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FIRST EDITION

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1919.

PREFACE.

Rao Bahadur H. V. Sathe, after having published his fourth and last annotated edition of the Land Revenue Code and the rules thereunder, has transferred to me his copy-right inclusive of translations.

2. The Government of Bombay in their Resolution Government No. 3980 dated 12th April 1916 ordered as follows:—

“ It is open to Rao Bahadur R. N. Joglekar to prepare a new and revised edition of Sathe's Land Revenue Code and Government will be glad if he will make it convenient to do so. Heads of offices are authorized to communicate to Rao Bahadur Joglekar any information regarding Government rules and orders which he may require.”

3. In accordance with the desire of Government I willingly undertook this important work as in the performance of my revenue duties for more than 30 years, I had collected all the necessary materials and had also the experience gathered during my administrative and executive work.

4. Besides being upto date in the subject matter, the arrangement of the contents in this edition differs from that of Rao Bahadur Sathe's previous editions in the following particulars:—

(1) Modifications in Sections.

The modifications that have been made from time to time in certain sections have been denoted by indicative letters *a*, *b*, *c*, etc. and are placed immediately under those sections.

(2) Notes.

Under important sections I have added my own notes containing explanations; my experience, and remarks for the sake of brevity the notes are denoted as N 1, N 2, N 3. etc.

(3) Government Orders.

All government orders, resolutions and notifications relating to each section are arranged in their chronological order and have been briefly numbered as G 1, G 2, etc.

(4) Judicial decisions.

All Judicial decisions of the Bombay and other High Courts relating to each section have also been arranged in proper order and have likewise been marked as J 1, J 2, etc.

(5) Summary.

With a view to facilitate ready reference to the notes (N), Government resolutions (G), and Judicial decisions (J) under each section, I have added a summary with the subjects arranged alphabetically.

5. The contents of this book will therefore be arranged as follows:—

(1) Section

- (2) Modifications, if any, indicated by letters *a, b, c*, etc.
- (3) Summary of the notes (N), Government Resolutions etc. (G) and Judicial decisions (J) pertaining to the section.
- (4) Notes (N) Government Resolutions etc. (G) and judicial decisions (J), given in full.

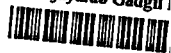
At the end of the book are attached

- (a) General alphabetical index of subjects.
- (b) Index of the Government Resolutions.
- and
- (c) Index of the Judicial cases.

PREFACE.

6. The Rules under the Land Revenue Code revised by the Bombay Government. I am informed that they have not been published for at least six months to come so I have not published the old rules with this edition.

Dhananjayrao Gadgil



GIPE-PUNE-023

7. After my retirement from the British service on the 1st of August 1916, His Highness the Maharaja Gaekwar of Baroda, was pleased to employ me in his State on the responsible post of the Collector of the Baroda District. This employment with its manifold responsibilities and the spread of influenza in Bombay and elsewhere have naturally delayed the speedy publication of the book, but all the same, the delay has been fully utilized in making the edition fully upto date *i. e.* 1st October 1919.

8. Just next to the preface, I have inserted addenda and corrigenda under the general heading corrections numbered serially. It is suggested that these numbers should be entered in red ink in the text in their proper places to serve as ready reminders.

9. I wish to place on record my sense of gratitude to the Honourable Mr. G. S. Curtis C. S. I., I. C. S. member of Council, Bombay, C. N. Seddon Esqr., I. C. S., Commissioner, Central Division, and F. G. H. Anderson Esqr., M. A., I. C. S., Survey Commissioner and Director of Land Records, Bombay Presidency for the advice and help which they have given to me from time to time. My thanks are also due to P. K. Pendse Esqr., M. A., L. L. M., Advocate of the Bombay High Court and other gentlemen for assisting me in compiling this edition.

Baroda, 17th October, }
1919.

R. N. JOGLEKAR.

CORRECTIONS.

1 Page 8 Add the following note at the bottom of the page.

Note. *vide* J. 5 under sections 217 on pages 559-60.

2 Page 12, after line 4—Insert, 'G 1. In the office of the Commissioner C. D., one Assistant has been abolished. (G. R. F. D. 1894 dated 15th May 1918).'

3 Page 55, subsection (3) of section 37. Score out the words "by the Collector" in line 3 and substitute '[c]'

Above summary under section 37. Insert '[c] the words repealed by Bombay Act II of 1919 second schedule are omitted.'

4 Page 56. Strike out the word 'Government' against (b) and (c) at the top of the page.

5 Page 73, 8th line from top for G. 13 read G. 14.

6 Page 89—For G 21, substitute, G 21. *Trees*—The concessions granted to permit-holders by G 18 above, should be continued to their legal heirs without any restriction with regard to succession or transfer. (G.R.R.D. No. 9124 dated 6th September 1918).

7 Page 134, after (6) under 2 waterrate, insert (7) Old wells.....G 22.

8 Page 141 after the words "R. D. 4967 dated 20th April 1917" insert. G. 22. Water rates:—The levy of a waterrate under sec. 55 of the Code on old wells exempted under sec. 48 of the Irrigation Act must be regarded as inadmissible (G. O. R. D. No. 13614; dated 24th December 1918.)

9 Page 154 line 3 from bottom. After the letters 'feiture' insert [g] or to summary removal [g]

10 Page 155 line 2 from top. After the word "direct" insert [g] " and the cost of the removal of any encroachment under this section shall be recoverable as an arrear of land revenue " [g]

Page 155. After [f-f] insert [g-g] these words are added by Bombay Act II of 1919 first schedule

11 Page 155, In the summary (S. 61) strike out G 27 and substitute [g-g] above.

12 Pages 170 and 171, Strike out G. 27.

13 Page 174. Add the following as G. 9 after G. 8
G 9. *Grant of waste land to soldiers and their nearest relatives.*

2. So far as the Presidency proper is concerned Government consider that the Collectors should continue—

- (1) to give preference to persons mentioned in Government Order No. 12029 dated 6th October 1917, in the matter of grant of waste lands.
- (2) failing applications from such persons preference should be given to soldiers (including recruits) provided that their military service is satisfactory or the dependants of soldiers dying in service ;
- (3) waste land should only be given to persons not included in Classes (1) and (2) when there are no recruits from the village or where the Collector thinks the giving out necessary for food production, but in such cases the grant should only be temporary.

3. As regards Sind the Commissioner and Collectors already have discretion in the matter of the grant of waste lands to any suitable applicant. But Government desire that preferential treatment should be accorded to applications for waste land from recruits provided that their military service is satisfactory or from their near relatives and that the grant of land to such persons should be made either free or at a reduced rate of occupancy price (G. O. No. 7830 R. D. dated 29th July 1918).

14 Page 178—After the case at J I insert the following cases J 2, J 3.

J 2—Non-riparian owner—R sued for a declaration that he had a right to take the water of a river for cultivating his lands by making it flow over the paddy lands of J. From time immemorial R and his ancestors, as owners of certain non-riparian lands, had been taking water from the river at or about a certain spot on the river banks, and thence over the lands of J successively till R's lands were reached. J's objection was that the right claimed was really one 'to surface water not flowing in a stream' and hence could not be acquired as an easement under sec. 17 (c) of the Easements Act 1882. *Held* that sec. 17 (c) of the Act did not apply as R's claim was to river water and not to mere surface water on J's lands and that R having acquired the right claimed by him before the Act came into force and having enjoyed such right from time immemorial, the case was saved by sec. 2, clause (c) of the Act. (I. L. R. 42 Bombay 288).

J 3—Non-navigable river—In the case of a grant of land by Government described as bounded by a non-navigable river, the presumption (which may be strong or weak according to circumstances of each case) is that the grant passes to the grantee with a right to half the bed of the river, and that the onus of showing the contrary is on the grantor. I. L. R. 41 MADRAS, page 840.

15 Page 180. line 8 from bottom For 'manual' read manure.

16 Page 180 summary section 65 after G. 13 add 'G. 17.' and after G. 1, 2 against (5) and G. 18. and at the bottom of the page add 10. Lands near Railway Stations.....'G. 18.'

17 Page 190. Insert as follows :—

G. 17. The latter part of rule 6 of the rules published under G. 13 above should be interpreted as applying to lands which the superior holder has let to tenants-at-will, from whom the holder can levy non-agricultural assessment in excess of the standard rates. (G. O. R. D. No. 8779, dated 29th August 1918).

G. 18. Section 65 does not apply to buildings on alienated lands. When it is intended to grant permission under section 65 to build upon unalienated agricultural lands and unoccupied waste lands in the vicinity of any railway station, Collectors should give an intimation to the Railway Administration of his intention to grant the desired permission within a specified period not exceeding six months. A definite limit of distance from railway stations as regards these buildings cannot be prescribed in view of the varying conditions of railway stations situated in different localities. Government prefer therefore to leave this question to the discretion of the Collectors in each case. (G. O. R. D. No. 856I, dated 20th August 1918.)

18 Page 261. Insert the following above section 85.

N. 2. Vide appendix XIII (pages 620 to 626) for rules relating to suspension and remissions.

19 Page 318. After (e) Vacant lands in village sites insert (f) Area over 10 acres G 6.

20 Page 319. After G. 5 insert. G. 6 *Survey*—When it is proposed by any Department of Government survey in the presidency proper an area over ten acres in extent (intimation of the nature, purpose and extent) of such survey should first be communicated to the Settlement Commissioner and Director of Land Records.....The Collectors should be instructed to invite the municipalities, local boards and other public bodies concerned also to communicate such proposals to the Settlement Commissioner and Director of Land Records. G. O. R. D. No. 13152, dated 12th December 1918.

21 Page 355. Insert the following under section 103.
N. 1. Vide appendix XV on pages 628 and 629.

22 Page 357. Line 7. Read 'N I' instead of No. 1.

23 Page 380. After (6) Stamp duty, insert (7) Civil Court's duty J. 3, 4.

CORRECTIONS.

24 Page 385. Insert the following after J 2.

J 3. The Civil Court has no jurisdiction to reopen a partition made by the Collector under section 54 of the Civil Procedure Code (Act 5 of 1908). I. L. R. 42 Bombay 689.

J 4. 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 section 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. (I. L. R. 41 Allahabad page 207).

25 Page 435. Section 135 D. (1) in the 5th and the 6th line of this section strike out the words " subsection (1) " and substitute [a] the first paragraph [a]

Page 437 below subsection (7) and above J. 1 insert [a-a] these words are added by Bombay Act II of 1919. first schedule.

26 Page 442. After G. 3 insert.

G 4. *Record of Rights*—Government sanction Mr. Anderson's proposal to raise the fee from 2 to 4 annas per mutation in the Record of Rights of certain village site in Gujarat as remuneration of talaties. G. O. R. D. No. 9211 dated 25th September 1918. 10872 dated 6th November 1918.

27 Page 452. Insert under section 139. G. I Credit of interest due to an investor in the Indian War Loan in direct payment of the land revenue assessment.

The Government of India have acceded to the expressed desire of many landholders, particularly of the Mahomedan community, that interest due to them on investments in the Indian War Loan should be credited to their land revenue accounts instead of being paid direct. This concession will be granted to all 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. Those investors who desire to take advantage of this concession should apply to the treasury officer of the district in which they reside.

(G. O. F. D. No. 2630 dated 13th July 1918).

28 Page 481. Summary section 154. After G. 6. against (2) write G. 10.

29 Page 484. After G. 9 insert. G. 10. Illegality of breaking open the outer doors of the house of a defaulter for the purpose of distraining goods for the recovery of arrears of land revenue :—

Having regard to the legal opinions recorded in G. R. R. D. No. 11240 dated 11th December 1913, Government do not sanction the application of Section 62 (2) of the Civil Procedure Code to the recovery of arrears of land revenue, the word 'defaulter' being substituted for 'judgment-debtor.'

(G. O. R. D. No. 7673 dated 24th July 1918).

30 Page 492. After G. 1 insert.

J. 1. *Right of Government to recover proportionate assessment from the grantee of rent free lands.*

The Talukdar of a village, who paid to Government assessment for the whole village in a fixed sum, granted certain lands to the plaintiff free of rent. The assessment not having been paid by the Talukdar, the Government attached the village under the provisions of section 144 of the Bombay Land Revenue Code, 1879, and proceeded to levy proportional assessment from the plaintiff in respect of the lands held by him. The plaintiff sued to restrain the Government from levying the assessment from him :—

Held, dismissing the suit that the fact that the plaintiff held rent free lands from the Talukdar, did not affect the right of Government to levy proportionate assessment from the plaintiff, under the provisions of section 160 of the Bombay Land Revenue Code, 1879. I. L. R. 43 Bombay page 6.

31 Page 542. Insert the following as N. 7 after N. 6.

N. 7. Vide appendix XII regarding form of Commissioner's order to extend the provisions of Chapters VIII and IX to an Inam village.

32 Page 568, lines 3 and 4 from top—for the words “and thereafter at successive periods of years in perpetuity,”
Substitute “and thereafter at such periods as may from time to time be fixed in this behalf”.

Page 567, lines 14 to 16 from top—*omit* the words “facing towards the the road leading from to”

(G. O. R. D. No. 8241 dated 10th August 1918).

33 Page 558 after G.-32 insert—G. 33 *Inam Village Survey*.—If the survey of the unsettled Inam villages is to be carried out extensively the Udtara method must be adopted, otherwise the cost of operations will be prohibitive.

(G. O. R. D. No. 339 dated 13th January 1919)

34 Page 355, after 10 lines from top, insert, ‘G 15. *Settlement Reports*—Government Order No. 706 dated 23rd January 1919 abolishes Appendix J to Settlement Report at page 554 of the new Survey and Settlement Manual and adopts a revised Appendix M, showing village population and area of unoccupied assessed cultivable Government land.’

(G. O. R. D. No. 706 dated 23rd January 1919)

35 Page 170, insert the following as G 27 in place of the present G 27 cancelled by correction 12.

“G. 27 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 section 61 of the Bombay Land Revenue Code.”

(G. O. R. D. No. 3141, dated 26th March 1919).

36 Page 190, below G 18, inserted by correction 17, *insert*.

‘G 19—*Proposal to control the erection of buildings on unalienated lands in the vicinity of railway stations*:—

The period of six months referred to in paragraph 2 of Government order No. 8561 dated 20th August 1918 is a maximum and it will not be possible to allow a delay of six months in every case for the Agent’s decision. The collectors should be directed to give as long notice within six

months as can be given without undue hardship to applicants, and to send clear plans showing the plots which it is intended to build upon with their distances from the railway boundary, and the nearest railway mileage which will be found marked on the telegraph poles.

When the Collector is making his survey, he should do so in conjunction with the Railway Executive Engineer concerned, as this will save a further meeting when the question as to whether the building should be permitted or not is under discussion.

(G. O. Nos. 5434, R. D. dated 28th May 1919)
 (" 7338, R. D. " 18th July 1919)
 (" 9448, R. D. " 13th September 1919.)

37 Page 497,—at the bottom of this page, after N. I, add:—

" G I,—G. O. R. D. No. 6755 dated 5th July 1919 approves revised forms for holding auction sales of moveable and immoveable property."

(G. O. R. D. No. 6755 dated 5th July 1919.)

38 Pages 620 to 627 (rules for suspensions and remissions) The following changes should be made in these rules:—

(a) rules I and 6—Insert the words "and to superior holders of alienated land" between the words "alike" and "without" in rule I and also after the word "occupants" the first time it occurs in rules 6.

(b) in rules 4 and 7, after the word "occupants" insert the words "and superior holders of alienated land"

(c) For rules $\frac{5}{7}$ substitute
 "suspensions

..... may be granted to superior remissions

holders in accordance with the orders and provisions of section 84A of Bombay Act 5 of 1879."

(d) delete the words "cultivating their own holdings
 • and except as provided in clause (ii) below, to non-cultivating occupants" occurring in rule 6.

(e) delete clause (ii) of rule 6 and add the following between the last two sentences of clause (i) of the rule :—

“ the oldest arrears should be remitted first.”

(G. O. 9402, R. D. dated 12th September 1919.)

39 Page 190, below G 19 inserted by correction 36, add :—

“ G 20—*Non-agricultural assessment*—In the following case, the non-agricultural assessment was properly levied by the Collector :—

A Co-operative dairy society for Gaolis was organised, bringing them into one place, securing some land for them, putting up a shed for the cattle, and arranging for the joint purchase of feeding stuffs and the joint marketing of the milk. 2. As a general rule, Government think 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. No. 10108 dated 29th September 1919.)

40 Page 486, J. 3.—add :—

“ I. L. R. 43 Bombay 550 ” below “ 21 Bombay Law Reporter, pages 251-255 ” at the end of J 3.

THE BOMBAY LAND REVENUE CODE, 1879.

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BOMBAY ACT No. V OF 1879.^[a]

—0—

[a] 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 30th 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. I of 1884—see s. 44 of the latter Act.

S. 85 and subsection 3 of s. 58 are not in force in the Panch Maháls—see Act VII of 1885, s. 2.

Ss. 68, 72, 73, 74, 104, para. 2, 112, 117A, 117B, 150, cl. (b), and 153 of Bom. V of 1879 do not apply to any village in the district of Ratnágiri or the district of Kolába 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. 38 to 40, 44, 60 to 67, 76, 82, 85, 116, 117A, 117B, 127 to 134, 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 Maháls to which the Gujarát Táluqdárs' Act, 1888, extends; and ss. 3, 46, 54, 79A, 88, 89, 94, 111, 113, 147, 150, 160, 162, 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 1888, ss. 1 and 33.

*(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:—

Preamble

CHAPTER I.

PRELIMINARY.

Short Title	1. [a] (1) This Act may be cited as "The Bombay Land Revenue Code, 1878."
Local Extent	[b] (2) Save as otherwise provided by Chapter XA, this Act extends to the whole of the Presidency of Bombay, except the City of Bombay, Aden, and the Scheduled District of the Mehwassee Chiefs' villages as defined in the Scheduled Districts Act, 1874.
XIV of 1874.	[c] (3) Provided that Chapter III also extends to the City of Bombay, subject to the modification that the expression 'Revenue-officer' means every officer of any rank 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.
Bom. II of 1876.	

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

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

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

[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.

Extension of the Code to Native States :—

G. I. Akalkote State.—The provisions of the Code have been made applicable to the Akalkote

State. (G. N. No. 5728, P. D., dated 9th December 1879, published in the B. G. G., Part I., page 966, 1879.)

G. 2. **Jat State.**—The Code has been extended to the Jahangir Territories of the State of Jat as far as its provisions are applicable. (G. N. No. 5730, P. D., dated 9th December 1879, published in the B. G. G., Part I., page 966, 1879.)

Purchase of the Land Revenue Code :—

G. 3. Land Revenue Code is allowed to be purchased from the contingent grant (G. R. No. 1515, dated 22nd February 1905, and 6708, dated 19th August 1905).

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

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

(1) "Revenue-officer" means every officer of any rank 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 [b] 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 Matá-dárs Act, 1887 [b]:

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

G. 1. [b-b] These words were added by Bom. IV of 1905, 1st Sch. They remove the difficulty noticed in G. R. No. 5764, dated 17th September 1900, R. D. of recovering money from village officers in case of defalcation.

G. 2. Officers ascertaining forest rights—not revenue officers.—An officer employed in ascertain-

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

ing whether the forest rights in a village belong to the Government or to the Inamdar, is not a revenue officer as defined in Section 3, clause 1 of the Code, and cannot, therefore, legally exercise the powers conferred by Section 189 of the Code for the purpose of any such inquiry. Even were he gazetted an Assistant Collector, the enquiry would not relate to the business of land-revenue, nor could it be held to be an enquiry which an Assistant Collector is "legally empowered" to make. (G. R. No. 4964, dated 20th June 1884.)

G. 3. District Inspectors of Land Records.—They should be considered revenue officers. (G. R. No. 1327, dated 25th February 1902.)

J. I. Forest officer—not a Revenue officer.—A 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 vs. Secretary of State* P. J. 317, 1895).

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

(a) Words repealed by Bom. III of 1886 are omitted.

G. I. Retired Survey Officers. A Survey officer retired from Government service and subsequently employed in the survey of Native States under an arrangement between him and those States is not a survey officer within the meaning of Section 3, clause 2, and Section 18 of the Land Revenue Code. (G. R. No. 4523, dated 23rd June 1893.)

(3) [Definition of "Collector"]—*Repealed by Bom. IV of 1913, s. 6 (a), as superfluous in view of s. 3 (11) of the Bombay General clauses Act, 1904.*

(4) "Land" includes benefit 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 :

(5) "estate" means any interest in lands and the aggregate of such interest 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 [a] assessment [a] are separately entered, under an indicative number in the [b] land records [b] [c] :

[a-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.

