessed or held for agricultural purposes is used for non-agricultural purposes.*—When unalienated land assessed or held for purposes of agriculture only is subsequently used for any purpose unconnected with agriculture, the assessment upon the land so used shall (except in the cases provided for in rule 79 or 76 and except as otherwise

directed by Government ) be altered under sub-section (2) of section 48 and such alteration shall be made by the Collector in accordance with the following rules.

81. *Ordinary rates of altered assessment.*—*Ordinary rates of altered assessment.*—(1) For the purpose of determining generally the rate of altered assessment leviable, each Commissioner shall, from time to time, by notification published in the official *Gazette*, divide the villages, towns and cities in each district in his division ( to which a standard rate under Rule 82 has not been extended ) into two classes.

(2) The assessment shall then be fixed by the Collector at his discretion, subject to the general or special orders of Government at a sum per square yard within the following limits :—

*Maximum*—For Class I land 2 pies.

For Class II land 1 pie.

*Minimum*—The agricultural assessment.

In fixing the rate within the above limits due regard shall be had to the general level of the value of lands in the locality used for non agricultural purposes.

“ Provided that the altered assessment of plots of land not built upon in Development Department Schemes shall be limited to maximum rate of Re.1 per 250 square yards or part thereof.” :

(3) “ The Collector with the previous sanction of the Commissioner which shall only be given for special reasons to be recorded in writing, may levy on any land altered assessment at a rate higher than the maximum fixed under Sub-rule (2) in respect of any village, town or city in which such land is situated, in cases where the land is either situated in an exceptionally favourable position, or where it is used temporarily for a non-agricultural purpose, or where the purpose for which it is used is of a special kind. Such higher rate shall not however exceed 50 per cent. of the estimated annual rental value of the land when put to non-agricultural use in question ”.

82. *Special rates of altered assessment in certain areas.*—In any area in which on account of there being a keen demand for building sites or for any other special purpose, Government may, by notification in the official *Gazette*, direct that this rule shall be applied, the rate of altered assessment shall be determined in accordance with the following provisions and not under rule 81:—

I.—The altered assessment shall ordinarily be a percentage on the full market value of the land as a building site.

II.—In cases where this rule is applied on account of there being a demand for building sites, the market value of the land shall be estimated as far as possible on the basis of actual sales of unoccupied land for building purposes in the locality. In cases where this rule is applied on account of the demand being for other special purposes, the market value

shall be estimated as far as possible, on the basis of actual sales of unoccupied land of which the value is enhanced by the existence of the special demand.

III.—Government shall determine what percentage shall be charged in any locality to which this rule is applied, and the standard rates of altered assessment shall be calculated thereupon and shall be levied in place of the current rate of assessment. At intervals of ten years or, in particular localities, at such shorter intervals as Government may direct, the rates shall be revised with the sanction of Government. Until the rates are so revised, the old rates shall remain in force. The rates sanctioned from time to time shall be published in the official gazette. A public notice shall be given one year before any revised rate comes into force.

IV.—A rate differing from the standard rate of altered assessment in any locality shall not be levied without special reasons which shall be recorded: provided that the Collector, with the previous sanction of the Commissioner, may levy a higher rate in the case of land situated in an exceptionally favourable position.

V.—*Deleted (G. R. 1890/28 of 1-8-1929).*

VI.—The rates of altered assessment leviable on lands in the Bombay Suburban Division, to which this rule applies, shall however be reduced to such extent as Government may specify by a notification in the official Gazette.

82-A. Notwithstanding anything in rules 81 and 82 in any area to which Government may by notification in the official Gazette direct that this rule shall be applied an additional rate of Rs. 2½ for every lakh of bricks manufactured in any one year shall be levied in addition to the annual assessment of Rs. 40 per acre on land used for the manufacture of brick: Provided that where exact accounts of manufacture are not available the Collector shall be at liberty to fix the number according to the known capacity of the kiln, and his decision shall be final.

83. (*Cancelled by G. R. 1890/23 of 20-8-1929.*)

84. *Grant of permission in hill stations, etc.*—In hill stations and such other localities as Government may direct, permission shall not be granted under section 65 except on such conditions as are considered desirable regarding the style of building, the period for construction and the observance of municipal or sanitary regulations. Such conditions shall be embodied in the Sanad.

85. *Assessment leviable on compounds; returned in certain cases.*—Altered assessment shall ordinarily be levied upon the whole of the land within the compound of a building and not merely upon the land covered with building.

86. *Levy of altered assessment when to begin.*—(a) The altered assessment shall ordinarily be levied from the the first day of the revenue year next succeeding the revenue year in which permission to use the land for

non-agricultural purposes was given, provided that (1) where the use is temporary the Collector may in his discretion levy it from the first day on which or the commencement of the year in which the non-agricultural use begins.

"(2) In the case of building sites held by Co-operative Housing Societies which are not built upon, no altered assessment shall be levied for three years subsequent to the date on which possession of the land was taken or the building permission granted, whichever was later; And on the expiry of that period, altered assessment shall be levied with effect from the first day of the next revenue year at half the rate current in the locality, unless for special reasons which shall be specified in writing the Collector considers it desirable that the full exemption from altered assessment should be continued for a further period or periods. In all cases, the full altered assessment payable in the locality shall be levied as soon as a plot is built upon".—*G. R., R. D., 620/23, of 14-10-32.*

(b) Where no permission was given the altered assessment levied for non-agricultural use shall always be levied from the first day of the revenue year in which the use commenced ( Notification *G. R. 9113/24, 3rd January 1928* ).

87. *Revision of altered assessment.*—(a) *Revision of altered assessment.*—The period for which the altered assessment is to be fixed shall ordinarily be 30 years from the date prescribed in the sanad except in the Bombay Suburban District where, on account of its special conditions the period shall ordinarily be fifty years. On the expiry of this or any other period mentioned in the sanad, and at such further intervals as may be from time to time directed by Government in this behalf, the assessment fixed shall be liable to revision in accordance with the Code and the rules and orders for the time being in force thereunder.

(b) When land used for non-agricultural purposes is assessed under the provisions of rules 81 to 85, a sanad shall be granted in the Form M if the land is used for building purposes, in form NI if the land is used temporarily for a non-agricultural purpose other than building and in Form N in all other cases.

88. *Commuting altered assessment.*—In cases where the altered assessment is fixed under rule 87 the assessment, if not exceeding one rupee, instead of being rendered annually, may, with the consent of the Collector, be commuted by the occupant for a lump payment of its present value, for the residual term for which that assessment is fixed, at a rate of interest not more than half per cent. above the market rate at the time of commutation upon public securities the interest on which is liable to income-tax; and a note of such payment or commutation shall be made in or at the foot of the sanad granted in respect of the land under Rule 87 (b), on the expiry of the period for which it has been commuted the assessment, whether revised or not, shall again be leviable unless it is again commuted under this rule.

89. *Maps showing altered assessment.*—(1) Each Collector shall permanently maintain in this office and from time to time as required renew a map or his district upon which it shall be clearly shown by distinct colours, or otherwise as may be convenient, under which of the foregoing rules and classes all the land of the district falls.

(2) When an area is very small, or when its limits intersect a village in an intricate way, insets on a larger scale or a supplementary file of village maps shall be provided.

(3) Whenever any area is brought under a different class or rate by a fresh order, the map shall be corrected and the authority for the change noted over the Collector's signature on the map.

(4) Each Mamlatdar shall similarly maintain a map of his taluka with similar supplements which shall be similarly corrected and endorsed by the Collector at each change.

(5) These maps shall be open to public inspection free of charge during all office hours.

90. *Levy of rate when land assessed for a purpose other than building is used for building.*—(1) When any holding which has been assessed or is held for non-agricultural purposes other than building, is with the Collector's permission, used for residential building, the Collector shall levy the rate of assessment imposed on land used for such purpose in the locality."

(2) In such cases the holder shall be given a new sanad in the form prescribed from time to time under rule 67 (b).

91. *Re-imposition of agricultural assessment.*—(1) When any holding, which has been assessed or of which the assessment has been altered for any non-agricultural use, is used for agriculture only, the Collector may on the application of the holder, remove the non-agricultural assessment and impose either the old agricultural assessment, if any, and if the settlement period has not expired; or may impose in other cases a new agricultural assessment equivalent to that imposed on other similar agricultural lands in the vicinity.

(2) Such agricultural assessments shall be subject to the same conditions as to periodical revision and the same rules and provisions of law as if they had been imposed at the ordinary revenue settlement of the village in which land is situated.

Provided that if the holder has paid any lump sum as commuted assessment for any period, he shall not be entitled to any refund or to any change in the conditions of his lease or agreement until the period for which the commutation has been paid expires.

#### Alteration of Assessment in surveyed in settled Alienated Villages.

92. *Application of rules; certain powers of Collector to be exercised by holder with commission.*—When land assessed for purposes of agriculture only is



subsequently used for any purpose unconnected with agriculture, the assessment upon the land so used shall, unless otherwise direct by Government, be altered under sub-section (2) of section 48 by the Collector in accordance with rules 81 to 87 inclusive:

Provided that the powers of the Collector under those rules, other than the power of estimating the full market value and fixing standard rates of assessment, shall be exercised by the holder or holders of the alienated village in respect of land specified in a commission conferring the powers of a Collector under section 65 or 66 upon such holder or holders under section 88 (d).

93. *Fines*.—For the purposes of determining the amounts of the fines leviable under section 66, rules 99 to 102 shall be applied:

Provided that the powers of the Collector under section 65 or 66 respectively shall be exercised in accordance with the provisions of rules 99 to 102 by the holder or holders of the alienated village in respect of land specified in a commission conferring the powers of a Collector under section 65 or 66 respectively upon such holder or holders under section 88 (d).

94. *Applications how to be dealt with*.—(1) When the Collector receives an application under section 65 for permission to use for any other purpose land assessed for purposes of agriculture only, he shall forthwith forward to the holder or holders of the alienated village in which the land is situated a copy of the application and shall as soon as possible thereafter also forward to such holder or holders a letter showing the altered assessment leviable upon use of the land for such other purpose and requesting such holder or holders to intimate within one month of the date of the letter whether the application should be granted or refused.

(2) If such holder or holders intimate that the application should be granted it shall be granted accordingly; but if such holder or any of such holders intimate that the application should be refused or do not make any intimation within the time specified, the application shall be refused.

95. *Procedure when information of use for non-agricultural purposes is received*.—(1) When the Collector receives information that any inferior holder of land assessed for purposes of agriculture only has rendered himself liable to any of the penalties specified in section 66 the Collector shall address to the holder or holders of the alienated village a letter communicating the information and the liabilities of the holder of the said land and showing the altered assessment or fine or both leviable and requesting the holder or holders of the alienated village to intimate within such time as the Collector considers reasonable whether the liabilities should or should not be enforced.

(2) If such holder or holders intimate that the liabilities should be enforced, they shall be enforced accordingly; but if such holder or any of such holders intimate that the liabilities should not be enforced or do not make

any intimation within the time specified or within such further time as may specially be granted, they shall not be enforced.

"(3) Provided that the Collector shall not pass any such orders in respect of land specified in a commission conferring the powers of a Collector under section 66 upon the holder or holders of the alienated village under section 89 (d) but shall forthwith communicate the information for the orders of such holder or holders of the alienated village; and also provide that any such information may be received and acted upon by such holder or holders of the alienated village district".—*G. R. R. D., 1890/28 of 15-3-1921.*

95. *Communication of orders and levy of assessment.*—(1) The Collector, or the holder or holders of the alienated village, as the case may be, shall communicate any orders passed by him or them under these rules to the Mamlatdar, who shall communicate such orders to the applicant or holder of the land concerned and shall direct the village officers to levy any altered assessment or fine so ordered.

(2) Such altered assessment or fine shall be levied in the same manner as other land revenue and shall be paid wholly to the holder or holders of the alienated village when such holder or holders are entitled to the whole land revenue of the village or proportionately to their shares when such holder or holders are entitled to a proportion only of the land revenue in accordance with the conditions under which they hold the alienated village.

97. *Kadim and sheri land exempted.*—Nothing in rules 92 to 95 shall be deemed to apply to lands which are alienated lands apart from the alienation of the village in which they are situated, nor alienated land in the possession of and occupied in person by the holder or holders of the alienated village.

99. *Meaning of "holder" of alienated village.*—For the purposes of rules 92 to 97 the holder or holders of any alienated village shall be taken to mean the actual holder or holders or in cases of doubt the person or persons whose name or names is or are registered as such in the register kept under section 53.

#### Permission for Non-Agricultural Use and Fines in Cases of Unauthorized Use.

93. *No fine ordinarily to be imposed under section 65.*—No fine shall ordinarily be imposed under section 65, that is to say, where land assessed or held for purposes of agriculture is used for any purpose unconnected with agriculture with the permission of the Collector.

100. *Maximum fine leviable under section 66.*—Any fine imposed by the Collector under section 66 shall be fixed by him at his discretion subject to rule 101 and shall not exceed ten times the altered assessment imposed under this Chapter.—*G. R. R. D., 1899/28 of 15-3-1921.*

"101. *Maximum fine leviable for unauthorized use for building, brick making etc.*—When the material of the soil of any occupied land is employed for bricks or tiles or pottery or for any other non-agricultural purposes, without the permission of the Collector being first obtained and the value of the land is thereby adversely affected, a fine may be levied at a rate not exceeding double the rate prescribed in rule 100."—*G. R. R. D., 1890/28 of 15-5 1931.*

102. *Saving of special cases dealt with by Government.*—Notwithstanding anything contained in rules 99 to 101, the Collector may, in such cases as Government deem exceptional or unusual, impose a fine, whether under section 65 or under section 66, at such rate as may be fixed by Government in that behalf.

103. *Limit of fine under section 61.*—The limit of fine to be levied under section 61, when land is unauthorizedly occupied and used for any non agricultural purpose, shall be double the amount of the fine that would be leviable under section 66 and rule 100 if the same land being in lawful occupation had been used by the holder for the same purpose without the permission of the Collector :

" Provided that a fine up to Rs. 100 may be levied in any such case irrespective of the area of the land involved."—*G. R., R. D., 1890/28 of 15-5 1931.*

## CHAPTER XV.

### RECORD OF RIGHTS

104. The record of rights and mutations, the Index of lands and the register of disputed cases shall be kept in forms O, P, and Q respectively ; provided that in sites surveyed under section 131, these forms may be modified by the Director of Land Records to suit the requirements of cities, the record of rights being termed the "Property Register." After the original preparation of the Record, all later entries altering or transferring those rights are termed "mutations."

105. (1) When the record of rights is first introduced in any village, as soon as the preparation has begun, the village accountant shall cause notice thereof to be given by beat of drum and shall post up a written notice in the chavdi. He shall also write at the head of the record a certificate that such notice was duly given.

(2) Prior to the preparation of the fair copy of the record of rights, the village accountant shall prepare a rough copy of the record in the form of an Index of Lands with all rights noted against each parcel. Until the fair copy is prepared, such rough copy shall be used as and be deemed to be the register of mutations and the provisions of the Code and of these rules which apply to the said register shall apply so far as may be to such rough copy, and the provisions or rule 111 respecting the introduction of the re-written copy of the index shall apply so far as may be to the introduction of this first fair copy of the record.

106. (1) Every mutation shall be posted in the Diary by the village accountant and examined by the Circle Inspector and shall be read out and explained by the latter to all persons present.

(2) The Circle Inspector shall initial all entries so examined.

(3) If any person adversely affected admits an entry to be correct the Circle Inspector shall note the admission.

(4) If any interested person disputes the correctness of an entry, the Circle Inspector shall not erase but shall correct any errors admitted by all parties either by bracketing the errors and inserting the correct entries by interlineation or side note or by an entirely fresh entry in either case authenticated by his signature : if the error is not admitted, he shall enter the dispute in the Register of Disputed Cases ( form Q ), and it shall be disposed of under rule 108.

107. (1) The entries in the Diary of mutations shall be further tested and revised, by a revenue officer not lower in rank than a Mamlatdar's First Karkun.

(2) Any entry found by such officer to be correct shall be certified by him.

(3) Any entry found to be incorrect shall, if no dispute is brought to his notice, be corrected as in rule 106 (4) and certified by him : such correction shall be a new mutation for the purpose of section 137D (2).

(4) When such officer finds that there is a dispute regarding any entry examined by him, he shall enter the dispute in the register of disputed cases and the dispute shall be disposed of under rule 108. Such officer shall, wherever possible, himself dispose of the dispute under the said rule forthwith.

(5) One appeal only shall lie against any entry certified under sub-rule (2) or corrected under sub-rule (3) otherwise than by the Collector himself, to the same authority to which an appeal lies in a case decided under rule 108.

108. (1) Disputes entered in the register of disputed cases shall ordinarily be disposed of by the Mamlatdar's First Karkun or by the Mamlatdar, but may be disposed of by the District Inspector of Land Records or by any revenue officer of superior rank to that of First Karkun.

(2) The enquiry shall ordinarily be made in the village in which the land is situate or where the interested parties reside.

(3) The officer making the enquiry shall record his order disposing of the dispute in the said register, and shall then make such entry in the Diary of mutations as may be necessary.

(4) Such officer shall certify the entry in the diary of mutations to be correct.

(5) An appeal against an order under this rule shall, if the order has been passed by the Mamlatdar's first karkun, the Mamlatdar, the District Inspector or a revenue officer of lower rank than that of a Deputy Collector, lie to the Sub-Divisional Officer or an officer appointed by Government in this behalf, and if the order has been passed by the Sub-Divisional Officer, the Superintendent of Land Records or by a Revenue Officer of not lower rank than that of a Deputy Collector, to the Collector ; and must be presented

within 60 days from the day the appellant first knew it had been made. The decision of the appellate authority shall be final. There shall be no appeal against the order of the Collector and no second appeal in any case.

(6) If the appellate order confirms the previous decision, it should be noted in the remarks column, against the confirmed entry. If it alters it, the change shall be entered as a fresh, but not disputable, mutation.

109. Entries in the Diary of mutations shall ordinarily be transferred to the Index of lands as soon as certified.

110. The index of lands shall be re-written incorporating all mutations recorded up to the date prescribed by the sub-divisional officer whenever that officer, in view of the number of entries in the Diary of mutations, shall so direct.

111. (1) When the re-written Index of land is reported to be complete, the Collector or sub-divisional officer shall fix a date for its inspection and shall cause notice thereof to be given calling upon all persons interested to appear on such date at a specified place in or in the immediate vicinity of the village concerned, and notifying that any such person may before such date inspect the Index on application.

(2) On the date and at the place appointed, the Collector or sub-divisional officer shall compare the new copy with the old Index and the diary of mutations, cause such portions thereof to be read out as any of the persons present may desire to hear, read and make any correction that may be necessary.

(3) Such officer shall then sign the new Index and subscribe below it a certificate that the entries therein have been duly tested and found correct.

112. Where a revenue officer or a village accountant issues any summons or notice under section 135E (1) or G, he shall follow the provisions of sections 190 or 191 as the case may be.

113. Record of such tenancies as are not perpetual or notified under section 135B (2) shall be kept in form R. The entries therein shall be tested by the Circle Inspector when he examines the crops and by other officers of higher rank. When any error is discovered by any of these inspecting officers, they may correct it and initial the corrected entry. The register will be compiled every ten years, but there will be no notification. When any dispute as to such tenancies is found to exist, a note of the fact may be made in the register, but no entry will be made in the register of disputed cases, nor will any revenue officer decide the dispute.

## CHAPTER XVI

### RECOVERY OF LAND REVENUE.

114. *Land revenue where and to whom to be paid.*—All payments of land revenue shall be made to the officers of the village in which such revenue is due: provided that, with the sanction of the Collector, such payment may in special cases be made into a Government Treasury within the district to which the payment appertains.

Payment is ordinarily to be made to the patel in the presence of the accountant.

115. Except in Sind, Ratnagiri, Kolaba, Kauara and Thana, Collectors shall, with the sanction of the Commissioner, classify the villages in their districts into the following three classes :—

Class I : kharif villages in ghat districts and elsewhere where it is necessary that the revenue be secured specially early ;

Class II : kharif villages in Gujarat and elsewhere where no such special provision is necessary ;

Class III : rabi villages generally.

116 *Dates on which agricultural revenue to be paid.*—(1) The land revenue payable in respect of lands assessed for purposes of agriculture only shall be paid in equal or nearly equal instalments on the following dates :—

(a) in Sind—for kharif cultivation the 15th February and the 15th April, and for rabi cultivation the 15th May and the 15th June, (Notification 6961/24 19 July 1927).

(b) in Thana district—the 1st January and the 16th February ;

(c) and in villages classed under rule 115 in—

Class I, on the 5th December and the 5th January ;

Class II, on the 5th January and the 5th March ;

Class III, and the whole of the District of Ratnagiri, Kauara and Kolaba the 5th February and the 5th April :

(2) Provided that—

(i) in any district or in any part of a district where the dates above specified are found unsuitable, the Collector may, with the sanction of the Commissioner, fix such other dates as he may deem expedient according to the circumstances of the season and of the villages concerned and the character of the crops generally sown therein ;

(ii) Where the annual amount of the revenue is five rupees or under, it shall be payable in a lump sum at the date of the first instalment ;

(iii) if the person from whom the year's revenue is due so wishes, he may in any case pay the whole amount at once instead of by instalments.

117. *Other land revenue.*—Land revenue, other than that due upon agricultural land, shall ordinarily be paid in one instalment, at the time of the first instalment of agricultural land revenue or on such other date as the Collector thinks fit in any case to prescribe ; but in special cases the Collector may in his discretion allow the payment to be made in two or more instalments on dates which shall be fixed by him.

118. *Form of notice of demand.*—The notice of demand to be issued under section 152 shall be in form S.

119. *Duties of village officers.*—(a) It shall be the duty of the village officers to warn landholders verbally from time to time of the dates on which their instalments are due, and to use their influence in securing prompt payment without resort to notices of demand or other compulsory processes.

(b) Village officers shall report to the Mamlatdar the names of landholders who, they have reason to believe, will not punctually pay their instalments, in order that precautionary measures under sections 140-145 may be, when necessary, adopted in time : and shall immediately report any case where the produce of any land on which the assessment has not been paid is attached by a Civil Court.

XXVIII. Whenever the consolidated demand is ordered to be half suspended or half remitted, the division shall be so made that no fraction less than a whole anna shall be taken in the portion to be suspended or remitted.

XXIX. Whenever an amount is suspended, the suspension shall always be conditional upon the payment of the amount which is not suspended. When, for instance, half the revenue is suspended, but any revenue-payer defaults in respect of any remaining unsuspended revenue the suspension shall be cancelled so that the suspended amount also becomes 'due for the current year' (sec. 148).

#### General Calamities.

(R. 4966/24 of 1-5-29).