[a] (7) "sub-division of a survey number" means a portion of a survey number of which the 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] :

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

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

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

(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 :

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

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

G. I. Unploughed ridge. The words (viz., "unploughed ridge or") were substituted for the original word "vacant" by Bombay Act VI of 1901, Section 2. They removed the difficulty noticed in G. R. No. 4609, dated 31st May 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.

G 2. Baroda boundary. There is no legal defect attaching to the Collector's orders to maintain a vacant strip on the Baroda boundary. When such orders have been given they should stand, and it would be advisable that they should be issued in other districts. (G. R. No. 3527, dated 6th April 1907, R. D.)

[a] (11) "to hold land," or to be a "land holder" or "holder" of land means to be lawfully in possession of land, whether such possession is actual or not :

N. I. Holder. A holder, may mean any person holding land by any right or title whatsoever. It may mean a superior holder, a tenant, or an occupant whether registered or unregistered. In the Code however, it is used with reference to alienated land.

J. I. Holder. The term holder is wide enough to include even a tenant who has entered into

possession under an occupant (L. R. 34 Bombay 686)

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

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

[^a] (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 Jágirdár, Inámdar or other such holder of alienated land whose name is authorizedly entered as such in the land records, such Jágirdár, 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, ^{Bom. III.} 1869, shall, notwithstanding anything hereinafter ^{of 1969.} contained in the definition of the word "tenant," be deemed to be the tenant of such grantor. 8

[^a] This was substituted for the original definitions of "superior holder" and "inferior holder" by Bom. IV of 1913, s. 6 (f). In amending this definition the Select Committee reported as follows:—"We have had under consideration the case of Inamdars, Jagirdars and other holders from Government of alienated lands who have themselves made grants of portions of their lands for the maintenance of cadets and other similar purposes. These grants are made subject to resumption in certain contingencies, such as failure of lineal male heirs, and if they are made free of liability to pay rent or land revenue, the grantors have been held not to be the superior holders of such lands (vide Gordhanlal

SECTION 3—PAGES 3 TO 9.

vs. Darbar Shri Surajmali, I.L.R. 26 Bom., page 504. As the grantors have a reversionary interest in the land, it is desirable that the grantors should be included within the definition of superior holders."

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

[a] (15) "landlord" means a lessor;

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

[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;

G. I. Occupants.—Occupants holding land under the terms of survey settlement are persons holding temporary settled land under direct engagement with Government as described in Sch. II No. I (a) second clause, Court fees act 1870. (G. R. 634 of 28th January 1888).

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

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

[a] (19) "occupation" means possession;

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

(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;

[a] (21) "village" includes a town or city and all the land belonging to a village, town or city;*

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

(22) the words "revenue-year" or "year" means 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.

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

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

[a] (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 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;

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

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

i of 1872.

[a] (28) in Sind the word 'Mukhtyarkar' shall be deemed to be substituted for the word 'Mámlatdar,' wherever it occurs in this Act.

[a] These definitions were added by Bom. IV of 1913, s. 6 (j).

CHAPTER II.

CONSTITUTION AND POWERS OF
REVENUE OFFICERS.

Chief controlling authority in revenue matters.

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

Extent of territories under the Commissioners.

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.

The territories under a Commissioner to be a division.

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

[b] 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. [b]

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

[b-b] These words were added by Bom. IV of 1913, s. 7.

N. I. There are at present three Divisional Commissioners, besides the Commissioner in Sind, each in charge of a division, there being three divisions in the Presidency proper. These divi-

sions are (1) the Northern Division, (2) the Central Division, and (3) the Southern Division. The districts in each Division are given in the margin.

N. D.	C. D.	S. D.
Ahmedabad.	Ahmednagar	Belgaum.
Broach.	East	Bijapur.
Kaira.	Khandesh.	Dharwar.
Panch Mahals.	West	Kanara.
Surat.	Khandesh.	Kolaba.
Thana.	Nasik.	Ratnagiri.
	Poona.	
	Satara.	
	Sholapur.	

The Districts in Sind are:—1 Hyderabad, 2 Karachi, 3 Larkhana 4 Sukkur 5 Thar and Parkar, 6 Upper Sind Frontier.

N. 2. 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. (Page 194 of the Council proceedings for 1877).

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, 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.

6. Each Commissioner shall have such number of 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.

NOTE 1—There are at present 2 Assistants to each Divisional Commissioner one in charge of the English branch, and the other in charge of the Vernacular branch of the office.

Division to be divided into districts.

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.

A district to consist of talukas comprising such mahals and villages as Government may direct.

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].

(a) Words repealed by Bom. IV of 1913, s. 8, are omitted.

(b) Words repealed by Bom. IV of 1913, s. 8, are omitted.

(c) Words repealed by Act XVI of 1895 are omitted.

N. 7. The Mahals at present are :

N. D.		C. D.		S. D.	
Modasa } Ahmeda-		Bhadgaon } East		Chandgad } Belga-	
Gogha } bad.		Edlabad } Khan-		Murgod } um.	
Halol } Panch			desh	Bilgi... } Bijapur	
Jhalod. } Mahals.		Mulsi		Mundargi } Dhar-	
Hansot... } Broach.		Ambegaon } Poona		Nurgund. } war.	
Valod } Surat.		Dhond		Bhatkal	
Mokhada } Thana.		Khandala		Supa } Kanara	
Umbar- } Thana.		Malecompeth } Sata-		Mundgod } ra.	
gaon. }		Shirala } ra.		Uran	
		Jamkhed } Ahmed-		Khalapur } Kolaba	
		pathardi. } nagar.		Nagothna	
				Guhagar } Rat-	
				Mandangad } nagiri	

G. 1. All changes must be reported by the Collector to the Survey Department (G. R. No. 1103, dated 18th March 1868, and G. R. No. 3215 dated 6th July 1870.)

G. 2. Government have directed that 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 object is that there should be

data in the India office for the supply of correct delineations of district and other boundaries throughout India. Changes in the boundaries of districts or other 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. In all cases, therefore, due weight should be allowed to these considerations before deciding to sanction any modifications in territorial boundaries. Care should be taken that changes are made only when essentially necessary for administrative purposes.

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. 3175 dated 4th July 1870
 " " 3265 " 6th July 1870
 " " 6814 " 13th September 1883.
 " " 9482 " 25th September 1885
 " " 3309 " 9th April 1892.]

G. 3. The Superintendent of Survey should confer with the Collector before submitting his proposals for converting hamlets into distinct villages. (G. R. No. 6474, dated 10th June 1884.)

G. 4. Establishments of new hamlets.

With a view to encourage small bodies of bona-fide cultivators to take up outlying Waste Land and to settle thereon, the Commissioner N. D. proposed the following rules for the approval of Government.

(a) Occupying sites for new hamlets will be given by Government.

(b) Each house will be allowed $\frac{1}{2}$ th acre of rent free Land.

(c) At the discretion of the collector land for new cultivation may be granted, either rent free for a term or at a reduced assessment.

(d) Takavi upto Rs. 800 may be granted on reasonable security for the purpose of constructing a well for a new hamlet at the rate of 9 pies per rupee per annum. The advance shall ordinarily be repayable within four years. At the discretion of the collector the security may be taken from all the settlers jointly and repayment arranged for by an addition to the ordinary Land revenue for a certain number of years.

(e) If the new colony is sufficiently numerous Government will be prepared to grant Land free of assessment for the following purposes.

(1) For standing ground for village cattle.

(2) For remuneration.

(a) To a Police patil appointed under Bombay Act VIII of 1867.

(b) To a village watchman.

The survey and settlement commissioner submitted remarks on the proposal and observed that it would be well if the proposed concessions were limited to cases in which at least 25 registered occupants of Government Land pledged themselves to settle in the new hamlet arrangement could then be made for police administration, and for the proper registration of vital statistics. Small bodies wishing to separate themselves from a parent village should, in his opinion, be allowed to make their own arrangement without any direct encouragement from Government. When the country is fully ripe for it, the isolation of individual formers in small bodies of formers will come about in the natural course of events. Government while recognising the merits of the commissioner's proposal expressed an opinion that it should be limited according to the views expressed by the survey and settlement commissioners.

G. 5. In submitting proposals involving the transfer of any area from one district, division or province to another the following information may

be furnished for the preparation of the return (*Vide* G 2) which is now prepared in the secretariat.

1 Area to be transferred with details *i.e.* cultivated area and total.

2 Land revenue of the area to be transferred.

[G. C No. 1772 dated 12th March 1903].

8. The Governor in Council shall appoint in each district an officer who shall be the Collector [^a] 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.

Collector
of the
District.

(a) Words repeated by Act XVI of 1895 are omitted.

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.

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.

To be sub-
ordinate to
the Collec-
tor.

N. 1. Deputy Collectors.—Deputy Collectors fall under the following principal designations:—

- (1) Assistant Commissioners.
- (2) Personal Assistant to the Collector, director of agriculture &c.
- (3) Dist. Deputy Collector in charge of Talukas.

SECTION 9—PAGES 15 TO 16.

- (4) Huzur Deputy Collector and City Magistrate.
- (5) Huzur Account Officer without magistrial work.
- (6) City Magistrates, without treasury work.

G. 1. Personal Assistant.—Act XXI of 1862 relates to the appointment etc. of Deputy Collectors. Government have decided that in order to afford some relief from office routine work so as to give them time for their more important administrative duties the collectors of the heaviest districts *viz.*, Satara, Poona and Thana will be allowed Personal Assistant of the rank of Assistant or Deputy Collector according to the class of work for which aid is needed. In the case of other Districts the Collectors shall be required to show that full use is made of their existing assistants and deputies before further aid is solicited. The Commissioners should see that there is no necessary reservation of powers by the Collector under section 10. The system of putting a senior assistant in charge only of the most important Taluka and requiring him to relieve the Collector of much routine work should be adopted whenever it is considered suitable.

[G. R. No. 7018 dated 8th October 1903.]

G. 2. Commissioner in Sind.—In exercise of the powers conferred by Section I of V of 1868, the Governor in Council is pleased to delegate to the Commissioner in Sind the powers conferred on the said Governor in Council as the Local Government of the Provinces of Sind by Section 9 of Bombay Land Revenue Code (G. R. R. D. No. 9291 dated 14th September 1908.)

G. 3. Akrani Mahal.—The revenue management of the Akrani Mahal of the Taloda Taluka in West Khandesh having been entrusted to the Forest Department the Divisional Forest Officer, North Khandesh Division has been appointed *ex-officio* Assistant Collector for the Mahal.

[G. R. No. 12020 dated 24th November 1903.]

10. Subject to the general orders of Govern-^{Their}ment, a Collector may place any of his assistants ^{duties and} powers, 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 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.

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

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

G. I. Assistant or Deputy Collectors. (1) Section 10, Land Revenue Code, confers on Assistant or Deputy Collectors in charge of talukas all the powers of a Collector under the Act "or any other law at the time being in force," and empowers the Collector to delegate to Personal and Supernumerary Assistants not in charge of talukas any duties and powers. The words "any other law at the time being in force" are not limited to laws relat-

ing to land-revenue, but include all acts of the Government of Bombay in which a contrary intention does not appear. The Governor in Council now sanctions similar delegation of powers in respect of all executive orders of the Local Government. (Entry No. 15 of G. R. No. 5941, dated 26th August 1902.)

G. 2. Assistant or Deputy Collectors. There should be no unnecessary reservation under this section. (G. R. No. 7048, dated 8th October 1903.)

G. 3. Personal Assistant. Regarding the appointment and duties of a Personal assistant to the collector see G I under section 9. The collectors are authorised to delegate to their Personal Assistants the power to sign or countersign all bills for them whether as collectors, District Magistrates, District Registrars or Presidents of District Local Boards.

[G. R. No. 1642 dated 29th February 1904.]

G. 4. Personal Assistant under the court of Wards Act 1905 section 19 (2). The collector may exercise through his Personal Assistant all or any of the powers delegated to him by the Commissioner. The meaning of the words "exercise through" is to be taken as equivalent to "authorize" and the difference between delegation and authorisation is that responsibility is devolved with delegation and not with authorisation. There is, therefore, no legal objection to powers being exercised by the Personal Assistant who will sign not as "Court of Wards" but "for the Court of Wards".

[G. R. No. 2839 dated 26th March 1913.]

Collector of the district in case of temporary vacancy.

11. If the collector is disabled from performing his duties, or for any reason vacates his offices 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 for special purposes only, shall not be deemed to be an Assistant for the purposes of this section.

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

12. The chief officer entrusted with the local revenue administration of a *táluka* shall be called a *Mám-latdár*. He shall be appointed by the commissioner of the division in which his *táluka* is situated. The Mám-latdár ; his appointment.

His duties and powers shall be such as may be expressly imposed or conferred upon him by this 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. His duties and powers. [a]

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

N. I. He is called a *Muktiarkar* in *Sind* [*Vide* s. 3 (28).]

13. Whenever it may appear necessary to the Governor in Council, the Collector may [a] appoint to a *táluká* one or more *Maháلكari* [a] and, subject to the orders of Government and of the Commissioner, the Collector may [b] assign to a *Maháلكari* [b] within his local limits such of the duties and powers of a *Mám-latdár* as he may from time to time see fit, and may also from time to time direct whether the his duties and powers.

Mahálkari's immediate superior shall, for the purposes of section 203 [c], be deemed to be the Mámíatdár or the Assistant or Deputy Collector, or the Collector in charge of the táluká.

[d] When a defined portion of a táluká is placed in charge of a Mahálkari, such portion shall be called a Mahál [d].

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

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

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

[d-d] This was added by Bom. IV of 1913, s. 9 (1). The amendment enables Government to place an officer of the status of a Mahalkari in a taluka and subordinates him to a Mamlatdar without the constitution of a separate Mahal.

G. I. It is for the Collector to appoint the Mahalkaries and to assign to them such of the duties and powers of a Mamlatdar as he may think fit. The Assistant or Deputy Collector in charge of the talukas should be declared to be the immediate superior of the Mahalkari. (G. R. R. D. No. 4258, dated 1st may 1906.)

Mámíatdár
or Mahá-
kari may
depute
subordi-
nates to
perform
certain of
his duties.

14. It shall be competent to a Mámíatdár or Mahálkari, 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 Mámíatdár or Mahálkari [a].

[a] Words repealed by Act XVI of 1895 and Bom. IV of 1913, s. 9 (2) are omitted.

15. If a Mámlatdár or Mahálkari is disabled from performing his duties, or for any reason vacates his office, or leaves his táluká or mahál, 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 Mámlatdár's or Mahálkari's office, and shall be held to be the Mámlatdár or Mahálkari under this Act until the Mámlatdár or Mahálkari resumes charge of his táluká or mahál, or until such time as a successor is duly appointed and takes charge of his appointment.

Mámlatdár
or Mahá-
kari in
case of
temporary
vacancy.

J. 1. Mamlatdar's Court Act.—A substitute designated under section 15 cannot exercise the powers conferred by the Mamlédars Courts' Act (II of 1906) on the Mamlatdar to whose office he has temporarily succeeded. (*Deorao vs. Narayandas* I. L. R. 25, Bombay 318 & I. L. R. 32 Bombay, 277.)

J. 2. Mamlatdar on casual leave.—Karkun doing the work of a Mamlédar on casual leave is not a Mamlatdar. (I. L. R. 32, Bombay, 279.)

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.

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

Saving the rights of holders of alienated villages.

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.

SUMMARY (S. 16)

Section meaning of	...	...	...	N 1
1 Kulkarni Commutation	...	...	...	G 4
2 Stipendiary	...	...	...
(a) Patels	...	...	...	N 2
(b) Village Accountant	...	...	...	N 2
3 Talati charges or <i>Sajas</i>	...	...	...	G 3
4 Village officers				
(a) Powers of—under s. 9—Irri- gation Act	...	...	...	G 1
(b) Responsibility of—for preser- vation of trees belonging to Government	...	...	...

N. 1. Section meaning of.—The words ‘or others’ and “or other villages” were introduced in para 2 of the section during the discussion in the Legislative council with a view to save the rights of holders of other than alienated villages who may have the right of appointing Patels and village accountants (Leg. proceedings pages 128, 129).

N 2 Stipendiary patels and village accountants.—Stipendiary patels and village accountants (who are otherwise known as talatis in the Konkan and Gujarath districts, shanbhog in Kanara and kulkarni in the Deccan and Khandesh and Southern Maratha country districts) are appointed under this section in villages where there are no hereditary officers. In large villages there are separate patels for revenue and Police duties,

otherwise the same man does both duties. One or more village accountants or talatis are appointed for one village according to size and other circumstances. If the villages are small one Talati is appointed for two or more villages. In alienated villages, where there are no hereditary officers, stipendiary patels and even village accountants are appointed for discharging the Government duties. They are not servants of the Inamdars. Talatis' services are now pensionable under the Civil Service Regulations. Their pay is made personal.

G. 1. Powers under Irrigation Act.—The village officers are invested with powers under section 9 of the Bombay Irrigation Act. [G. N. No. 10 P. W. D. dated 11th May 1887.]

G. 2. Village officer's responsibility.—The village officers should understand that they are indirectly responsible for the preservation of forests, as being the property of the Government. The village officers in forest villages should submit a half-yearly report on the state and condition of the trees belonging to Government and in Malki numbers in their respective charges, to the Assistant collector in charge of the taluka who should forward it to the Divisional Forest officer. [G. R. No 5062 dated 19th July 1899].

G. 3. Talati's charges.—The collectors are authorised to modify Talatis' charges (sajas) without reference to Government when no additional expenditure is involved. [G. R. No 9540 dated 1st October 1909].

G. 4. Kulkarni commutation. It is in contemplation to replace the hereditary kulkarnis by talatis, by compensating their rights by annual allowances. [G. R. No 2659 dated 19th March 1913].

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.

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

N. I. Accounts &c. kept by village accountant and Police patel. The village accountant is required to keep Land revenue accounts and statistical returns and other records as prescribed in the Manual of Revenue accounts. The Police Patel is required to keep accounts etc. prescribed in the Rules under the Cattle Pound Act 1871. He is also required to keep certain registers of criminal classes in the village as may be directed by the Police officers.

Survey Officers;

18. For the purposes of Chapters VIII, IX and X [a] the Governor in Council may appoint such 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 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.

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

N. I. Compilation.—See. Compilation of orders relating to the Department of Land Records.

G. I. Retired Survey officer.—See. G. R. No. 4523 dated 23rd June 1893 at G. I under section 3 (2).

G. 2. Director and Superintendents of Land Records. The Director of Land Records and agriculture was appointed Commissioner of survey under this section for the purposes of section 98 and No. 55 of the Rules under section 214 of the Land Revenue Code by G. M. No. 5370 dated 31st July 1901. In 1906 three posts of Superintendent of Land Records and Registration were created one for each Division by G. R. No. 656 dated 23rd January 1906.

G. 3. Duties of Directors of Land records and (2) of Agriculture—The separation of the office of the Land Records and the office of agriculture having been made, two separate Directors were appointed and the duties of the two officers were fixed as under

A. Director of Land Records.

- 1 Revision of settlement proposals.
- 2 Maintenance of the survey records including inspection of survey offices and training of Circle Inspectors and village accountants.
- 3 Alteration of assessments.
- 4 Irrigation rates (The rates are to be determined by the Director of Land Records

in consultation with the Director of agriculture Vide G. circular No. 1058 dated 5th February 1906 R. D. and G. cir. No. 234 dated 5th March 1906 P. W. D.)

5. Preparation of the Records of rights.

B. Director of agriculture.

- 1 Administration of the agricultural Department.
- 2 Submission of reports on crops and agricultural prospects (including fore-casts of special crops)
- 3 Meteorological returns
- 4 Supervision of prices
- 5 Agricultural returns
- 6 Crop experiments
- 7 Trade statistics—Rail borne and Road borne traffic
- 8 Mineral statistics
- 9 Statistical information for settlement reports.

[G. R. No. 7685 dated 5th August 1907]

G. 4. Settlement Commissioner to re-employ pensioners—Powers of settlement Commissioner and Director of Land Records.

The Settlement Commissioner and Director of Land Records is authorised to re-employ pensioned non-gazetted officers of the Bombay Survey Department in receipt of pension not exceeding Rs. 100, [G. R. No. 730 dated 25th January 1909.]

Combination
of offices.

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.

N. I. Combined offices.—The following officers hold combined offices :—

- (1) The settlement Commissioner and Director of Land Records and the Inspector General of Registration.
- (2) The Superintendent of Land Records and Registration.

G. I. Powers of a city survey officer—Under this section, the 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. No. 1368, dated 9th February 1909 in the case of the survey of lands within the Municipal area of Igatpuri).

G. 2. In exercise of the powers conferred by sections 18 and 19 of the Bombay Land Revenue Code, 1879 (Bom. V of 1879), and in supersession of Government Notification in the Revenue Department, No. 6884 dated the 25th June 1915, the Governor in Council is pleased to appoint the Collector, within the limits of his district, to hear and determine appeals from any decision or order passed by a Survey Officer below the grade of a Superintendent of Survey under sub-section (2) of section 37 and section 119 of the said Code and sub-section (1) of section 50A of the Bombay District Municipal Act, 1901 (Bom. III of 1901). Provided that the Collector shall not hear and determine appeals against decisions or orders passed by Enquiry officers in charge of the city surveys of Anand, Borsad and Nadiad.

(G. N. No. 14447 dated 29th November 1917.)

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

Any officer appointed to act temporarily for any such officer shall exercise the same powers

Certain Officers' appointments to be notified. Acting appointments.

and perform the same duties as might be performed or exercised by the officer for whom he is so appointed to act.

N. I. The appointments of commissioners, collectors, Assistant or Deputy collectors and survey officers mentioned in section 16 are notified by Government. The appointments of mamlatdars and District Inspectors of Land Records are notified by the commissioners and those of Mahalkaris by collectors.

Establish-
ments.

21. Subject to rules [a] 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.

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

**Settlement Commissioner and the Superintendent
L. R.**

N. I. There is now no "Commissioner of Survey" or "a Superintendent of Survey." The corresponding officers doing these duties at present are the Settlement Commissioner and the Director of Land Records and the Superintendent of Land Records and Registration. There is no separate Survey Settlement Officer at present.

G. I. Family Cliques.—The formation of family cliques should be prevented in Government offices.

[G. R. No. 1870 dated 30th March 1881.]

22. The Governor in Council shall from ^{Seals.} time to time, 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]

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

G. I. Seals to be used by different officers.

Government have issued the following orders under this section. *Viz:*—

The officers mentioned below shall have and use seals *viz:*—

- A 1** Commissioners of Divisions and the commissioner in Sind.
- 2 Deputy Commissioner in Sind.
- 3 Collectors
- 4 Assistant collectors and the colonisation officer, Jamrao canal.
- 5 Deputy collectors (including Treasury officers of the Deputy collectors' grade) and Superintendents of Land Records and Agriculture.

NOTE—The latter officers are now called Superintendents of Land Records and Registration.

6 Mamlatdars

7 Mahalkaris

- 8 Muktiarkas (Sind) and the assistant colonisation officer, Jamrao canal
9. Huzur Treasurers C, D ; S. D. and N. D.
- 10 City survey officers N. D.
- 11 Resident Magistrates of Bandra and Borsad invested with powers under Act III of 1876 (now Bombay Act II of 1906)
- 12 District Inspectors of Land Records and Agriculture in the Northern, Central and Southern Divisions.

NOTE—These officers are now called District Inspectors of Land Records only.

- 13 Assistants in charge Head Quarter offices, Agricultural (now Land Records) Department, Dharwar and Poona, and in the Northern Division when appointed and

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 at serial numbers (1) to (3) hereinbefore mentioned
- (b) Seals of brass, copper or gunmetal (whichever may be the most durable material) of which the diameter should be $1\frac{1}{2}$ inches for the officers named at serial numbers (4) and (5) hereinbefore mentioned (except Huzur Treasury officers (see D)
- (c) Seals of brass, copper or gunmetal (which ever may be the most durable material) of which the diameter should be one inch only for the officers named at serial numbers (6) to (12) hereinbefore mentioned and

C pending the preparation of the abovementioned seals, the seals hitherto used shall continue to be used by such of the officers hereinbefore 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 inches (see para B (b) of the preceding order.)

[G. N. No. 9159 dated 18th November 1896

„ „ 10477	„	21st December	1896
„ „ 3717	„	17th May	1897
„ „ 3908	„	5th June	1899
„ „ 5219	„	25th July	1901
„ „ 5332	„	30th June	1905
„ „ 4602	„	6th May	1908]

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].

Governor
in Council
to direct
what
officers
shall
furnish
security,
and to
what
amount.

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.

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

G. I. Security bonds from Treasurers.

G. Rs. Nos. 1671 of 6th June 1885 and 3378 of 9th December 1885 prescribe a form of security bond

to be taken from Treasurers, when *Promissory Notes* are tendered as security. When personal security or sureties are given by them, the form prescribed by section 23 is to be used (G. R. No. 7522 dated 26th October 1882).

G. 2. Security for Income-tax Work.—The Commissioners are authorised to fix the amount of security for Income Tax work. (G. R. F D No. 2763 dated 13th July 1906).

G. 3. Schedule B requires no change.—The form of security bond contained in Schedule B as amended by Bom. Act IV of 1905 requires no further amendment.

[G. R. No. 1635 dated 11th February 1916.]

Fresh or additional security.

24. The Collector of 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.

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

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 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 or 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 :

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

N. 1. For the purposes of sections 25 and 26 only village officers are revenue officers. *Vide* definition in sec. 3 (1).

N. 2. It is doubtful whether the Superintendent of Survey can take any action under clause 2 of this section independent of the Collector. It appears from Sections 26 and 157, and the form of warrant (Schedule C), that it is intended that in such cases the Superintendent of Survey should apply to the Collector with a view to the necessary action being taken.

G. 1. Mamlatdars and Mahalkaris can issue notices and warrants under this section.

[G. R. R. D. No 5295 dated 1st June 1911 serial number 9.]

who may be arrested and confined in jail if he fails to produce them. Provided that no person shall be kept in confinement for more than a month.

Public moneys may also be recovered as arrears of revenue;

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

V of 1898.

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

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 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 VIII of the Code of Criminal Procedure, 1898 [a].

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.

[a] The reference to Chap. VII of Act X of 1882 is altered in accordance with Act V of 1898.

N. 1. Records prepared by an hereditary officer. The records prepared by an hereditary officer in pursuance of the duties of his office, or by order of a superior officer, or of the former or present Government, are the property of Government, and the Collector can enforce their production. (Section 70 of the "Watan Act," III. of 1874, as amended by Act V. of 1886, Section 14.)

N. 2. Land cannot be forfeited. A Collector cannot forfeit the land of a revenue officer under

this section because the public money or papers are not due in respect of the land (*Vide* sec. 153). He can only sell the right, title and interest in the land of the defaulting revenue officer under sec. 155.

G. I. Mamlatdars and Mahalkaris. Mamlatdars and Mahalkaris can issue notices and warrants under this section (G. R. R. D. No. 5295 dated 1st June 1911 entry No. 9.)

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.

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

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

Liability of surety not affected by death of principal or by his taking a different appointment. Liability of heirs of deceased officer.

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.

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.

N. I. It appears that the heirs of a deceased surety are also liable in the same manner as the heirs of a deceased principal, viz. by a suit.

How surety may withdraw from further liability.

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.

CHAPTER IV.

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

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

- (1) engage in trade, or be in any way ^{Not to} concerned, directly or indirectly, either as ^{trade.} principal or agent, in any commercial transaction whatever ;
- (2) purchase or bid either in person or by ^{Not to} agent, or in his own name or in the name ^{purchase} of another, or jointly or in shares with ^{at public} others, for any property which may ^{sale.} 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 ^{Not to be} in any way concerned on his private ^{concerned} account in the collection or payment of ^{in the} revenue of any kind in the district in which he is at the time employed ;

and no revenue officer shall

Not to
make
private
use of
public
money or
property.

(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

Not to
make or
receive
undue
exac-
tions or
resents.

(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.

SUMMARY (SEC. 31.)

1	Government servants' conduct rules ...	G	1
2	Government servants not to		
	(1) behave rudely with the public ...	G	15
	(2) receive salary for private work of others	G	7
	(3) take fees for commission for taking evidence	G	5
	(4) take part in the election of Legislative Council members ...	G	12
3	Hereditary village officers	G	2
4	Landed property	G	6
5	Loyalty-declaration of ...	G	10, 11, 13, 14
6	Pensioners-reemployment of	G	8, 9
7	Talatis	G	3, 4

G. 1. See Government servants' conduct rules in Appendix I. These rules apply to every person holding any civil office, other than a menial one, under the Government.

G. 2. Hereditary village officers.—This section does not apply to hereditary village officers. But if it is observed that such hereditary village officers avail themselves of their official position to the injury of others, the collectors and their assistants shall take due notice of all complaints from the parties injured and inflict proper punishments in any case that may be proved.

[G. R. No. 158 dated 12th January 1860.]

G. 3. Talatis not to act as money-lenders, —Talatis detected to be engaged as money-lenders in their villages should at once be dismissed. (G. R. No. 4120, dated 15th August 1878.)

G. 4. Stipendiary village accountants not to hold land other than hereditary.—Clauses (1) and (2) of Section 31 of the Land Revenue Code (which is the law in force and supersedes all previous orders) should be construed strictly in the case of stipendiary village accountants and permission should not be given to them to engage in money-lending or to purchase lands at public sales. Clause (3) if strictly enforced would prohibit them from holding any lands paying revenue to Government. But there is no objection to the holding of hereditary lands by stipendiary village accountants or absolutely to their holding of lands purchased otherwise than at a public sale. The section requires that every revenue officer who holds land paying revenue to Government in the district in which he is employed should obtain permission to continue to hold it, and the Collector can give or withhold permission according to the merits of each case, taking care that his orders are not unduly harsh. If the Collector considers that the position of a talati as a holder of land in his own charge,

taluka, or district conflicts in any case with the proper performance of his duty as a village accountant, he can have him transferred. (G. R. No. 5635, dated 31st July 1883.)

G. 5. Fees received for commission to be paid into Treasury.—Any paid servant of Government accepting a commission for taking evidence must hand over forthwith to his superior officer or the neighbouring treasury any and every sum which he may receive as a fee for his services.

Courts sending and receiving commissions should be informed that so far as Government is concerned there is no objection on its part to the defrayal of all fees that are paid or credited to Government by an equivalent amount in Court-fee Stamps. A note of such payment should be made by the transmitting Court and formally taken cognizance of by the Court executing the commission. Cancels G. R. No. 5401, dated 9th August 1888. (G. R. No. 2551, J. D., dated 11th May 1889 and G. R. No. 4893, dated 9th July 1889.)

G. 6. Register of landed property held by Government Servants.—In supercession of all existing orders † on the subject it is directed that in every office shall be kept a register in (Appendix 2) showing the landed property held by each member † in superior service. The Register shall be filled up as regards every new member of the establishment upon his first appointment whether permanent or temporary.

2. Every officer shall submit to the authority by whom he was appointed on 1st April in each year—

- (1) If he has acquired any new or alienated any old landed property during the previous year, a complete statement in the form of the register prescribed above.
- (2) if he has not acquired any new or alienated any old landed property

during the previous year, a declaration in the appended form B.* (see Appx. 2.)

3. Officers appointed direct by Government should submit the information called for in the preceding paragraph to the Department of the Secretariat concerned. (G. R. G. D. 3000, dated 10th June 1903.)

Note.—These orders are not applicable to Police officers of lower ranks than Chief Constables. (G. R. G. D. 5812 dated 4th November 1903.)

G. 7. Government Servant's regular private work.—The Government of India are entirely opposed to any arrangement by which a Government Servant receives a salary from a private employer for regular work performed even in part during office hours. With certain exceptions all Government Servants are to be considered whole time employes and their leisure must be held to be no more than is actually necessary for recreation. (Government of India Home Department, Ecclesiastical, 331 dated 19th July 1906. Ecclesiastical 22 dated 10th November 1906—G. R. No. 10396, dated 2nd November 1906.)

G. 8. Re-employment of pensioners.—Commissioners of Divisions are authorized under article 524, Civil Service Regulations, to re-employ Government pensioners who having been non-gazetted officers are in receipt of a pension of not more than Rs. 100 a month (Order No. 10 of statement accompanying G. R. No. 6453 dated 19th November 1908 F. D.)

G. 9. The Settlement Commissioner and Director of Land Records is authorized to re-employ pensioned non-gazetted officers of the Bombay Survey Department in receipt of pension not exceeding Rs. 100 (G. R. No. 730 dated 25th January 1909.)

G. 10. Declaration of loyalty.—As a condition of entrance into the Government service, it is

desirable to exact on first appointment, a solemn declaration of loyalty to Government during the period of such service and the form of declaration (printed as Appendix 28) is accordingly prescribed. This declaration should be made by all superior servants on their appointment and by those already in the service on promotion to the rank of Mamlatdar and appointments of similar status. (G. R. G. D. No. 49, dated 6th January 1909.)

G. 11. The solemn declarations need not be stamped. They are to be taken so far as superior servants already in the service are concerned, only from men obtaining substantive promotion to the rank of Mamlatdar &c. and are to be filed in the office of the Collector of the district in which the declarants are at the time serving (G. R. G. D. No. 851 dated 15th February 1909.)

G. 12. Taking part in the election of members Legislative bodies.—No officer of Government of any department or grade in the service shall interfere directly or indirectly with the free choice of a Candidate by elective bodies, or to influence or direct the action of those bodies in any ways, and no indication is to be given by any official of the manner in which he himself personally intends to vote. Government desires it to be understood that any infraction of this order will be viewed with grave displeasure. (G. R. No. 778 dated 14th February 1910.)

G. 13. Police Inspectors and Sub-Inspectors:—The declaration of loyalty in the case of Police Inspectors and Sub-Inspectors should be made in the presence of the District Magistrate of their respective Districts. (G. R. No. 1904 dated 2nd April 1910.)

G. 14. Temporary appointments.—In the case of temporary appointments, the declaration should be taken if the appointment will last for three months or more. The declaration should be dis-

pensed with if the period of appointment is less than three months. (G. R. 3772 dated 20th June 1911.)

G. 15. Relations between Officers of Government and the people.—The paramount necessity of displaying courtesy, tact and good temper 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. But since the possession of these qualities has so insignificant a bearing upon the promotion of an officer and the lack of them constitutes so serious a disqualification, the Governor-General in Council desires again to impress the importance of this matter upon the Governor in Council and to inform him, with the Secretary of State's concurrence that manifestation of grave defects of tempèr and repeated loss of self-control should be regarded as constituting inefficiency. (G. R. No. 6275 dated 26th August 1913.)

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.

Power of
fining,
reducing,
suspending,
and dis-
missing in
whom to
vest.

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.

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

SUMMARY (SEC. 32.)

1 Discharge dismissal or Removal	...	G 6,7
2 Suspension	... ..	G 1
3 Village officers:—		
(1) hereditary revenue—when to be fined by subdivisional officers	...	G 5
(2) Police patels—when to be fined by First class Magistrates	... ..	G 3
(3) Stipendiary revenue—when to be fined by Mamlatdars	...	G 2
(4) ditto by Mahalkaris	... ..	G 4

G. I. Maximum period for which revenue officers may be suspended.—The maximum period for which suspension from office should be awardable as a specific punishment under this section should be fixed at six months—this is the period mentioned in the Hereditary Offices Act (III. of 1874), and in the Bombay Village Police Act (VIII. of 1867). A maximum term of three months would in some instances prove sufficient, whilst the maximum term of twelve months would, on the other hand, seem too long. 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 unnecessary delay should be permitted to occur. Such an enquiry would ordinarily not occupy a very long period, but when it is not completed within two months from the date of the suspension of the official concerned, the Collector should monthly report to the Commissioner the cause of delay till the case has been disposed of. (G. R. No. 9981, dated 19th December 1884.)

G. 2. Mamlatdars empowered to fine village officers.—(1) The Collector may, under Section 32 of the land Revenue Code, or under Section 84 of Bombay Act III. of 1874, delegate to a Mamlatdar the power of fining village officers (stipendiary as well as hereditary) subject to a right of revision and subject to any limitation, laid down by law or rule which the Collector may think fit to impose. Government have no objection to the power being so delegated in any district in which the Collector thinks it expedient to adopt this course. (G. R. No. 2116, dated 13th March 1883, and G. R. No. 4100, dated 30th May 1883.)

G. 3. G. R. No. 4100, dated 30th May 1883, delegating to Mamlatdars the power of fining hereditary village officers, was obviously intended to apply to revenue officers only, and not to override in any way the provisions of the village Police Act VIII. of 1867, Section 9 of which expressly limits the power of fining Police Patils to First Class Magistrates. If the resolution in question has been construed anywhere as empowering Mamlatdars to fine Patils for neglect of their Police duties, the practice is incorrect and should be discontinued. (G. R. No. 1953, dated 15th March 1893.)

*G. 4. Mahalkaris empowered to fine village officers:—*Collectors are authorized to delegate to any Mahalkari in his district the power to fine hereditary village officers in sums not exceeding Rs. 2 subject to the conditions in order Nos. 1 and 2 above. (G. R. No. 5891, dated 23rd August 1903.)

G. 5. Power to fine may be delegated to sub-divisional officers only.—In G. R. No. 9241, dated 24th September 1909, Government prohibited the Collector etc., from punishing the village officers with fine directed that these should be dealt with more severity than by a mere fine when an occasion for punishing them arises. But on the representation of the Divisional Commissioners who brought to the notice of Government the inconvenience arising from these orders, Government have directed that the power to fine may be delegated to Sub-divisional Officers in accordance with the orders contained in G. R. No. 2116 of 13th March 1883 and 5891 of 28th August 1893 save in respect of stipendiary village accountants organised in a graded service in whose case the modification of the existing orders is not considered necessary. In the opinion of Government, fining should not be restored to freely, but should be employed as a punishment to be inflicted on the spot and in public, in cases of wilful slackness and disobedience on the part of village officers. (G. R. No. 10431, dated 14th November 1912.)

G 6. Dismissal, discharge, or removal.—The punishment of dismissal should in future be considered to be a bar to re-employment in Government service and should be reserved for serious cases. Whenever the dismissal of a public servant is ordered, the order of dismissal must be in writing and must contain a clear statement of the reasons for the order.

In less 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 reemployment under Government, the term "removal" or "discharge" should be used. (G. R. No. 2749, dated 19th May 1905.)

G. 7. Dismissals:—Notification of ineligibility for Government service.—It is necessary that a

report should be made to Government in each case as these notifications have to be issued by Government. (G. R. No. 5989, dated 19th October 1910 J. D.)

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.

SUMMARY (SEC. 33.)

- 1 Copies of confidential letters not to be given &c. G 3
- 2 Dismissal-Procedure G 1, 2
- 3 Misconduct-inquiry into charges for G 4, 5, 6.

G 1. Procedure to be followed in dismissing a public servant.—In all cases of dismissal, the dismissing authority should always record in English, under his own hand-writing, 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. (G. R. No. 1549, dated 9th May 1883).

G 2. In all cases of dismissal of Native subordinates for misconduct the officer should make an enquiry in judicial form before passing an order, or making recommendation, for dismissal. It is not meant that the admission of the evidence should be restricted by the law of judicial evidence. All evidence which in the opinion of the enquiring officer conduces to moral conviction should be admissible, but in whatever form received it should be noted and explained to the person charged.

Much evidence could be recorded simply in the form of questions to which the person charged should be required to give specific answers. The person charged should be allowed besides to place on record a full written statement of his defence. (Para. 7, G.R. No. 7170 J.D. dated 16th October 1883.)

G. 3. Copies of letters &c. not to be given—In conducting inquiries the accused person need not be granted copies of letters. The grant of confidential letters is open to serious objection. (G.R. No. 3780 dated 20th may 1904.)

G. 4. Procedure to be adopted when instituting enquiries into charges of misconduct on the part of Government servants:—It appears desirable to summarise and amend the existing orders relating to enquiries into charges of misconduct on the part of Government officers for the information and guidance of all Heads of Offices.

(2.) Government have noticed with regret that extreme delay sometimes occurs in the departmental enquiries, which necessarily precede further action in regard to charges of misconduct which may end in a criminal prosecution. Government desire to insist on their invariably being conducted with the utmost promptitude. Delay is most injurious both in the public interests and also in those of the officer concerned, inasmuch as it tends to render more difficult the discovery of the truth and keeps under suspicion, which may be unmerited, the individual affected.

(3.) When the preliminary enquiry indicates a criminal offence, application to prosecute should at once be made to the authority empowered to dismiss, and permission should be promptly granted, if that authority agrees that there is a *prima facie* case for a prosecution and does not consider that there exist adequate reasons, which must always be recorded, for not instituting a prosecu-

tion. This procedure is, however, unnecessary in those cases generally in which the misconduct amounts only to an offence against a special law or rules relating to official duties, though made triable by the Criminal Courts. In such cases, unless there are circumstances which render a criminal prosecution advisable, the misconduct may more suitably be dealt with departmentally. On the other hand, a belief that there is not sufficient evidence to make out a *prima facie* case before a Criminal Court is not a proper reason for substituting a departmental enquiry regarding a criminal offence proper for a prosecution.