##### *A.—Suspensions of Consolidated Land Revenue.*

XXX. When the Collector has ascertained by local inquiries that owing to a partial or total failure or destruction of the crops throughout any tract on account of drought or any other cause, it will be necessary to suspend the collection of land revenue (or judi under the Gordon and Pedder settlements) assessed for agriculture in any area, he is authorized, especially when the tract is already impoverished or the previous harvests have been poor, to grant suspensions according to the scale given below to all occupants, agriculturist and non-agriculturists alike and to superior holders of alienated land (R. 9402-19) without inquiry into the circumstances of individuals:—

Classification of crops.	Amount of assessment to be suspended.
4 annas and under ...	The whole.
Over 4 annas, under 6 annas ...	Half.
6 annas and over ...	None.

The normal crop, or average of satisfactory seasons is reckoned at 12 annas.

XXX-A. For the purposes of the suspension of revenue, anewari is required only when there is doubt as to whether the season is below 6 annas, or, if there are suspended arrears, when there is doubt as to whether the season is below 8 or 11 annas according as the amount of arrears to be collected is half or the whole of one year's assessment". (R. 6365/28 of 2nd February 1931).

The procedure for making the anna valuation is thus laid down in Government Resolution No. L. C. 1145-B, dated 24th June 1927:—

(i) A Committee shall be formed for every village for which an anna valuation is to be prepared consisting of the Circle Inspector (as Chairman), the K, the Patil and two representative agriculturists selected by the Circle Inspector.

(ii) The Circle Inspector shall give not less than 3 clear days' notice of his visit.

(iii) The Committee shall meet in the month preceding the harvesting of the main crops and record its opinion as to what the anna valuation should be for each of them.

(iv) This opinion shall be signed by each member who (if the Committee is not unanimous) shall record his opinion over his own signature or mark.

(v) The opinion or opinions thus recorded shall be forwarded by the Circle Inspector to the Mamlatdar, who shall proceed to make a provisional decision.

(vi) The Mamlatdar shall fix a date by which the opinion or opinions referred to in section (v) above shall reach him.

(vii) If the opinion or opinions are not received by that date, he shall make his provisional decision on such other data as may be available.

(viii) The Mamlatdar shall publish his provisional decisions in the taluka kacheri and in the chawadis of all the villages concerned.

(ix) Any objection to the provisional decision of the Mamlatdar shall be made within 15 days from the date of its publication, and he shall take into account all objections which have been submitted to his superior officers, in person or by petition.

(x) Unless the Mamlatdar, on a consideration of the objections or for any other reason, sees fit to amend his provisional decision, such decision shall stand as his final decision. In any case where he amends his provisional decision, the amended decision shall be published in the same manner.

(xi) If the Collector revises the Mamlatdar's decision, this further decision similarly shall be published.

(xii) The Collector may select any field in any village for a crop test with a view to checking the accuracy of any anna valuation.

(xiii) The Collector or the Mamlatdar as the case may be should supply to the public on payment of copying fees, information relating to the anna valuation of the crops of a village embodied in the following documents:—

- (1) the opinion of the Village Committee as to the anna valuation of each of the main crops,
- (2) the provisional decision of the Mamlatdar,
- (3) the final decision of the Mamlatdar, if any,
- (4) the Collector's decision.

When possible the Mamlatdar's decision should contain the area as well as the anna valuation of each of the main crops of a village. The information should be furnished in the form appended to R. 4866, 24 of 19th June 1930".

XXXI. Where the area affected is homogeneous or whole villages are more or less uniformly affected, the suspensions should be announced for such tract or villages without detailed inspection.



XXXII. The Collector shall cause the occupants and superior holders of alienated land whose revenue is suspended to understand distinctly that such suspension is provisional only, and that it will be decided subsequently whether the revenue suspended shall be ultimately remitted or collected.

#### B. Remissions of Land Revenue.

XXXIII. Remissions should be granted to occupants and to superior holders of alienated land in the manner explained below; there should be no inquiry into the circumstances of individuals.

(i) Except as provided in sub-paragraph (ii), the grant of remission should depend on the character of the three seasons following that in which the assessment is suspended. The oldest arrears shall be remitted first (R. 9402—19). Suspended revenue should be collected to the extent permissible under the table given below. In accordance with this table, all suspended arrears which either (a) in Gujarat and the Konkan are in excess of one year's revenue or (b) in the Deccan are in excess of two years' revenue or (c) are more than three years old should ordinarily be remitted by the Collector:—

Anna classification of crop.	Proportion of assessment the collection of which would be justified	
	Current.	Suspended arrears
11 annas and over	...	1
8 annas and under 11 annas	...	1
6 annas and under 8 annas	...	1
Over 4 annas and under 6 annas	...	1
4 annas and under	...	...

(ii) In the tracts noted below, the grant of remission should depend on the character of the four seasons following that in which the assessment is suspended. In other respects the instruction in sub-paragraph (i) will apply except that the suspended arrears shall not be due for remission until they are more than four years old (R. 4966/24—27-3-1928).

Sholapur District.

Bijapur District.

Ahmednagar District (excluding Akola, Kopargaon and Sangamner talukas).

Indapur and Bhimthadi talukas and Sirur and Dhond Petas of Poona District.

Gadag, Ron and Navalgund talukas and Mundargi and Nargund Petas of Dharwar District.

(iii) The amount of suspended revenue to be collected with any particular instalment should be fixed by the Collector and announced before the collection of the instalment begins.

(iv) Cases in which owing to the impoverishment of a tract by a succession of bad seasons, or for any special reasons, it appears to the Collector

desirable to remit or to collect suspended revenue otherwise than in accordance with the ordinary rule, should be reported through the Commissioner for the orders of Government.

XXXIV. When the assessment includes a separated rate for water-advantages then, if the water fails to such an extent that no irrigated crop, or an irrigated crop not exceeding  $4/6$  annas can be grown, the  $\frac{\text{whole}}{\text{half}}$  of the portion of the assessment which represents the water-rate should in the case of all occupants and superior holders be remitted without suspension (R. 5087-07, 5324-09). If such remissions are extensive, the Collector should first consult the Irrigation Officer of the district, and in case of difference of opinion should refer the case to the Commissioner.

XXXV. When much land which would ordinarily be sown is left unsown because present or recent calamity renders sowing impossible the case is identical with that of failure of crops and should be similarly treated.

XXXVI. Suspensions may be granted to superior holders [including meowadars (R. 11946-07)] in accordance with the orders and the provision of sec. 84A of the Bombay Land Revenue Code. Such grant entails the suspension and remission of rent (other than crop share) payable by the inferior holders or tenants to the extent provided by that section, under which the Collector must also record his order.

## II.—Local Calamities.

XXXVII. Relief on the occasion of local calamities, including the loss by fire or flood of harvested crops or other property (R. 8507-11), should be determined by the investigation of individual cases. Before relief is granted the resources of the owner should be taken into account.

When the damage amounts to total or nearly total loss of crops, immediate remission is preferable to suspension—(R. 650-07, 2702-07, 8507-11)

### General

XXXVIII. (R. 8714-12) In order to carry out these rules it is essential that each autumn, not later than 1st October, each Sub-divisional Officer should obtain from each Mamlatdar a list of the villages in the taluka (printed lists should be available). This list should show against each village the full normal year's demand of fixed consolidated revenue in round figures, omitting annas. The next column should show the total amount of suspended revenue in each village. When these suspensions are not given uniformly to all occupants this fact should be made clear, together with the proportion (half, whole or more than one year's demand) which stands suspended. The next column should show the Mamlatdar's Final anna valuation for the village. For orders as to methods of valuation see R. 5750-09, 7392-11, and 7760-12, para. 2, and 7773-B-27. A duplicate of these statements must also be sent to the Collector.

XXXIX. Upon this information the Remission and Suspension Rules can be applied. If there is no suspended revenue, no orders about its collection will be needed. If the crops are plainly well above 6 annas there will be no suspension for the current year. If they are unmistakably above 11 annas, the collection of the current revenue together with one full year's demand of suspended revenue could be ordered without further enquiry. But when the reported anna-valuation is close to one of the critical figures,—say  $5\frac{1}{2}$  to  $6\frac{1}{2}$ , so that perhaps suspensions may be needed in the current year, or 10 $\frac{1}{2}$  annas, so that it is doubtful whether two years' dues can be demanded,—then a careful test of the valuation must be made. For this purpose the Sub-divisional officer will, if necessary, go out on inspection in October (R. 438-12). It is imperative that the crops should be seen before they are reaped, and the Sub-divisional Officer must ensure that the list reaches him in time for this to be done and should call for and proceed to act on the Mamlatdar's provisional estimates should there be danger of his final estimates being received too late. He will select villages for test from the list so as to take a fair sample of the average condition of the taluka and should specially select villages for which the figures are critical.

XL. Reports of the extent and result of this test must be submitted weekly to the Collector. Duplicates of the original lists have been sent to the Collector, so that as he receives the results of the tests he can modify his estimate of the effect upon the probable demand and collections for the year. He can also see that proper progress is made in the tests. The Collector must see that reports required by Order XLIII below (F. 2225-10) are submitted promptly. He must not wait until the last tests have taken and the conditions of both kharif and rabi crops ascertained. If this first *estimate* requires material modification, he should intimate the revised figures later. These estimates can be made upon the schedules showing the normal demands (or indeed upon the District Returns up to the end of July which will exhibit by Talukas the exact suspended revenue). He should not attempt accuracy to a single rupee and not delay while figures are collected, a task that should not be placed upon the subordinate establishment. (R. 8714-12).

XLI. Only in cases where some special remission of water-revenue, or collection of the full revenue from irrigated holdings while other holdings are granted suspensions, has been ordered, will it be necessary to collect estimates (or actual figures) of the financial effect in detail from the villages concerned. The general intention of these orders is that the village should be the unit, not the aggregate 'khata' or the single field.

XLII. The lists of suspensions and remissions should be published in the following manner. As soon as the statement for any village is sanctioned, the Mamlatdar should cause a copy to be sent to the village officers, who should be required to read and explain the orders to all the villagers and to post the copy in a conspicuous place in the village chavdi, if any, or otherwise in some building to which the villagers resort. The Collector's orders, if any under section 84-A should be published and explained in the same manner. The village officers should be required at the same time to enter in

the rayat's ledger (village from VIII-B) the remissions and suspensions which have been sanctioned, and in due course to note in the rent column of the Tenancy Register (Form XII) for each hissa concerned the suspension or remission granted by the Collector's orders under section 84-A unless these orders are of general character, when they may be recorded in a remark at the end of the Register. All Revenue Officers from Circle Inspectors upwards should satisfy themselves (by personal observation) that the publication has been made as directed and that any torn or defaced notice has been replaced and (by direct inquiry) that the remissions and suspensions and the Collector's orders under section 84-A have been read and explained to the villagers. The Circle Inspectors and other Taluka Officers must examine not less than 25 per cent. of the rayats' receipts and of the entries in the tenancy register within three months after the remissions and suspensions have been declared, giving special attention to receipts and entries affected by the orders. The District Officers should pay special attention to ensure that this examination has been properly carried out.

In alienated villages the same procedure should be followed throughout as far as practicable, and in those in which forms VIII-A and B and the Tenancy Register or corresponding forms do not exist, the Inamdar should be invited to provide every inferior holder who is entitled to remission or suspension and whose dues are not collected through the village officers with a combined demand and receipt form showing the remission or suspension sanctioned for each and the balance due for payment.

XLIII. The Collector, as soon as he issues his orders, should report to the Commissioner his proceedings as regards both suspension and remission of land revenue, stating fully the reasons for these orders and the extent of their application, with other relevant particulars.

XLIV. Immediate intimation of all suspensions and remissions granted under the foregoing orders should be given by the Commissioners to Government and to the Accountant-General, who should report to Government how far they are likely to affect the budget estimates of the year.—F. 2225-10 and paragraph 6 of R. 722-12.

## CHAPTER XVII.

### DISPOSAL OF FORFEITED LAND.

120. *Restoration or grant on inalienable tenure.*—Where the Collector thinks it advisable that the holding of a defaulter should, after forfeiture, be either restored to the defaulter or given out with or without any occupancy price to any other person, subject to the condition that he shall not transfer it in any way to another person without the previous sanction in writing of the Collector, the Collector, after having declared such holding to be forfeited to Government, may, without having resort to any of the other means provided in the Code for the recovery of an arrear of land revenue, restore, or give it out (as the case may be) accordingly, and shall take an agreement in form T.

**XLV.** Where Rule 120 is not applied, resort should not be had to forfeiture of land unless it appears to the Collector that the arrear cannot be readily recovered by any of the other means provided in Chapter XI of the Code.

121. *Partial forfeiture.*—Where the land in respect of which an arrear is due consists of two or more survey numbers or of two or more sub-divisions of survey numbers or of two or more estates separately assessed, and the Collector is of opinion that the whole amount of such arrear could be realized by the sale of less than all of such survey numbers, portion or estates, he shall restrict forfeiture to such one or more survey numbers or the sub-divisions as prove sufficient to realise the arrears.

122. *Deleted, as it merely repeated sec. 117 B (i).*

123. *Disposal of forfeited land otherwise than by sale in certain cases.*—Forfeited land shall not be put up for sale in the following cases, but shall be disposed of in the manner hereinafter prescribed for the particular case under which it falls, namely:—

(a) Where the Collector thinks that, owing to general agricultural depression or to the want of demand for such land, or to a combination of the neighbouring land-holders, or for any other special cause, there will be no bidders at the sale, or that the highest amount bid will be considerably below the reasonable value, he shall cause the land to be entered in the land records as unoccupied.

(b) Where the Collector finds that the land is likely to be required either immediately or within a reasonable time, for any of the purposes described in section 38, he shall take steps at once to assign it for such purpose.

(c) In the case of a forfeited alienated holding, where the Collector considers it expedient to allow the land to continue in the possession of its actual holder or tenant, as an occupant of unalienated land, annulling the alienation, he shall pass orders accordingly for its continuance.

(d) In the case of an inferior holding forfeited on account of an arrear of rent or land revenue due to a superior holder, for the recovery of which assistance is being rendered under sections 86 and 87, the Collector may in his discretion transfer the holding to the superior holder thereof, subject to such tenures, rights, incumbrances or equities (if any) as he may direct under section 56.

(e) In any other case, where the Collector considers it is expedient that the disposal of a forfeited holding should be otherwise than by sale, and obtains the sanction of Government thereto, he shall dispose of it in accordance with the particular orders for its disposal passed or sanctioned by Government.

124. *Forfeited land to be sold for recovery of arrears in other cases.*—In cases not falling under rules 120, 121, 122 or 123, forfeited land shall, subject to the provisions of rule 126, be put up for sale for recovery of the arrears due,

125. *Rules and orders applicable to sales of forfeited land.*—(1) Every sale of forfeited land shall be made subject to the same rules as are applicable to the sale of unoccupied unalienated land so far as the same are consistent with the provisions of Chapter XI.

(2) The Collector should ordinarily set aside the sale under section 179, if in his opinion—

- (a) the bidding at such sale has not been *bona fide*; or
- (b) there has been collusion to recover the holding without payment in full of the arrears and charges due to Government or the superior holder; or
- (c) there has been some material irregularity or mistake or fraud, in publishing or conducting such sale, which is likely to have affected the amount of the highest bid or otherwise, to have caused substantial injury to any person.

126. *Restoration of forfeited land.*—(1) It shall be the discretion of the Collector to restore any forfeited land at any time previous to any sale, or other disposal under these rules on payment of the arrear in respect of which the forfeiture was incurred together with all costs and charges lawfully due by the defaulter, or on security being given to his satisfaction for the payment of the said arrear, costs and charge within a reasonable period :

Provided that no forfeited alienated holding, which is not held for service, shall be restored as alienated land without the previous sanction of

- (a) The Commissioner if it is assessed at more than Rs. 20 ;
  - (b) Government if it is assessed at more than Rs. 50.
- (2) Where in the case of a forfeited alienated land held for service by a watandar the Collector is satisfied that the failure to pay the land revenue due thereupon arose solely from the inability of the defaulter to meet the demand, he may deduct from the forfeited land a portion of which the price would be likely to equal the amount of the arrear recoverable, and deal with such portion in accordance with such of rules 122 to 125 as are applicable, and restore the remainder of the forfeited land to the defaulter, or may restore the entire forfeited land to the defaulter, and either remit the arrear of land revenue due, or make such arrangements for its being paid in the future as he thinks fit.

XLVI. Where land which has been forfeited for default in payment of the land revenue is not sold, the arrear payable by the defaulter shall ordinarily be remitted without having recourse to further compulsory process against him. But it is not intended that the right of recovering arrears from defaulters by other means, notwithstanding that their holdings have been forfeited, and disposed of without being sold, should be altogether relinquished; in special cases the Collector may, with the sanction of the Commissioner, enforce that right.

Recovery of land revenue due on forfeited land which is not sold.

## CHAPTER XVIII.

## SALES.

127. *Auction sales under rule 42 where to be held.*—Auctions held under rules 37 (1), 41, 42 and 50 (2) shall ordinarily be conducted in the town or village in which the land is situated.

128. *Upset price may be fixed.*—Where any land or other property is sold by public auction, an upset price shall, if the Collector thinks fit, be placed thereon.

129. *Sales how to be conducted.*—(1) Every sale by auction, under these rules, or in pursuance of any of the provisions of the Code, shall be conducted, so far as may be, in accordance with sections 165, 166, 170 to 177 both inclusive and 180. The proclamation and written notice of sale required to be issued under sections 165 and 166 shall be in one of the forms U or W, with such modifications, if any, as may be necessary :

(2) Provided that, in conducting the following sales, namely:—

(a) sales of the right of grazing and of the right to take or cut grass in waste lands,

(b) sales of the right to take the fruit of specified Government trees for a specified period, and

(c) sales of dead-wood,

the procedure shall be in accordance with such orders as may from time to time be made by the Collector either generally or in a particular case instead of the procedure prescribed in sections 165 and 166.

## CHAPTER XIX.

## APPEALS.

130. *Form and contents.*—Every appeal shall be made in the form of a petition addressed to the authority to whom an appeal lies, and shall be drawn up in concise, intelligible and respectful language; and shall bear the signature or mark of the appellant or of his duly authorized agent.

(2) The petition should give the following particulars:—

the name, father's name, occupation and place of residence or address of the appellant;

the name and address of the writer of the petition.

(3) The petition should also contain a brief and unexaggerated statement of the facts on which the appellant relies in support of his appeal and the grounds of the appellant's objection to the order or decision appealed against.

131. *Presentation.*—(1) Appeals may either be presented to the authority to whom an appeal lies in person or be forwarded to him by post.

(2) Where an appeal is sent by post, the postage on the cover containing it must invariably be fully prepaid.

132. *Rejection of appeals without enquiry into their merits.*—Inattention in any material respect to the requirements of rule 130 or 131 will render an appeal liable to be rejected without enquiry into its merits.

## CHAPTER XX.

### PENALTIES.

133. *Breaches of the rules how punishable.*—Breaches of rules hereunder mentioned shall be punishable on conviction before a Magistrate as follows:—

(1) Whoever commits a breach of rules 67, 68, 69, 70 or 78, by excavating or removing earth, stone, kankar, sand, muram or any other material of the soil without due authority:

with imprisonment which may extend to one month, or with fine which may extend to five hundred rupees.

(2) Whoever commits a breach of rules 75, 76, 77 or 79, by using or excavating land in a prohibited manner, or for a prohibited purpose, without due authority:

with fine which may extend to five hundred rupees.

(3) Breach of any of rules 67, 70, 72 (b), 119 (a), 119 (b), 134 or 135 committed by a village officer or city surveyor—

(a) by taking or levying any fees for preparing any document or copy or extract of any document which he is bound by any such rule to prepare without charge, or

(b) by charging any fee (i) for granting any permission or inspection which he is authorized by any such rule to grant, or (ii) for making any search for records, for which no fee can lawfully be charged,

(c) by refusing without reasonable cause an inspection of land records which he is required by any such rule to permit;

with imprisonment which may extend to one month, or with fine which may extend to five hundred rupees,

(d) by refusing or neglecting to prepare any document or copy or extract of any document, or to sign or to certify the same, in the manner prescribed by any such rule, or

(e) by neglecting to make any report or to perform any duty which he is required by any such rule to make or to perform:

with fine which may extend to five hundred rupees.

## CHAPTER XXI.

### CERTAIN DOCUMENTS TO BE PREPARED FREE OF CHARGE.

134. *Village accountants to prepare certain documents without charge when so desired.*—(1) It shall be the duty of every village accountant, if so requested by any occupant, or by any person about to become an occupant, of land in his village, to prepare any agreement that may be necessary under either rules 37, 43, 46 or 12) without fee or charge of any kind, and any notice of relinquishment under section 74.



(2) A village accountant who prepares any such agreement or notice shall affix his signature beneath the words "written by" on the lower left-hand corner of such agreement or notice.

## CHAPTER XXII.

### COPIES, INSPECTION AND SEARCHES.

#### I.—Inspection.

135. *Certain documents to be open to inspection.*—Documents, maps, registers accounts and records, the right of inspection of which is provided for in section 91 of the Indian Registration Act (XVI of 1908) and in section 213 and all public documents which any person has, under the provisions of any law for the time being in force, a right to inspect, shall be open to inspection in the office of the officer in charge of the same during the usual office hours every day, except Sundays and public holidays, on payment of the fee hereinafter prescribed in this behalf: and not otherwise.

Provided that no fee shall be charged for inspection (with the permission of the Officer in charge) of the Enquiry Proceedings or Register or Property Register of a City Survey by a Municipal Official for municipal purposes (Notification R. 5228/24-13-12-27).

Provided further that no fee shall be charged for the inspection of village records by an officer or a member of any Co-operative Society for the business of the Society (Notification 248/28-3-10-28).

#### II.—Extracts and copies.

136. *Uncertified copies.*—(1) No uncertified copy or extract shall be obtainable of or from any documents other than those prescribed in rule 135, nor otherwise than under this rule.

(2) Any person may himself or by an agent make a copy of any public document or of any portion of any public document of which he has duly obtained inspection, but no copy so made shall be certified by any public officer.

137. *Village accountants to grant certified copies of certain records.*—

(1) So long as the originals are in their charge, all village accountants, and in the cities surveyed under section 131 all City Surveyors, shall themselves receive and grant applications for certified copies of any serial number (entry) in the record of rights, register of mutations (Property Register) or of tenancies, or of a map of a survey number or sub-division thereof.

(2) The Collector may, in his discretion in respect of his whole district or any part thereof, also empower village accountants to receive and grant applications for certified copies of village forms Nos. (old) 1, 3, 5, 6, 9, 11, 13, 14 and 18; (new) Nos. I, III, VII-XII combined, VIII-A and B, IX, XI, XII, XIV and XV, and of orders for levying miscellaneous land revenue.

(3) Such copies shall after comparison with the original be certified by the accountant as true, and given to the applicants direct within ten days from their application.

138. *Mamluktars generally to grant certified copies of village papers.*—Except as provided in rule 137 every application for a certified copy of any public document in the charge of a village accountant shall be made to the Mamltdar to whom he is subordinate, who shall cause the copy to be prepared, compared with the original, and signed in token of correctness by the village accountant. The copy shall then be certified and made over to the applicant by the Mamltdar.

139. *Officer in charge of document generally to grant certified copy.*—In all other cases the officer in charge of any public document described in rule 135 shall, and in the case of any public document or portion thereof other than those described in rule 135 may, cause to be prepared and give certified copies of the same or of any portion thereof under his own signature to any person applying for such copy on payment of the fees hereinafter prescribed:

Provided that (a) no copy shall be granted of any record, map or plan which has been printed or lithographed and published under the authority of Government and is on sale; but small extracts of not more than five fields or plots may be granted under rule 142 (6);

(b) that no copy of any document is to be given in any case in which the grant would be prejudicial to the public interest.

XLVII. Subject to the provisions of the rules, the grant of copies of some documents is obligatory, while of others it is optional. Ordinarily the latter are given, but every application must be carefully considered by the officer to whom it is made who will be guided by the administrative orders of Government and his superior officers; and in any doubtful case he must obtain the order of his immediate superior.

XLVIII. No copy of any official correspondence, or any opinion of a Government officer, or of any order or Resolution embodying any such opinion shall be given by any officer subordinate to a Collector or to the Survey Commissioner without the previous permission of those authorities.

140. *Receipt to be endorsed on copy.*—On every certified copy of extract granted under these rules and delivered otherwise than through the agency of the value payable post there shall be endorsed by the officer who receives the fee for the same a receipt in the following form:—

Received Rs.                    a.                    , as fee for this certified copy.  
Dated                    of                    19                    .

(Signed) A. B.

### III.—Searches.

141. *Search fees when to be charged.*—When an application is made for an inspection or copy of any public document or of any portion of a public document and such application does not distinctly describe the number, date and nature of the document required; or if the description given in such application is incorrect, and it shall in consequence be necessary for the officer in charge of the document to search his records in order to find it, a fee, at the rate hereinafter prescribed, shall be payable by the applicant for such search whether the inspection or copy for which he applies, on examination of the said document by the said officer, be granted or not.

## IV.—Fees.

142. Fees.—(a) The following fees shall be levied in cash under these rules:—

(1) For an inspection granted under Rule 135 for each day on which inspection is made. Twelve annas an hour for each applicant subject to a minimum of Rs. 1-8-0, to be paid in advance.

(2) For every certified copy of a public document not falling under Articles 3, 4 and 5 of this table—

(a) If the original be in English for every 25 words or fraction of 25 words: Nine pies.

(b) If the original be in the vernacular, for every 33 words or fraction of 33 words: Nine pies.

(c) (i) for examining or comparing 100 words or fraction of 100 words, whether the original be in English or the vernacular: Nine pies.

(ii) for comparing copies of maps etc., under Articles (5), (6) and (7) out of the copy fee there will be credited as comparing fee: One-fourth.

(d) if the original be in a tabular form, whether in English or the vernacular: Twice the rates respectively, named in clauses (a) and (b).

(e) if the copy be given on a printed form, for every sheet or page of forms used: Three pies plus the fees at the rates herein prescribed for the manuscript additions made on the form.

(f) For each form of extract of a City Property Register: Two annas.

(g) When no printed form is supplied or available, for each sheet of foolscap paper used in preparing the copy other than that of a map or plan under Articles (5), (6) and (7): Six pies.

(3) For every certified extract from a register of alienations granted under section 13:

One anna for every rupee of the amount of alienated revenue, or if the same lost or destroyed had been granted under Bombay Act IV of 1888 or under section 133, a sum equal to one-half of the survey fee which the holder of the building site included in the same would

be liable to pay under section 132 if not exempted by the second paragraph of that section. Provided that the fee shall in no case exceed Rs. 10 or be less than 8 annas.

One anna.

(4) For every certified copy of a serial number (or entry) in the record of rights, register of mutations, or register of tenancies, and for every Holding Sheet in V. F. VIII-A (including the printed form), and in villages to which rule 137 (2) applies for every certified copy of each entry in the forms named, or for each khata in V. F. VIII-B: provided that there shall be no charge for correcting the Holding Sheet at any time during the 5 years for which it is current:

(4-A) (i) For every certified copy of the tabular annewari statement of a village with the annewari decision worked out therein ...

Five annas.

(ii) For every certified copy of the decision of the Collector or Mamlatdar not embodying such a form, or of the opinion of the village committee as to the anna valuation. ...

Two annas.

(5) For every certified copy of a map of a survey number or subdivision of a survey number or of any (uncoloured) map of any immovable property prepared under clause (a) of section 136,

Two annas.

or of an entry in a City Property Register:

(6) Subject to proviso (a) to rule 139 for every other certified copy of a map of a survey number or of a subdivision or of a field or of any ordinary (uncoloured) map or plan of any immovable property, or extract of City Survey map, for each field or plot:

Eight annas.

(7) For every certified copy of a map or plan or of any portion of a map or plan not falling under Article (5) or (6) of this table:

Such fee not exceeding fifteen rupees, and not less than one rupee, as the officer who certifies the copy shall determine: provided that no fee exceeding Rs. 5 shall be charged by any officer subordinate to a Collector except with the permission of the Collector, or by an Officer of the Land Records Department except with the permission of the Superintendent of Land Records, to whom he is subordinate.

(8) For every search

One rupee for each year of which the records are searched.

(9) For every authenticated translation of orders, and the reasons therefor, and of exhibits in formal or summary inquires under the Code:—

(a) for the first 100 of fraction of 100 words: Eight annas.

(b) for every subsequent 100 or fraction of 100 words: Four annas.

Provided that—

(a) when any fee is required to be recovered through the agency of the value payable post, postage and postal commission shall be levied in addition, and when the total amount of fee together with postage and commission includes a fraction of an anna a whole anna shall be levied in place of the fraction:

(b) any revenue officer shall be entitled to receive fee of any charge a certified copy of the final order recorded in his own case under section 33.

142. (b). While recovering, copying and comparing fees, any amount less than six pies shall be remitted, and six pies or more shall be rounded to the extent of whole anna.

143. *Fees how to be paid.*—Every fee payable in accordance with the foregoing table shall either be paid in advance or recovered in pursuance of a specific request through the agency of the value payable post.

#### V.—Miscellaneous

144. *Applications how to be made.*—Every application under rules 135 to 143 must be made in writing, and except in the case of an application for inspection made to a village accountant, must be duly stamped. The application may contain a request that the copy, extract, or translation be forwarded by value payable post (unregistered book packet) to any post Office which is also a Money Order Office.

143. *Stamp duty or court-fee payable in addition.*—Nothing in these rules affects the provisions of the Stamp Act (II of 1899) or Court Fees Act (VII of 1870). The stamp duty or court-fee with which an application, copy or extract made or furnished under these rules may be chargeable is in addition to the fees prescribed herein and care is to be taken that the requirements of the Stamp Act and Court Fees Act are properly fulfilled in respect of every such application, copy or extract.

## FORM A (Rule 17)

## NOTIFICATION OF SETTLEMENT

FOR THE BOMBAY PRESIDENCY EXCLUDING SIND

(Notice under sections 102 and 103, Land Revenue Code, 1879).

*For Revised Settlements.*

(For original settlements and revised settlements when the basis of classification is changed see notes below).

Whereas the Governor of Bombay in Council has been pleased to sanction, under section 102 of the Bombay Land Revenue Code, 1879, the levy of assessments for the revised Settlement, which have been fixed under the provisions of sections 100 and 101 of the said Code in the case of such lands as are now actually used for the purposes of agriculture alone and in the case of unoccupied cultivable lands (but excepting lands classed as *pot kharab*) within the village of \_\_\_\_\_ of the taluka \_\_\_\_\_ it is hereby declared under section 102 of the said Code that the said assessments calculated as noted below shall henceforth be leviable in accordance therewith and shall be fixed for a term of \_\_\_\_\_ years from \_\_\_\_\_

Class of land.

Approximate increase or decrease in the rupee of existing assessment.

Dry-crop

...

...

...

annas pias

Rice, etc.

...

...

...

2. Notice of the same is hereby given under section 102 of the said Code to all holders of land in respect of which the assessments have been sanctioned (approved).

3. By this notice the Revised Settlement shall be deemed to have been introduced in the aforesaid village.

4. But in the case of land which may hereafter be brought under irrigation by the use of water the right to which vests in Government or which is supplied from works constructed and maintained by, or at the instance of, Government, or in the case of land which may be supplied with an increased amount of water from works constructed, repaired or improved at the cost of the State, Government reserve the right of imposing an extra cess or rate, or of increasing any existing rate, for the use of water supplied or increased by such means, whether under the provisions of the Bombay Irrigation Act, 1879, or otherwise.

5. In addition to the fixed assessment, a cess not exceeding such rate as may be allowed by law will be levied under the Bombay Local Fund Act, 1869, or other law for the time being in force, for the purpose of providing funds for expenditure on objects of local public utility and improvement.

6. The reservations respecting the right of Government to trees as made by any general notification at the time of, or after the Survey Settlement and reproduced in the margin, or as made by any express order at the time of Survey Settlement and recorded in the Settlement Records, are hereby continued. All other rights over trees are conceded to occupants.

NOTE 1.—In cases of original settlements the following changes should be made in the above form:—

(1) Substitute "original" for "revised" occurring in line 3 of paragraph 1 and in line 1 of paragraph 3.

(2) After the word "assessments" in line 7 of paragraph 1 add "as shown in the accompanying Akarband" and omit "as noted below."

(3) For the words "Approximate increase or decrease in the rupee of existing assessments" in paragraph 1 substitute "Maximum Rates—

Rs. as. "

(4) Substitute the following for paragraph 6—

"6. The right of Government to trees standing in lands which are now occupied is hereby conceded to the occupants thereof subject to the general exceptions entered in the margin and special exceptions inscribed in the Settlement Records."

NOTE 2.—In case of revised settlements in which the classification basis is altered the following changes should be made in the above form:—

(1) After the word "assessment" in line 7 of paragraph 1 add "as shown in the accompanying Akarband" and omit "calculated as noted below."

(2) For the words "approximate increase or decrease in the rupee of existing assessment" in paragraph 1 substitute "Maximum Rates.

Rs. as.

NOTE 3.—This form was finally confirmed in G. R. No. 3012 of 1920.

"FORM AA (Rule 17)

NOTIFICATION OF SETTLEMENT FOR SEND

(Notice under sections 102 and 103 of the Bombay Land Revenue Code 1879).

For Revised Settlements.

Whereas the Governor in Council has been pleased to sanction, under section 102 of the Bombay Land Revenue Code 1879, the levy of assessments for the revised settlement in the case of such lands as are now actually used for the purpose of agriculture alone and in the case of unoccupied cultivable lands within the village of \_\_\_\_\_ in the

Taluka of the \_\_\_\_\_ District. Now, it is hereby declared under section 102 of the said Code that the said assess-

ments as noted below shall hereafter be leviable in accordance therewith and shall be fixed for a term of \_\_\_\_\_ years commencing with the revenue year \_\_\_\_\_ and ending with the revenue year \_\_\_\_\_.

Class of cultivation.	Sanctioned rates per acre		
	Flow	Lift.	Combined Flow and Lift
	Rs. a.	Rs. a.	Rs. a.
Rice	...		
Fogareane	...		
Cotton	...		
Tobacco	...		
Other Kharif	...		
Rabi Wheat	...		
Rabi Oil-seeds	...		
Leguminous crops (Kharif or Rabi)	...		
Huris	...		
Gardens	...		
Watered Dubari	...		
Unwatered Dubari	...		
Adhawa	...		
Barani	...		
Cultivation on river side of bund	...		

2. Notice of the same is hereby given under section 102 of the said Code to all holders of land in respect of which the assessments have been sanctioned.

3. By this notice the revised settlement shall be deemed to have been introduced in the aforesaid village." (G. R., H. D., No. 557-B, dated 8-7-1922.)

FORM B [ Rule 29 (1) ].

A FORM OF NOTICE UNDER SECTION 37 (2), AND SUMMONS UNDER SECTIONS 182-190

To

A. B.

Whereas (here describe the property or right in or over any property) is claimed by Government (or by C. D. against Government) notice is hereby given that an enquiry will be held by me in order to decide the said claim.



You are hereby required to attend before me either in person or by a duly authorized agent at \_\_\_\_\_ o'clock of the \_\_\_\_\_ noon (at the site in dispute or) at my office (camp at \_\_\_\_\_ in the taluka) on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ at \_\_\_\_\_ which time and place an enquiry into the same claim will be made.

And you are hereby required to produce before me at the above named time and place any documents or evidence you may wish to be heard.

If you fail to attend in person or by a duly authorized agent in pursuance of this notice the abovementioned claim will be decided in your absence and you will not afterwards be entitled to be heard with respect thereto, except in an appeal filed within 60 days or in a suit civil if filed within one year from the date of my decision.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ .

(Signed)

Designation of Officer.

FORM C [Rule 29 (2)].

Whereas in accordance with a notice duly issued and served under rule 29 (1) of the Land Revenue Rules an enquiry was held by me on \_\_\_\_\_ and an order was passed on \_\_\_\_\_

Notice is hereby given to all persons concerned and to (*here specify the person to whom this notice is directed*) that my decision and order is that:-- (*here summarise the order and define the property or right to which it relates*).

You are not entitled to be heard by me in respect thereof. After my decision has been communicated to you, there remain only two ways by which you can get it altered if you are dissatisfied with it, namely:--

(i) You must within 60 days of the date of my decision appeal to (specify the proper appellate authority), and again to the next higher revenue authority, or

(ii) within one year from the date of my decision you may (without recourse to the appeals above detailed) and notwithstanding anything contained in section 11 of the Bombay Revenue Jurisdiction Act, 1876, file a suit in the proper Civil Court.

A suit filed more than a year from the date of my decision or from the date of the decision of last of the appeals if you make them cannot be entertained by any Court.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ .

(Signed)

Survey Officer,  
or  
Collector.

## Form D (Rule 32).

FORMS OF SANAD FOR REVENUE-FREE GRANTS OF LAND FOR RELIGIOUS,  
CHARITABLE OR EDUCATIONAL EDIFICES OR INSTITUTIONS.

(SANCTIONED BY G. R. 7010 of 1905).

(To be used where the land is granted by Government).

To

A. B.

Whereas Government have been pleased to grant revenue-free to you, A. B., the possession of the below-mentioned piece of land situated in the village of \_\_\_\_\_ in the \_\_\_\_\_ taluka for the purpose of \_\_\_\_\_ (namely)—

All that piece of land bounded on the North by \_\_\_\_\_ on the South by \_\_\_\_\_, on the East by \_\_\_\_\_, and on the West by \_\_\_\_\_, and measuring from North to South \_\_\_\_\_, and from East to West \_\_\_\_\_, comprising \_\_\_\_\_ square in superficial area, be the same more or less, and bearing No. \_\_\_\_\_ in the Land Records.

It is hereby declared that the said land shall be continued <sup>for ever</sup> ~~for a term of \_\_\_\_\_ years~~ free of all claim on the part of Government for rent or land revenue to whoever shall from time to time be the lawful holder or manager of the said \_\_\_\_\_, [ (a) on the condition that neither the said land nor any building erected thereupon shall at any time, without the express consent of Government, be diverted either temporarily or permanently to any other than the aforesaid purpose, and that no change or modification shall be made of such purpose, and that in the event of any such unauthorized diversion, change or modification being made, the said land shall thereupon, in addition to the assessment to which it becomes liable under section 48 of the Bombay Land Revenue Code, 1879, become liable to such fine as may be fixed in this behalf by the Collector under the provisions of section 66 of the said Code, or other corresponding law for the time being in force relating to the recovery of land revenue, as if the land, having been assessed for purposes of agriculture only, had been unauthorisedly used for any purposes unconnected with agriculture (a) ] and in any such event as aforesaid, or in the event of the land being notified by Government for acquisition under Act I of 1894, it shall be lawful for Government, on causing six months' previous notice in writing to be given to the said holder or manager, to take one of the two following courses (namely), either—

(1) to require that the said land be vacated and delivered up to Government free of all claims or incumbrances of any person whatsoever,

or (2) to resume and take possession of the said land and any buildings erected or works executed thereon, free of all claims and incumbrances of

any person whatsoever, on payment of compensation not exceeding the following amount, namely:—

(a) the amount (if any) paid to Government for this grant, and

(b) the cost or value at the time of resumption, whichever is the less, of any buildings or other works authorizedly erected or executed on the said land by the said grantee.

\*\*

This grant is made subject to the reservation of the right of the Secretary of State for India in Council to all mines and mineral products and of full liberty of access for the purpose of working and searching for the same, with all reasonable conveniences.

This sanad is executed on behalf of the Secretary of State for India in Council by order of His Excellency the Governor of Bombay in Council, by the Collector of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_

19 .



(Signed)

Collector.

FORM E (Rule 35).

(To be used where the land is not granted by Government).

To

A. B.

Whereas, in consideration of your having built (or undertaken to built, as the case may be)\* on the piece of land hereinafter described, which is your property, Government have been pleased, at your request, to exempt the said piece of land from liability to rent or land revenue.

It is hereby declared that the said land shall be continued ~~for ever~~ <sup>for a term</sup> of \_\_\_\_\_ years free of all claim on the part of Government for rent or land revenue to whoever shall from time to time be the lawful holder or manager of the said \_\_\_\_\_, [Insert "(a) ... .. (a)" as in Form D.] If there be any further special conditions, here add: "and subject to the following further special conditions, namely":—]

The piece of land herein referred to is situated in the village of \_\_\_\_\_ in the \_\_\_\_\_ taluka and is bounded on the North by \_\_\_\_\_

\*\* If there be any further conditions, add here the words "and subject to the following further special conditions, namely:—"

The Commissioners suggest a further condition:—

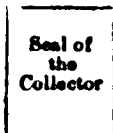
"that an open space shall be kept free from any building whatever, as marked on the plan hereto appended as land not to be built upon."

\*The nature of the building and the extent of the public interest in it should be clearly set forth as for instance "a temple with a Dharmashala attached, for the use of the Digambar Jain community."

, on the South by \_\_\_\_\_, on the East by \_\_\_\_\_,  
 and on the West by \_\_\_\_\_, and  
 comprises about \_\_\_\_\_ square \_\_\_\_\_ in superficial  
 area, be the same more or less, and bears No. \_\_\_\_\_ in the  
 Land Records.

This sanad is executed on behalf of the Secretary of State for India in  
 Council by order of His Excellency the Governor of Bombay in Council,  
 by the Collector of \_\_\_\_\_, this \_\_\_\_\_ day of

19 .



(Signed)

Collector.

FORM F (Rules 37, 43 and 52).

FORM OF AGREEMENT\* TO BE PASSED BY PERSONS INTENDING TO  
 BECOME OCCUPANTS

To the Mamltdar of

I, A. B., inhabitant of \_\_\_\_\_ in the  
 taluka, hereby accept the right of the occupation of the land comprised in  
 Survey No. \_\_\_\_\_ (or of the building site  
 hereinbelow described, or otherwise as the case may be), in the village  
 of \_\_\_\_\_ in the \_\_\_\_\_ taluka, and I pray that  
 my name be entered in the Government records as the occupant of the said  
 land.

The said land has been granted to me subject to the provisions of the  
 Bombay Land Revenue Code, 1879, and of rules in force there-under, in  
 perpetuity†, from the \_\_\_\_\_ day of  
 19 \_\_\_\_; ‡ and I undertake to pay the land revenue from time to time law-  
 fully due in respect of the said land (or I undertake, whenever Gov-  
 ernment shall see fit to discontinue the exemption of the said land from  
 payment of land revenue, to pay such revenue as may be lawfully im-  
 posed thereupon under the orders of Government or otherwise as the case  
 may be).

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ at \_\_\_\_\_  
 Written by \_\_\_\_\_ (Signed) A. B.

\* This agreement is (so far as it is an appointment) exempt from Court fee; item C-24 of Notifi-  
 cation of the Government of India, 4630, 10-9-09. It is also exempt from stamp-duty; item A-9  
 of Notification of the Government of India 3616-Exc., 16-7-09 R. 8022, 17. 8.

† When not granted in perpetuity delete the words and insert "until the  
 day of 19 \_\_\_\_."

‡ When land is sold for a fixed period free of land revenue the agreement should end here  
 and the second endorsement may be omitted.

We declare that *A. B.*, who has signed this agreement, is to our personal knowledge the person he represents himself to be, and that he has affixed his signature hereto in our persence.

(Signed) *C. D.*

*E. F.*

We declare that to the best of our knowledge and from the best information we have been able, after careful inquiry to obtain, the person who has passed this agreement is a fit person to be accepted by Government as responsible for the punctual payment of the land revenue from time to time due on the above land.

(Signed) *G. H. Patel.*

*I. J. Village Accountant.*

“FORM F-1 Rule 37 (4)

FORM OF AGREEMENT TO BE PASSED BY PERSONS INTENDING TO  
BECOME OCCUPANTS OF LAND ON IMPARTIBLE TENURE.

To the Mamlatdar of

*I, A. B.*, inhabitant of \_\_\_\_\_ in the  
taluka, hereby accept the right of occupation of the land comprised in  
survey No. \_\_\_\_\_ in the village of \_\_\_\_\_ in  
the \_\_\_\_\_ taluka and I pray that my name be  
entered in the Government records as the occupant of the said land.

The said land has been granted to me in perpetuity from the day  
of \_\_\_\_\_ 19 \_\_\_\_\_, subject to (1) the provisions of the Bombay Land  
Revenue Code, 1879, and of the rules in force thereunder and to (2) the  
further condition that *I*, my heirs, assigns and legal representatives shall  
not at any time by partition, inheritance, lease, mortgage or otherwise  
howsoever transfer the said land except as a whole or allow any portion  
of it to be cultivated, used, or occupied by any other person so as to  
divide it.

If I fail to perform any of the aforesaid conditions I shall be liable with-  
out prejudice to any other penalties that I may incur under the said Code,  
and the rules made thereunder, to have the said land summarily forfeited  
by the Collector, and I shall not be entitled to claim compensation for any-  
thing done or executed by me in respect of the said land.

\*And I undertake to pay the Land revenue from time to time lawfully due  
in respect of the said land (or I undertake, whenever Government shall see  
fit to discontinue the exemption of the said land from payment of land  
revenue to pay such revenue as may be lawfully imposed thereon under the  
orders of Government or otherwise, as the case may be).

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

Written by

(Signed) *A. B.*

\* When land is sold for a fixed period free of land revenue the agreement should end here  
and the second endorsement may be omitted. G. R. 4702-24 III of 12-8-1931.

In Sind the Collector is empowered to allow division of survey number if in view of any  
special circumstances, he considers it necessary to do so.—G. R. 4702-24 III of 8-3-1932

We declare that A. B. who has signed this agreement is to our personal knowledge the person he represents himself to be, and that he has affixed his signature hereto in our presence.