(4.) On sanction to prosecute being obtained, the officer incriminated shall at once be placed before a Magistrate to be dealt with according to law. On the termination of the judicial proceedings it will be the duty of the departmental superior to consider the evidence and findings and determine whether the retention of the subordinate in the service is desirable or not. This is a matter entirely for his consideration, subject to an appeal to higher departmental authority. He is responsible for the retention or dismissal of his subordinates as may be expedient in the interests of the public service, and, in the case of an acquittal by a Magistrate, whilst he must carefully consider the reasons, he is not justified in retaining a servant whom he believes on the evidence to be corrupt or otherwise so discredited as to be unfitted for retention in the public service. In minor matters which have been made punishable by a court, if the superior officer has referred the matter to the decision of a magistrate, he will be well advised to accept the Magistrate's conclusion; but it does not always follow that in such cases conviction affects an officer's character so as to necessitate his dismissal or removal from service. In the more serious cases touching the moral character of a public servant the decision as to the retention or

dismissal or removal of an officer must ultimately rest with the departmental superior. The responsibility is his and cannot be avoided by the substitution of the opinion of the Magistrate or Judge for his own. Before an order of dismissal is made the officer as a general rule should be summoned and informed of the reasons for which it is considered proper to dismiss him, and any explanation he may have to make should be recorded and considered. When no prosecution has been instituted the departmental enquiry must be so conducted as to give to the accused servant a fair trial. This requires that he shall be confronted with the witnesses who incriminate him and be shown the documents used to substantiate the charge against him. He must be allowed to cross-examine hostile witnesses and to call in his own for examination, and his explanation must be reduced to writing and carefully considered. A departmental officer is not, it is true, bound by the technical rules of the Evidence Act, but the above principles, which are based on the universally recognised canons of fair dealing, must be attended to, and care should be taken to have the papers compiled in such manner as on their face to satisfy an appellate authority that the enquiry has been so conducted.

(5.) The punishment of "dismissal" should in future be considered to be a bar to re-employment in Government service, and should be reserved for serious cases. Whenever the dismissal of a public servant is ordered the order of dismissal must be in writing and must contain a clear statement of the reasons for the order.

In less 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.

(6.) These orders embody the general principles which should be followed, but do not apply to petty cases of disobedience, insubordination and the like, which are usually disposed of in correspondence, provided that the officer inflicting the punishment takes care to see that the person concerned knows with what he is charged and has had an opportunity of explaining or denying the charge. (General Department Circular No. 2749, dated 19th May 1905.)

G. 5. Government of India Home Department (Public) No 1507 dated 24th June 1907, calls attention to 2031-40, dated 15th October 1898 and 37—1389—1404* dated 29th July 1879. (cited in Bombay Govt. No. 2218, dated 18th August 1879), regarding investigation of charges of misconduct against Government servants.

(2) The most common defects observed (by Government of India) are:—

(1) that officers frequently fail to comply with the prescribed procedure requiring a written charge and a written defence in respect of each offence;

(2) that after framing charges they often fail to give a specific finding on each charge; and

* In order that a dismissed servant of Government may be able to exercise his right of appeal, it is obviously necessary that the charge against him, his defence, and the order thereon, should be reduced to writing. In the case of public servants, who are dismissed in consequence of facts or inferences elicited at a judicial trial, or in the case of persons who abscond with an accusation over their heads, this procedure may be unnecessary or impossible. But in all other cases of the dismissal of public servants, the charge against a public servant should be reduced to writing, his defence should be either taken in, or reduced to, writing, and the decision on such defence should also be in writing. In many cases (such for instance as that of a clerk at an outlying tahsil station) the officer who passes the order of dismissal may not be able to make the enquiry himself, and the proceedings leading to dismissal would be conducted by the superior officer on the spot. The record of such charge, defence and decision would then furnish sufficient information for, and should be submitted to, the superior officer or the Government, to whom the dismissed servant may prefer an appeal. (G. of L. L. No. 37-1389-1404, dated 29th July 1879,—vide also paras. 4 to 9 of Despatch No. 42 of 1851, from the Court of Directors.)

(3) that sometimes they do not even discuss the charges framed but confine their remarks on the whole case to some major charge which has not even been framed against the person who is the subject of the inquiry.

(3.) The defects mentioned above and any other similar defects should be avoided. (G. R. G. D. 4493 dated 23rd July 1907). Refers to G. R. 6117, dated 7th November 1898.

G. 6. For detailed orders, see compilation of standing orders in the General Department (1901). Pages 15 to 23.

Fine not to exceed two months' pay ;

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

how recovered

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.

N I. Vide section 187, clause I.

Appeals.

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

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.

G. 1. Orders regarding fining, &c., of subordinates drawing not more than Rs. 35 not appealable.—The object of this section is to preclude all appeals to the Commissioner from the decision of a Collector in cases in which he punishes any of his subordinates in receipt of a salary not exceeding Rs. 35 per mensem by fine, dismissal, reduction or suspension and to render such order final, subject only to revision by Government. No order passed by a collector of the nature referred to in clause 1 of this section should be reversed, modified, or interfered with by the Commissioner. (G. R. No. 3872, dated 24th July 1880, and G. R. No. 611, dated 27 January 1898.)

G. 2. Officers of other Departments.—The limits in section 35 apply to public servants holding subordinate appointments in the Forest, Customs, Salt opium and Abkari Departments (G. R. R. D. No. 3010 dated 14th May, 1900.)

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 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.

An officer's liability to criminal prosecution not affected by this Act. Officer may be suspended during trial, and subsequently suspended, reduced, or dismissed.

CHAPTER V.

OF LAND AND LAND REVENUE.

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

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, nallas, lakes, and tanks, and all canals, 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.

[b] (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.

[^b] (3) Any suit instituted in any Civil Court after the expiration of one year from the date of any order passed by the Collector 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 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.

[^b] (4) 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.

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

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

SUMMARY UNDER SEC. 37.

1	Section 37, history, scope and meaning of N 1,2,3,5. G 5,9,17,20. J 3,4,6,7,11,13:
2	Adverse possession of or against Govt. ... ..G 10, 16, 19. J 6, 10
3	Appeals G 26
4	Appropriations of land ... G 21, 25
5	Beds of rivers &c. } G 2
	(a) Govt. villages } J 2, 8

(b) Govt. in Inam and khoti villages J 9, 12

(c) Govt. in municipal limits see
municipality rights of.

6 Easement	...	...	...	G 12, 13
7 Fishing	...	...	...	J 5
8 Forest lands	...	...	...	G 3, 15, 23
9 Land Acquisition Act	...	...	...	G 24
10 Municipality, rights of	...	...	...	G 6, 7, 8, 11, 28
11 Notice to Govt.	...	...	...	G 14
12 Roads, lanes &c.	see municipality rights of them.			
13 Rules under	...	...	...	N 4. G 27
14 Talukdars	...	...	...	G 18
15 Village site rights to	...	...	...	G 1, 22
16 Waste lands	...	...	...	G 4. J 6, 7

NOTES.

N. 1. Section.—History of—Sub-section (1) was the original section 37 as passed in 1879. It was then based on section 7 of Regulation 17 of 1827 and section II of Bombay Act IV of 1868.

N. 2. Section additions to sub-sections 2, 3 and 4 have been added by Bombay Act XI of 1912, as already pointed out.

N. 3. Section—scope and meaning.—This Section is one of the most important sections in the Land Revenue Code. It is therefore necessary to explain the scope and meaning of the original Section and the amendments made in 1912.

In the case of *Suranna vs. The Secretary of State* printed at I. L. R. 24 Bombay 435, the Hon. Mr. Justice Parsons remarked on the old Section (now clause 1), that no provision was made therein for any inquiry by the collector nor was any power given to him to determine what is or what is not Government land and what are the rights of individuals.

The objects and reasons of sub-sections (2) and (3), newly added, were as follows:—In its original form section 37 only provided for the disposal by the Collector of Government property, and did not provide for any enquiry where there was a dispute as to whether property belonged to Government or not. This is now provided for in the new sub-section (2). In the new sub-section (3) the provisions of section 135, (which is now repealed) are included in an amplified form so as to cover all descriptions of property on which orders may be passed under sub-section (1) or (2). This extension is necessitated by the uncertainty whether the period of limitation prescribed in article 14 of the first Schedule of the Limitation Act applies to cases not covered by the original section 135.

N. 4. Rules under sub-section (4) Vide G. 27.

N. 5. Connection with section 61.—This section is connected with Section 61. A man cannot be called a trespasser upon land under Section 61 if he has some private rights in that land.

GOVERNMENT ORDERS.

G. 1. Village sites.—According to the custom of the country, the Proprietary right in all village sites vests in Government unless it has been unmistakably purchased.

- (1) Government circular No. 3361. of 12th June 1873
- (2) G. R. No. 4239 of 24th July 1873.
- (3) G. R. „ 5292 of 22nd September 1873.

G. 2. Beds of rivers:—The sovereign's rights are as great under the Hindu and Mahomedan laws as under the English. The property in the beds of navigable rivers as in the seashore and the bottom of the sea is reckoned amongst the *Jura regalia* of the crown.

- (i) 8 Bombay H. C. R. 87 and
- (ii) G. R. No. 1604 of 10th March 1877.

G. 3. Transfer of Forest Land.—The sanction of Government should be obtained in each case of transfer to the Forest Department of land required for forest chowkis and compounds. (G. R. No. 5724, dated 20th September 1877).

G. 4. Waste lands.—Waste lands belong to the state 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 4-5-81.

G. 5. Proprietorship, the chief point.—Section 37 of the Land Revenue Code is the only law by which an Assistant Collector holding an enquiry into claims to sites can be guided. Act XI of 1852, Bombay Act II of 1863 and Section 128 of the Code, if they were applicable, would only affect claims to exemption from payment of land revenue, not claims to proprietary rights (G. R. No. 7996, dated 9th October 1884).

G. 6. Rights to beds of tanks, &c., in Municipal limits.—Section 37 of the Land Revenue Code only declares the right of Government to the beds of rivers and to streams 'which are not the property of individuals or of aggregates of persons legally capable of holding property,' and would not therefore affect Section 17 (b) of the Bombay District Municipal Act, 1873,† if it vested such beds in Municipalities. But the words used in Section 17* (b) of the last-named Act are 'all public streams.' It does not appear that those words include either the banks or the beds of such streams, which, as section 17 now stands, do not vest in Municipalities unless transferred to them by Government under clause (c) of that section. (G. R. No. 4551, dated 6th June 1885.)

G. 7. Rights to public streets in Municipal limits.—The only case in which a Municipality can sell or grant any portion of a public street to an

* Now Section 50 (2) (b) of Bombay Act 3 of 1901.

Individual house-holder is under clause 2* of Section 30 of Bombay Act VI, 1873† 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. Where there is no Municipality the public streets vest under Section 37 of the Land Revenue 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. No. 5965, dated 20th August 1886.)

G. 8. Open ground not forming part of public roads.—The order in G. R. No. 5965 dated 20th August 1886 regarding encroachment on public roads is inapplicable to any open space or portion of open ground which cannot be reasonably claimed as forming part of public road. Whether any such piece of ground is a part of public road or not is a question of fact which must be determined according to the circumstances in each case. If a person has taken possession of land to which he has no right, the law should be enforced against him with the view of ousting him or if that is found inexpedient, the occupancy should be recognised to be his on his giving usual occupant's Kabulayat and paying the usual occupancy price, if any. (G. R. 3815 dated 23rd June 1887.)

G. 9. The clause 'Meaning of the clause 'except in so far etc.'—except in so far as any rights

* Now clause 1 of s. 90 of Bombay Act 3 of 1901.

&c may be established in and over the same' has the effect (a) of precluding partial proprietary rights and (b) of throwing the burden of establishing private rights on the persons who assert them (G. R. 1697 of 13th March 1888).

G. 10. Adverse possession.—60 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.

(i) G. R. 728 dated 28-1-1891.

(ii) G. R. 3274 dated 12-5-1891.

(iii) I. L. R. 9 Madras 183.

G. 11. Rights to town walls, etc., in Municipal limits.—Municipalities have no right to the sites 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 sites in Municipalities.

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. The only powers which Municipalities have is to make, repair and keep properly cleansed such high-ways and do such things upon them as are necessary for conservancy, 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. Municipalities have no control over provincial high-roads or trunk roads. (G. R. No. 1890, dated 13th March 1891.)

G. 12. Easement.—No grant of an easement in respect of Government land may be made by any officer except with the express sanction of Government (G. R. 3864 of 6-6-91 and I. L. R. 9 Bombay 227)

G. 13. Easement.—An easement to take water from a river would be acquired by 60 years enjoyment as of right against Government.

- (i) I. L. R. 14 Bom. 220.
- (ii) Sect. 15 of the Easement Act 1882.
- (iii) G. R. 1376 of 24-2-1892.

G. 14. Notice to Government.—A notice published in a newspaper should not be accepted by the Collector as sufficient for the purposes of the Civil Procedure Code G. R. 4803 of 3-6-1892.

G. 15. Transfer of Forest land for Government purposes.—When land is required for Government purposes no formal alienation thereof from the Reserved forest is necessary. (G. R. No. 7779, dated 19th September 1894).

G. 16. Enjoyment for a considerable time raises a presumption of ownership.—Government concurred in the following opinion of the Advocate-General, who said as follows :—

“The decision of Ismail Ariff *vs.* Mahomed Ghose (L. R. 20, I. A. 99) has no application to suits for restoration of possession brought against Government by persons who had 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 Government the onus of showing that the land was not private property (*vide* Section 110, Indian Evidence Act), and it would not be sufficient to rely only upon the words of Section 37 (*vide re* Ahtaji Keshao Tambe, I. L. R. 18 Bombay, 674, and Secretary of State *vs.* Jaithabhai Validas, I. L. R., 17 Bombay, 299). It would not be necessary for the person suing to shew 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 Government records, be sufficient to show whether the land was private property or not" (G. R. No. 1873, dated 27th February 1896.)

G. 17. Proof sufficient to evict.—When executive officers intend to evict persons in unauthorized possession 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. Stacking of wood or grass is not tantamount to juridical possession. (G. R. No. 9661, dated 1st December 1896.)

G. 18. Talukdars rights of—Government have no objection to the disposal by the Talukdars of miner products *e. g.* stone and kunker &c in their lands.

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.

G. 19. Adverse possession.—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 60 years neither he nor anybody else, did or could claim the land as of right with power to exclude all other possession G. R. 3169 of 22-5-1900.

G. 20. Section—scope of—Wrong entry in Survey Papers as Government land.—Certain land was wrongly entered in Survey Papers as Government land and subsequently sold as such. When the real holder came forward afterwards and claimed the land Government offered him the purchase money and some additional compensation G. R. 7126 of 14-11-1900.

G. 21.—Appropriations.—Assignment of sites for Itga, temple, &c., and for extension of village site are appropriations under section 37 rather than assignments under Section 38. (G. R. No. 555 dated

29th January 1901, and G. R. No. 9424, dated 3rd October 1906.)

G. 22. Village sites—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 sec. 110 of Evidence Act,

(i) G. R. No. 8413 of 27-5-1907

(ii) I. L. R. 16 Bom. 338

G. 23. Forest lands.—All Collectors may sanction the use of forest land to another government 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. No. 6473, dated 29th June 1908).

G. 24. Land Acquisition Act.—It is most inadvisable to acquire land ostensibly for one purpose and to use it for another purpose for which land could not be compulsorily acquired G. R. 9831 of 11-10-1909.

G. 25. Appropriations Annual statements of—Annual Statements of appropriations of land for public purposes sanctioned by Commissioners and prescribed by G. R. No. 6095 of 10-8-1904 should be discontinued.

G. R. 11506 of 6-12-1911.

G. 26.—Vide section 19, G 2.

G. 27. Rules under sub-section (4).—In exercise of the powers conferred by section 37, of the Bombay Land Revenue Code, 1879 (Bom. V of 1879), and section 50A sub-section (3) clause (c), of the Bombay District Municipal Act, 1901 (Bom. III of 1901,) the Governor in Council is pleased to make the following rules prescribing the notice required to be given of enquiries and orders under the said sections:—

- I. (a) In the case of a proposed enquiry under section 37 of the Bombay Land Revenue

Code, 1879, or under section 50A of the Bombay District Municipal Act, 1901, a written notice of the enquiry and of the time and place and subject matter thereof shall be affixed, not less than ten days before the enquiry, in the following places, namely:—

- (i) Where the enquiry is to be held under section 37 of the Bombay Land Revenue Code 1879, at the chavdi or some other public place in the village, in which the property is situate ;
 - (ii) Where the enquiry is to be held under section 50A of the Bombay District Municipal Act, 1901, at the Municipal office;
 - (iii) In either of the said cases, in a conspicuous position upon the property with respect to which the enquiry will be held.
- (b) In either of the aforesaid cases a copy of the notice shall 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 of the Bombay Land Revenue Code, 1879, for the service of a summons.
2. (a) Written notice of any order passed under section 37 of the Land Revenue Code, 1879, or under section 50A of the Bombay District Municipal Act, 1901, specifying briefly the subject matter, contents and date of the order passed, shall be served in the manner specified in clause (b) of rule I upon the persons referred to in that clause.

- (b) Such written notice shall also be affixed in the place or places specified in clause (a) of rule I.

(G. N. No. 8866 dated 13th September 1916.)

G. 23. Weekly Bazar sites in Municipalities.— Government in their Resolution No. 2579 dated 15th March 1918 forwarded to all Collectors for information and guidance the following opinions of the Remembrancer of Legal Affairs.

Question No. 1. Whether a Municipality is liable to pay occupancy price and rent for land which has never been formally granted to them free but has been used as the site of the weekly market since a time anterior to the establishment of the Municipality. Does the land vest in the Municipality, as being a market, under section 50 (2) (a) of the District Municipal Act ?

Opinion of the Remembrancer of Legal Affairs.
—“‘Market’ means ‘a public time and appointed place of buying and selling; also purchase and sale’ (see Wharton’s and Stroud’s dictionaries). Under section 50 (2) (a) of the Bombay District Municipal Act, 1901 public markets vest in the Municipality unless they have been specially reserved by Government. Under rule 35 of the Bombay Land Revenue Code Rules plots of open ground which have been dedicated to public use or already transferred to the municipality are declared to be specially reserved to Government.

In this case the site in question appears to have been used by the public as a weekly market from a period anterior to the establishment of the Municipality. It would therefore be a public market within the meaning of the Municipal Act. It would also apparently be a place dedicated to public use and transferred to the Municipality within the meaning of the Land Revenue Code Rule cited above. Consequently in my opinion it has been specially reserved by Government, but vests in the Municipality.”

Question No. 2. The question at issue is the legal one whether or not the Municipality is liable to pay occupancy price and rent for a market-site from which it derives profit but which existed before the Municipality came into being. The facts seem to be that the market did really exist before the Municipality was constituted.

Opinion of the Remembrancer of Legal Affairs.—"The present case relates to land at Jalgaon which has for a long period been used as a site for the weekly bazar. Even if the site was not so used before 1875 it would, on being appropriated to such use, have vested in the Municipality (which is said to have been established in 1864) under section 17 of Bombay Act VI of 1873 as a 'public market' not specially reserved by Government. The municipality now proposes to lease part of land for building, but not so as to interfere with the market. The question is whether Government can levy land revenue on such part of the land as the municipality may lease for building, and whether the Commissioner, when granting sanction to the lease under section 40 (2) of Bombay Act.III of 1901, can stipulate that portion of the rent shall be paid by the municipality to Government as land revenue.

"2. The first question can be approached in three ways. Firstly the site of the market vests in the municipality by statute only *qua site* of a market, and if the land ceases to be so used, the corporation has no longer any title to it and the land reverts to its former owner: see *Gunendra Mohan Ghosh vs. Corporation of Calcutta* (1916), *Indian Law Reports*, 44 Calcutta 689. In my opinion the same principle must be applied to market sites as to streets. In this view it is open to Government to assess the land to land revenue when it ceases to be used as a market. If the municipality attempted to dispose of the land for building, it would cease to be market and would

revert in the original owner, so the municipality could not give the purchaser any title; Section 18 of Bombay Act VI of 1873 (cf. section 51 Bombay Act III of 1901) could not therefore apply in this case. The original owner to whom the land would revert (in a case like this where there appears to be no evidence of the original dedication or appropriation and the land did not apparently originally belong to the municipality) would be Government, on the principle embodied in section 37 of the Land Revenue Code, unless any person can make good a claim to it.

“ 3. Secondly, all land is liable to land revenue except when wholly exempted under especial contract or under a law (section 45, of the Land Revenue Code). This provision, enacted in 1879, only states the law as previously existing (cf. Bombay Regulation XVII of 1827, chapter I). Land vesting in a municipality by virtue of a statutory provision such as section 17 of Bombay Act VI of 1873 would not be relieved of this liability to land revenue merely because it vests in the corporation. Section 18 of the Act of 1873 does not exempt such land from land revenue; it merely states that the proceeds and rents of municipal property go to the municipal fund; but if the land, when it vests in the municipality, is liable to land revenue, the right or property of the municipality to or over the land only subsists subject to such liability. So far as appears from the papers, Government have never promised not to assess the land.