(Signed) C. D.

( " ) E. F.

We declare that, to the best of our knowledge and from the best information which we have been able after careful enquiry to obtain, the person who has passed this agreement is a fit person to be accepted by Government as responsible for the punctual payment of the land revenue from time to time on the above land.

(Signed) G. H.

Patel.

I. J.,

Village Accountant."

FORM G-1 (Rule 39) (as amended by G. 11514-11)

RECLAMATION LEASE

Form of lease to be granted to an occupant who takes up land on special terms.

This is to certify that, with the previous sanction of the Commissioner (in Sind. or as the case may be), of has been granted the right of occupation of survey No. in the village of in the taluka for a term of years from the day of 19 , subject to the payment of land revenue as follows (viz.)—

(a) for the first years, A. D. 19 to 19 , nil;

(b) for the next years, A. D. 19 to 19 , a reduced assessment of Rs.

The reason for the grant of the said land on the favourable terms aforesaid is that the lessee has undertaken, at his own expense, within a period of from the day of 19 , to carry out to the satisfaction of the following work, whereby the cultivation of the said survey No. will be improved (or rendered feasible or otherwise as the case may be), viz:—

(Here describe as accurately as possible the work to be executed)

The conditions on which this lease is granted are:—

(1) That the lessee shall completely execute the work aforesaid to the satisfaction of the said within the period above mentioned;

(2) that he shall keep the said work when executed in good order and repairs to the satisfaction of the said until the expiry of this lease;

(3) It shall not be lawful to the lessee to partition, bequeath, alienate, assign, mortgage or otherwise charge or encumber any portion of the said

land less than the area—hereby fixed by the Collector as the economic holding, nor shall any such portion of the said land be liable to seizure, sequestration, attachment, sale or partition by process of a Court :-

(4) that if the lessee shall fail to perform any of the aforesaid conditions he shall be liable, notwithstanding anything hereinbefore written, to pay the full assessment of the land comprised in this lease amounting to Ra. for the year or years during which such failure shall take place and it shall be open to the Collector either to cancel the remaining portion of the lease and re-enter upon the land, or to levy full assessment from the lessee for every subsequent year of the term of this lease ;

(5) that provided the lease shall not have previously determined under the last preceding condition, the lessee shall be entitled, on the expiry of this lease, to retain the occupation of the land herein comprised, subject to the payment of the full assessment from time to time fixed thereupon under the law and rules in force in this behalf, on his executing an agreement in the form prescribed for persons who intend to become occupants.

This lease is executed on behalf of the Secretary of State for India in Council, by order of Government of Bombay in Council, by the Collector of and under his seal of office, this day of

19



(Signed)

Collector.

I the aforesaid lessee do hereby accept this lease in the terms and conditions therein mentioned.

Signed by

lessee.

in the presence of—

NOTE—Form G-1 is printed as amended by Draft Notification No. 4702-24, dated 1st June 1939

FORM G-2 (Rule 40).

RECLAMATION LEASE

THIS INDENTURE made the  
 day of 19 BETWEEN THE SECRETARY OF  
 STATE FOR INDIA IN COUNCIL ( hereinafter called the Lessor ) of the one  
 part and inhabitant of (hereinafter called the Lessee) of the other part  
 WITNESSETH that the Lessor doth hereby lease unto the Lessee all the Salt  
 Marsh Lands situated in the village of in the  
 Registration Sub-district of and in the  
 taluka the Survey Numbers,  
 Area and Boundaries of which are set forth in Schedual A hereunder written  
 which said Laude were late in the occupation of  
 and are now in the occupation of

and are delineated in the Plan attached hereto and signed by the Collector of \_\_\_\_\_ ( hereinafter referred to as the Collector ) TO HOLD the said Lands unto the Lessee for the term of 999 years from the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, paying during the said term unto the Lessor for the said lands save such portion as may be appropriated for Public Roads which portion shall be exempt from payment the yearly Rents following that is to say for the first ten years of the said term the rent of *Ous Pie* if demanded and for the next 20 years, *vis.*, from the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, till the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, a yearly sum equal to Four annas per Acre in such Instalments on such Dates and to such Person as may be from time to time prescribed and designated by the Collector and for each Period if any as shall intervene between the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, and the date of the first settlement of Assessment hereinafter provided for the yearly sum hereinbefore lastly reserved, payable in the manner hereinbefore mentioned AND from and after the first settlement of assessment hereinafter provided for, such sum of Land Revenue as under the Laws or Rules having the force of Law for the time being in force in respect of Lands held under Government by ordinary Occupants shall from time to time be found to be payable AND the Lessee hereby covenants and agrees with the Lessor in manner following that is to say *first* that the Lessee shall at his own expense and with due diligence completely reclaim the lands hereby leased so as to be in a state fit for use for agricultural purposes AND shall to reclaim at least one-half of the said lands within ten years and the whole thereof within twenty years from the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, respectively and shall maintain each Reclamation during the residue of the term hereby granted AND shall not until the whole of the said Lands shall have been completely reclaimed and rendered cultivable, assign or underlet the said Lands or any portion thereof or charge or receive any Tax or Fee for Cattle-grazing upon any portion thereof and that the lessee shall not at any time partition, bequeath, alienate, assign, mortgage or otherwise charge or encumber or allow to be cultivated, used or occupied by any other person, any portion of the said Land less than the Area—hereby fixed by the Collector as an economic holding in respect of the said lands, nor shall any such portion of the said land be liable to seizure, sequestration, attachment, sale or partition by process of a Court. PROVIDED that if any Officer of Government duly empowered in this behalf by the Government of Bombay shall certify in writing that any portion of the said Lands is unreclaimable such portion shall be excluded from the operations of the covenants hereinbefore contained. Provided further that the lessees shall be at liberty during the first ten years to relinquish any portion of the said lands which he cannot reclaim : and such portion shall thereupon be excluded from the operation of the covenants herein contained ( E. 572-B-17th April 1923 )

The portion in brackets was inserted as per Draft Notification No. 602-24, dated 1st June 1923 which would be taken into consideration on or after 1st August 1923.



SECOND that the Lessee shall at his own expense (a) keep open the several Roads mentioned and described in Schedule B hereunder written and delineated in the Plan hereunto annexed (b) provide and keep in good order to the satisfaction of the Collector such water-ways in and along the Lands hereby leased as may from time to time be required by the Collector (c) erect such new Boundary-marks upon the said Lands as may from time to time be required by the Collector and maintain and keep in good repair to the satisfaction of the Collector all such new Boundary-marks as well as all those at present existing thereon, THIRD that the said Lessee shall pay the rents hereinbefore respectively reserved at the times and in manner hereinbefore provided for payment of the same respectively and that whenever any Instalment of the said Rents respectively shall be in arrear, it shall be recoverable from the Lessee as an arrear of Land Revenue under the provisions of the Law for the time being in force in that behalf AND the Lessee shall also pay all Rates, Taxes and other Outgoings (if any) which shall at any time during the continuance of this Lease be payable in respect of the said Premises or any part thereof FOURTH that from and after the

day of 19 the Lands hereby leased shall be liable to be from time to time surveyed and assessed to the Land Revenue under the Laws or Rules having the force of Law for the time being in force in respect of Lands held under Government by ordinary occupants and thenceforward during the residue of the term hereby granted the Lessee shall hold the said Lands subject to all the provisions of such Laws and Rules and subject also to such of the Covenants and Provisions of this Lease as shall then be capable of continuing effect PROVIDED ALWAYS AND IT IS HEREBY AGREED that if and whenever there shall be a breach by the Lessee of any Covenant, Condition or provision herein contained the Lessor may re-enter upon the said Lands or upon part thereof in the name of the whole and thereupon this Lease shall determine AND that in case default shall be made in reclaiming the half or the whole of the Lands within the periods respectively hereinbefore prescribed in that behalf the Lessor may re-enter upon the said Lands and determine this Lease under the power in that behalf hereinbefore contained AND that if in the opinion of the Collector (whose decision shall be final) the reclamation is not carried on with due diligence during the two years ending on the day of 19

the Lessor may on or after the said day re-enter upon the said Lands and determine this Lease under the power in that behalf hereinbefore contained AND that notwithstanding anything hereinbefore contained if at any time any portion of the said Lands (other than such portion as may be appropriated for Public Roads) is after being reclaimed used for any purpose unconnected with agriculture, such portion shall be liable to such assessment or altered assessment as may be leviable under the Law or Rules having the force of Law for the time being in force in respect of land which is held for agricultural purposes and subsequently used for purposes unconnected with agriculture and such assessment or altered assessment shall be leviable notwithstanding that any of the periods hereinbefore specified shall not

have elapsed AND that the right of the said Lessor to all Mines and Mineral Products and of full liberty of access for the purpose of working and searching for the same with all reasonable conveniences shall be reserved.

AND IT IS LASTLY AGREED that the word "Lessor" in this Lease shall mean the Lessor and his Successors and Assigns and the word "Lessee" shall mean the Lessee and his Legal Representatives.

IN WITNESS WHEREOF

Esq., Collector of \_\_\_\_\_, has, by order of the Governor of Bombay in Council, hereunto set his hand and affixed his official seal on behalf of the said Secretary of State in Council, and the Lessee has hereunto set his hand the day and year first above written.

*Schedule A above referred to:*


*Schedule B above referred to:*

Signed by the above name  
 in the presence of \_\_\_\_\_  
 \_\_\_\_\_

} Seal of the Collector

Signed by the above named  
 in the presence of \_\_\_\_\_  
 \_\_\_\_\_

**FORM H ( Rule 43 ).**

**ALTERNATIVE FORM OF AGREEMENT TO BE PASSED BY PERSONS INTENDING TO BECOME OCCUPANTS, IF THE COLLECTOR SO REQUIRES**

**Agreement**

To  
 The Mamlatdar of  
 I. A. B., of \_\_\_\_\_ in the said taluka, agree on behalf of myself and my assigns to occupy the land specified in the Schedule appended hereto on the conditions stated below, and I pray that my name may be entered in the land records as occupant of the said land.

**Conditions**

1. I will pay the land revenue from time to time lawfully due in respect of the said land, to wit; as assessment the sum of Rs . ( being at the rate of per ) for the period of years commencing on , and there after I will pay such assessment for such further periods as may from time to time be fixed by lawful authority.

2. Within the period of two years from the date hereof or within such further period as may be fixed by lawful authority, I will erect on the said land one or more buildings of a permanent character.

3. I will keep as an open space, free from any buildings whatever, the piece of land marked on the plan appended hereto as the land not to be built upon.

4. The provisions of the Bombay Land Revenue Code, 1879, and all rules and orders for the time being in force thereunder, shall apply to my occupation of the said land, so far as the same may be applicable and not inconsistent with these conditions.

5. Subject to the foregoing conditions I shall be entitled to occupy the said land in perpetuity, but if I contravene any of the foregoing conditions the Collector may declare the said land forfeited to Government and may dispose of the same in any way he may deem fit, free from any claim by me or by any person holding through or under me.

Dated the                      day of                      19                       
 Written by                      Signed,                     

[ Declaration if necessary ]

Then follows the Plan.

FOBM HH

Form of agreement to be passed by persons intending to become occupants of land included in a development scheme or in other special cases ( vide Rule 43 )

**Agreement**

The Special Mamalatdar, taluka Bombay Suburban District,  
The Mamalatdar,

I, AB, of                      agree on behalf of myself and my heirs, executors, administrators and assigns to occupy the land specified in the Schedule appended hereto ( hereinafter referred to as the said land ) on the conditions stated below, and I pray that my name may be entered in the land records as occupant of the said land:—

**Conditions**

(1) I will pay the land revenue from time to time lawfully due in respect of the said land to wit: as assessment the sum of Rs. ( being at the rate of per or at such lower rate as is leviable

NOTE.—This agreement is exempt from Court-fee under item C (24) of the Notification of the Government of India. 4650—10-9-89.

It is also exempt from the payment of stamp duty, under item A-9 of Notification of Government of India. No. 3616-Exc.. 16-7-09.

under the rules for the time being in force and applicable to such land) for the period of \_\_\_\_\_ years commencing on \_\_\_\_\_ and thereafter, I will pay such assessment for such further periods as may from time to time be fixed by lawful authority.

(2) *Use*.—I will use the said land only for building purposes of the nature specified in condition (3) of this agreement.

(3) *Building*.—I will erect and complete on the said land\* of a substantial and permanent description; I will in regard thereto duly comply in every respect with the building regulations contained in clauses \_\_\_\_\_, etc., of the second schedule hereto ;: (and I will not use, or permit the use of, any of the buildings erected or to be erected on the said land as a shop, or carry on in any of the said buildings any trade or business, other than \_\_\_\_\_).

(4) *Reservation of margin*.—If at any future date the Collector shall give me notice in writing that a strip from the margin of the said land not more than \_\_\_\_\_ feet in depth is required by Government for the purposes of a road, I will, at the expiration of one month after the receipt of such notice, quietly surrender and hand over possession of such strip to the Collector in consideration of receiving from Government in exchange and as full compensation therefor a sum equivalent to \_\_\_\_\_ ( \_\_\_\_\_ ) times the assessment proportionately payable upon the strip so surrendered.

Provided that, where the materials of any gate, wall, pavement or other such authorised erection or construction on such strip cannot in the opinion of the Collector be removed without appreciable loss, such further compensation on this account shall be paid to me as the Collector may deem fit.

(5) *Liability of rates*.—I will pay all taxes, rates and cesses leviable in respect of the said land.

(6) *Penalty clause*.—The Collector may, without prejudice to any other penalty to which I may be liable under the provisions of the Bombay Land Revenue Code, 1879 (hereinafter referred to as "the said Code"), direct the removal or alteration of any building or structure erected or used contrary to the provisions of this agreement within a time prescribed in that behalf by the Collector, and on such removal or alteration not being carried out within the prescribed period, may cause the same to be carried out and may recover the cost of carrying out the same from me as an arrear of land revenue.

(7) *Code provisions applicable*.—The provisions of the said Code and all rules and orders for the time being in force thereunder shall apply, to my occupation of the said land, so far as the same may be applicable and not inconsistent with the conditions of this agreement.

\* Here insert description of the buildings such as a "residential bungalow and outhouses."

‡ To be carried out in cases where business premises are permitted.

§ To be omitted where not required.



## FORM I [Rules 37 (3) and 43 (3)].

CLAUSE FOR INALIENABLE TENURE ADDITIONAL TO FORMS  
F AND H OR OTHER AGREEMENTS.

In cases where the land is granted subject to the condition that the occupant shall not transfer it in any way to another person without the sanction of the Collector, the following clause should be added in the agreement to be taken from him:—

"The said land has been granted to me subject to the condition to which I hereby assent, namely, that I, my heirs, executors, administrators and approved assigns may not at any time lease, mortgage, sell, or otherwise howsoever encumber the said land or any portion thereof without the previous sanction in writing of the Collector."

## "FORM I-I [Rule 37 (4) and 43 (4)]

FORM OF AGREEMENT TO BE PASSED BY PERSONS INTENDING TO  
BECOME OCCUPANTS OF LAND ON THE INALIENABLE TENURE.

To the Mamlatdar of  
I, A. B., inhabitant of \_\_\_\_\_ in the  
taluka, hereby accept the right of occupation of the land comprised in survey No. \_\_\_\_\_ or of the building site hereinafter described or otherwise, as the case may be), in the village of \_\_\_\_\_ in the \_\_\_\_\_ taluka, and I pray that my name be entered in the Government records as the occupant of the said land.

The said land has been granted to me in perpetuity from the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ subject to the conditions hereinbelow mentioned and to the provisions of the Bombay Land Revenue Code, 1879, and of the rules in force thereunder;

\* And I undertake to pay the land revenue from time to time lawfully due in respect of the said land (or I undertake, whenever Government shall see fit to discontinue the exemption of the said land from payment of land revenue, to pay such revenue, as may be lawfully imposed thereon under the orders of Government or otherwise, as the case may be).

The said land has been granted to me subject also to the further condition to which I hereby assent, namely, I, my heirs, assigns and legal representatives shall not at any time—

(1) partition the said land;

or

(2) lease, mortgage or otherwise however encumber the said land or any portion thereof without the previous sanction of the Collector, which shall not be given except in respect of the whole land.

If I fail to perform any of the aforesaid conditions I shall be liable without prejudice to any other penalties that I may incur under the said Code, and the rules made thereunder, to have the said land summarily forfeited by the Collector, and I shall not be entitled to claim compensation for anything done or executed by me in respect of the said land.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ at \_\_\_\_\_  
Written by \_\_\_\_\_ (Signed) A. B.

\* When land is sold for a fixed period free of land revenue this paragraph should end here, and the second endorsement may be omitted.

In Sind the Collector is empowered to allow division of a survey No. if in view of any special circumstances, he considers it necessary to do so.

We declare that A. B. who has signed this agreement is to our personal knowledge the person he represents himself to be, and that he has affixed his signature hereto in our presence.

(Signed) C. D.  
( " ) E. F.

We declare that, to the best of our knowledge and from the best information which we have been able after careful enquiry to obtain, the person who has passed this agreement is a fit person to be accepted by Government as responsible for the punctual payment of the land revenue from time to time due on the above land.

(Signed) G. H.,  
Patel.  
I. J.,

Village Accountant.

( G. R. No. 4702/24, III of 12-3-1931 ).

FORM J ( Rule 46 )

FORM OF AGREEMENT\* FOR EXCHANGE TO BE EXECUTED BY  
VILLAGERS REMOVING TO A NEW VILLAGE SITE,

Agreement executed the                      day of                      19                      by A. B.  
resident of                      in the                      taluka:

Whereas Government have been pleased to sanction a change being made in the position of the site of the village of                      in the registration sub-district of                      , and in pursuance of such sanction the following plot of ground has been allotted to me in the new site in exchange for the ground held by me in the old site, namely, the piece of land bounded as follows, that is to say on the North by                      , on the South by                      , on the East by                      , on the West by                      , measuring                      in length from North to South, and                      in length from East to West, and comprising about                      square                      in superficial area and bearing No.                      in the Land Records.

I do hereby agree, in consideration of the allotment to me of the new piece of land aforesaid, as follows, namely:—

( 1 ) That all my right, title and interest in any land whatsoever, situate within the old site of the said village, shall be deemed to be, and is hereby, surrendered to Government, together with the trees standing thereon and all rights over other benefits arising out of or enjoyed by me in respect of the said land:

( 2 ) That I shall hold the piece of land aforesaid in the new site from the date of this agreement on the same terms and with the same rights and

\* The stamp duty for this agreement is reduced to four annas; item 10 of Notification of the Government of India, 3616-Exc., 16-7-09, G. R. 7317-09.

subject to the same liabilities as would apply to my tenure of the ground held by me in the old site, if I continued to be the holder thereof. †

In witness whereof I have hereto set my hand the day and year aforesaid,

Written by

(Signed) A. B.

Signed and delivered by

in our presence.

FORM K (Rule 54).

FORM OF WRITTEN PERMISSION TO OCCUPY LAND TO BE GIVEN  
BY A MAMLATDAR UNDER SECTION 60.

Permission is hereby given to A. B., inhabitant of \_\_\_\_\_ in the \_\_\_\_\_ taluka, to occupy Survey No. \_\_\_\_\_ (or the building site hereinbelow described or otherwise as the case may be) in the village of \_\_\_\_\_ in the \_\_\_\_\_ taluka, in accordance with the Sanad granted \_\_\_\_\_ (or, upon the conditions sanctioned by the Collector in his order No. \_\_\_\_\_ dated \_\_\_\_\_).

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ at \_\_\_\_\_.



Seal

(Signed)

Mamlatdar.

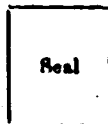
Form KK (Rule 54 Bombay Suburban)

Permission is hereby given to you A. B., inhabitant of \_\_\_\_\_, to occupy \_\_\_\_\_ the building site hereinbelow described in the \_\_\_\_\_ taluka in the \_\_\_\_\_ taluka in accordance with the conditions sanctioned by the Collector and accepted by you in the agreement dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ subject to which this permission is given.

Description of Land

Plot No. \_\_\_\_\_ in the Suburban Scheme No. \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ at \_\_\_\_\_.



Seal

(Signed)

Mamlatdar.

FORM L (Rule 74).

FORM OF NOTICE OF RELINQUISHMENT

To the Mamlatdar of \_\_\_\_\_  
I, A. B., inhabitant of \_\_\_\_\_ in the \_\_\_\_\_ taluka,  
(the occupant / holder) of Survey No. \_\_\_\_\_ (or sub-division \_\_\_\_\_)

† In omitting a clause reserving the right to impose land revenue if hereafter thought fit Government nevertheless do actually reserve that right (G. R. Nos. 9021 and 10296-83—see Note E7 to Rule 14).

‡ N. Court-fee is chargeable, vide Court-fee Act, VII of 1870, section 19 (X1)



No. \_\_\_\_\_ ) or the building-site hereinbelow described  
 ( or otherwise as the case may be ), in village of \_\_\_\_\_ in the  
 taluka, hereby give notice under section 74 of the Bombay Land Revenue Code, 1879, that it is my intention to relinquish and I hereby do  
 relinquish the said Survey No. ( or building-site, etc. ) at the end of the  
 current year, \* subject to any rights, tenures, incumbrances or equities  
 lawfully subsisting in favour of any person ( other than Government or  
 the occupant  
 holder )  
 Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ at \_\_\_\_\_  
 Written by \_\_\_\_\_  
 (Signed) A. B.

## FORM M

Form of sanad in cases where the assessment on land  
 appropriated to building purposes is altered  
 under section 48.

WHEREAS application has been made to the Collector of \_\_\_\_\_  
 ( hereinafter referred to as the Collector which expression shall include  
 any officer whom the Collector shall appoint to exercise and perform his  
 powers and duties under this grant ) under section 65 of the Bombay Land  
 Revenue Code, 1876 ( hereinafter referred to as " the said Code " which  
 expression shall, where the context so admits, include the rules and orders  
 thereunder ) by \_\_\_\_\_ inhabitant of \_\_\_\_\_

being the registered occupant of Survey No. \_\_\_\_\_  
 in the village of \_\_\_\_\_ in the \_\_\_\_\_  
 taluka hereinafter referred to as " the applicant " ( which expression shall  
 where the context so admits include his heirs, executors, administrators  
 and assigns ) for permission to use for building purposes the plot of land  
 ( hereinafter referred to as the " said plot " ) described in the first schedule  
 hereto and indicated by the letters \_\_\_\_\_ on the site plan  
 annexed hereto, forming part of Survey No. \_\_\_\_\_ and measuring  
 \_\_\_\_\_ be the same a little more or less.

When used under rule 51 for land already occupied for agricultural purposes within certain surveyed cities the period for which the assessment is leviable will be ordered to coincide with the expiry of 99 years' period running in that city. G. R. 9508/24 23-3-27.

Now this is to certify that permission to use for building purposes the said plot is hereby granted subject to the provisions of the said Code, and on the following conditions, namely:—

( 1 ) *Assessment.*—The applicant in lieu of the assessment hereto-fore leviable in respect of the said plot shall pay to Government on the \_\_\_\_\_ day of \_\_\_\_\_ (Rs. \_\_\_\_\_ ) in each year an annual assessment of Rupees \_\_\_\_\_ (Rs. \_\_\_\_\_ ) during the thirty (30) years commencing on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, or in composition therefor a lump sum of Rupees \_\_\_\_\_ (Rs. \_\_\_\_\_ ) being twenty times the said annual assessment; and on the expiry of the said \_\_\_\_\_

\* These notices must be given before the 31st March, or such other date as Govt. prescribe under sec. 74 for each district.

period of thirty years, such revised assessment as may from time to time be fixed by the Collector under the said Code.

" Provided that where the applicant is a Co-operative Housing Society, it shall be entitled to such exemption from the payment of altered assessment in whole or in part as is permissible under proviso (2) to clause (a) of rule 86 "

( This Proviso was added by G. R., R. D., 620/28 of 14-10-32 ).

(2) *Use*.—The applicant shall use the said plot only for building purposes of the nature specified in condition (3) of this sanad.

(3) *Building Time Limit*.—The applicant shall within three (3) years from the date hereof, erect and complete on the said plot a substantial and permanent description, and shall in regard thereto duly comply in every respect with the building regulations contained in clauses etc., of the second schedule hereto.

" From the date of permission " has been suggested by one Commissioner: but there ought not to be any material difference and the "permission" can only date from its formal expression in the Sanad. Government did not accept the suggestion. ( R. 1432/24 3-1-25 ).

(4) *Reservation of Margin*.—If the Collector shall give the applicant notice in writing that a strip of land from the margin of the said plot not more than \_\_\_\_\_ feet in depth, is required by Government for the purposes of a road, the applicant shall, at the expiration of one month after the receipt of such notice, quietly surrender and hand over possession of such strip of land to the Collector in consideration of receiving from Government in exchange and as full compensation therefor a sum equivalent to ( \_\_\_\_\_ ) times the assessment proportionately payable upon the strip so surrendered.

An agreement entered before 1915 was by compromise modified and recast in G. R. 9553 92-1924.

Provided that, where the materials of any gate, wall, pavement or other such authorized erection or construction on such portion cannot in the opinion of the Collector be removed without appreciable loss, such further compensation on this account shall be paid to the applicant as the Collector may deem fit.

(5) *Liability for Rates*.—The applicant shall pay all taxes, rates and cesses leviable on the said land.

(6) *Penalty clause*.—The Collector may, without prejudice to any other penalty to which the applicant may be liable under the provisions of the said Code, direct the removal or alteration of any building or structure erected or used contrary to the provisions of this grant within a time prescribed in that behalf by the Collector, and on such removal or alteration not being carried out within the prescribed period may cause the same to be carried out and may recover the cost of carrying out the same from the applicant as an arrear of land revenue.

\* Here insert description of the buildings such as " a residential bungalow and out-house, "

§ C. in this condition if not required. And see Note L.

(7) *Code provisions applicable.*—Save as herein provided, the grant shall be subject to the provisions of the said Code.

(8) *Execution.*—The applicant shall bear all costs incurred in the preparation, execution, stamping and registration of these presents.

## MAP.

## Schedule I.

Length and Breadth		Total Superficial area.	Forming (part of) Survey No or Hissa No.	Boundaries				Remarks
North to South	East to West			North	South	East	West	

## Schedule II.

(The numbers of the conditions which are applicable should be entered in condition 3 of the grant: and special conditions should be inserted in continuation).

1. The applicant may build on the area marked \_\_\_\_\_ on the map annexed and shall leave the remaining area of the said plot as an open space.

2. \_\_\_\_\_ of the said plot shall be let open to the sky.

3. Any latrine, cesspool or stables constructed on the said plot shall, if any place shall have been set apart in the map annexed for such purpose be constructed in such place and not elsewhere.

4. No building shall be erected in the said plot more than \_\_\_\_\_ feet in height.

5. The building erected on the said plot shall be used for residential purposes only.

6. No building erected on the said plot shall be used as a shop or a factory or as a place for carrying on an offensive trade.

7. The grant shall be subject to the following special conditions:—

(a)

(b) \_\_\_\_\_ etc., etc.

IN WITNESS WHEREOF the Collector of \_\_\_\_\_ has hereunto set his hand and the seal of his office on behalf of the Secretary of State for India in Council; and the applicant has also hereunto set his hand this day the \_\_\_\_\_ of \_\_\_\_\_ 19 .

(Signature of applicant).

(Signatures and designations of witnesses).

(Signature of Collector).

(Signatures and designations of witnesses).

(Seal of Collector).

We declare that *A. B.*, who has signed this notice, is, to our personal knowledge, the person he represents himself to be, and that he has affixed his signature hereto in our presence.

(Signed) *E. F.*

*G. H.*

*N. B.*—1. This document need not be registered (sec. 90 (1) (d), Act XVI of 1903) unless condition 4 is retained (sec. 17 (1) (b) *ibid.*).

2. This document is exempt from stamp duty (Rule 7. G. of I Notfn. 3616-Exc.-16-7-09) unless condition 4 is retained when it should be stamped under Article 95 of Schedule I to Act II of 1899. See also R. 741-23. Form was sanctioned in G. R. 1291-20.

FORM N [Rule 87 (b)].

Form of Sanad in cases where the assessment on land appropriated to non-agricultural purposes other than building is altered under section 48.

WHEREAS the land hereinafter described by measurement and by the boundaries specified in the schedule (and delineated in the map hereto appended) and forming (part of) Survey No. \_\_\_\_\_ in the village of \_\_\_\_\_ in the taluka of \_\_\_\_\_

entered in the name of and at present held by \_\_\_\_\_, resident of \_\_\_\_\_, has been hitherto assessed for purposes of agriculture at the rate of \_\_\_\_\_; AND WHEREAS the said land has been used for a non-agricultural purpose, to wit for (*describe purpose*) (but not for building) and such assessment has thereby become liable under section 48 of the Bombay Land Revenue Code, 1879, to be altered and fixed at a different rate:

Now this is to certify that under the provisions of the said Code, and rules in force thereunder the assessment of the amount to be paid annually as land revenue on the said land has been fixed: for a term of \_\_\_\_\_ years from the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, at the sum of Rs. \_\_\_\_\_

(*Agrees*) [Rupees \_\_\_\_\_ (*words*)] payable in each year of the said term in one instalment due on \_\_\_\_\_ in each year.

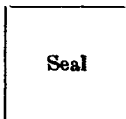
On the expiry of the said term, and at such further intervals as may be from time to time directed by Government in this behalf, the assessment aforesaid will be liable to revision in accordance with the said Code and the rules and orders for the time being in force thereunder.

*Schedule hereinbefore referred to.*

Length and Breadth		Total superficial area	Forming (part of) Survey No. or Hissa No.	Boundaries				Remarks.
North to South	East to West			North	South	East	West	

Here insert the usual date of the Land Revenue first instalment or such other date as the Collector may fix (Rule 116).

In witness whereof the Collector has hereto set his hand and the seal of his office this day of 19 .



Collector.

NOTE—In such Sanads also the Collector has full power to impose conditions, which will be inserted after the schedule—

“FORM NI [ Rule 87 (b) ]

**Form of Sanad in Cases where the assessment on land temporarily appropriated to non-agricultural purposes other than building is altered under section 48.**

Whereas the land hereinafter described by measurement and by the boundaries specified in the schedule ( and delineated in the map hereto appended) and forming ( part of ) Survey No. in the village of in the taluka of entered in the name of, and at present held by resident of , has been hitherto assessed for purposes of agriculture, at the rate of ; and whereas the said land has been used for a non-agricultural purpose, to wit for ( describe purpose ) ( but not for a permanent building ) and such assessment has thereby become liable under section 48 of the Bombay Land Revenue Code, 1879, to be altered and fixed at a different rate :

Now this is to certify that under the provisions of the said Code and rules in force thereunder, the assessment of the amount to be paid as land-revenue on the said land, has been fixed for a term of day of 19 , at the sum of Rs. ( figures ) [ Rupees ( words ) ] payable in one instalment on

On the expiry of the term the assessment aforesaid will be liable to revision in accordance with the said Code and the rules and orders for the time being in force thereunder.

In case of a breach of any of the conditions of this Sanad the Collector may, without prejudice to any other penalty to which the holder of the said land may be liable under the provisions of the said Code, direct the removal or alteration of any structure erected or used contrary to the provisions of this Sanad within a time prescribed in that behalf by the Collector, and on such removal or alteration not being carried out within the prescribed period, may cause the same to be carried out and may recover the cost of carrying out the same from the holder as an arrear of land revenue :—

Schedules heretofore referred to.

Length and Breadth		Total superficial area	Forming (part of) Survey No. or hissa No.	Boundaries				Remarks.
North to South	East to West			North	South	East	West	

In witness whereof the Collector has hereto, set his hand and the seal of his office this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_



Collector.

NOTE—The Collector has full power to impose any conditions he thinks fit. Such conditions will be inserted after the schedule for the erection of temporary structures.”

**FORM O (Rule 104 and Rule 113).**

**Record of Rights.**

A double-page form with sufficiently wide columns for (or cards in V. F. VII-XII ruled to contain) the following particulars :—

1. Serial Number.
2. Survey Number (if inam, the kind of inam)
3. Area.
4. Ordinary or Special Assessment and Judi.
5. Sub-division Number.
6. Area.
7. Assessment.
8. Judi or Special or Non-agricultural Assessment payable.
9. Occupant of Khalsa Land or Holder of Alienated Land.
10. Nature and origin of Title.
11. Other rights or encumbrances with names of right-holder or encumbrancer.
12. References to Mutation Diary, Form P.
13. Remarks.

## FORM P (Rule 104).

## Mutation Register

A single page form with columns showing the following particulars:—

Serial No. of entry 1	Nature of right 2	Survey and anti-division Nos. affected 3	Initials or remarks by testing officers 4

## FORM Q (Rules 104 and 108).

## Register of Disputed Cases.

Serial No. 1	Number in Form O. or P. 2	Survey No. & Hissa No. (or part). 3	Date of receipt of objection 4	Particulars of dispute with names 5	Orders of Mamlatdar or Collector 6

## FORM R (Rule 113).

Now Combined with V. F. XII (Form 6) in card form.

## FORM S (Rule 118)

## NOTICE TO A DEFAULTER

To A B residing at

You are hereby required to take notice that the sum of Rs. a. p.  
due by you on the as the<sup>o</sup> instalment  
of land revenue on the land held by you, of which full details can be obtain-  
ed from the village Accountant ( or otherwise as the case may be ), in the  
village of in the taluka of  
has not been paid, and that, unless it is paid within ten days from the date  
of this notice together with the sum of annas,  
being the fee chargeable for this notice, compulsory proceedings will be  
taken according to law for the recovery of the whole of the revenue still  
due by you on the said land, together with an additional penalty not exceed-

\* "First" or "Second", as the case may be.

ing one-fourth of the said arrears under section 148 of the Land Revenue Code.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_  
(Signed) Mamlatdar ( or Aval Karkun ).}

FORM T (Rule 120)

FORM OF AGREEMENT TO BE PASSED WHEN FORFEITED LAND  
IS RESTORED ON NEW TENURE

Agreement

To

The Mamlatdar of  
I. A. B., inhabitant of \_\_\_\_\_ in the Taluka  
hereby accept the right of occupation of the land comprised in Survey  
Number \_\_\_\_\_ in the village of \_\_\_\_\_ in the  
Taluka \_\_\_\_\_ and I pray that my name may be entered  
in the Government records as the occupant of the said land.

The said land which has been forfeited for arrears of land revenue has  
been regranted to me subject to the provisions of the Bombay Land Re-  
venue Code, 1879, and of the Rules in force thereunder in perpetuity§ from  
the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_; and I undertake  
to pay the land revenue from time to time lawfully due in respect of the  
said land.

The said land has been regranted to me after forfeiture, subject to the  
condition to which I hereby assent in consideration of the grant, namely,  
that I, my heirs, executors, administrators and approved assigns may not  
at any time lease, mortgage, sell or otherwise howsoever encumber the  
said land or any portion thereof without the previous sanction in writing  
of the Collector.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ at \_\_\_\_\_  
Written by \_\_\_\_\_

(Signed) A. B.

We declare that A. B., who has signed this agreement, is to our personal  
knowledge, the person he represents himself to be, and that he has affixed  
his signature hereto in our presence.

(Signed) C. D.

— E. F.

We declare that to the best of our knowledge and from the best informa-  
tion we have been able, after careful inquiry, to obtain, the person who has  
passed this agreement is a fit person to be accepted by Government as re-

§ Authorized by G. R. No. 2459-43; 9263-11.

§ When not granted in perpetuity delete the word and insert "until the  
day of \_\_\_\_\_ 19 \_\_\_\_\_."



possible for the punctual payment of the land revenue from time to time due on the above land.

(Signed) *G. H. Patel,*  
*I. J., Village-Accountant.*

FORM U (Rule 129).

(Standard form R, M. 20)

FORM OF PROCLAMATION AND WRITTEN NOTICE OF SALE OF ATTACHED  
PROPERTY

(Under Section 165, L. R. C.)

Whereas the property of \_\_\_\_\_ hereinunder specified has been attached on account of the Government assessment Rs. \_\_\_\_\_ due by the said \_\_\_\_\_; and whereas it is necessary to recover the said amount by sale of the said property, together with all lawful charges and expenses resulting from the said attachment and sale:

Notice is hereby given that on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ at \_\_\_\_\_ o'clock A. M. \_\_\_\_\_ A. B. \_\_\_\_\_ the Mamlatdar of \_\_\_\_\_ (or other person appointed) will, at \_\_\_\_\_ in \_\_\_\_\_ taluka in this district, sell by auction to the highest bidder and upon such conditions as to upset price and other conditions as are set out in the sub-joined Schedule of Conditions of Sale, the right, title and interest of the said \_\_\_\_\_ in the property hereinunder specified, and every power of disposing of the same or any of them or of the profits arising therefrom which the said \_\_\_\_\_ may now consistently with the law exercise for his own benefit.

Movable Property

(This table only should be omitted when the form is to be used under rules for the execution of decrees.)

1	2	3	4	5	6
Lot No.	Number and description of articles	Where attached	Where now placed	When to be viewed	Whether the sale is subject to confirmation or not

Immovable Property

1	2	3	4	5	6	7	8	9
Lot	Description of Lot including local situation supposed or estimated rent or annual value, and if leased for how long, on what terms and to whom	Survey number, municipal number and other cadastral designation.	Government Revenue including any Local Cess and any other known fiscal charge resting on the Lot	Present occupant	(Here enter any other particulars the Collector may see fit)			(This column should be used for particulars which the Collector may see fit to enter under the rules for the execution of Civil Court decrees)

N. B.—No guarantee is given of the title of the said \_\_\_\_\_ or of validity of any of the right charges or interests claimed by third parties.  
(Signed) \_\_\_\_\_ Collector

A printed schedule setting forth the conditions of sale according to the Code and Rules shall be appended.

FORM W (Rule 129)

FORM OR PROCLAMATION AND WRITTEN NOTICE OF SALE OF RIGHT OF OCCUPATION OF UNOCCUPIED LAND.

Notice is hereby given that the right of occupation of the undermentioned unoccupied land, situate in the village of \_\_\_\_\_ in the taluka will be put up to public auction at \_\_\_\_\_ on the \_\_\_\_\_ day of 19 \_\_\_\_\_ at or after \_\_\_\_\_ o'clock A. M.

The written (or printed) conditions of sale signed by \_\_\_\_\_ [may be seen on application during office hours, on any office day before the day of the auction, to the Mamlatdar of \_\_\_\_\_ or, at the time of the auction, to the officer who conducts the same] and intending bidders are warned that they should ascertain the said conditions before bidding.

\* (see subjoined to this Proclamation).

Description of the Land

Here give a full description of the land, *vis*, the Survey Number or Numbers, if it has been surveyed, if not, its boundaries; the class of land, *i. e.* whether it is dry-crop land, garden land, or a building-site, etc., the area of the land, adding "be the same more or less"; the assessment, if any, at present payable for the land, and the term for which that assessment has been fixed.

(Signed) \_\_\_\_\_ Collector (or other competent officer).  
Dated the \_\_\_\_\_ day }  
of 19 \_\_\_\_\_

	1	Consecutive number.
	2	Name and designation of officer required to give security.
	3	Amount of security given
	4	Nature of security given.
	5	Names of securities, if any, and dates of their bonds.
	6	Names of new sureties, if any substituted for former ones who have died or withdrawn, or whose fitness is considered doubtful and dates of their security bonds.
	7	Amount of security, if any, for which each surety is liable on account of other officers, whether in the same or in any other Department.
	8	Opinion of the head of office as to sufficiency of present security and date on which such opinion was recorded.
	9	Date of receipt of Surety's notice of withdrawal.
	10	Commissioner's Inspection notes.

Register showing the results of inquiries made as to the sufficiency of the security furnished by Revenue Officers in the District of

FORM O-A (Order XVII).

APPENDIX O-B (Order XIX).

ADVANCE NOTICE OF PROPOSED SETTLEMENT.

I.—*Form of notification for the Presidency proper.*

It is hereby made known to the people of the undermentioned villages of taluka \_\_\_\_\_, district \_\_\_\_\_ that the revision of the survey assessment of the lands of the said villages is about to be effected and that it is proposed to divide the said villages into the following groups, the existing and proposed maximum rates of each village being as shown against its name in the following list:—

Number	Name of village	By former settlement				By revision settlement		
		Maximum rates				Maximum rates		
		Number of Group	Dry crop	Rice	Garden	Dry crop	Rice	Garden
1	2	3	4	5	6	7	8	9
	Group I ...							
	Group II ...							
	Group III ...							

Reasons for alteration in the rates—

Reasons for alteration in the grouping—

The result so far as the village of \_\_\_\_\_ is concerned is that the rates in the village are <sup>raised</sup>/<sub>lowered</sub> by \_\_\_\_\_ annas in the rupee.

A copy of the Settlement Officer's report has been deposited at the office of the Mamlatdar of \_\_\_\_\_ and is open to the inspection of any one interested.

For a period of two months from the date of the publication of this notification the Collector will be prepared to receive objections made by any village community to the proposed grouping of their village and the maximum rate thereof, which objections must be presented in writing by the revenue Patel of the village as the representative of such village community.

Collector of \_\_\_\_\_

NOTE.—When the Settlement is not revision but original omit such words as 'Revision' and 'existing' rates cols. 3 to 6 and words implying 'alteration.' For the 3rd Clause below the form read "The result is that the Maml of old revenue payments made by the village are <sup>raised</sup>/<sub>lowered</sub> by \_\_\_\_\_ annas in the rupee."

**II**  
*Form of notification for Sind.*

It is hereby made known to the people of the undermentioned villages of taluka \_\_\_\_\_, district \_\_\_\_\_, that the revision of the survey assessment of the lands of the said villages is about to be effected and that it is proposed to divide the said villages into groups as detailed in the subjoined statement, the existing and proposed rates of each village being as shown against its name:—

Number	Name of village	Number of group	By former settlement				By revision settlement				
			Rates according to different modes of irrigation				Rates according to different modes of irrigation				
1	2	3									
	Group I ...										
	Group II ...										
	Group III ...										
	Group IV ...										

Reasons for alteration in the rates—

Reasons for alteration in the grouping—

A copy of the Settlement Officer's report has been deposited at the office of the mukhtiarkar of \_\_\_\_\_ and is open to the inspection of any one interested.

For a period of two months from the date of the publication of this notification, the Collector will be prepared to receive objections in writing from any zamindar to the proposed grouping of his village and the revised rates proposed therefor.

Collector of \_\_\_\_\_

Note—Vide footnote to Appendix O-B (Presidency)

**APPENDIX O-C ( Order XXIII ).**  
**FORM OF REGISTER OF ALIENATIONS.**

NOTE—See this form at p. 254 ante

**APPENDIX O-D: [ Note 63 ( V ) under Rules 30-36 ].**

**FORM OF STATEMENT OF ALIENATIONS TO BE SUBMITTED MONTHLY**  
**( R. P/196 of 6-4-1926 ).**

Name of grantees.	Village.	Taluka.	District.	Area	Value under which grant is made.	Rule or order which grant is made.	Orders sanctioning the grant.

**APPENDIX O-E.**

**LEASE FOR LANDS GRANTED TO CRIMINAL TRIBES ( R. 12176-16 and 6509-19-7-23 ).**

*A—For Agricultural purposes.*

The land comprised in survey No.                      area                      acres                      gunthas,  
assessment Rs.                      a.                      p.                      in the village of                      in the                      taluka  
is hereby granted on lease to—

- (1)
- (2)

(inhabitant(s) of                      in the                      taluka [ hereinafter called "the lessee(s)" ]  
on payment of an occupancy price of                      rupees in perpetuity \*  
from the                      day of                      19                      , subject to the provisions of the  
Bombay Land Revenue Code, 1879, and to the rules from time to time in  
force thereunder and to the following conditions, namely :—

- (1) That the lessees, their heirs or assigns shall not at any time lease mortgage, sell or otherwise howsoever encumber the said occupancy or any portion thereof without the previous sanction in writing of the Collector of                      or of any Assistant or Deputy Collector to whom the said Collector may delegate this power.
- (2) That the lessees, their heirs and assigns shall pay the land revenue and other dues from time to time lawfully due in respect of the said occupancy.

\* [ or if the grant is not in perpetuity but merely for a term, delete the word "in perpetuity" and insert here "to the                      day of                      19                      ". ]

(3) That if within 20 years of the date of the grant of this lease the lessees or their heirs or any of the male issue of the lessees or their heirs living jointly with them be convicted of any offence punishable under the Indian Penal Code or any other Act for the time being in force and sentenced to imprisonment for a period of not less than six months, the said occupancy may be forfeited at the discretion and under the order of the Collector of \_\_\_\_\_ or of any Assistant or Deputy Collector to whom the said Collector may delegate this power and such order of forfeiture shall be final.