“ 4. Thirdly, rent may legitimately be distinguished from land revenue, and as section 18 of the Act of 1873 and section 51 of the Act of 1901 refer to proceeds and rent, they should not be read as referring to land revenue [for the distinction between the two, see *Sadashiva vs. Ramkrishna* (1901), *Indian Law Reports*, 25 Bombay 556].

“ 5. The foregoing opinion is not in accordance with that given by one of my predecessors (the late

Sir E. Fulton) in his memorandum (vidê Government Resolution No. 6111 dated 9th September 1887) to the Revenue Department No. 1102 dated 23rd August 1887, but although direct authority is unfortunately scanty, I think I have given the correct view of what is undoubtedly a difficult question. Of course if land were granted by Government to a municipality, the liability of the land to land revenue would depend on the terms of the grant, express or implied; but here there is no evidence of a grant.

“6. The second question referred to in paragraph 1 above should in my opinion be answered in the affirmative. In a case where the land has not been exempted from land revenue it is lawful for the Commissioner to require, as a condition of granting sanction to the lease, 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 sections 52 and 146).

“7. The assessment of land revenue on land which has not been assessed before is not subject to the law of limitation.”

G. O. No. 2579, R. D., dated 15th March 1918.

G. 29. Proposed amendment of section 37.— Government concur in Mr. Anderson's view that section 37 (3) of the Land Revenue Code gives finality to the Collector's order only and that fresh legislation is required to give similar finality to a Survey officer's order under that section. The following draft clause with the note explaining its object prepared by the Remembrancer of Legal Affairs, is approved:—

DRAFT CLAUSE.

Amendment of sec. 37 of Bombay V of 1879.	}	In sub-section 3 of sec. 37 of the Bombay Land Revenue Code, 1879, the words ' by the Collector ' shall be repealed.
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NOTE.

Under sub-section 2 of section 37 of the Bombay Land Revenue Code, a collector or Survey officer is empowered to pass orders adjudicating a disputed claim to land or other property as between Government and any person; but while sub-section 3 gives finality to the decision of a collector after the lapse of a year from the original or appellate order, it does not provide in a similar way for the finality of the decision of a Survey officer. It was undoubtedly the intention of the original Bill II of 1912 which passed into law as Bombay Act XI of 1912 that the orders of both officers should be treated on an equality in this respect, and the report of the Select Committee makes it clear that they did not intend to make any distinction. The error was therefore, as it appears, clerical and the object of this clause is to rectify it.

2. The amendment should be included in the next Repealing and Amending Bill.

3. City Survey inquiry work should not be stopped pending legislation.

Order No. 11312 R. D. of 22-11-1916.

JUDICIAL DECISIONS.

<i>J. 1.—</i>	2	B. H. C. R.—345	<i>Vide</i>	J	8
	8	B. H. C. R.—87	"	G	2
	I. L. R.	9 Madras 183	"	G	10
	"	9 Bombay 227	"	G	12
	"	14 Bombay 220	"	G	13
	"	16 " 338	"	G	22
	"	17 " 299	"	G	16
	"	18 B. 674	"	G	16
	"	17 A. 571	"	J	6
	"	23 B. 31	"	J	9
	"	23 B. 761	"	J	9
	"	24 B. 435	see	N	3

J. 2. Beds of rivers &c.—Under sect 37, land formed by the waters of a sea, river &c. 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.

Sec. 37 embodies the common law of England which has been made applicable to India saving subsisting rights of individuals. A person claiming a right to dig stones in the bed of the sea below high-water mark must prove 60 years possession.

(i) 6 Moore's Indian Appeals 267.

J. 3. Section scope of.—Mere entry of lands in survey records as *Sirkari* does not constitute an act of possession and will not start limitation.

(i) 6 Bom. H. C. R. 125.

J. 4. Section scope of—A customary right in, or a profit *a pendre* over a piece of land cannot be claimed by custom however ancient or uniform the exercise of that custom may have been.

(i) P. J. 1879 Page 274.

J. 5. Fishing.—The Right of the Public to fish in the sea and its subjacent soil is common, and is not the subject of property.

(i) I. L. R. 2 Bombay 19.

J. 6. (a) mere assertion of a right for over 60 years or,

(b) merely managing waste lands in a village which vest in Government.

(c) Or mere custom,

does not give anyone any title by prescription or otherwise.

(i) I. L. R. 3 Bom. 174.

(ii) I. L. R. 17 Allahabad 571.

J. 7. Waste lands.—Cultivation of plots in Government waste for a season or two does not constitute a property or possession of the person so cultivating. Dalhi or kumbri cultivation, for several generations, of patches of waste or warkas land does not create a proprietary title.

(i) I. L. R. 3 Bom. 452.

J. 8. Beds of rivers &c.—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 side of their holdings.

- (i) I. L. R. 7 Bom. 209.
- (ii) 2 Bombay H. C. R. 345.
- (iii) Sections 46 and 64 of L. R. C.

J. 9. The ownership of the bed of a stream or river within the limits of an Inam village vests in the Inamdar.

- (i) I. L. R. 22 Bom. 377
- (ii) I. L. R. 23 Bom. 31 to 46.
- (iii) I. L. R. 23 Bom. 761.

J. 10. Adverse possession of Government.—Occupation by Government of certain land, believing to be Government, and constructing a building on it, none having claimed any rent &c for over 12 years, gives Government adverse possession against any person laying claim to it.

- (i) I. L. R. 23 Bom. 137.

J. 11. Section scope of—This section applies to what is not the property of individuals I. L. R. 25 B. 299.

J. 12. The khots of the village of Bele Budruk in the Ratnagiri District 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 were treated for nearly a 100 years as a part of the village. *Held* that the plaintiffs were entitled to the right claimed and that sec. 37 presented no bar to the claim. (Secretary of State vs. Wasudeo, 1907, I. L. R. 31 Bombay, 456, 1906.)

J. 13. When a collector passes an order, under the provisions of section 37 of the Land Revenue Code (Bombay Act V of 1879) with reference to land which is *prima facie* the property of an individual who has been in peaceful possession thereof

and not of the Government, he is not dealing with the Land in his official capacity, but acting *ultra vires*.

(I. L. R. 36 Bombay 325.)

Lands may be assigned for special purposes, and

when assigned shall not be otherwise used without sanction of the Collector,

^{a]} **38.** Subject to the general orders of Government, it shall be lawful for survey officers whilst survey operations are proceeding under Chapter VIII [^{b]}], and at any other time for the Collector [^{c]}], 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 otherwise [^{d]} used without the sanction of the Collector [^{c]}]; and in the disposal of land under section 37 due regard shall be had to all such special assignments.

[a] As to the local repeal of s. 38, see para. 5 of foot-note [a] on p. I, *supra*.

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

[c] "Collector" was substituted for "Commissioner" by Bom. IV of 1905, 1st Sch.

[d] This word was substituted by Bom. IV of 1913, s. 11, for the original words "appropriated or assigned".

SUMMARY (s. 38).

Section—meaning of	...	...	N 1, G 9.
Rules under	...	...	N 2.
Appropriation	...	...	G 10.
Assignments—Ancient	...	...	J 2,
Burial ground	...	...	G 5, 8.
Gairan lands	...	...	G 1.

Military purposes

(1) camping grounds	G2, 6.
(2) cantonments	G 2, 3, 4.
(3) others	G 2
Open air spaces in municipal areas	G 11, 12.
Survey officers, power of	N 3
Threshing floors	G 7, 13, 16.
Village sites	G 13, 15.

NOTES.

N 1 No private rights exist in lands assigned under sec. 38. No private rights in such lands can accrue while the assignments continue. The erection of huts or other structures on such lands or the recovery of rent in respect of them by private persons is unauthorised and illegal.

It is advisable that the purposes for which existing assignments have been made should be distinctly specified in the revenue records and should be notified to the villagers.

N 2, Rules—*Vide*.

N 3. This section gives 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. (Select Committees's Report on the Revenue code Bill.)

GOVERNMENT ORDERS.

G. 1. Change of assignments.—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. No. 3121, dated 18th May 1888.)

G. 2. Land assigned for military purposes not to be used for any other purpose.—No land (1) within cantonment limits, (2) forming part of (a) military encamping ground, (3) otherwise held for military purposes shall be used or occupied by

railway, or otherwise, without the sanction of Government of India in the Military Department. (This G. R. Cancels G. R. No. 9085, dated 18th November 1892.) (Government of India, in their Military Department No. 415, dated 27th February 1893, in G. R. No. 1978, dated 16th March 1893.)

G. 3. Cantonment.—Land within cantonment limits should not be granted for the purpose of erecting cotton presses. (G. R. No. 2817 dated 21st April 1893.)

G. 4. Cantonments.—Applications for the transfer of lands in Cantonments to the Civil Departments should be submitted to the Government of India in the Military Department for sanction through the local Military authorities only. (G. R. No. 8678, dated 23rd October 1894.)

G. 5. Burial Grounds.—A portion of service Inam land was assigned for a burial ground, the judi on the land being reduced (G. R. 2347 of 16-3-96.)

G. 6. Camping grounds for Troops.—Curtailement of camping ground specially assigned for troops is not allowed. (G. R. No. 6881, dated 16th September 1897.)

G. 7. Assignment different from appropriation.—The orders conveyed in G. R. No. 8558, dated 6th December 1882 R. D. and in entry No. 3 of *Schedule A* appended to G. R. No. 720, dated 8th March 1887, F. D., restricting within certain limits the powers of Commissioners to sanction, under Section 37, the *appropriation* of lands, for roads, schools, dharmashalas and other public purposes, were not intended to apply to assignments of lands under Section 38. The grant of land for threshing floors is an instance of such an assignment, and may be disposed of by the Commissioner on his own authority. (G. R. No. 3317, dated 12th May 1899.)

G. 8. Burial ground.—Where burial ground is provided by purchasing private land, the cost

should be met from local funds, as the duty devolves on Local authorities (G. R. 4953 of 9-8-1900)

G. 9.—The word "Collector" was substituted for "Commissioner" by Bombay IV of 1905, First Schedule—Such assignments being revocable are apparently no more than "licenses" within the meaning of chapter VI of the Easements Act (V of 1882) and confer no right to hold land as against Government. G. R. 4347 of 25-6-1902 (3) L. R. 21 B 684.

G. 10. Collector's Power.—The authority to transfer lands to other Departments should be delegated to Collectors; such transfers cannot be regarded as assignments. (Entry 19 of G. R. No. 4347, dated 25th June 1902.)

G. 11. Open air spaces—the following conditions are generally attached to assignments of lands for use as open air spaces in municipal areas:—

- (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 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.

The Collector of the district shall see necessary note as to the assignment of the land is made in the survey registers and shall take measures for ensuring that the conditions shall be carefully observed and the Commissioner shall satisfy himself when he visits the town that they have not been infringed.

G. R. Nos. 5319 dated 12th July 1904,
10078 dated 6th October 1908,
12447 dated 7th December 1908.

G. 12. Government sanction is necessary for assigning an open air space to a municipality (G. R. 4306 dated 27 April 1907.)

G. 13. Threshing floors.—When land is acquired at the expense of the villagers for assignment as a threshing floor etc., the amount contributed by the villagers should 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. No. 4804 dated 28th May 1910).

G. 14. Village sites.—A Collector can appropriate lands for village sites (G. R. No. 5295 dated 1st June 1911, Entry 16).

G. 15. Collectors may grant sites revenue free inside a village site where the assessment capitalised at 4% does not exceed Rs. 100 (G. R. No. 9193 dated 29th September 1911).

G. 16. Threshing floors.—Government provided the villagers with land required for Khalvadi 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 subject to the payment of the agricultural assessment on the land.

Note:—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. No. 4748 of 18-5-1912).

JUDICIAL DECISIONS.

J. 1. I. L. R. 21 Bombay 684 *vide* G-9.

J. 2. "Land set apart for special purposes" is not confined to lands set apart under Section 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 operation took place under Chapter VIII of Land Revenue Code (Pranlal *vs*, the Secretary of State P. J. 366 of 1897.)

[^a] 39. The right of grazing on free pastu-
 rage 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 in any particular instance, prescribed by the
 Collector with the sanction of the Commissioner.

Regulation
 of use of
 pasturage.

The Collector's decision in any case of dispute as to the said right of grazing shall be conclusive.

(a) As to the Local repeal of s. 39 see para 5 of footnote (a) on page 1, *Supra*.

G. I. Grazing on sides of roads.—The right of grazing on roadsides should not be sold. (G. R. No. 5312, dated 28th June 1882.)

J. I. The phrase "village cattle" does not include the cattle of any roving grazier who may choose to squat for a few months on the public ground of a village. (L. L. R. 2 Bombay, 110.)

[^a] 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, 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

Concession
 of Govern-
 ment
 rights to
 trees in
 case of
 settle-
 ments
 completed
 before the
 passing of
 this Act.

completed before the passing of Bombay Act I of 1865 [b] this provision shall not apply to teak, black-wood or sandalwood 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.

Ditto
in case of
settle-
ments
completed
after the
passing of
this Act.

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.

Ditto
in case of
land taken
up after
completion
of settle-
ment.

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 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 a village.

[a] As to the local repeal of s. 40, see para 5 of foot-inte (a) on p. 1, supra.

[b] 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.

SUMMARY (s. 40).

Section—meaning of N 1
 rules under N 2

Trees—rights of

(1) Government N 1, G 1, G 2.
 (2) holders of land under the ordinary survey tenure J 4
 (3) holders of land on restricted tenure G 3
 (4) holders of land in Kanara J 2
 (5) „ in South Konkan J 2
 (6) holder of Warkas land in Thana J 3
 (7) Maktedar of a village G 4
 (8) Tenant at-will of Government... J 5

NOTES:

N. 1.—section 40, meaning of—The following classification will make the meaning clear:—

1	2	3
Villages.	Government right to trees in unalienated lands in the villages &c	occupant's rights to trees in the lands
I. Villages in which original settlement was introduced <i>before</i> 17-7-79		
(a) before the date (7-1-65) of Act I of 1865	(1) Teak, blackwood and sandal wood 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	All other trees
II. villages in which the original settlement was introduced <i>after</i> 17-7-79.	Trees referred to in (2) above	
III. In the case of land taken up <i>after</i> the original settlement	(1) Trees referred to in (2) above (2) Trees <i>expressly</i> reserved at the time of granting permission to occupy the land.	

N. 2. rules—*Vide*. Rules under s. 214.

GOVERNMENT ORDERS.

G. 1. Trees-rights of Government—The legal position of Government in respect of forests and rights to trees was circulated with G. R. No. 2493 dated 4th May 1881 [*Vide* Cordeaux's compilation (1893) pages 138 to 144].

G. 2. Trees-rights of Government.—A summary of all the important orders &c is also given in the Standing orders of Government (R. D.) pages 1933-1968.

G. 3. Trees in lands on restricted tenure.—Trees should be reserved when land is sold on restricted tenure.

G. R. 2564-17-4-03
5033-22-7-02

G. 4. Trees-rights of Maktedar.—A Maktedar of a village has no property whatever in the soil and consequently none also in the trees planted by him, when the Makta or lease expires.

G. R. 795 of 20th November 1909
6 B. H. C. R.—191.

I L R 16 Bombay 547
„ 22 Calcutta 742
„ 30 Allahabad 134

Broom's maxims (7th Edition) page 305.

JUDICIAL DECISIONS

<i>J. 1.</i> —6 B. H. C. R. 191	} <i>Vide G 4</i>
16 B. Y..... 547	
22 Cal 742	
30 Allahabad 134	

J. 2.—In the South Konkan, Dunlop's proclamation of 1824, and in Kanara Harris' proclamation of 1823 are relied upon by landholders as giving them certain rights to timber. These proclamations are quoted in

8 B H. C. R. 2
and

I. L. R. 3 Bombay 728 respectively.

J. 3—Rights to trees in Warkas lands in the Thana district are determined in the case of Wasudeo vs. the Collector at P. J 1879, pages 274-287.

J. 4—An occupant under the ordinary survey tenure loses all rights created by him in respect of trees when the land is forfeited for default in the payment of land revenue (10 B. H. C. R. 419)

J. 5. When a purchaser from a tenant at will of Government on having been given a notice to quit puts forward a claim for the value of the trees planted by him, such purchaser has no valid title to trees as a mere tenant of land in the absence of a special agreement. On the expiration of a tenancy and reversion of land to the State, all private rights therein would become extinct, and a claim to enjoy usufruct of trees in the same cannot be put forward against Government (6 B. H. C. R. -188).

41. The right to all trees specially reserved under the provision of the last preceding section, and to all trees, brush-wood, jungle, or other natural product growing on land set apart for forest reserves under section 32 of Bombay Act I of 1865 [a] or section 38 of this Act, and to all trees, brush-wood, 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.

[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.

SUMMARY (Sec. 41)

Section-meaning of	...	...	...	N	I
Rules under	...	...	...	N	2

.....

Timber-free grants of—have from Govern- ment waste lands	...	...	G 12, G 14
Trees-Babhul	...	...	G 3, G 10
Trees-encouraging the planting of	G 15, G 18, G 21		
Trees-fruit	...	...	G 10

Trees in—

(1) Forest lands	...	...	N 3, G 1
(2) Government lands	...	...	G 1, G 2
(3) Occupied survey nos.	...	...	G 2, G 13
(4) Open spaces in village sites	...	...	G 11
(5) Railway limits...	...	...	G 8

Trees-rights of—

(1) Dist. H. Officers			
(a) commuted	...	...	G 17
(b) uncommuted	...	...	G 4
(2) Gadkaris	...	...	G 20
(3) Service Inamdars—			
(a) in Government villages and kadim—in alienated villages	...	...	G 5,6,7,9,16,19. J 1
(b) Jadid—in alienated villages	...	...	G 7

N. 1. Section, meaning of.—The words 'or other natural product' were added with the view of protecting existing rights of Government to such products as lac, honey, gum, resin, catacha etc. (Leg. pro. 1877 page 132)

N. 2. Rules.—*Vide*

N. 3. Trees in Forest lands.—As regards the disposal of trees in Forest lands *Vide* Standing orders of the Forest Department.

GOVERNMENT ORDERS.

G. 1. Rights to trees in Government lands.
—Whatever is affixed or planted in the soil becomes subject to the same rights of property as the soil itself. If a man plants a tree in Government land, the tree becomes the property of Government and the planter has no right thereto or to the produce thereof. A claim to enjoy the produce cannot be maintained by custom. Prescription does not support the claim as it cannot run against the Crown. No claim can be maintained unless there has been a special arrangement or agreement with Government or its officials that the claimant should take the produce. Enjoyment of the produce of trees on Government waste lands by custom or under a lax system of administration does not amount to recognition by Government of a right. The exception in favour of private rights in this section extends to lands set apart for Forest reserves under Section 38. (G. R. No. 6550, dated 3rd November 1881.)

G. 2. Trees in occupied survey nos.—If the trees grow on land included in an occupied survey number they belong to the occupant. If they grow in the dry beds of streams which are not included within the boundaries of such a number they are to be treated as Government property, unless and until the occupant can establish his claim to them.

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 Land Revenue Code regarding alluvion. (G. R. No. 649, dated 30th January 1882).

G. 3. Special concessions for arboriculture:—

It is desirable that the cultivation of the Babul should be encouraged as largely as possible, and the District Officers should use every endeavour to induce holders of land and other persons to undertake to form Babul plantations on lands suitable for the purpose near the villages. The benefits to be derived from the adoption of this course should be explained to them, and any application for land that may be received should be submitted for the orders of Government, with the recommendation of the District Officer and the Divisional Commissioner. Government will be prepared to grant any reasonable concessions which may be considered necessary in each case (G. Rs. Nos. 6282, dated 5th August 1884, and 9384, dated 26th November 1884).

G. 4. Of District hereditary Officers.—The District hereditary officers have no right to trees standing on the lands which they hold for service uncommuted and without proprietary rights. (G. R. No. 419, dated 17th January 1887).

G. 5. Of service Inamdars.—The holders of service Inam lands have no right to the timber or forest on their lands unless they hold a title deed conferring proprietary rights in express terms. (G. R. No. 7633, dated 9th November 1887.)

G. 6. Service Inamdars and occupants distinguished or defined.—The distinction between a holder of service lands and an ordinary occupant is clear. 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. Government 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. No. 5987, dated 6th September 1888.)

G. 7. In an alienated village in which the grant of service land was made by Government prior to

alienation of the village to the Inamdar, and was thus excluded from Inam to the latter, the right to trees in such service land would undoubtedly vest in Government, while in villages where the service grant was subsequent to the alienation of the village, such right must be considered to vest in the Inamdar. (G. R. No. 7664, dated 17th November 1888.)

G. 8. Trees inside railway fence.—All trees unless reserved, inside a railway fence are the property of Railway Company. (G. R. No. 237, dated 11th January 1890, and G. R. No. 9313, dated 18th December 1883.)

G. 9. Rules regarding cutting of trees in service lands.—As regards cutting of trees in service lands the following rules have been sanctioned, in modification of G. R. No. 9578, dated 19th December 1889. *vis*:—

- (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.

Where the Custom is for the land to pass from an occupant to his natural heirs independently of the watandar 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. No. 6376, dated 9th September 1890).

G 10. The formal taking of Survey Nos. for the cultivation of Babul or fruit trees should be encouraged. Applications for lands on special terms should be invited and submitted through the Commissioner for the orders of Government. All Mamledars and other Taluka Officers should be distinctly given to understand that the Commissioner will make a favourable record of efforts to promote arboriculture. (G. R. No. 4118, dated 14th June 1901).

G 11. Special concessions have been allowed for planting of trees in open spaces in villages. The form of Sanad which is issued is given as Appendix 3. (G. R. No. 8966 dated 27th December 1901).

G 12. Free grants of timber by Commissioner from waste lands outside Forest.—The Commissioners of Divisions are empowered to make free grants of timber from Government waste lands outside forests, 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 purposes.

G. R. No. 8811 of 4-9-1907.

G 13. Trees in occupied lands in the districts of Kolaba, Thana and Ratnagiri.—A long press-note on this subject has been issued by Govt. (*Vide* G. N. No. 12060 dated 26th Nov. 1908 on pages 2078-2081 of the Bombay Govt. Gazette Part I dated 3rd December 1908).

G 14 Free grants of timber by Collectors.—Collectors are empowered to make free grants of timber from Govt. waste lands upto the value of Rs. 50 (G. R. 3736 dated 14th June 1909).

G 15. Tree-planting.—The Govt. of India requested the Bombay Government to take measures for the promotion of arboriculture in the Bombay Presidency (P. W. D. 2289 of 26th October 1910 and 60 dated 13th January 1911).

G 16. Trees in service Inam lands.—Mamlatdars and Mahalkaris should permit cutting of trees in service Inam lands subject to the usual conditions referred to in G. R. No. 6376 of 9th September 1890. (G. R. No. 5295 dated 1st June 1911, entry 22.)

G 17. Trees in non-service watan lands of District hereditary officers.—These officers have a right to cut trees in non service watan lands (G. R. 7195 dated 28-7-1911.)

G 18. Concessions to be given to private persons for planting trees.—With a view to encouraging private persons 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 Department, the Governor in Council is pleased to issue 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 Department 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 Govt., 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 Govt. as the Mamlatdar or Mahalkari shall direct.

All Collectors in the Presidency proper should be requested to give the widest possible publicity to these orders, and utilise every opportunity to induce the villagers to apply for the benefit of the rules.

(Paras 2 & 3 of G. N. No. 5 dated 2nd January 1913, R. D. printed on pages 4 & 5 of the Bombay Govt. Gazette Supplement dated 9th Jan. 1913).

G 19. Trees in service Inam lands.—Selected Divisional forest officers are empowered to grant permission to cut reserved trees in service Inam lands (G. R. 5651 dated 16th June 1913).

G 20. Trees in Gadkari lands.—Gadkaris have no right to teak trees in Gadkari lands. (G. R. 9680, dated 9th October 1914).

G 21. Trees—As regards the suggestion that the word "permit holder" in paragraph 2 of Government Resolution No. 4 dated 2nd January 1913 may be considered to include his heirs also, the Commissioners of Divisions should be requested to state whether (a) the concession granted in the Resolution in question to the permit-holder should not be continued to his successors, (b) if so, whether, to avoid disputes and divided claims, the concession should not be continued only to the eldest son or, in the absence of sons, to the eldest daughter, and (c) if so, whether it would not be desirable to require such heir to apply in order to have the permit continued in his or her name.

(G. R. No. 13000 dated 30th October 1917.)

J I. Trees in Patil Inam.—No Civil Court can try suits against Government for trees in Patil Inam land (P. J. 1893, page 186—Appeal No. 41 of 1891.)

[^a]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. [^a] 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.[^b]

[^{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.

SUMMARY (Sec. 42.)

Roadside trees belonging to Govt.	
(1) duty of Village Officers	... G 1
Roadside trees belonging to Local Boards	... .. G 6, 9
Roadside trees planted by land holders in their land	... ..
(a) cutting and lopping	... G 7, 8
(b) encouragement of	... G 4, 9
(c) Preservation of	... G 2, 4
(d) Sanads for	... G 3, 5

GOVERNMENT ORDERS..

G 1. Protection of road-side trees.—It is the duty of village officers to protect Government trees on local and provincial roads without any additional remuneration. (G. R. No. 2731, dated 5th May 1876.)

G 2. Preservation of Road-side trees.—The propriety of laying down a general law concerning road-side trees planted by landholders in their own land was much discussed by the Select Committee on the Revenue Code Bill. That Bill, as introduced, contained a specific provision on the subject [Section 107, clause (*c*)], but it was much opposed and it has been omitted from Section 42 of the Bill as read a third time and passed on the 15th April 1879.

The only way to prevent such road-side trees being cut down is to apply the provisions of Act

X. of 1870 (now I of 1894) for the acquisition for public purposes either of the trees, or of both, the trees and the land on which they stand. (G. R. No. 3495, dated 3rd July 1879.)

G 3. Road-side trees.—The Collectors are authorised to give an assurance to persons who will plant trees on the boundary of their fields. A form (R. M. 45) has been prescribed in which the assurance called 'Sanad' is to be given. Under this sanad, the holder and his children are to enjoy the fruit of the trees hereditarily for ever. Govt. have no claim to the fruit, but the trees are the property of Govt. and shall not be cut down or injured by any one. When fields are mortgaged, care is to be taken to enter the name of the owner, and not of the mortgagee, in the sanad. (G. R. 3283 of 26-6-1880, G. R. 4849 of 14-9-1880.)

G 4. Road-side trees.—The following is the substance of a circular issued by the Commissioner, C. D. to his Collectors :—

Little attention is paid now a days to the planting of roadside trees. The Collectors are requested to make an effort to revive interest in this work. The most suitable system of roadside tree-planting was communicated in G. R. 8428 dated 15th November 1883 and in the instructions issued by the late Mr. Ashburner (Rev. Commr. N. D.) in his circular No. 1253B dated 5th April 1875.

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. The name of any Mamlatdar or Mahalkari doing special good work in this matter should be brought to the Commissioner's notice.

G 5. No occasion will arise for the issue of Sanads by Collectors for planting road-side trees as under orders passed in G. R. P. W. D. No. 309 c. w.—1189—23rd June 1890, the management of

road-side trees on provincial roads has been transferred to the P. W. Department, (G. R. R. D. No. 1037 dated 7th February 1891).

G 6. There is no objection to the management of road-side trees on local fund roads in charge of the P. W. D., being transferred to that Department wherever such a course is deemed expedient and the Local Board agrees to it. The transfer may be made under the orders of the Commissioners who will consult the Chief or Superintending Engineer concerned. (G. R. No. 4087 dated 18th June 1898 R. D.)

*G 7. Delegation of powers:—*The powers of a Collector under Sections 42, 43, 70 and 156 should be delegated to Mamladars. It does not seem advisable to delegate powers under Section 90. (Serial No. 17 of the statement accompanying G. R. R. D. No. 4347 dated 25th June 1902).

G 8. Mamlatdars can permit the cutting and lopping of roadside trees (G. R. 5295 of I-6-II (entry 22)).

*G 9. Roadside trees.—*Govt. have now directed, with a view to encouraging roadside trees planting by private agency, that the planters may be allowed to take the loppings and wood of the trees provided that the trees are not lopped or cut down, without the previous permission of the Collector. The agency to be employed in any district for planting and maintaining trees on Local Fund roads maintained by Public Works Department, shall be subject to the decision of the Commissioner of the Division. G. R. No. A-1970 dated 5th October 1911.

Recovery
of value of
trees, etc.,
unauthor-
izedly
appropri-
ated.

43. Any person who shall unauthorizedly fell and appropriate any tree or any portion thereof or remove [a] from his holdings [a] any other natural product [a] whether of the like

description or not [^a] 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, 1st Sch.

N I, The insertion was intended to make it clear that sect. 43 refers not only to natural products, *ejusden generis* with trees but also to stones etc. (Bill I of 1905).

G I.—The Collector's powers under this section are delegated to Mamlatdars. (G. R. 4347 of 25-6-1902. Entry 17).

G 2.—Trees in (a) *Government waste land and*
 " " (b) *Private lands, reserved by Government*. Section 75 (c) and rule 2 under it, so also sect. 76 or any of the provisions of the Forest Act, were not applicable to the unauthorised cutting of trees in (a). Such cases can be dealt with by the Collector under sect. 43 L.R.C. and prosecutions can be made either under rule III under L.R.C. or sect. 379 I.P. Code.

The unauthorised cutting of trees in (b) can be punished under section 75 (c) of the Forest Act and rule 2 under it. The ruling number 49 dated 6-10-1896, (Queen Empress vs. Koya Mavaji) is no bar to such a prosecution. (G. R. No. 3394 dated 25th May 1903).

Regulation of supply of fire-wood and timber for domestic or other purposes.

[^a]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 fire-wood 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 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.

[a] As to the local repeal of s. 44, see para. 5 of foot-note [a] on p. 1, *supra*.

GOVERNMENT ORDERS.

Free grants of wood from Govt. forests.

Note 1. These orders do not apply to Sind. (G.R. 1051 of 15-2-1887).

Note 2. Grants made under these orders are restricted to the talukas and to the inhabitants of talukas in which there is forest. (G. R. No. 1662 of 2-3-1897).

Note 3. If an Inamdar has forest rights his ryots should look to him for free grants. (G. Rs. 3752 of 20-6-1887 and 5688 of 18-8-1887).

Powers delegated by Government.

Officers.	Objects and authorities for delegation.	Maximum value in each case of grant.
1. Commissioners.	(a) The relief of poor people whose houses have been destroyed either by fire or flood.	
	(b) The construction of dwellings where members of wild tribes or new settlers are too poor to purchase wood.	Rs. 250.
	(c) Agricultural purposes (such as implements) in cases in which such grants are absolutely necessary.	
	(G. R. No. 1051 of 15-2-1887.)	
	(G. R. No. 21 of 6-1-1903.)	
	(G. R. No. 11221 of 7-12-1912.)	
	(d) To agricultural labourers or sub-tenants of registered cultivators.	
	(G. R. No. 2614 of 27-3-1885.)	
	(G. R. No. 11221 of 7-12-1912.)	
	(e) Sheds for postal runners torches etc.	
	(G. R. No. 4061 of 5-8-1880.)	
	(G. R. No. 8812 of 8-11-1884.)	
	(G. R. No. 1743 of 23-2-1885.)	
	(G. R. No. 11221 of 7-12-1912.)	
	(f) Construction of huts for poor subordinates of Government departments, other than Forest.	
	(G. R. No. 1891 of 13-2-1901.)	
	(G. R. No. 11221 of 7-12-1912.)	
	(g) To taluka local boards for improvement of local communication in bridging nallas, water-courses etc.	Rs. 250.
	(G. R. No. 1051 of 15-2-1887.)	
	(G. R. No. 11221 of 7-12-1912.)	
	(h) Repairs and construction of village school houses.	
	(G. R. No. 4073 of 31-5-1895.)	
	(G. R. No. 11221 of 7-12-1912.)	
2. Collectors.	(a) to (h) as given against No. 1.	Rs. 100.
(except the Collector of Kanara) After consulting Divisional Forest Officer.	(i) Religious or charitable purposes to village communities, public bodies etc. in their collective capacity provided the trees are not required for shade and that the D. F. O. is consulted beforehand.	Rs. 50.
	(G. R. No. 7113 of 31-7-1912.)	

3. Sub-divisional officer. (a) to (b) as given against No. 1. Authorised to submit direct to D.F.O. recommendations up to Rs. 20.
4. Conservators and Deputy Conservators of forests in charge of circles. (a) To village communities, public bodies, Departments of Government or sections of the communities in their collective capacity. (G. R. No. 8885 of 3-10-1910). Rs. 1,000.
(b) In other cases. Rs. 500.
5. Deputy Conservators of not less than 10 yrs. service. (a) and (b) as given against No. 4. Rs. 100.
6. Divisional Forest Officers. (a) to (e) as given against No. 1. Rs. 100.
(f) Construction of huts for poor subordinates of the Forest department. (G. R. No. 1662 of 2-3-1897). Rs. 100.
(G. R. No. 11221 of 7-12-1912).

In sanctioning a free grant of timber, the sanctioning officer should fix in each case the time from the date of the communication of sanction to the grantee, for which the grant will hold good, and notice should be given to the grantee of the time so fixed. (G. R. No. 7724 of 5-11-1903).

As regards free grant of timber from waste lands outside forests see G. R. No. 8811 of 4-9-1907 and G. R. 5736 of 14-6-1909 at G. 12 and G. 14 under section 41.

All land liable to pay revenue unless specially exempted. **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.

And special exemption may in case of necessity be overruled for a time. 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.

G. 1 Liability to pay land revenue.—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. (G. R. 4344 dated 18th June 1886.)

G. 2. Limitation.—There is no rule of limitation, in bar of the right to levy assessment (G. R. 8879 dated 19th August 1915).

G. 3. Grant of land for residences connected with religious or educational institutions.—Copies of the following letter from the Government of India to the Government of Madras are forwarded to the officers concerned for information and guidance.

“I am directed to refer to your letter No. 1416-A-17-1 dated the 30th August 1917, regarding an application for the alienation of an area of 4.70 acres of land in the village of Mudumarnad in the Karkal taluk of the South Kanara district, in favour of the Vicar for the time being of the Holy Cross Church at Hosabettu, for the construction of a school with a play-ground and garden, a chapel, a cemetery and a residence for the priest in charge. In view of the orders conveyed in Mr. Holme's letter No. 373-128-2 dated the 16th March 1911 the Governor in Council doubts whether he is authorised to permit the assignment of any portion of the land for the purposes of a parochial residence, and asks that the bar imposed by the ruling of 1911 upon grants made partly for residential and partly for religious or educational purposes may be removed; or, if this is not possible, the special sanction may be accorded to the alienation in the present case.

“2. In reply I am to say that the Government of India are averse from grants of land being made specifically for the purposes of a residence apart

from the erection of religious or educational buildings, but they have no objection to a parsonage or a clergy house being built on land which it is proposed to grant for religious or educational purposes when the land to be occupied by the parsonage or similar buildings is an integral part of the land required, as in the present case, and is small in amount both in itself and relatively to the total area involved. Subject to the observance of this general principle, the Government of India leave it to the Government of Madras to sanction such grants at their discretion so long as the total value of the grant is within their power of alienation. I am however to remark that the area of 1.39 acres which it is proposed to devote to the site of the priest's residence in the present case appears to the Government of India to be neither small in amount in itself nor relatively to the total area involved, and I am to suggest that the question of reducing this area should be considered.

(G. R. No. 555, dated 19th January 1918.)

J. I. Strict proof for exemption.—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 the Government has forfeited its right to enhance the assessment in respect of such lands. (*Shapurji Jivanji vs. The Collector of Bombay*, I. L. R., Bombay, Vol IX, 1885, page 483.)

Liability of
alluvial lands
to land
revenue.

[a] **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 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.

[a] As to the local modification of s. 46, see para 5 of footnote [a] on p. 1, *supra*.

SUMMARY (S. 46.)

Section-meaning of ...	...	...	N-2, 3
<i>Rules</i> ...	...	...	N 1
Alluvial land—			
(a) artificially formed ...	...	...	G 3
(b) meaning of ...	...	...	G 2, J 3
(c) on alienated holdings ...	...	...	G 1, G 2
(d) severed from original holding			
by sudden flood ...	...	...	G 2, J 3
Submerged land ...	...	...	J 1, J 2

NOTES.

N 1 rules—Vide

N 2 This section refers to alluvion formed on alienated lands. Alluvion formed on Government lands is dealt with in sections 63 and 64.

N 3 When the Land Revenue Code Bill was before the Local Legislature, a bill providing for cases of alluvion, &c., was before the Legislative Council of India and which, if it had been passed into law, would have governed cases falling under this section, but as that bill has been withdrawn there is at present no special law on the subject. Cases falling under this section will, therefore be governed by the ordinary law of the country.

GOVERNMENTS ORDERS.

G. 1. Alluvial lands formed on alienated holdings—A case recently occurred in which some alluvial land was formed, some years ago, close to a survey No. held as personal Inam. The holder of the personal Inam petitioned that the proprietary right to the alluvial land vested in him under Section 46 of the Land Revenue Code, but that it was sold every year by public auction, till the land was given into his possession and requested that in the circumstances stated the money on account of the sale-proceeds of the right, which was credited to Government, might be refunded to him. The case being referred to Government was ordered to be disposed of in accordance with the opinion of the Legal Remembrancer given below :—

“The ordinary law, independent of the Land Revenue Code, is that the riparian proprietor becomes the owner of land gained from a river by gradual accretion; and the applicability of this principle to the Bombay Presidency has been recognized in *Nasarwanji Pestonji vs. Nasarwanji Darasha* (II Bo. H. C. R. 366) † As the petitioner is the Inamdar of the adjoining land, I think he was entitled from the beginning to the possession of the newly-formed land, assuming, of course (as I think may probably be assumed owing to the smallness of its area), that it was formed by accretion and was not transferred bodily from some other holding. The law on the subject is concisely explained in the footnote on page 368 of the volume of the High Court reports above mentioned.

“2. But though I do not think that Government had at any time any legal right to the land, the question of paying over to the petitioner mesne profits involves other considerations. By law he has no claim to them. He has enjoyed the land

† Special appeal No. 425 of 1864. *Hold* that land gained from a river by gradual accretion belongs to the owner of the adjacent soil by the title of the occupancy.

since 1882, and any right to previous profits is time-barred. The sum which is claimed is trifling in amount but the principle of refunding money which at the time it was collected, was levied *bonâ fide* under the impression that Government was entitled to it, may if admitted, constitute an inconvenient precedent.

"3. Under the circumstances, I think Government might follow the course laid down in G. R. No. 1110 of 1st March 1878, and merely refund arrears from the date of the earliest discoverable petition, in which the petitioner may have laid claim to this land.

"4. I do not think there is any reason for treating the passing of the Land Revenue Code as the date from which a refund of mesne profits should be sanctioned as that Act does not appear to affect in any way the claimant's title." (G. R. No. 1094, dated 17th February 1888.)

G. 2. The claim to alluvial land.—The question of a claim to a particular alluvial land was referred to the Remembrancer of Legal Affairs, who reported as follows:—

"The case reported is one in which during a flood in a river soil has been washed up so as to form a considerable area of new land adjoining the Inam land of some Girassias, which was previously on the bank of the river. Such land is alluvial within the meaning of Section 46 and vests under the ordinary law of accession in the Girassias.

"The only exception is that defined by Lord Mackenzie (Roman Law), when, 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. When no such exception can be

established the owner of the land which receives the addition is the owner of the accreted land. This is the general law§ which existed before the L. R. Code was passed and which has not been affected by it. Section 46 merely determines the liability of the new land to the payment of land revenue." (G. R. No. 8820, dated 21st December 1891.)

G. 3. Alluvial land artificially formed.—Such lands artificially formed in the vicinity of Inam lands cannot be granted as Inam (G. R. 8011 dated 25th August 1912)

§ The law at present in force on the subject of alluvial accretions is that contained in Section 46 of the Land Revenue Code. This section, while it lays down the manner of dealing with such accretions so far as their liability to the land-revenue is concerned, does not enter into the question of right to such accretions, but deliberately leaves it to be determined by the "law (if any) for the time being in force." There is at present no such law in existence, and consequently cases of the nature must be determined and disposed of in accordance with the ordinary law under which, as explained by the Remembrancer of Legal Affairs, "the riparian proprietor becomes the owner of land gained from a river by gradual accretion." This law has now been authoritatively upheld by Government, and all cases of rights to alluvial accretions must hereafter be disposed of in accordance therewith.

It must be observed that 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 accretions. Under the section in question as interpreted above, 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 will, "in respect of their liability to the payment of land-revenue, be subject to the privileges, conditions or restrictions as are applicable to the original holding" on which such accretions are formed.