This grant is made on behalf of the Secretary of State for India in Council by order of the Governor of Bombay in Council by, and under the hand and seal of, the Collector of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_



Collector of \_\_\_\_\_

In the presence of—

\* \_\_\_\_\_  
 \* \_\_\_\_\_

This grant is hereby accepted, on the terms and conditions therein mentioned, by—

† \_\_\_\_\_  
 † \_\_\_\_\_  
 † \_\_\_\_\_

In the presence of—

\* \_\_\_\_\_  
 \* \_\_\_\_\_

\* Signature of witnesses

‡ Signature of the lessee

## B—For sites for houses or huts

The building site described below, in the village of \_\_\_\_\_ of the \_\_\_\_\_ taluka of the \_\_\_\_\_ District is hereby granted on lease in perpetuity to—

(1)

(2)

Inhabitant (s) of \_\_\_\_\_ in the village of \_\_\_\_\_ in the taluka of \_\_\_\_\_ in the \_\_\_\_\_ District (hereinafter called "the lessee") for the purpose of building a house or hut thereon, subject to the provisions of the Bombay Land Revenue Code, 1879, and to the rules from time to time in force thereunder and to the following conditions:—

- (1) That the lessee, their heirs, and assigns shall pay such land revenue (if any) from time to time as is lawfully due in respect of the said land. Also that the lessee, their heirs and assigns shall pay annually as ground rent for the said site the sum of \_\_\_\_\_ (being at the rate of \_\_\_\_\_ per \_\_\_\_\_) for the period of \_\_\_\_\_ years commencing on \_\_\_\_\_ and thereafter pay such ground rent for such further period as may from time to time be fixed by lawful authority.
- (2) That one or more permanent buildings shall be constructed on the said site within \_\_\_\_\_ years from the date of this lease.
- (3) That the lessee, their heirs or assigns shall not at any time lease, mortgage, sell or otherwise howsoever encumber the said site or any portion thereof without the previous sanction in writing of the Collector of \_\_\_\_\_ or of any other officer to whom he may delegate this power.
- (4) That if within \_\_\_\_\_ years of the date of the grant of this lease the lessee or their heirs or any of the male issue of the lessee or their heirs living jointly with them be convicted of an offence punishable under Chapters XII and XVII of the Indian Penal Code and sentenced to imprisonment for a period of not less than six months this site, together with all the buildings erected thereon, and all rights and interests connected therewith, may be forfeited at the discretion and under the orders of the Collector or of any other officer to whom he may delegate this power and such order of forfeiture shall be final.

The building site referred to herein is bounded as follows:—

On the North by \_\_\_\_\_

On the South by \_\_\_\_\_

On the East by \_\_\_\_\_

On the West by \_\_\_\_\_

and is of the following size and measurements:—



This grant is made on behalf of the Secretary of State for India in Council by order of the Governor of Bombay in Council by, and under the hand and seal of, the Collector of this the day of 19 .

Seal of the  
Collector.

Collector of

In the presence of—

This grant is hereby accepted, on the terms and conditions therein mentioned, by—

In the presence of—

APPENDIX O-F. (1) (Rule 39).

AGREEMENT TO COVER CASES OF LANDS IN THE KAIRA DISTRICT  
WITH VALUABLE BABUL AND OTHER TREES WHEN GIVEN  
ON IMPARTIBLE TENURE.

To

The Mamlatdar of in the Kaira District.  
I, A. B. inhabitant of in the Taluka,  
hereby accept the occupancy of the land described in schedule A hereto appended (hereinafter referred to as the said lands) and I pray that my name may be entered in the Land Records as the occupant of the said lands.

2. The occupancy of the said lands has been accepted by me subject to—
- (a) the provisions of the Bombay Land Revenue Code, 1879, and of the Rules in force thereunder;
  - (b) a [ *present* ] payment in cash of Rs. (and a *deferred* payment of Rs. on account of the value of the trees standing on the said lands); and

\* Signatures of witnesses.

† Signatures of the lessees.

(c) the conditions hereinafter mentioned.

3. The conditions on which I have accepted the occupancy of the said lands are as follows, and I agree on behalf of myself, my heirs, executors, administrators and assigns to abide by them subject to any modifications therein that may hereafter be ordered by Government consistently with the general tenor of this agreement;

- (1) That I will regularly pay from time to time the annual land revenue lawfully due in respect of the said lands according to the rate of assessment as may be fixed from time to time under the Law and Rules in force in this behalf.
- (2) That I, my heirs, assigns and legal representatives shall not at any time by partition, inheritance, lease, mortgage or otherwise howsoever transfer the said land except as a whole or a portion thereof of not less than an economic holding.
- (3) That I shall bring under cultivation to the satisfaction of the Collector of Kalra—

(a) at least one-fourth of the said lands within a period of 3 years  
i. e., A. D. 19            to 19

(b) at least half of the said lands within a period of 5 years, i. e.,  
A. D. 19            to 19

(c) the whole of the said lands within a period of 8 years, i. e., A. D.  
19            to 19

subject however to the exclusion of such fallows not exceeding one-fifth of the total area of the said lands as are essential for agricultural purposes, and of the *Kharabs* areas included in survey numbers and the vacant strips of land required to be left uncultivated by the sides of fields.

( *Explanation*—Cultivation means raising of crops, not of grass. )

- (4) That if I fail to perform any of the aforesaid conditions, I shall be liable at the discretion of the Collector notwithstanding anything hereinbefore contained—

(a) to pay the full assessment of the said lands for the year during which such failure takes place together with all authorised and unauthorised arrears of land revenue due from me,

(b) to have the whole of the said lands including such portions thereof as have been transferred, mortgaged, leased or otherwise howsoever incumbered by me to any other person summarily forfeited; and neither I nor such other person shall be entitled to claim compensation for anything done or executed by me or by him in respect of the said lands, and

(c) in case of forfeiture of the said lands to pay Rs.        as the deferred payment of the value of the trees standing on the said lands and granted to me.

- (5) That I shall not have the right at any time during the period of eight years commencing from A.D. 19      to relinquish a portion only of the said lands without the previous sanction in writing of the Collector; the whole may, however, be relinquished by me at any time.
- (6) That I shall have the right to transfer, mortgage, or lease the whole of the said lands or portion thereof of not less than an economic holding, subject to the conditions mentioned herein, specially subject to the right of forfeiture by Government in case of my failure to keep the land undivided, as mentioned in condition (2) above or to bring the land under cultivation as required by conditions (3) and (4).
- (7) That I shall furnish, before I take possession of the said lands, security to the extent demanded by the Mamlatdar in the form of either a cash deposit or a personal bond with sureties as may be required by the Collector to secure the due fulfilment and enforcement of the conditions of this agreement.
- [ (8) *That I shall, on the due and satisfactory fulfilment of the conditions mentioned in sub-clause (3) of clause (3) of this agreement or at such earlier date at which I shall have brought into cultivation the whole of the said lands subject to the exceptions provided for by sub-clause (3) of clause (3) be entitled to a remission of the deferred payment of the value of the said trees referred to in sub-clause (b) of clause (2) and in condition (4) (c) of clause 3 above.*
- (9) *That subject to the conditions abovementioned the full ownership over the trees comprised in the said lands shall belong to me and I may dispose of them as I think fit.*
- (10) That I shall not take into my possession any part of the said lands which has been set apart for public purposes, *viz.* for roads waterways, etc., and I shall respect all rights and easements vested in the public over such parts.
- (11) That subject to the due and proper fulfilment of the conditions hereinafter agreed to I shall be entitled on the expiry of eight years or at such earlier date at which I shall have brought under cultivation the whole of the said lands [subject to the exceptions provided for by sub-clause (3) of clause 3], to retain the occupancy on the unrestricted but impartible tenure of the said lands subject to the payment of the full assessment from time to time fixed thereupon under the law and rules in force in this behalf, on my executing an agreement in the form prescribed for persons who intend to become occupants of land on impartible tenure [Form F (1)].
- (12) In case of forfeiture of the whole of the said lands under clause 3 of this agreement or in case I exercise the option given to me above to relinquish the whole of the said lands I shall be permitted to

retain possession of such portion of the said lands as I may have brought under cultivation provided—

(1) I ask for the permission to retain such portion within a fortnight from the date on which I receive the order of forfeiture or on which my relinquishment is duly accepted by the Mamlatdar, and

(2) I pay to Government as occupancy price 10 times the assessment of the said portion without taking into consideration any amount that I may have paid before taking possession of the said lands in accordance with the terms of this agreement.

Dated the            day of            19            at  
(Signed)

We declare that who has signed this agreement is to our personal knowledge, the person he represents himself to be and that he has affixed his signature hereto in our presence.

(Signed)

(Signed)

We declare that to the best of our knowledge and from the best information we have been able, after careful inquiry, to obtain the person who has passed this agreement is a fit person to be accepted by Government as responsible for the punctual payment of the land revenue from time to time due on the above land.

(Signed)

Patel.

(Signed)

Village Accountant.

*Schedule A.*

Taluka	Village	Survey No.	Area	Assessment.	Trees valued at Rs.	Remarks.

APPENDIX O-F. (2)

*Agreement to cover cases of lands in the Kaira District*

*without valuable babul and other trees, when given on impartible tenurs.*

[ The same as Appendix O F (1) omitting the passages, conditions and column above printed in italics. ]

APPENDIX O-G (Rule 44, Note 120) (R. 1293-05, 2201-08, 7987-12, 817824 of 8-3-23 and 11-7-23).

## LEASE\* FOR HILL STATIONS.

THIS AGREEMENT made this            day of            in the year One Thousand Nine Hundred and            between THE SECRETARY OF STATE FOR INDIA IN COUNCIL (hereinafter called "the Lessor" which expression shall, unless excluded by or repugnant to the context include his successors in office and assigns) of the one part and (hereinafter called "the Lessee" which expression shall, unless excluded by or repugnant to the context include his successors in office and assigns) of the other part WITNESSETH that in consideration of the rent hereby reserved and of the covenants herein contained and on the part of the Lessee to be respectively paid, and observed, the Lessor doth hereby lease unto the Lessee ALL THAT piece or parcel of land situate at in the District of            containing by measurement            acres and            gunthas be the same little more or less and described and particularly denoted as No.            in a certain map or plan of the said deposited in the Office of the Collector of            hereinafter referred to as "the Collector" which expression shall include any officer authorised by such collector or Government to act on his behalf or under his orders and which said piece of land hereby demised is bounded on the East by            on the West by            on the North by            and on the South by            † was formerly occupied by           

and is now occupied by the said Lessee ‡ and is situate in the Registration District of            TO HAVE AND TO HOLD the said piece of Land and Premises with their appurtenances hereinafter referred to as "the premises" unto the Lessee for the term of (30) § thirty years from the            day of            19 (hereinafter called "the said term") PAYING therefor yearly during the said term unto the said Lessor on the            day of            in each year the rent of            \*Rupees            and annas being at the rate of            \*Rupees            per acre, the first payment of such rent to be made on the day of            19 .

\* This Lease is exempt from Registration under section 90 (d) of the Indian Registration Act, 1908 (XVI of 1908). Both the Leases executed by the Collector and the Counterpart executed by the Lessee are also exempt from Stamp-duty, the former under head A-8 of the Government of India (Finance Department) Notification No. 366-Ex. C. dated the 16th July 1909 (republished in Bombay Government Notification No. 7317 dated the 23rd July 1909) and pp-1334-88 of the Bombay G. C. for 1909, Part I), and the latter under Provision (1) to section 3 of the Indian Stamp Act, 1899 (IV of 1899).

† Omit these words, if the Lease is for an unoccupied site.

§ In the case of Matheran, if the lease is for period of 99 years delete the words (30) thirty and insert the words " (99) ninety-nine."

\* Enter amount in words and figures. In the case of Matheran insert Rupees ten (Rs. 10) only or Rupees twenty (Rs. 20) only according as the lease is for a period of thirty or ninety-nine years.

2. AND the Lessee doth hereby covenant, with the Lessor in manner following, that is to say, that he the Lessee during the continuance of the said term—

- (a) will pay or cause to be paid unto the Lessor at the Office of the Collector, or at such other place as he shall be required on the part of the said Lessor, the said yearly rent of \_\_\_\_\_ rupees and annas at the time hereinbefore appointed for payment thereof;
- (b) and will bear, pay and discharge all rates, taxes, assessments, duties and charges which at any time during the said term may be or become due or payable in respect of the said premises or any building or erection now built or to be built or erected thereon;
- (c) and will obey and submit to all rules or orders of Government now existing or hereafter to exist, in the mofussil or district of \_\_\_\_\_ or at \_\_\_\_\_ so far as they are not of a personal nature but are incidental to the possession of immovable property or so far as they affect the health, safety or convenience of the other inhabitants of the district or place;
- (d) and if there shall not be already existing on the premises some building of the nature of a substantial bungalow as a residence according to the plan and position approved of by the Collector, will build thereon one such bungalow but not more than one, subject to such approval as aforesaid and will commence the building of such bungalow within one year and will complete it within two years from the first day of 19 . or within such further period of time (if any) as the Collector in his discretion shall think fit to grant in this behalf;
- (e) and will keep such bungalow and building at all time in a state of good and sufficient repair to the satisfaction of the Collector;
- (f) and will, at his own expense, within one month from the date of this Lease, place proper and substantial land marks on the boundaries of the premises to the satisfaction of the Collector (if such land marks do not at the date of this Lease already exist) and will if required by the Collector, enclose his Site by means of such wall or wire or other fencing as may be approved by the Collector, and will carefully preserve such land marks and such wall or fencing as the case may be, and will renew the same at his own expense as often as the Collector shall deem to be necessary, and in case of any neglect so to do after due notice in that behalf shall have been given by the Collector, it shall be lawful for the Collector to cause proper land marks or walls or wire or other fencing as the case

} Enter amount in words and figures.

§ In the case of Mathema, for the word "all" substitute the words "Rules 2 to 6 (both inclusive) 12 to 15 (both inclusive), and 17 of the Rules and Orders of Mathema sanctioned by G.O. 1835-29-10-04, and all others."

may be to be placed on the premises at the sole expense of the Lessee, which expense the Lessee hereby agrees to reimburse by paying to the Collector such amount as the Collector ( whose order shall be final ) shall fix in that behalf;

- (g) and will not make, or permit to be made, any alterations in or additions to the said buildings or other erections for the time being on the premises, or erect, or permit to be erected, any new building on the premises, without the previous permission in writing of the Collector, and except in accordance with the terms of such permission and the plan (if any) approved of by the Collector, and in case of any deviation from such terms or plan will immediately upon notice signed by the Collector requiring him so to do correct such deviation as aforesaid, and if the Lessee shall neglect to correct such deviation for the space of seven days after such notice, then it shall be lawful for the Collector to cause to be corrected such deviation at the expense of the Lessee which expense the Lessee hereby agrees to reimburse by paying to the Collector such amount as the Collector (whose orders shall be final) shall fix in that behalf; and will supply to the Collector two copies of a plan of the land hereby demised drawn to scale showing the boundaries of the said land and the buildings or other erections permitted to be erected thereon with the external measurements of the same, and if at any time hereafter the buildings or other erections on the said land are added to, altered in any way, or removed with the sanction of the Collector, shall supply to the Collector on demand two copies of a new plan drawn to scale showing the said land and the buildings or other erections standing thereon with the external measurements of the same after such addition or alteration to or removal of the buildings or other erections aforesaid;
- (h) and will remove from the premises all dilapidated, uninhabited and useless buildings of every description on notices requiring their removal being given by the Collector to the Lessee, and in case of such buildings not being removed according to such notices the Collector shall be at liberty to remove the same at the expense of the Lessee, which expense the Lessee hereby agrees to reimburse by paying to the Collector such amount as the Collector (whose orders shall be final) shall fix in that behalf;
- (i) and will provide and maintain in good repair a properly constructed metalled\* road to the satisfaction of the Collector leading from the public road to the bungalow referred to in this Lease;
- (j) and will not, without previous permission in writing of the Collector, cut or lop or uproot or remove or destroy any such† tree, bush or

\*In the case of Mathera, delete the word "metalled" and insert the words "or path" after "road".

†Omit the words in italics if the prohibition is to extend to all trees, bushes and shrubs.

shrub growing on the premises as; is hereinbelow described that is to say:—

- and in case any such tree, bush or shrub, or portion of such tree, bush or shrub, shall have been felled or cut down or lopped off or uprooted or shall have fallen it shall be the property of Government and the Collector shall have liberty at all reasonable times to enter upon the premises for the purpose of removing such tree, bush or shrub, or portion of a tree, bush or shrub;
- (k) and will not, without the previous permission in writing of the Collector, commence or carry on any building, or dig, excavate or remove any earth or stone in or from any spot other than such as the Collector in that permission shall specify, or in so digging, excavating or removing exceed such limits as to the depth or area over which such digging, excavation or removal extends, or the period of time during which it is to be carried on as the Collector in that permission prescribes in such behalf; and will pay for the earth or stone, whether used in building or otherwise on the plot or for any other purpose, such amount as the Collector (whose orders shall be final) shall fix in that behalf;
- (l) and will, before being granted such permission, submit a clear plan showing the total area of the plot and the area which it is proposed to clear of all growth for the bungalow, out-houses, servants' quarters, paths and garden, respectively, or from which it is proposed to remove any earth, stone, trees, bushes, shrubs, or undergrowth for any purpose whatsoever, and will submit to § such orders as the Collector shall impose with regard to such clearance or removal, as the case may be;
- (m) and will not, without the previous permission in writing of the Collector, use, or permit to be used, for residential purposes any of the buildings or erections on the ground hereby demised, except such as may have been expressly sanctioned by the Collector for that purpose, and will not, without such previous consent in writing and except on such terms as the Collector may see fit to impose, use any building premises as an hotel or boarding house, and will not do, or suffer to be done, on the premises, or any part thereof, any act or thing which may be, or grow to be, a nuisance, damage, annoyance or inconvenience to the owners or occupiers of the premises or any other property in the neighbourhood;
- (n) and will not, without the previous permission in writing of the Collector, sublet, or permit to be sublet, the premises and will not without such previous permission otherwise transfer or assign the premises provided, however, the previous permission in writing of Government will be necessary if the Lessee transfers or assigns any part only of the premises otherwise than by subletting it;

<sup>1</sup> Have enumerated kinds of trees, bushes, etc., which are not to be cut, lopped, etc., without permission.

§ In the case of Mathura for the word "such" substitute the words "the rules relating to the excavation of earth and quarrying of stone sanctioned by R. 373-13-5-04, and such others."



- (o) and will be responsible for any breaches of the conditions of this Lease by his servant or agent and for the removal of all earth, stone, trees, bushes, shrubs, and undergrowth by such servant or agent;
- (p) and will on demand by the Collector deposit with the Collector the sum of Rupees (500) five hundred in cash as security for the due fulfilment and observance during the continuance of all building operations of any conditions hereinbefore contained, and will be responsible for any failure on the part of any contractor or other person carrying on such building operations on behalf of the Lessee to fulfil and observe all and every one of the conditions contained in sub-clause (d), (g), (j) or (k) of this clause, and will, in case of such failure by the Lessee or by such contractor or other person, forfeit to the Collector the whole or such portion of the said sum of Rupees (500) five hundred as the Collector shall deem sufficient to compensate for any loss or damage caused by any non-fulfilment or non-observance on the part of the Lessee or of such contractor or other person of any such conditions;
- (q) \*and subject to sub-clause (n) will not sublet the premises or any part thereof for any period which shall include the whole or any part of any hot-weather season to any person without giving to such person notice of the liability specified in sub-clause (r) of this clause provided that no such notice need be given in any case where such subletting is done after the first day of December in any year and is for the next ensuing hot-weather season only;
- (r) \*and will from time to time, and at all times during the said term, on being given at least three months' previous notice in writing by the Collector (which may be served in the manner provided by Clause 5) that the premises are required for the occupation of a Civil or Military officer or officers of Government during the next hot-weather season, that is the period from first day of March to the fifteenth day of June next ensuing, sublet the premises and give possession thereof to such officer or officers as may be specified by the Collector for the period aforesaid at such rent as may be agreed upon or (failing agreement) at such rent as may be determined either before or after the commencement of the tenancy by the unanimous decision, or the majority of the votes, of a Committee, which shall consist of (a) the Superintendent of Mahableshwar for the time being, (b) a person nominated by the Collector, and (c) a person nominated by the Lessee, and which shall meet at such place as may be appointed by the said Superintendent; Provided that where the Lessee intends himself to occupy the premises during at least two months of the said hot-weather season, he may, within (14) fourteen

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\*This sub-clause should be deleted in the case of Matheran, Panchgani and Sakar Pathar.

\*This sub-clause should be deleted in the case of Matheran, Panchgani and Sakar Pathar.

days of the service of the said notice, inform the Collector in writing of such intention and thereupon the Lessee may himself occupy the premises during the said hot-weather season, and if he commence so to occupy them on or prior to the first day of April, he shall not be bound as aforesaid to sublet or give possession of the premises during the said hot-weather season, and provided that where the Lessee fails to nominate a member of such Committee and to give notice thereof to the Collector within (14) fourteen clear days from the date on which he is called upon to do so by notice in writing to be served in manner aforesaid, or if any member, who has been nominated, neglects or refuses to act or is incapable of acting, the Collector may appoint in his stead another member who is willing to act, and the decision of the members of every such Committee or the majority thereof shall be final.

2-A. And it is hereby agreed that the Lessee may at any time and from time to time during the said term and with the previous permission in writing of Government surrender to the Lessor any part of the premises (not being less at any one time than                      acres) by giving notice in writing to the Collector before                      in any year and such relinquishment shall have effect from the                      and thereupon such part shall be excluded from the premises leased out and an abatement shall be made in the fixed yearly rent of rupees (Rs.                      ) at such rate for every acre of land so surrendered, as Government may determine and such reduced rent shall be payable under sub-clause (a) of clause 2.

2 B. In the case of any Municipal water, gas or electric scheme requiring the laying of pipes or wires in or through the lands of Lessees, the Lessees shall permit the laying thereof without making any claim to compensation or rent therefor.

3. AND it is hereby further agreed that the Collector and his Agents, Surveyors and work-men may, at all reasonable times, enter upon the premises in order to inspect the same.

4. AND that in case the said Lessee shall not fulfil and keep all and every one of the conditions hereinbefore contained or shall commit any breach thereof, the Collector shall be at liberty to impose upon the Lessee a fine not exceeding Rupees (50) fifty for each failure, neglect or omission to fulfil any of the said conditions and for every breach thereof and in the case of any breach consisting in the cutting, lopping, uprooting, removal or destruction of any tree, bush or shrub without the previous permission of the Collector, such fine of Rupees (50) fifty may be imposed in respect of every tree, bush or shrub so cut, lopped, uprooted, removed or destroyed, and in the case of a breach consisting of a digging, excavation or removal of earth or stone without or otherwise than in accordance with the permission of the Collector, such fine of Rupees (50) may be imposed in respect of each day during which the digging, excavation or removal is carried on and in respect of each day from the commencement of such digging, excavation or removal until

the spot, from which the digging, excavation or removal has been made shall have been reinstated to the satisfaction of the Collector.

5. AND that in case the said rent or any part thereof, or any costs or expenses incurred by the Collector under sub-clause (f), (g) or (h) of clause 2 of this Lease, or any fine imposed under the last preceding clause, shall at any time hereafter be in arrear and remain unpaid for the space of six months after the same shall have become due or have been incurred and shall have been demanded in writing (such writing to be served on the Lessee or his authorized agent, or on the tenant or occupier of the premises, or in case the Lessee shall have left India, or his place of residence be unknown, and the premises be unoccupied, by posting the same on some conspicuous place upon the premises) or in case the Lessee shall persist after notice in writing to be served in manner aforesaid, in not fulfilling, keeping and observing all and every one of the conditions hereinbefore contained, or shall, whether such notice in writing has or has not been served upon him as aforesaid, commit or have committed any breach or breaches of any of the conditions in sub-clause (j) or (k) of Clause 2 hereinbefore contained, of such extent or nature or duration that the Collector under the conditions in clause 4 might impose in respect thereof fines amounting in the aggregate to Rupees (300) three hundred or more, the Collector shall be at liberty, in the name and on behalf of the Lessor, to put an end to and cancel this Agreement, and resume the premises and enter into and eject the Lessee or any person claiming under him, from the possession of the premises, and the Lessor shall thereupon become entitled to and possessed of any house or building which may be standing thereon and the materials thereof, and the Collector shall be entitled to sell the same either by private contract or public auction as he shall think fit, and shall, out of the proceeds arising from such sale, first pay all expenses attending the taking possession and selling of the same, and secondly retain any amount which may be due for arrears of rent or on account of all costs or expenses incurred or fines imposed under the terms of this Lease as aforesaid, and lastly pay over the residue of such proceeds (if any) to the Lessee: provided always, and it is hereby further agreed in case of such resumption for arrears of rent or costs or expenses or fines, that the Lessee, except in the case of resumption for a breach or breaches of any of the conditions of sub-clause (j) or (k) of Clause 2 in respect of which the Collector might as aforesaid impose fines amounting in the aggregate to Rupees (300) three hundred or more, shall, at any time before the actual sale of such building by the Collector under the powers aforesaid, be entitled, on payment of all arrears of rent or costs or expenses or fines and of all further costs and expenses incurred up to the date of payment, to have such house or building and land restored to him for the remainder of the said term for which the same are hereby granted: provided further that in any case of resumption for persistent failure to keep and fulfil any of the conditions hereinbefore contained the Lessee shall be entitled to such restoration only on accepting such terms as the Collector may think fit to impose.

6. AND it is hereby further agreed that, subject as hereinafter provided, the said Lessee shall at the expiration or sooner determination of the said term quietly deliver up to the Collector the premises and all the buildings which shall have been built thereon during the said term and all the drains and appurtenances together with all fixtures, windows, doors, shutters, fastenings, water closets, cisterns, partitions, fixed presses, shelves, pipe, pumps, rails, poles, locks, and keys and all other fixtures which at any time during the last seven years of the said term shall have been fastened to the said buildings and land or any part thereof in such good and substantial repair and condition and so maintained paved and cleansed as aforesaid and in all respects in such state and condition as shall be consistent with the due performance of the several covenants and provisos hereinbefore contained :

Provided always and it is hereby agreed that the Lessee may within six months before the expiration of the said term remove such buildings as may have been erected by him upon the demised land provided that he shall have given to the Collector twelve months' previous written notice of his intention so to do and he shall have during the said term paid the rent hereby reserved in manner aforesaid and shall have performed and observed to the satisfaction of the Collector all the covenants by the Lessee and the conditions herein contained or referred to and that the Lessee will at the expiration of the term hereby granted quietly deliver up to the Collector the demised land levelled and ready for building or for any other purpose to the satisfaction of the Collector.

7. \* Provided always and it is hereby agreed and declared by and between the said parties to these presents that if the said Lessee shall desire to take a renewed lease of the premises for a further term from the expiration of the term hereby granted and of such desire shall prior to the expiration of the said term give to the Collector six months' previous notice in writing and shall have paid the rent reserved by and shall have performed to the

\* In the case of a building site in Mathura the following clause (1273-05 7967-13) shall be substituted for Clause 7, namely (as amended by R. 1663-30 & R. 773-13-6-23)

7. Provided always and it is hereby agreed and declared by and between the said parties to these presents that if the said Lessee shall desire to take a renewed lease of the said land for the further term of (30) thirty years from the expiration of the term hereby granted and of such desire shall prior to the expiration of the said term give to the Collector six months' previous notice in writing and shall have paid the rent reserved by and shall have performed to the satisfaction of the Collector the covenants by or on behalf of the said Lessee contained in this lease up to the expiration of the term hereby granted then the Collector will grant to the said Lessee a new lease of the said land to be prepared by or on behalf of the said Lessee for a further term of thirty years on such conditions as may then be determined by the Collector acting under the orders of the Governor of Bombay in Council and reserving such annual rent whether the same be decreased or increased as the said Lessee shall think fit to reserve subject to the condition that it shall be entirely within the discretion of the said Lessee whether in the new lease there shall or shall not be a covenant for renewal.

(b) If the lease is for ninety-nine years—

7. Provided always and it is hereby agreed and declared by and between the said parties to these presents that at the expiration of the term of ninety-nine years for which the said lease has been granted it shall be entirely within the discretion of the said Lessee whether he will or will not renew the said lease of the said land.

satisfaction of the Collector the covenants by or on behalf of the said Lessee contained in this lease up to expiration of the term hereby granted, then the Lessee shall have a preferential right to, that is to say, shall have the first offer of, a new lease of the premises to be prepared by or on behalf of the said Lessor for such further term and on such conditions as may then be determined by the Collector acting under the orders of Government subject to the condition that it shall be entirely within the discretion of the said Lessor whether in the new lease there shall or shall not be a covenant for renewal.

IN WITNESS WHEREOF the Collector of \_\_\_\_\_ has, by order of the Governor of Bombay in Council, set his hand and the seal of his office on behalf of the Secretary of State for India in Council to one part hereof remaining with the Lessee, and the Lessee has set his hand to the other part thereof remaining with the Secretary of State for India in Council, the day and year first hereinabove written.

Signed by

In the presence of

APPENDIX O-H Rule 51 (1)

FORM OF 99 (50) YEARS' LEASE.

[ ROYAL ARMS. ]

THE SECRETARY OF STATE IN COUNCIL

TO

WHEREAS

has purchased from Government the right of occupation for a term of years, \*subject to the conditions hereinafter mentioned of a plot of ground situated in f the \_\_\_\_\_ Division of f the city ( or town as the case may be ) of \_\_\_\_\_ being registered No. \_\_\_\_\_ in the Map market Sheet No. \_\_\_\_\_, and containing about \_\_\_\_\_ square yards, and of the following shape, and about the following dimensions:—  
( here insert sketch or tracing ).

AND WHEREAS the said \_\_\_\_\_ has paid the purchase money for the said land for the said term, viz. Rupees f I, \_\_\_\_\_ Collector, hereby lease on behalf of Government to the said \_\_\_\_\_ ( hereinafter called " the Lessee " ) the right of occupancy of the said plot of ground for the term of \_\_\_\_\_ years\*, subject to the following conditions that is to say:—

I. The Lessee shall pay to Government an annual rent of Rupees \_\_\_\_\_ in respect of the said plot of ground.

II. The Lessee shall pay the said rent in advance in one annual payment on the 1st of August in each year. If the said rent be not paid within three

\* See Supplement A for list of towns in which the period is 99 years and in which it is 50.

† Omit these words if unnecessary.

‡ To be entered in words and figures.

months from the said 1st of August in each year, interest at the rate of nine per cent. per annum shall be charged upon the said rent in arrear from the expiration of the said three months until payment, and if the said rent, together with such interest thereon as shall be due, be not paid within a year from the said 1st of August in each year, payment of such rent and interest shall be enforced by proceeding in any of the modes prescribed by any of the Regulations, or Acts of the Legislature, now or hereafter to be in force relating to the realization of Government land revenue; and if the said rent together with all interest thereon, be not paid within two years from the said 1st of August, this Lease and all rights thereunder shall become forfeited to Government.

III. The Lessee shall within \_\_\_\_\_ from the date of this Lease erect on the said plot of ground one or more buildings of a permanent, character and construction.

IV. No roofs, or exterior or party walls, of wood, bamboos, thatch or similar combustible materials shall be erected on the said plot of ground.

V. No building of any kind whatsoever shall project over the edge of the public footpath or prescribed line of road nearest the limits of the said plot of ground.

VI. No building shall be less than \_\_\_\_\_ feet in height from the level of the footpath or road to the top of the wall plate, inclusive of a plinth \_\_\_\_\_ feet high.

VII. The said plot of ground and all buildings thereon shall be subject to Municipal taxation, and to any taxation for local purposes which is now or may hereafter be imposed and shall also be subject to any Tax affecting the said plot of ground or any of the buildings thereon, of the nature contemplated in the second paragraph of section 45 of the Bombay Land Revenue Code, 1879, which may hereafter be imposed by the Legislature.

VIII. If the Lessee shall fail to observe or fulfil the conditions of this Lease or any of them, he shall forfeit to Government all right and title under this Lease to the said plot of ground and buildings thereon, and it shall be lawful for the Collector, on such default as aforesaid, to enter upon the said plot of ground and take possession of the same and of all buildings thereon and hold the same to the use of Government freed and discharged from all incumbrances created thereon by the Lessee:

PROVIDED that the Collector may in lieu of such resumption and without imposing any further penalty, order the removal within a prescribed period of any building or structure erected contrary to any of the Conditions III to VII of this Lease and on such removal not being carried out within the prescribed period may cause the same to be carried out at the expense of the Lessee, or may resume the said plot of ground and all buildings thereon in the manner authorised by this condition and it shall be in the sole, absolute and unfettered discretion of the Collector, subject to the orders of the Governor of Bombay in Council or the Commissioner, to adopt either one or other of the above remedies as may seem desirable to him under the circumstances.

IX. The Lessee will be at liberty, subject to the above conditions, to sell assign or otherwise transfer his right under this Lease; but such transferee shall in every case take subject to the above conditions and to the obligation of observing and fulfilling the same, provided always that the liability of every transferor under this Lease shall continue until a written notice of such transfer signed by the transferor or his duly constituted agent, shall have been served upon the Collector or other officer authorized by the Collector to receive the same.

X. If the said term should not become forfeited under any of the preceding clauses of this Lease, but should expire by effluxion of time, the Lessee shall have a renewal of the said Lease for such further period as Government may then fix on his consenting to pay the annual rate which may be assessed on the said land at a general revision of assessment at the commencement of such period; as also a premium to be fixed by Government for the continuance of the right of occupancy for such period and if the Lessee shall not assent to comply with such terms, Government shall at the expiration of the then expiring period of \_\_\_\_\_ years, enter upon and take possession of the said demised premises, and the said heirs, successors, legal representatives and assigns, shall at the expiration of the said term, or within six calendar months after Government shall have notice of the terms on which it is willing to renew the Lease, clear off all buildings and erections that may be upon the said demised premises unless the Collector and the said

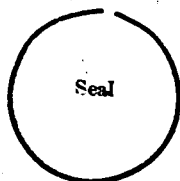
heirs, successors, legal representatives and assigns, shall in the meantime agree upon a valuation to be put upon the said buildings and erections, and the Collector shall assent to take them at such valuation.

XI. In this Lease the words "the Lessee" shall include the Lessee, his heirs, successors, legal representatives or assigns; and the words "the Collector" shall include the Collector of the \_\_\_\_\_ District for the time being and any other officer whom the Governor in Council may at any time appoint to exercise the powers of Collector under this Lease.

This Lease is executed on behalf of the Right Honourable the Secretary of State in Council by order of His Excellency the Governor of Bombay in Council, by and under the hand and seal of the Collector of the

District, this \_\_\_\_\_ day of \_\_\_\_\_ one thousand nine hundred and \_\_\_\_\_

A. D.



(Signed)

Collector

In the presence of

APPENDIX O-I Rule 51 (2)  
FORM OF SHORT-TERM LEASE.  
THE SECRETARY OF STATE IN COUNCIL

TO

THIS IS TO CERTIFY that

inhabitant of  
( hereinafter called " the Lessee " ) has, subject to the provisions of the Bombay Land Revenue Code, Act V of 1879, and the Rules thereunder and subject to the conditions hereinafter specified, been allowed by the Collector of  
hereinafter called " the Collector " acting on behalf of the Secretary of State for India, to occupy for a period of                    years \* commencing from the                    day of                     
19                    ( hereinafter called " the said term " ), a plot of ground situated in ‡ the                    Division of † the city ( or town as the case may be ) of                    being registered No.                    in the Map marked sheet                    No.                    , and containing about                    square yards, and of the following shape and of about the following dimensions:—

The Conditions of this Lease are as follows:—

I. The Lessee shall pay to Government for the said plot of ground on the first day of                    of August every year in advance in one annual payment an annual rent of Rs.                    together with Ra.                    , being the amount of Local Fund Cess thereon.

II. The Lessee shall not erect any permanent building upon the land, and shall at the end of the said term without any objection, without claiming any compensation and without retaining any claim over it, clear and deliver over the said plot of ground to the Collector in the same condition in which he took it.

III. The said plot of ground and all buildings thereon shall be subject to Municipal taxation, and to any taxation for local purposes which is now or may hereafter be imposed ( in the whole district ), and shall also be subject to any tax affecting the said plot of ground or any of the buildings thereon, of the nature contemplated in the second paragraph of section 45 of the said Land Revenue Code, which may hereafter be imposed by the Legislature.

IV. Failure to comply with any of the above conditions of the lease or with any provision of the said Land Revenue Code or of the Rules thereunder shall render this lease liable to cancellation by the Collector, who may thereupon resume the land and summarily evict the Lessee without notice or payment of any compensation whatever :

Provided that the Collector may, in lieu of such resumption and without imposing any further penalty, order the removal within a prescribed period of any building erected contrary to Condition II of this lease, and on such

\* This period may not exceed seven years.

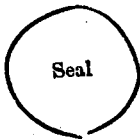
‡ Omit these words if unnecessary.



removal not being carried out within the prescribed period, may cause the same to be carried out at the expense of the Lessee, or may resume the said plot of ground and all buildings thereon in the manner authorized by this condition : and it shall be in the sole, absolute and unfettered discretion of the Collector, subject to the orders of the Governor of Bombay in Council or the Commissioner, to adopt either one or other of the above remedies as may seem desirable to him under the circumstances.

V. In this lease the words "the Lessee" shall include the Lessee, his heirs, successors, legal representatives or assigns ; and the words "the Collector" shall include the Collector of the District for the time being and any other officer whom the Governor in Council may appoint to exercise the powers of the Collector under this lease.

This lease is executed on behalf of the Right Honourable the Secretary of State in Council by order of His Excellency the Governor of Bombay in Council, by and under the hand and seal of the Collector of the District, this day of one thousand nine hundred and A, D.



Seal

(Signed)

In the presence of

Collector.

## APPENDIX O-J (Rule 55).

## SANAD FOR PLANTING TREES IN WASTE LAND.

WHEREAS resident of  
Mouze Taluka in the District of  
has applied to  
No restriction on kind plant and rear trees in Government land in Reserved  
and number. Forests in charge of the Revenue Department and  
lands set apart for common village use ;

AND WHEREAS the aforesaid application has been duly sanctioned under the authority of Government Resolutions No. 4118, dated 14th June 1901, and No. 4 of 2nd January 1913 ;

Now, this sanad is hereby granted to the said authorising him, his heirs and executors to plant and rear trees within in the marginally noted Government lands or reserved forest in the village of Taluka in the District and to enjoy the produce thereof without any question on the part of Government of any assessment or rent otherwise leviable under the Land Revenue Code or any other similar law in force from time to time on account of the land occupied by or under trees subject to the below-mentioned conditions :—

Enter extent situation  
and boundary.



3. And Whereas the Collector has been authorised to grant under section 62 of the Bombay Land Revenue Code, 1879 ( hereinafter referred to as "the said Code") the permission applied for, subject to the provisions of the said Code and the rules and orders thereunder and to the terms and conditions hereinafter contained.

4. Now it is hereby agreed between the Secretary of State and the applicant that permission to occupy the said plot for the purpose of shall be and it is hereby granted to the applicant for the said term subject to the provisions of the said Code and the rules and orders thereunder and on the following terms and conditions, namely :

(1) The applicant shall pay to Government during the said term for the said plot on the first day of August every year in advance in one annual payment an annual rent of together with the local fund cess payable thereon at the rate for the time being in force ;

(1) ( In the case of short-term leases) the applicant shall pay to Government for the said plot the rent of before entry on the said plot together with the local fund cess payable thereon.

(2) The applicant shall also pay fees at the prescribed rates for earth, kankar, etc., removed from the said plot, the quantity removed being measured from the pits made or bricks manufactured.

(3) Earth shall not be excavated by the applicant to a depth of more than feet below the general level of the said plot and the excavation shall be carried out by him in such a manner as not to make the said plot unfit for cultivation after the expiry of the said term.

(4) The surface of the said plot shall be made level ; and all bricks, kilns and other materials used for the purposes of the manufacture of the bricks shall be removed from the said plot before the expiry of the said term ; and in default thereof the Collector may cause such levelling or removal to be carried out at the expense of the applicant, which shall be recoverable as an arrear of land revenue, without prejudice to any other penalty to which the applicant may by reason of such default become liable under the provisions of the said Code or the rules or orders thereunder.

(5) The applicant shall not excavate earth within a margin of ten feet along and inside the perimeter of the survey No.

(6) Failure to comply with any of the above conditions of the grant or with any provisions of the said Code or the rules thereunder shall render this grant liable to cancellation by the Collector, who may thereupon resume the land and summarily evict the applicant without notice or payment of any compensation whatever.

In this sanad the words "the Collector" shall include the Collector of the District for the time being or other officer whom the Governor in Council may appoint to exercise the powers of the Collector under this sanad.

*Sketch*

In witness whereof  
Collector of

the  
hath, by order of His Excellency

the Governor of Bombay in Council, set his hand and seal of his office for and on behalf of the Secretary of State for India in Council and the applicant has, in token of his acceptance of the conditions hereinbefore set forth, set his hand this the                      day of                      one thousand nine hundred and                      A. D.

Signed, sealed and delivered  
by the abovesaid

Collector of

In the presence of—

1

2

Signed and delivered  
by the abovesaid

In the presence of

1

2

#### APPENDIX O-K.

Form of agreement under section 67, L. R. C. in case of use of agricultural lands for the manufacture of bricks.

Cancelled by R. 1890/28 of 1-2-29.  
For form of agreement see Appendix X of Land Revenue Code

#### APPENDIX O-L [Rule 87 (b).

##### ALTERED ASSESSMENT SANAD WHEN LAND WAS AGRICULTURALLY ASSESSED BY ERROR.

###### Sanad A

WHEREAS under Government Notification No.                      dated                      , Government have declared fixed for a term of                      years commencing with the revenue year                      and ending with the revenue year                      the assessment upon such lands only as were used at the date of the said Notification for the purpose of agriculture alone and whereas the land described by measurement and by the boundaries specified in the schedule and delineated in the map hereto appended and forming non-agricultural survey number in the village                      in the taluka of                      and delineated in the map hereto appended and forming non-agricultural survey number                      in the village                      in the taluka of                      registered in the name of                      and at present held by                      was used for non-agricultural purposes before the date of the aforesaid notification.

Now this is to certify that the amount of non-agricultural assessment to be paid annually as land revenue on the said land has been fixed for a term of 50 years from the day of

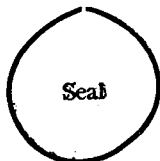
19 at the sum of rupees (Rs. ) payable in each year of the said term on the 1st January annually.

On expiry of the said term and at such further intervals as may from time to time be directed by Government in this behalf, the assessment aforesaid will be liable to revision in accordance with the Bombay Land Revenue Code, 1879, and the rules and orders for the time being in force thereunder:—

Schedule hereinbefore referred to

Length and Breadth		Total superficial area	Forming (part of) Survey No. or Pot No.	Boundaries				Remarks.
North to South	East to West			North	South	East	West	

In witness whereof the Collector has hereto set his hand and the seal of his office this day of 19 .



Collector.

APPENDIX O-M Rules 87 (6).  
 ALTERED ASSESSMENT SANAD WHEN LAND WAS LEFT  
 AGRICULTURALLY UNASSESSED

Sanad B

WHEREAS the assessment upon the land hereinafter described by measurement and by the boundaries specified in the schedule and delineated in the map hereto appended and forming non-agricultural survey number in the village of in the taluka of District registered in the name of and at present held

by \_\_\_\_\_ has to be assessed by the Collector in accordance with section 52 of the Bombay Land Revenue Code, 1879.

Now this is to certify that the amount of assessment to be paid annually as land revenue on the said land has been fixed for a term of 50 years from the day of \_\_\_\_\_ 19 \_\_\_\_\_ at the sum of Rs. \_\_\_\_\_ (Rs. \_\_\_\_\_) payable in each year of the said term on the 1st January annually.

On expiry of the said term and at such further intervals as may from time to time be directed by Government in this behalf, the assessment aforesaid will be liable to revision in accordance with the said Code, and the rules and orders for the time being in force thereunder:—

*Schedule herewith referred to.*

Length and Breadth		Total measurement superficial area	Forming (part of) Survey No. or Pot No.	Boundaries				Remarks.
North to South	East to West			North	South	East	West	

In witness whereof the Collector has hereto set his hand and the seal of this office this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.



Collector,

**APPENDIX O-N.**

(Referred to under section 67, Rule 87 (b).)

(These forms were sanctioned by R. 1189—04.)

**FORM A.**

(To be used where applicant applies for permission to use for building land hitherto used for agricultural purposes.)

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_ one thousand nine hundred and \_\_\_\_\_ between the SECRETARY OF STATE FOR INDIA IN COUNCIL (hereinafter referred to as "the Secretary of State") on the one part and inhabitant of \_\_\_\_\_ (hereinafter referred to as "the applicant") on the other part.

WHEREAS the applicant being the occupant of \_\_\_\_\_ of Taluka \_\_\_\_\_ has applied to the Collector of \_\_\_\_\_ (hereinafter referred to as "the Collector") under section 65 of the Bombay Land Reve-

ue Code, 1879, for permission to use for building purposes the plot of land indicated by the letters \_\_\_\_\_ on the site plan hereto annexed\*, forming part of the said \_\_\_\_\_ and measuring \_\_\_\_\_ square yards, be the same a little more or less;

AND WHEREAS the Collector has been authorized by Government to grant under section 67 of the said Code, the permission applied for subject to the provisions of the said Code, and rules and orders thereunder and to the terms and conditions hereinafter contained.