Such newly-formed land when found to exist at the time of survey is to be dealt with by the survey officer in the ordinary way, that is, it is to be included in the survey number on which it was formed, unless its area is sufficient to admit of its being made into a separate survey number, and is to be measured, demarcated and classed according to the rules in force applicable to lands of a similar description, its full survey assessment being recorded in the survey papers. In respect of liability to payment of revenue, the land will be subject to the same privileges, conditions or restrictions as are applicable to the original holding. Thus, if original holding be "personal Inam" held under the "summary settlement," the payment of revenue on account of the alluvial land if it exceeds the limit will be regulated according to the terms of that settlement. In the case of the original holding being held on service tenure, the newly-formed land will be subject to payment of full assessment as "Bhar Judi" or "Bhar Akar Salami."

J. 1. Where land has been submerged proof of actual possession would apparently be sufficient *prima facie* evidence of possession during the submersions. (Secretary of state *vs.* Krishnamoni Gupta L. L. R. 29 Cal. 575) Mazhar Husain *vs.* Biharisingh L. L. R. 28 All. 760.

J. 2. The right to soil submerged:—If by the irruption of the waters of a river, tidal or non-tidal a new channel is formed, 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 exclusive property of the owner, free from all rights whatsoever, in the Crown or in the public (Thakurain Ritraj *vs.* Thakurain Sarfraj Bom. L. Reporter, VII 1905, page 872.

J. 3. Alluvion defined:—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 land is added to the estate of an adjoining owner,” the land continues to be the property of the original owner. Accretion to be considered “gradual” must be by gradual, slow and imperceptible means Narendra *vs.* Achhaibar—L. L. R. XXVIII, Allahabad, 647).

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,

Assessment of land revenue in cases of diluvion.

not being less than half an acre in extent, [a] is lost by diluvion [b].

[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

G. I. Collectors can reduce assessment due to diluvion. (G. R. 1369 dated 4th February 1916).

J. I.—When any land is submerged by inroads of a river and is reformed after several years, the owner is entitled to the land as it is not alluvial land giving any right to Government, but where the holder has obtained remission of revenue on account of the submerged area, he may be considered to have abandoned right over it.

(13 Moore's Indian Appeals 467).

Manner of assessment and alteration of assessment.

Prohibition of use of land for certain purposes.

[a] **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.

- (a) for the purpose of agriculture,
- (b) for the purpose of building, and
- (c) for a purpose other than agriculture or building.

(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 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.

[a] This section was substituted by Bom. IV of 1913, s. 14, for the original section.

SUMMARY (SEC. 48.)

Section 48 (a)	}	N 1 to N 12
history, meaning and scope			G 1, 5.
(b) rules under	}	Appendix 4 and
		<i>Vide</i> rules.
1 Altered assessment how	}	N 4 to N 14.
and when leviable ...		G 8, 16, 17, 18, 20, 21, J1.
2 Buildings :—		
(a) before Act I of 1865 in lands assessed to agriculture at a revision survey after this Act		G 2, 3,
(b) erected after this Act in lands surveyed before it ...		G 4, 6, 7,
(c) existing in unalienated lands settled after this Act when the area under the building is not excluded from the survey guarantee ...		G 11,
(d) in Mharki or other service Inam lands		G 9, 10,
(e) in house sites or open spaces in village sites		G 13,

- (f) used as farm buildings in
Potkharab G 14, 19,
- (g) used for non-agricultural pur-
poses in Potkharab really
unusable and therefore un-
assessed to agriculture ... N 13,
- 3 Roads—disused in Alienated and
unalienated lands G 15,
- 4 Salt-works—in Alienated lands ... G. 12

Notes under Section 48.

N. 1. History.—This section was first based on section 2 clause 1 of Regulation 27 of 1827 and section 25 of Bombay Act I of 1865.

N. 2. Original section in 1879.—The section as originally passed in 1879 was amended by Act 6 of 1901 and replaced by a new section by Act 4 of 1913.

N. 3. Amendments.—The original section with subsequent amendment and substitution is given below before explaining.

(a) Why the changes were made, and

(b) How the amended section is connected with sections 52, 61, 65, 66, 102, 103, 106 and 187.

Original section as it stood in 1879.

A—“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.—A.

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 section 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."

In the amendment made in 1901, the section practically remained the same, except the addition of the following clause after the letters A—A.

"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."

In 1913, in addition to some verbal alterations, the principal change was the substitution of the word "used" for the word "appropriated."

N. 4. Objects of amendments.—The objects of the amendments in 1901 were,

- (a) 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.

N. 5. The substitution of the word "used" for the word "appropriated" in 1913 was necessitated by a ruling of the Bombay High Court (I. L. R. 34-Bombay 239), which held that the word "appropriated" implied something more than temporary use, and that therefore altered assessment could not be fixed for stacking timber in agricultural land in

the fair season only. The word used was therefore substituted, as it includes both temporary and permanent uses. Before this ruling, it had been actually the practice for revenue officers to interpret the word "appropriated" as including both temporary and permanent uses. The discussion in the Legislative Council at the time of introducing the change of wording shows that Government did not intend to alter the assessment if the temporary diversion of agricultural land to a non-agricultural purpose (e.g. a cultivator building a plague hut in his field), was not made for the purpose of profit.

N. 6. Connection with other sections.—The section does not apply to trespassers on Government land, to whom section 61 applies.

N. 7. The section does not apply also 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.

N. 8. The words "the land revenue leviable under the provisions of *this* Act" in clause 1 and words "the assessment fixed under the provisions of *this* Act" in clause 2 should be specially noted.

N. 9. Concrete case:—In 1870 the original Survey Settlement was introduced into a village in class 1. At this settlement A's field measuring 20 acres was assessed at Rs. 10. In 1885 A unauthorisedly built a factory for non-agricultural purposes on an area measuring 3 acres with a proportionate assessment of Rs. 3. The factory remained undetected by the Collector till the revision survey, say, in 1890. As the assessment of Rs. 3 was not fixed after 17th July 1879 (after *this* act came into force) it is not liable to be altered to building assessment of Rs. 30 in the Collector's discretion until the revision survey is introduced in 1890. After the discovery of the factory in the field in 1890 the Collector could of course recover only the penalty under section 66 to which A became liable in 1885 at any time within

60 years from the year in which the liability first arose. (Vide section 187 and the Limitation Act, IX of 1908, schedule I, article 149).

At this revision survey again, the factory could escape building assessment if none of the following 4 conditions existed :—

(1). The area of 3 acres under the factory should be excluded from the operations of the revision survey.

or,

(2). If not so excluded the area must have been separately demarcated and specially assessed to building rates under this section at the revision survey.

or,

(3). There ought to be a clause in the notice under section 103 that the revised assessment say of Rs. 6 on the 3 acres (supposing that the original Rs. 10 was raised to Rs. 20 at the revision survey) was subject to modification when the Governor in Council would subsequently publish a declaration under the latter part of Section 102 (and in accordance with this clause in the notice the agricultural assessment on 3 acres has actually been modified to, say, Rs. 60 in the subsequent declaration).

(4). In the absence of such special modification the declaration under Section 102 should at least be so worded that the assessments fixed by survey officers related to lands which on the date of the declaration were *actually* used for the purposes of agriculture alone; (so that even if a survey officer has wrongly fixed the agricultural assessment of Rs. 6 on the area covered by the factory, the declaration would not apply to such wrong assessment, which can be cancelled and replaced by a building assessment of, say, Rs. 60.)

N 10. If conditions (1) and (2) were not observed at the revision survey in 1890, conditions (3) and (4) also could not have existed in that year as explained below :—

(a) Paragraph 1 of the form of Notification in Appendix J under Section 103 originally stood as follows :—

“The survey rates as fixed under this settlement will remain in force *without increase for a period of 30 years* commencing from 1890-91 and extending to 1919-20.”

This wording did not give a notice to the ryots about any probable modification in any of the assessments at the time of publishing a subsequent declaration under the latter part of Section 102 and therefore that declaration could not make any modification in the assessment of Rs. 6 in this case.

(b) The wording in Appendix J was changed as follows by Government Notification No. 2828 dated 10th April 1895 published on page 457 of the Bombay Government Gazette Part I dated 11-4-1895 :—

“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 Section 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.”

(The words between (a)—(a) were inserted when the rules were revised and published with G. N. No. 5223 dated 28-6-1905.)

(c) Thus till a survey settlement after 10th April 1895, the Governor in Council had no

door open for specifying any modification of the revised assessment of Rs. 6 in this case in his declaration under Section 102.

- (d) As regards condition 4, the following form of declaration was first sanctioned by G. R. No. 4267 dated 29-5-1896.—“Whereas Government have sanctioned the assessments fixed by the officer in charge of 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 &c. &c. now in exercise of the powers conferred by Section 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.”

(The words between (a)—(a), (b)—(b), (c)—(c) were principally inserted by G. R. No. 4582 dated 16-6-1904.)

- (e) Thus, till a survey settlement after 29-5-1896 on which date G. R. 4267 was passed, the declaration under Section 102 was not expressly limited to lands used for agriculture alone. Therefore condition 4 also did not apply to the area under the factory in 1890 and it could not be assessed until the second revision survey in 1920. In that year, even if conditions 1, 2, and 3 are not observed, the clear wording of the declaration in condition 4 will apply and although the survey officer may have instead of omitting the 3 acres from the second revision actually assessed them to revised agricultural assessment say, Rs. 9, the wrong assessment will not come under the declaration, and even if the Collector has actually received this wrong assessment till say, 1930 he can, in his discretion

under Section 52, substitute Rs. 90 as building assessment from the year 1931, but not retrospectively from 1920 (G. R. No. 2156 of 7-3-1910 and 2514 of 3-10-1916.)

N 11. Now suppose that in A's village the original survey took place in 1880 instead of in 1870. This will bring A's act in 1885 under Section 48, because, the 3 acres under the factory came to be assessed after this Act came into force and consequently, A was liable to altered assessment, say, of Rs. 30 from 1885 till the revision survey in 1890 and the Collector could recover it at any future time of discovery, provided the interval between the liability and actual levy is not more than 60 years.

N 12. Again, suppose that the second revision survey is postponed for some reason or other for 10 years after 1920. Then the question arises whether in 1925 the Collector can impose altered assessment on the factory without waiting for the second revision survey on the ground that the guarantee of 30 years of the 1st revision survey of 1890 expired in 1920 and that therefore he was at liberty to impose building assessment at any time after 1920. The answer to this question is in the negative for the following reasons:—

- (1) There cannot be any Interim settlement (L. R.'s opinion accompanying G. R. No. 784 dated 3rd February 1892.)
- (2) The guarantee of the former settlement after its expiry must be considered as current till the introduction of the next settlement (vide Bombay High Court Ruling in appeal No. 98 of 1905 from original decree in the case of the Secretary of State Vs. Sadashiv Bhat and 3 others, circulated with G. R. R. D. No. 1327 dated 7-2-1912).

N 13. As regards G. 15, although a sheet of rock in a survey No. is not assessed for agriculture, it will

be assessed to building if a building for non-agricultural purposes is erected thereon under s. 65.

N 14. As regards determining special assessments under this section see table given in Appendix 4.

GOVERNMENT ORDERS.

G 1. **The proper scope of the Section.**—Section 48 contemplates the case of a holder of land set apart for one purpose appropriating such land to another purpose, for instance, a rayat turning his field into a quarry or a building site. It was not intended to meet the case of trespassers or encroachers, or unauthorized occupation. (G. R. No. 172, dated 12th January 1880.)

G 2. **Treatment at the revision survey of appropriations effected before 1865.**—In cases in which portions of lands assessed for agricultural purposes only have, prior to the passing of Bombay Act I of 1865, been appropriated for building or other non-agricultural purposes, such portions should at the first revision survey be separately demarcated (by analogy with Section 116 of the Code) and specially assessed under Section 48 (c) of the Code. (G. R. No. 205, dated 9th January 1885.)

G 3. It would obviously involve much expense and inconvenience to separately demarcate and assess in accordance with G. R. No. 205, dated 9th January 1885, minute plots of land which have been used for constructing huts, temples, tombs and raised platforms surrounding trees, &c. There may, however, be cases, such as a large building in the vicinity of an important town, where it would be expedient to act on the principle approved in the above Resolution. The Survey and Settlement Commissioner is given a discretionary power either to carry out the principle approved in the Government Resolution above quoted or to apply the "Pot Kharab" Rules to such appropriations according to the circumstances of each case. (G. R. No. 3942, dated 16th May 1885.)

G 4. Extent of para. 2 of Section 48 read with Section 112.—Section 112 of the Code 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”. As regards the question whether this enactment subjects assessments fixed in any such “existing survey settlements” to the provisions of paragraph 2 of Section 48 of the Code, it has to be observed that that paragraph applies in terms only to any “assessment fixed under the provisions of this Act.” Assessments fixed in “existing survey and settlements” were not fixed, “under the provisions of this Act,” and as Section 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 reasonable to conclude that this latter enactment was not intended to embrace any such provisions as that of paragraph 2 of Section 48, but only to such provisions of the Code as are general in their terms. Any other reading of Section 112 would deprive the words “fixed under the provisions of this Act” in paragraph 2 of Section 48 of their meaning and give to that paragraph a retrospective operation. There is a strong authority against thus interpreting the intention of the legislature. (G. R. No. 10196, dated 19th Decembr 1885.)

G 5. Under sections 45 and 48 *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. (G. R. No. 4344, dated 18th June 1886.)

G 6. Paragraph 2 of Section 48 does not apply to lands assessed under a survey settlement fixed before the date of the Land Revenue Code. The words of the paragraph “the assessment fixed under the provisions of the Act” are specific, and Section 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 an assessment fixed under the provisions of the Land Revenue Code. It cannot be considered that the assessment under the existing settlement was fixed under an order or notification, which by virtue of Section 2 is to be deemed to have been made under the Land Revenue Code, as in that case Section 112 would seem to be surplusage. Legislation will be required, therefore, if paragraph 2 of Section 48 is to be made applicable to assessments fixed under earlier survey settlements, *i. e.*, those introduced prior to the passing of the Code. It is doubtful how far such legislation would be justifiable, having regard to the difference between Section 35 of Bombay Act I, of 1865 and paragraph 2 of this Section with reference to the rate of assessment which may be levied in such a case. (G. R. No. 4758, dated 3rd July 1886.)

G. 7. Lands settled before the Code not liable to altered assessment. In all cases in which unalienated land (settled before the Land Revenue Code came into force) is appropriated to any purpose unconnected with agriculture, a fine under Section 65 can only be levied, but no revised assessment under Section 48 which can be only imposed in the case of land settled under the Code. The procedure to be observed in cases of such appropriation of land settled before the Land Revenue Code came into force should, therefore, be to recover the fine only. (G. R. No. 6306, dated 19th September 1887.)

G. 8. *Vide* G. R. No. 6035, dated 25th August 1890, printed under Section 66.

G. 9. Appropriation of Mharki Inam Land.—In a case in which a company applied for permission to appropriate a (Mharki) watan land for building purposes, the question raised was whether, if the application was granted, the land appropriated for building purposes would be liable to altered assessment under paragraph 2 of Section 48 of the

Land Revenue Code and to a fine under Section 65 of the Code. This question has been disposed of by the following orders:—

“Watan land is alienated land within the meaning of Clause 19 of Section 3 of the Bombay Land Revenue Code. Section 65 of the Code, which refers to procedure on appropriation to non-agricultural purposes by an occupant, *i. e.*, holder of unalienated land, is therefore inapplicable in the case of service lands such as the Mharki (uncommuted service) land in question.

“Nor can the land in question be subjected to any assessment under Section 48. It is not ‘land allowed by Government free of assessment on condition of its being appropriated to one purpose’ (that is, to some one specific purpose) within the meaning of that section. Service lands have not been granted revenue free on such condition. The holders of such lands are not restricted by the terms of grants to making any particular use of them. They hold them 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. No. 3012, dated 1st May 1891, and G. R. No. 5115, dated 25th July 1891.)

G. 10. The holders of service Inam lands, such as Mharki, which are not such as are allowed by Government, to be held free of assessment, on condition of their being appropriated to one purpose (*i. e.*, to some one specific purpose) can appropriate them to any purpose without any sanction and without being liable to pay any extra assessment so long as they keep the lands in their possession and guard against such alienations of it as will conflict with the provisions of the Hereditary Offices Act [cancels G. R. No. 5517, dated 4th August 1886. (G. R. No. 3411, dated 11th May 1893.)]

G. 11. Assessment guaranteed not liable to be altered.—An assessment fixed at a revision survey on land after its conversion from agricultural to building purposes, cannot be enhanced until the term of years fixed for such assessment under Section 102 of the Land Revenue Code, 1879, has expired. Section 102 provides that it shall be lawful for the Governor in Council to declare assessments fixed for certain periods, and Section 106 provides that a fresh survey may be directed, but no enhancement of assessment shall take effect till the expiration of the period fixed under Section 102. The assessment so fixed can only be enhanced if the purpose for which the land is held is changed after the assessment is fixed; in that event the assessment is liable to be altered under Section 48, but there is no other provision in the Act allowing an assessment once fixed to be enhanced. Therefore, if lands have been assessed, even by mistake, as appropriated for agriculture, when they might have been assessed as lands appropriated for building sites, the assessment cannot be enhanced until the period fixed for the assessment has expired. In future the assessment of land applied to non-agricultural purposes should be left to the Collector, on receipt of information from Survey Department and the guarantee might be given for such period. (G. R. No. 5344, dated 25th July 1893.)

G. 12. No assessment to be imposed on alienated lands used for salt works.—In the case of alienated lands no extra sum (apart from the quit rent, Judi, Salami, &c) could be levied as assessment for the privilege of using the lands for salt works, unless there was a stipulation in the grant that the land was granted for a particular purpose which was not that of making salt. (G. R. No. 4956, dated 2nd August 1898.)

G. 13. The test for levying assessment.—The criterion whether any house site or open space

(when appropriated to non-agricultural purpose) should be assessed or not is whether it is held by the present occupant prior to British possession or in recent years. If the former the land is exempt, if the latter it should be assessed. (G. R. No. 3476, dated 2nd June 1900.)

G. 14. No assessment for farm buildings or potkharab.—Under Section 65, the occupant of agricultural land is entitled to erect farm buildings. Imposition of agricultural assessment on land which was treated as potkharab in the last settlement and on which farm buildings have since been erected is erroneous. (G. R. R. D. No. 2329, dated 18th March 1905).

G. 15. Pot-Kharab or bad land included in the periphery of a Survey Number.—When portions of land, such as

- (1) Deep pits.
- (2) Water-courses, scoured out by streams.
- (3) Rock out-crops.

are unfit for cultivation, they are deducted as uncultivable and the holder may bring it under cultivation without liability to any 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 rice field. Such unarable lands though brought under cultivation, are to be left unassessed hereafter (Para 16 of G. R. R. D. No. 2619 of 26-3-1884.)

2. There is, however, a quite different class of land exempted from assessment which though called unarable is, however, perfectly arable; for instance, a cart road not metalled for village use across a field of good deep soil. The strip of the road is shown as Pot-Kharab in the map not because it is uncultivable but because it is withdrawn from cultivation and assigned for a road.

3. If this road is no longer needed as such by any one, the question is whether during the currency of the existing settlement the holder of the field can cultivate this disused road with any charge or revision of assessment,

if (a) the land is unalienated

or

(b) it is alienated.

4. As regards (a) the Survey Department expressly distinguished between strictly unarable land and land which was prohibited under Section 48 (4) because though arable, it was used for roads, tanks etc.

As regards (b) such expressed distinction between the two kinds of Pot-Kharab was not made by the Survey Department.

5. Assessment should be levied in every such case of unalienated lands. In the case of alienated land it 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 applied to use as a road or for any other definite purpose. (G. R. R. D. No. 3908 of 10-4-1916.)

G. 16. Levy of Revised Assessment in respect of certain lands at Viramgam used for non-agricultural purposes.—In paragraph 3 of his letter the Collector remarks that as in certain cases the assessment was erroneously revised as if the land was agricultural land and the revised assessment was guaranteed for thirty years, the assessment cannot be revised till the expiry of the period of guarantee. The Collector's attention should be invited to paragraph 1 of G. R. No. 2156 dated 7th March 1910, in which Government have ruled that the proceedings of a settlement officer purporting to raise the agricultural assessment of land, which at the time of the survey operations was not agricultural land but had paid its fine or premium for

conversion to building purposes and had been actually converted into building land, are of no effect and that when building sites have been wrongly assessed by the settlement officer as agricultural lands at the time of the revision settlement and the revised agricultural assessment has been recovered for a number of years, the revised building assessments subsequently fixed by the Collector should be levied from the year in which they are fixed and not from any previous year. It would therefore be open to the Collector to propose revision of the assessment levied in similar cases in future. (Paragraph 3 of G. O. No. 9514 R. D. dated 3rd October 1916).