NOW IT IS HEREBY AGREED between the Secretary of State and the applicant that permission to use for non-agricultural purposes the plot of land indicated by the letters \_\_\_\_\_ on the said site plan (which plot of land is hereinafter referred to as "the said plot of land") in the particular manner shown in the said site-plan, namely:—

(A) an area of \_\_\_\_\_ square yards indicated by a \_\_\_\_\_ colour and the letters \_\_\_\_\_ for the purpose of \_\_\_\_\_ or for the purpose of an open compound only;

(B) an area of \_\_\_\_\_ square yards indicated by a \_\_\_\_\_ colour and the letters \_\_\_\_\_ for the purpose of \_\_\_\_\_ or for the purpose of an open compound only;

(C) an area of \_\_\_\_\_ square yards indicated by the uncoloured portion of the said plot for the purpose of an open compound only;

shall be and is hereby granted subject to the provisions of the said Code, and rules and orders thereunder and on the following special terms and conditions, namely:—

- (1) The applicant in lieu of the present assessment leviable in respect of the said plot of land shall pay to Government without deduction on the \_\_\_\_\_ day of \_\_\_\_\_ in each and every year an annual assessment of Rupees \_\_\_\_\_ (Rs. \_\_\_\_\_) during the fifty (50) years commencing on the \_\_\_\_\_ day of 19\_\_\_\_, and ending on the \_\_\_\_\_ day of 19\_\_\_\_, or in composition therefor a lump sum of Rupees \_\_\_\_\_ (Rs. \_\_\_\_\_) being twenty-five (25)§ times the said annual assessment and thereafter such revised assessment as may from time to time be fixed by the Collector under the said Code and the rules and orders thereunder;
- (2)\* The applicant hereby gives up, resigns and relinquishes to Government without claiming any compensation therefor all interest in, and the Collector on behalf of Government is hereby permitted without further notice to the applicant to enter upon and take possession of the following pieces of land, that is to say:—

\* Care must be taken that this is duly annexed.

† Here insert the particular purpose for which the building is to be erected, such as "a residential bungalow and attached outhouses other than a stable or privy."

‡ Here insert the particular "purpose" for which the building is to be erected, such as "a shop" or "privy."

§ For composition for less period see Note 223.

\* Omit this clause which no such surrender is made.

- (a) for the purpose of widening and forming part of the road on the side of the aforesaid plot a strip of land containing by admeasurement square yards, be the same a little more or less, indicated by a colour and the letters on the site-plan hereto annexed; and
- (b) for the purpose of being used as a sweeper's passage (and not as a public thoroughfare) a strip of land situate along and within the boundary of the aforesaid plot and indicated by a colour and the letters on the said site-plan and containing by admeasurement square yards, be the same a little more or less;
- 2 (c) "In the case of any municipal water gas or electric scheme requiring the laying of pipes or wires in or through the said land, the lessees shall permit the laying thereof without making any claim to compensation or rent. R. 1063/28—27th August 1928.—
- (3) The applicant is hereby prohibited under the last paragraph of section 48 of the said Code from using, without the previous permission in writing of the Collector, any part of the said plot of land for any purpose other than that for which permission to use it is hereinbefore granted to the applicant:  
Provided that:—
- (i) nothing in the above shall be deemed to prohibit the applicant—
- (a) from erecting or constructing, without such previous permission, in the portion (C) (*i. e.*, used for the purpose of an open compound only), boundary walls not exceeding four feet in height, garden-fountains, uncovered steps and similar structures, not being projections from a building, such as verandahs, balconies, eaves or shopboards;
- (b) from constructing, without such previous permission, wells or tanks in any part of such portion (C) that does not lie within a margin consisting of a strip feet broad along and inside the perimeter of the said plot of land;†
- (c) ‡ from using, without such previous permission, for any non-agricultural purpose, other than that of a shop, a stable or a privy, to an extent not exceeding in total admeasurement square yards, any part of such portion (C) that does not lie within the aforesaid margin,  
and
- (ii) where any such prohibited use is permitted by the Collector the applicant shall, <sup>§</sup> *except in the case of a use of any part of the land measuring*

† Here insert any special exception or reservation that may be necessary, such as "save on the sides indicated by the lines G. D., E. F., on the said site-plan, where the existing margin as shown therein is allowed to remain."

‡ Omit this sub-clause (c) if applicant has not agreed to pay full assessment in respect of the portion (C) so as to be entitled to this exemption.

§ Omit the words in italics if sub-clause (c) has been omitted.



square yards and specified in sub-clause (c) of proviso (i) above, be liable to pay from the date of the use in respect of the land so used such enhanced assessment not exceeding,† Rupees (Rs. ) per hundred (100) square yards as the Collector may deem fit to impose, and in any such case the total amount payable under clause (1) of this Agreement shall be modified accordingly;

(4) If at any future date the Collector gives the applicant notice in writing that any portion of the margin specified in sub-clause (b) of proviso (i) to clause (3) of this Agreement is required by Government for the purpose of a road, the applicant shall, at the expiration of one month after the receipt of such notice, quietly surrender and hand over possession of such portion to the Collector on behalf of Government in consideration of receiving from Government in exchange and as full compensation therefor a sum equivalent to thirty (30) times the assessment proportionately payable upon the portion so surrendered, namely, an assessment at the rate of Rupees‡ (Rs. ) per hundred (100) square yards:

§Provided, that, where the materials of any gate, wall, payement or other such authorized erection or construction on such portion cannot in the opinion of the Collector be removed without appreciable loss, such further compensation on this account shall be paid to the applicant as the Collector may deem fit:

(4a) 'The applicant shall, at his own expense, within one month from the date of this Agreement, place proper and substantial land marks on the boundaries of the said ground to the satisfaction of the Collector (if such land marks do not at the time of this Agreement exist) and shall if so required by the Collector enclose his site by means of such wall or wire or other fencing as may be approved by the Collector, and will carefully preserve such land marks, and such wall or or fencing as the case may be and shall renew the same at his own expense as often as the Collector shall deem such renewal to be necessary, and in case of any neglect so to do after due notice in that behalf shall have been given by the Collector, it shall be lawful for the Collector, to cause proper land marks or walls or wire or other fencing as the case may be to be placed on the ground at the sole expence of the said applicant, which expense the said applicant hereby agrees to reimburse by paying to the Collector such amount as the Collector (whose order shall be final) shall fix in that behalf.'" (R. 1063/28—29th August 1928.)

\* (5) The applicant shall within three (3) years from the date of this Agreement, that is before the                    day of                    19                    , erect and complete on the said plot of land‡                    of a substantial and permanent description, and shall in regard thereto duly comply in every respect with the building regulations contained in the Schedule hereto annexed :

† Enter the amount calculated at five times the rate of assessment on the land permitted to be built over under the agreement (paragraph 4 of R. 6411-03.)

‡ Enter the amount calculated in accordance with paragraph I of R. 1188-04.

§ Proviso added by R. 5038-04.

\* As to retention or omission of this clause, vide R. 7436-06.—Also see note to form M-on p. 82.

(5) (a) The applicant shall not, without special permission, erect in the said plot of land any structures having more than [ ] upper floor (s) in addition to the ground floor.

[ Omit this clause if not considered necessary. ( R. 5124-18. ) ]

;(6) The applicant shall remove the existing [ ] indicated on the site-plan hereto annexed by [ ] a colour and the letters [ ] within a period of [ ] from date of this Agreement :

(7) Nothing in this Agreement shall affect the applicant's liability to any payment which may be required under any law for the time being in force for the construction and maintenance of roads and drains :

(8) The Collector may without prejudice to any other penalty to which the applicant may be liable under the provisions of the said Code, or rules or orders thereunder, direct the removal or alteration of any building or structure erected contrary to clause (3) or § (5) or not removed in accordance with clause (6) of this Agreement within a time prescribed in that behalf by the Collector, and on such removal or alteration not being carried out within the prescribed period may cause the same to be carried out at the expense of the applicant :

(9) AND IT IS HEREBY LASTLY AGREED between the parties hereto that in this Agreement the words "the Secretary of State" shall include the Secretary of State, his successors and assigns, and the words "the applicant" shall include the applicant, his heirs, executors, administrators and assigns and the words "the Collector" shall mean the Collector of [ ] for the time being or any other officer whom the Governor of Bombay in Council or the Commissioner, [ ] Division, or the Collector, districts to exercise the powers or perform the duties of the Collector under this Agreement. And also that the applicant shall bear and discharge all the costs and expenses incurred in the preparation, execution stamping and registration these presents.

IN WITNESS WHEREOF the Collector of [ ] has by order of the Governor of Bombay in Council hereunto set his hand and the seal of his office, on behalf of the Secretary of State for India in Council, and the applicant has also hereunto set his hand the day and year first above written.

Signed by

in the presence of  
Signed by  
Collector of  
in the presence of

( Applicant's signature ).

( Collector's signature ).



! Have insert description of the buildings, such as "a residential bungalow and cottages."  
! Omit this clause when there are no existing buildings to be removed.  
! Omit the words in italics when clause (6) is omitted.  
! Two copies should be executed, one to be kept by the Collector, and the other to be handed to the applicant.

## APPENDIX O-O (Rule 87 (6),

## FORM B.

(To be used where applicant has already used Land for building purposes without permission and applies for permission to continue so to use it')

[ 1st clause—the same as in Appendix O-N. ]

WHEREAS the applicant being the occupant of \_\_\_\_\_ of Taluka \_\_\_\_\_ has used for building purposes without the permission of the Collector of \_\_\_\_\_ ( hereinafter referred to as " the Collector " ) being first obtained as required by section 65 of the Bombay Land Revenue Code, 1879 ( hereinafter referred to as " the said Code " ) the plot of land indicated by the letters \_\_\_\_\_ on the site-plan hereto annexed\* forming part of the said \_\_\_\_\_ and measuring \_\_\_\_\_ square yards, be the same a tittle more or less, and has thereby become liable to the penalties prescribed by section 66 of the said Code ;

AND WHEREAS the applicant has applied for permission to remain in possession of and to continue to use the aforesaid plot of land for building purposes ;

[ The rest as in Appendix O-N. ]

## APPENDIX O-O ( 1 ).

*Form of short term lease of plots of land in the Bombay Suburban District  
( vide rule 43-A ).*

The Secretary of State for India in Council

To

This is to certify that \_\_\_\_\_ ( hereinafter called ' the lessee ' which expression shall unless excluded by or repugnant to the context include the lessee, his heirs, successors, legal representatives and assigns ), has, subject to the provisions of the Bombay Land Revenue Code, 1879 ( Bom. V of 1879 ), and the rules thereunder and subject to the conditions hereinafter specified, been allowed by the Collector of the Bombay Suburban District ( hereinafter called ' the Collector ' which expression shall include the said Collector and any other officer whom the Governor in Council may appoint to exercise the powers of the Collector under this lease ) for and on behalf of the Secretary of State for India in Council, to occupy for a period of \_\_\_\_\_ years\* commencing from \_\_\_\_\_ day of \_\_\_\_\_ 192 ( hereinafter called ' the said term ' ), a plot of square yards, and of the following shape and of about the following dimensions :—  
The conditions of this lease are as follows :—

1. The lessee shall pay to Government for the said plot of ground on the first day of August every year in advance in one annual payment an annual rent of Rs. \_\_\_\_\_ together with Rs. \_\_\_\_\_ being the amount of local Fund cess thereon.

\* Care must be taken that this is duly annexed.

\* This period may not exceed seven years.

2. The lessee shall not erect any permanent building upon the said plot of ground, and shall at the end of the said term without any objection, without claiming any compensation and without retaining any claim over it clear and deliver over the same to the Collector in the same condition in which he took it.
3. The said plot of ground shall only be used as a site for a                      and for no other purpose.
4. The lessee will bear, pay and discharge all local and municipal rates, taxes, assessments, duties and charges and any Land Revenue levied under the second paragraph of section 45 of the said Land Revenue Code which at any time during the said term may be or become due or payable in respect of the said plot of ground or of any building or work built or executed thereon.
5. The right of Government to all mines and mineral products is reserved and Government shall have full liberty of access for the purpose of working and searching for the same with all reasonable conveniences.
6. The lessee shall permit the officers, servants or agents of Government at all reasonable times to enter upon and inspect any part of the said plot of ground or premises.
7. The lessee shall not sublet, assign, mortgage or otherwise encumber the said plot of ground or any portion thereof or any building thereon.
8. If at any time before the expiration of this lease the said plot of ground or any portion thereof shall be required by Government, the lessee shall surrender the same or such portion thereof free from all incumbrances on Government giving notice in writing of such requirement: and the lessee shall not be entitled to any compensation on this account.
9. Failure to comply with any of the above conditions of this lease or with any provisions of the said Land Revenue Code or of the rules thereunder shall render this lease liable to cancellation by the Collector, who may thereupon resume the land and summarily evict the lessee without notice or payment of any compensation whatever.

Provided that the Collector may, in lieu of such resumption and without imposing any further penalty, order the removal within a prescribed period of any building erected contrary to condition 2 of this lease, and on such removal not being carried out within the prescribed period may cause the same to be carried out at the expense of the lessee or may resume the said plot of ground and all buildings thereon in the manner authorised by this condition: and it shall be in the sole, absolute and unfettered discretion of the Collector, subject to the orders of the Governor in Council or the Commissioner, to adopt either the one or the other of the above remedies as may seem desirable to him under the circumstances.

This lease is executed on behalf of the Secretary of State for India in Council by order of the Governor of Bombay in Council, by and under the hand and seal of the Collector of the Bombay Suburban District, this day of \_\_\_\_\_ one thousand nine hundred and twenty-

(Sealed)

(Signed)

Collector.

In the presence of

APPENDIX O-P (Rule 87 (6)).

FORM C.

(To be used where applicant has used Land for building purposes with permission, but is willing to comply with the terms of this Agreement in order to gain the benefits thereof.)

[1st clause—the same as in Appendix O-N.]

WHEREAS the applicant being the occupant of \_\_\_\_\_ of \_\_\_\_\_ Taluka \_\_\_\_\_ District \_\_\_\_\_ has used to building purposes with the permission of the Collector of \_\_\_\_\_ (hereinafter referred to as "the Collector") granted under section 65 of the Bombay Land Revenue Code, 1879 (hereinafter referred to as "the said Code"), the plot of land indicated by the letters \_\_\_\_\_ on the site-plan hereto annexed,\* forming part of the said \_\_\_\_\_ and measuring \_\_\_\_\_ square yards, be the same a little more or less;

AND WHEREAS the applicant has applied, in lieu of the said permission of the Collector, for permission to use the aforesaid plot of land for building purposes on certain special terms and conditions:

[The rest as in Appendix O-N.]

†Schedule of Building Regulations.

Definitions. 1. In these rules—

(i) "dwelling" means any building or part of a building used or intended for use as a dwelling for human beings, horses, or cattle;

(ii) "window" includes an open space running right through a wall so as to admit of the entry of air.

2. Every building intended to be used as a dwelling for human beings, or as a privy or kitchen, shall have a plinth at least \_\_\_\_\_ Plinth \_\_\_\_\_ two feet above ground level.

\* Care must be taken that this is duly annexed.

† (1) These regulations are common to the three (A, B, C) forms given above.

(2) For cases in which this schedule is to be replaced by other model regulations, see R. 7496-04.

**Ventilation.**

3. (i) Every room that is a dwelling shall be at least eight feet high at every point.

(ii) Every such room shall have a window opening directly into the air outside the house.

(iii) In every such room the total area of such outside windows shall be not less than one-tenth of the floor area.

(iv) In every such room every window shall be so constructed that at least its upper half is open or can be opened.

4. (i) No privy shall be built within five feet of any dwelling or within twenty feet of any kitchen, public road or place of public resort, or within thirty feet of a well or other

**Privies.**

source of water-supply :

(ii) for every twenty persons a house is intended to accommodate there shall be at least one privy.

(iii) Every privy shall be provided with a movable receptacle for night soil with a capacity of not more than two cubic feet.

(iv) Every privy shall be so constructed that the bottom of the receptacle for night soil, urine or ablation-water shall be at a level at least two feet above ground level.

(v) There shall be ventilation-holes at the bottom both of the door of the privy and the door of the chamber for the night-soil receptacle and also as near the top of the privy as practicable, these latter top-holes, aggregating at least two square feet in area.

(vi) The sides and floor of the chamber for the receptacle shall be constructed of hard smooth stone, brickwork plastered with cement, or other non-absorbent material ; and the floor shall be so sloped that any liquid discharged on it shall rapidly and easily flow to an outlet.

(vii) The door of the said chamber shall occupy the whole height and width of the chamber and shall open outwards on to a space screened in behind the privy and so arranged that a sweeper may conveniently do his work there without being seen by anyone outside.

(viii) Arrangements shall be made to allow of the receptacle for night soil being so fixed that it projects on all sides at least one inch beyond the space vertically below the aperture through which night-soil falls.

(ix) Every privy shall be so constructed that urine, and such ablation-water as is not actually used for ablation can be disposed of without entering the receptacle for night-soil.

5. (i) No cesspool shall be built within twenty feet of a dwelling or kitchen, or within thirty feet of a well or other source of water supply.

**Cesspools.**

(ii) Every cesspool shall be constructed of good masonry, at least one foot thick, plastered inside with cement, and shall be perfectly water-tight.

(iii) The bottom of every cesspool shall be at a level not lower than one foot below ground level.

(iv) The sides of every cesspool shall project above ground sufficiently to prevent the inflow of surface drainage.

(v) Every cesspool shall be entirely open to sun and air and shall have a superficial area of at least two square feet.

6. (i) Every outlet for the passage of urine, sullage water or other filthy liquid from any building shall be at a height of at least two feet above ground level.

(ii) Arrangements shall be made for all such urine, sullage water or other filthy liquid either—

(a) to flow rapidly without touching the walls of the building or the ground through drains of glazed earthenware or other hard, impervious material to points at least twenty feet from the nearest point of every dwelling or kitchen; or

(b) to fall without touching the walls of the building into a water tight removable receptacle entirely above ground level and open to light and air.

(iii) Every such drain that is not open to the air shall be trapped at the end nearest the building from which it runs.

7. All land within one hundred yards of any dwelling shall be so cleared and sloped as effectually to prevent the formation of pits or hollows in which water may stagnate, other than cesspools satisfying rule 5.

#### APPENDIX O-Q (Rule 114).

##### *Rules Relating to Revenue Money Orders for the Bombay Presidency*

*G. N. 402—18-1-11 & 8050—28-6-11 and 9465—28-11-23, R. D.*

*and Sind (G. N. 582—18-1-15).*

*The object and the use of R. M. O.*—1. R. M. O. are a special class of Inland Money Orders by means of which holders of land paying land revenue to Government may remit the amount due by them to the Mamlatdar through the village accountant of the village in which the land on account of which the amount is payable is situated. They may also be used for payment of principal and interest due in respect of Tagavi loans. The system is chiefly intended for the benefit of absentee land-holders and others in order to enable them to pay instalments due on lands belonging to them, or in which they are interested, in due time.

R. M. O's are payable only to the Mamlatdar of the taluka, but they will be delivered, in the first instance without cash, to the village accountant of the village in which the land is situated through the post office by which the village accountant's village is served. The village accountant will, after crediting the amount of each R. M. O. in the village accounts, forward the R. M. O. to the Mamlatdar with his next remittance to the sub-treasury, treating each R. M. O. as cash for the amount for which it is issued. The Mamlatdar will present these R. M. O's at the post office (head or sub) at his headquarters for payment by book transfer.





And whereas Government have decided to accept a fixed annual payment in lieu of service ;

It is hereby declared that the said land shall be continued hereditarily by the British Government on the following conditions :

(1) That the said holders and their heirs shall continue faithful servants of the British Government and shall render to the same the following fixed yearly dues :—

Mamul Judi, if any	...	...	...
Commutation Judi in lieu of service	...	...	...
		Total	...

(2) that the lands shall be continued without demand of service and without increase of the judis over and above the fixed amounts, to the said holders and their male heirs whether lineal, collateral or adopted, but subject, to the same restrictions on each successive holder's power to mortgage, alienate or lease the same beyond the term of his natural life, as are imposed on watandars under Section 5 (1) of the Bombay Hereditary Officers Act, 1874, as amended by Bomby Act V of 1896.

This sanad is executed on behalf of His Majesty's Secretary of State for India in Council, by order of the Governor in Council of Bombay, by an order the hand and seal of the Collector of \_\_\_\_\_ this day of \_\_\_\_\_ 19 \_\_\_\_\_

Collector of \_\_\_\_\_

APPENDIX O-V.

Form of license for easements ( e. g. balcony ) over Government land.

*Form of license.*

THIS INDENTURE made the \_\_\_\_\_ day of \_\_\_\_\_ one thousand nine hundred and twenty \_\_\_\_\_ . Between the Secretary of State for India in Council ( hereinafter referred to as the Secretary of State which expression shall unless it is excluded by or repugnant to the context include his successors in office and assigns ) of the one part and \_\_\_\_\_

of \_\_\_\_\_ ( hereinafter referred to as the Licensee which expression shall unless it is excluded by or repugnant to the context include the heirs, executors, administrators and assigns of the said \_\_\_\_\_ ) of the other part

WHEREAS the Secretary of State is possessed of and absolutely entitled in perpetuity free from incumbrances to the piece of land measuring approximately \_\_\_\_\_ and situate at \_\_\_\_\_ in the \_\_\_\_\_ taluka of the \_\_\_\_\_ ( hereinafter referred to as the said land )

AND WHEREAS the licensee has constructed a balcony in the wall of his house situate at \_\_\_\_\_ in the said taluka of the said district and bearing No \_\_\_\_\_ projecting over the said land

AND WHEREAS the licensee desires the Secretary of State to grant him permission to project the said balcony over the said land and the Secretary of State has agreed to grant such permission on the conditions hereinafter mentioned.

Now This Indenture Witnesseth that in consideration of the rent hereby reserved and of the conditions hereinafter contained and on the part of the licensee to be performed the Secretary of State hereby grants to the licensee permission to project the said balcony over the said land subject to the following conditions :-

- (1) That the licensee shall pay to the Secretary of State at the office of the  
the annual rent of rupees  
on the first day of \_\_\_\_\_ in each and every year; the first of  
such payments to be made on the  
day of \_\_\_\_\_ ;
- (2) that the licensee shall not, without the previous permission in writing  
of the Collector of \_\_\_\_\_, extend or add to the said balcony ;
- (3) that the permission hereby granted shall not in any way be deemed to  
convey to the licensee any right to or over, or any interest in, the said land  
or any easement thereof, or any right to put up posts or supports on the  
said land for the said balcony ;
- (4) that in case the licensee's house to which the balcony is attached falls  
down, or is destroyed by fire, earthquake, storm, or as a result of civil  
commotion or by any cause whatsoever or is reconstructed this license shall  
immediately determine and the licensee shall not be entitled to claim any  
right to put up a balcony or any similar easement in respect of any building  
which may be constructed in lieu of the house destroyed as aforesaid ;
- (5) the Secretary of State may cancel this license at any time by giving  
to the licensee one month's notice in writing of such his intention and at the  
expiration of such period this license shall cease and be void ;
- (6) during the subsistence of this license the said balcony shall be deemed  
to have been constructed and continued by the consent and permission in  
writing of the Secretary of State so that the right of the licensee to project  
the same over the said land shall not become absolute or indefeasible by  
lapse of time.

In witness whereof

\_\_\_\_\_ the Collector of  
hath by order of the Governor of Bombay in Council  
set his hand and the seal of his office for and on behalf of the Secretary of  
State for India in Council the day and year first above written.



Signature of the Collector of

I accept the above conditions.

Signature of Licensee.

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