G. 17. Altered assessment on land diverted from one non-agricultural use to another—Exemption from payment of altered assessment can only be allowed for the portion of a family grave yard at Ankleshwar actually used as such, and that only if the portion is demarcated from the rest of the survey number, but that, as the whole survey number has been let out for storing timber on rent by the family members, exemption from the payment of altered assessment even on that portion cannot be allowed. (G.M.R.D. No. 9833 dated 13th October 1916.)

G. 18. 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, the 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 November 1916)

G. 19. Potkharab—(1) Some potkharab land occupied by buildings was included in an agricultural survey number at the

revision survey as it had been at the original survey and was not taken into account in fixing the agricultural assessment at the revision survey, on the ground that it was occupied by buildings. It was never converted to any other purpose than that for which it was used when it was deliberately, excluded from agricultural assessment at successive settlements. As the Settlement Officer dealt with the question of its assessment by including it as potkharab in an agricultural survey number it became entitled to the benefit of the guarantee given under Section 102 of the Land Revenue Code even though that guarantee was confined to lands actually used for the purpose of agriculture (G. R. R. D. No. 11023, dated 15th November 1909).

- (2) At the next settlement such lands should be expressly excluded from the guarantee. When the land which has been treated as Potkharab because of the nature of the soil, is converted to a non-agricultural use or when having been treated as Potkharab because of a particular non-agricultural use, it is converted to another non-agricultural use, it becomes liable to assessment from the year in which it is fixed by the Collector on the analogy of the orders in G. R. No. 2156 dated 7th March 1910.

(G. R. 10438 of 27th August 1917.)

G. 20 Municipality.—A municipality is liable to pay altered assessment in respect of agricultural lands given by it for building purposes.

(G. R. R. D. 13088 dated 1st November 1917.)

G. 21. Watersupply and drainage.—Land used for water and drainage works by a municipality cannot be considered to be 'land yielding no return' and has no claim to exemption from assessment to land-revenue.

(G. R. R. D. 15191 dated 15th December 1917.)

J. 1. Substantial buildings in place of brick-kilns.—On conversion of his land from agricultural to non-agricultural uses by establishing a brick-kiln in 1872, the plaintiff was called upon by the Collector to pay thirty times the assessment as fine for the conversion under section 35 of Bombay Act I of 1865. About that time or shortly afterwards the plaintiff erected some huts on the land as accessories to the trade of a potter. At the Revision Survey, which took place in 1889, the land was assessed as agricultural land. Sometime between 1897 and 1901 the plaintiff erected substantial buildings called chawls on the land and let them out to tenants. These chawls occupied 597 square yards and left 522 square yards of land for the brick-kiln. The Collector thereupon levied enhanced assessment on the whole land measuring 597 plus 522 square yards at the rate of Rs. 85 per year for the years 1901 to 1911; and recovered it on the 13th August 1912.

Held that no enhanced assessment could be levied upon 522 square yards, but as regards 597 square yards, the Collector rightly levied enhanced assessment for conversion of the land from a brick-kiln to substantial buildings after the introduction of the revised settlement in 1889. There was no difficulty in levying this enhanced assessment although, at the introduction of the revised settlement of 1889, the land was in fact assessed to agriculture instead of to brick-kilns. (Mahmadbhai vs. Secretary of State, 20 Bombay Law Reporter 22)

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,

Commutated
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 occa-
sional as-
sessment.

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.

SUMMARY. (s. 49.)

Section 49—Meaning	...	...	...	N 1
Mamul Judi—fixed old—may fall to the level of the survey assessment only so long as the latter is less than the old fixed amount	...	...	...	G 1.
Scale Judi—on Patelki or Kulkarni Inam-lands never to exceed the survey assessment	...	...	...	G 5

Settlement judi on

- (a) Personal Inam land need not be reduced as of right... .. G 2, 3, 6
- (b) Ditto Dewasthan lands ... G 5
- (c) Ditto on non-service watan lands of Dist. hereditary officers G 5
- (d) Non-service watan lands of useless village servants not to be varied at revision survey but may be reduced in special cases ... G 4
- (e) Lands for service useful to the community G 6

Note 1. This section is based on clause I of section 4 and clause I of section 5 of Bombay Act VII of 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 Guzrath 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 ceses or occasional assessments. The correspondence and orders on the subject will be found in Govt. Selection No. 114 (new series) and Govt. Selections containing survey settlement reports of the different Talukas in which these cesses &c. 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 16.)

G. 1. Mamul Judi on Inam lands :—Although the Judi on Inam lands is fixed by a sanad, the amount of Judi actually levied on such lands can never be in excess of the assessment to which the lands would be ordinarily subject if unalienated. Thus if the assessment is less than the fixed Judi the amount of Judi levied must be equal to such assessment, while if at a future revision the assessment is enhanced up to or in excess of the amount of Judi, Government is entitled to levy the full amount thereof. (G.R. No. 8391, dated 30th November 1882.)

G. 2. Apparently the opinion in G. R. No. 8391 of 30th November 1882 has reference not to the quit rent payable under the summary settlement Act but to the Judi, Salami or other quit rent or land tax "already paid to Government." Under section 6, rule 3 of Act VII of 1863, the quit rent is calculated at one-eighth of the assessment minus any sum which irrespective of the settlement was payable to Government. 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 section 5 of Act VII of 1863 (repealed by V of 1879 and replaced by section 49) as a *commuted assessment*, such commuted assessment 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 section 6. Such quit rent cannot be reduced to the level of revised assessment under any provision of the law. It is competent to Government to allow such revision as a matter of grace and cannot be claimed as a matter of right. (G. R. No. 4733, dated 3rd July 1889.)

G. 3. It is unnecessary to alter Judi permanently fixed under Bombay Act 2 of 1863 in cases where the original assessment included patasthal assess-

ment in a tract or place where the latter is to be abolished. (G. R. No. 136, dated 7th January 1909).

G. 4. Judi on Service Inam lands:—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 eight annas in the rupee of the Jirayat assessment. (G. R. R. D. No. 571, dated 19th January 1909).

G. 5. When water rate on Patilki or kulkarni land is abolished, the scale Judi on such land should be reduced to the level of the remaining assessment. But in similar cases of Dewasthan and non-service watan lands of Dist. hereditary officers, the Judi need not be reduced. (G. R. No. 2858 of 13 March 1916).

G. 6. Certain Jat-Inam lands and lands of villagers useful to the community were jirait at the time when the judi on them was fixed. They were classed as Bagait 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 Bagait at the time when the 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. 1860 of 27th February 1914, brought to the level of the assessment that has remained after the abolition of the water rates. (G. O. R. D. No. 10498 dated 2nd November 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.

N. I. The description of the various cesses, taxes &c and of the occasional assessments which were levied on land in Gujrath will be found in Mr. Peile's report no. 3 dated 11th April 1863 printed at pages 484 to 557 of Government selection CXIV (new series).

51. When it has been customary to levy a larger revenue under the name of "veta" 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. Excess of assessment may be laid on land in adequately assessed held with it

N. I. There was a tenure called 'chali' in the Karnatic districts like 'veta' in Gujrath. It has been dealt with on the same principles at a survey settlement.

[^a] **52.** On all lands which are not wholly exempt from the payment of land revenue, and [^b] 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 [^c] made in this Assessment by whom to be fixed.

behalf under section 214, be fixed at the discretion of the Collector, for such period as he may, [c] be authorized to prescribe, and the amounts due according to such assessment shall be levied on all such lands :

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 [d].

[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, 1st Sch.

[c] Words repealed by Bom. IV of 1913, s. 15, are omitted.

[d] The validity of past assessments purporting to have been fixed under s. 52 is saved by Bom. VI of 1901, s. 5.

SUMMARY (s. 52).

Section 52—meaning and scope ...	N 1, J 1
Rules... ..	N 2, G 4
Prescriptive right—	
(a) in Panch Mahals	G 2
(b) in village sites	G 3
Words—meaning of the word 'नेहेरी' used in documents issued by the Maratha Government	G 1

NOTES

N. I. This Section was substituted for the original Section 52 by Bombay VI of 1901, Section 4. The amended Section 52 gives authority to the Collector to assess unoccupied and unalienated

lands which were within the operation of an order under Section 95 but which were left unassessed at the settlement. (paragraph 8 of statement of objects and reasons of Bill IV of 1901).

N. 2. Rules—Vide.

GOVERNMENT ORDERS.

*G. 1—*The word नेहेमी used in documents issued by the Maratha Government expresses merely that the terms of the grant were not subject to annual revision. No guarantee is thereby given against alteration when general revision of the land assessment or a general revision of such grants is determined on. (G. R. 3773 dated 30th September 1864 and 1637 dated 20th April 1865.)

G. 2. In the Panch Mahals district twelve years' possession in all cases before the introduction of the British rule should be considered sufficient to confer a prescriptive right to land not entered as alienated and allowed for in exchange of territory between the British Government and the Scindia (G. R. No 5831 dated 26th November 1870).

G. 3. In deciding whether any vacant area used for stacking grass in the village—site should be assessed or not, the criterion is whether the occupant has held the site or space for a time anterior to British rule or whether he has appropriated it in recent years. In the former case the land will be exempt from assessment. In the latter case it should be assessed (G. R. 3476 dated 2nd June 1900).

G. 4. Assessment to be made according to the rules in force.—The Collector can assess lands which at the time of the announcement of the survey rates were appropriated to purposes other than agriculture and the assessment must be made in accordance with the rules in force at the time of making it, not in accordance with the rules, if any, in force when the appropriation took place. (G. R. R. D. No. 6513, dated 19th September 1903).

JUDICIAL DECISIONS.

J. I. Effect of Sections 52 and 217:—The effect of Section 52 is to give the Collector the discretion to fix the assessment and the effect of Section 217 is to render the occupants in alienated villages subject to a settlement like the occupants in unalienated villages. But 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 the land revenue according to survey rates (*Laxman vs Govind*, Bombay Law Reporter V. 1905, page 694).

Register of
alienated
lands.

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.

SUMMARY. (s. 53.)

Rules	...	...	...	...	N 1
Land Alienation registers,	...	...	...	...	N 2, G 5

Land revenue Alienation of	...	...	G 2
Sanads...			
(a) altered	...	...	G 3; G 8
(b) copies of	...	...	G 4
(c) new...	...	...	G 7
(d) not renewed	...	...	N 3
(e) renewed	...	...	N 3, G 1, G 6

NOTES

N. 1.—*Vide* rules.

N. 2.—A separate printed register is kept for each *taluka* in the office of the commissioner C. D. who has charge of the Alienation records for the whole Presidency except Sind. Changes are to be entered in accordance with the instructions on pages 66-69 of Mr. Anderson's manual of Revenue Accounts.

The District register referred to in G. 5 consists of all the *taluka* registers separately bound.

N. 3.—A duplicate sanad is not issued when the original one is *permanently lost or destroyed* but when the original sanad is *worn out* or has become useless, it is renewed (*Vide* G. 1).

G. 1.—When Sanads are *worn out* or have become *useless*, they should be renewed G. Rs. 1754 of 4-5-68 and 6012 of 25-10-75.

G. 2.—No alienation of land revenue should be made or renewed without the previous sanction of Government. The Commissioner in Sind is however authorized to renew *Seri* grants in the desert districts of Thar and Parkar. (G. Rs. 2611 dated 21st May 1878 and 8054 dated 11th October 1892.

G. 3.—Alteration in existing sanads.—Where Government waste land is given to an Inamdar in exchange for his Inam land taken up by Government, no fresh sanad is required to be issued to replace the existing one. It will be sufficient in such cases if the existing sanad is altered, care being

taken that the Inamdar's assent to the exchange is endorsed on the sanad while the alteration in the deed should be certified by the Collector's signature. (G. R. No. 7851, dated 23rd December, 1881.)

G. 4.—Issue of separate sanads not necessary.—In cases in which it is found necessary to make out a sanad in the names of several sharers, a copy may be given gratis to each, but each of such copies should be signed and executed by the same officer and treated as an original document. In no other case can a copy of a sanad be granted, but an extract from the register of sanads may be given on payment of the fees prescribed in the rules under Section 213 of the Land Revenue Code and Section 91 of the Registration Act. (G. R. No. 4180, dated 2nd June 1883.)

G. 5.—Form of register of alienated lands.—The register of alienated lands required to be kept under this section is to be prepared in the form given in Appendix F to the rules under the Code. 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, printed and bound in the same manner as the cash alienation 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 villages 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. No. 5634, dated 31st July 1883).

G. 6.—G. R. No. 841, dated 4th February 1887, is hereby cancelled. In cases of mere clerical errors the sanads may be cancelled and fresh sanads issued

in their stead without reference to Government by the Commissioner except in matters beyond the scope of his proper authority (G. R. No. 5549 dated 8th July 1892.)

G. 7.—Commissioners are authorized to grant new sanads to holders of alienated land or cash allowance when they are required for any reason. (Entry No. 10 of G. R. No. 5941, dated 26th August 1902.)

G. 8.—Commissioners can sanction alterations in sanads owing to alluvion and diluvion G. R. 8885-3rd October 1910 (entry 13).

[^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 with whom to be made.

[a] As to the local modification of s. 54, see para 5 of footnote [a] on p. 1, *supra*.

[b] The paragraph repealed by Bom. IV of 1913, s. 16, is omitted.

N 1—The word “primarily” would be superfluous under the state of things established by the Record of Rights.

55. The Governor in Council may authorize the Collector or the officer in charge of a survey 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 land holders 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 rates shall be liable to revision at such periods as Government shall from time to time determine, and shall be recoverable as land revenue.

Rates for the use of water.

Bom. VII of 1879.

[a—^a] These words and figures were substituted for the original words by Bom. VII of 1879, s. 2.

SUMMARY. (s. 55.)

Section-meaning of N 1, 2, G 5

Rules under—*Vide.*

1 water

(1) free grant of G 6

(2) from

(a) Bandharas G 1

(b) Kacha Pats G 2

(c) Tanks G 3, 7, 8, 11, 14

(3) Penalty for taking-without per-
mission G 20

(4) Soil deterioration from G 10

(5) used in Sind by land-holders ... G 4

2 water rate

(1) maximum for each district G 9, G 18

(2) Pumping installations exempt
for 25 years G 16(3) Questions of levy &c. to be re-
ported by Comrs. after consult-
ing Director of L. R. G 15

(4) Reduction of G 13, G 17

(5) Suspension and remission of

(a) General G 17, G 19

(b) kacha pat G 2

(c) tanks G 7, G 14

(6) Village accounts to show ... G 12

NOTES.

N I. Meaning of.—Section 55 is a new law authorizing the imposition, and the recovery as land-revenue, of rates for the use of water the right to which vests in Government or which has been made available by Government works. (Select Committee's report on the Revenue Code Bill.)

N 2. Meaning of.—The words “such other officer as he deems fit” were introduced to enable Government to entrust the duty of assessing water to a Canal officer or to any other special officer. (Page 199 of the Council Proceedings of 1877).

G. 1. Bandharas.—*Vide* also rules regarding fixing of water assessment on land under Bandharas given under Section 101. (G. Rs. 3172 of 23-6-74 and 3618 of 14-7-74).

G. 2. Kacha Pats.—Applications for remission on account of Kacha Pats which fail to afford water should be enquired into and complied with in seasons of draught. (G. R. 5456 of 14-10-74).

G. 3. Tanks.—The holders of Inam lands, who use water for irrigation from tanks constructed by Government are to pay water-rate unless they show that they have a right to use the water. (G. R. No. 1546, dated 26th March 1878).

G. 4. Sind.—In exercise of the powers given by Section 55 of Bombay Act V of 1879 the Governor in Council authorises the Commissioner in Sind to fix rates for the use, by landholders and others, of water the right to which vests in Government, 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 Government, and shall, after sanction, be notified in the office of 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 an application in writing to the Mukhtyarkar or other officer duly authorized 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 other-

wise 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. (G. N. No. 4213, dated 21st July 1881, published in the B. G. G., Part I, page 396, 1881.)

G. 5. Meaning of section.—The words “Collector or the officer in charge of a survey” in this section appear superfluous and might as well have been omitted. The Governor in Council has under this section the power to authorize “such officer as he deems fit,” to fix the rates, and this would appear sufficient to enable him to authorize “the Collector or the officer in charge of a survey” as well as any other officer. (G. R. No. 4437, dated 4th June 1896 R. D.)

G. 6. Free grants of water:—Free grants of water are given only in special cases and for special reasons and they should be subject to revision at fixed periods generally at the end of the current settlements but at shorter intervals if desirable.

In all 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, the extension of which is under the control of the Revenue Officers. (G. R. No. 5762, dated 2nd August 1897, R. D.)

G. 7. Water assessment on lands irrigated by tanks now abandoned.—The intention of Government Resolution No. 34 W.T.—419, dated 5th March 1895, is that in the case of any tank which is abandoned, only that portion of the assessment in res-

pect of the water derived from such tank is to be foregone which the circumstances of the lands affected may show to be required. This view is in no way contrary to those expressed in G. R. No. 5909, dated 10th August 1897.

G. 8. Tanks.—Lists of abandoned tanks may be prepared and placed in the hands of Assistant or Deputy Collectors, who should be required in the course of their inspections to note cases in which serious and permanent injury to cultivation is clearly due to disrepair of the tanks.

Under Section 48 the Collector can 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. No. 2207, dated 25th March 1899.)

G. 9. Maximum rate; Collector's' power.—Maximum rates for each district should be reported to Government for sanction. Collectors are authorized to fix actual rates in each case within the maximum prescribed by Government. (Entry No. 5 of G. R. No. 4347, dated 25th June 1902.)

G. 10. Soil-deterioration.—The importance of early detection of cases of local deterioration of soil should also be borne in mind. The subject is of vital importance not only to the well-being of the people but in the interest of the State, since the failure to reduce the demand as soon as it ceases to be payable without serious difficulty results in a weakening of the resources of the people and finally in loss of revenue. Collectors and Sub-Divisional officers are directly responsible for bringing the fact of local deterioration to the notice of Government at an early stage. (G. R. R. D. No. 5423, dated 5th August 1902).

G. 11. Water rate for benefit derived from tanks.—On all lands which receive benefit from a tank, one appropriate rate should be levied 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. No. 5835, dated 21st August 1902, R. D.)

G. 12. Water rates to be shown in village accounts.—Water rates should be shown in Village Form No. 1 whenever they are ascertainable. (G. R. No. 8869, dated 13th December 1902.)

G. 13. Power of reducing assessment.—The powers given by G. R. R. D. No. 6946, dated 3rd October 1902 (in supercession of G. R. No. 3574 dated 24th July 1871) should be considered as cancelled. 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 Government for disposal through the Director of Land Records. (G. R. R. D. No. 1788, dated 7th March 1904).

G. 14. Tanks (i) Where tanks or other sources of water are abandoned as Government improvements, 'himayat' 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 Government, the procedure prescribed in the penultimate sentence of paragraph I of Government Resolution No. 1788, dated 7th March 1904, being followed in every such case.

(ii) For land which is irrigable from tanks or other sources of water belonging to or maintained by Government, 'himayat' 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 Government, the general orders relating to the suspension and remission of land revenue should be applied, with the understanding that the assessment is 'akasia' 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 the soil assessment alone, 'akasia' being entirely remitted. (G. R. No. 5475, dated 5th July 1905.)

G. 15. Commissioners to consult D. L. R.—The Commissioners of divisions should invariably consult the Settlement Commissioner and Director of Land Record when reporting on questions relating to the levy and renewals of water rates and to submit to Government his reports along with their own (P. W. D. 234—I dated 5th March 1906.)

G. 16 Pumping installations.—In accordance with the recommendations of the Irrigation Commission, Government have directed that any person desiring to erect a mechanical pumping installation on a river or stream, should apply for permission to the Collector stating the nature and pumping and discharging capacity of the installation and the area it is expected to irrigate. The Collector should then consult the Superintending Engineer on the question whether the raising of the water is likely to affect seriously any Government supply for irrigational works lower down the river and if the answer is in the negative, should give the necessary permission. No charge should be made for the first 25 years after which the circumstances can be reviewed. If the Government irrigational supply lower down will be seriously affected, permission will have to be refused or restricted to the raising of such quantity of water as will not materially affect irrigation lower down.

G. R. 2407 of 6-3-1908.

G. 17. Reduction of waterrate.—In accordance with the orders issued in Government Resolution No. 2759, dated 15th March 1907, all the precarious tracts have been ascertained and patasthal assessment abolished in them; there will remain only 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 the water assessment in years of absolute or partial failure of the water supply. The case of such places will be governed by No. 7 of the rules regarding suspension and remission, published in Government Resolution No. 5324, dated 27th May 1908. Accordingly the proposal to restore the powers withdrawn in G. R. No. 1788, dated 7th March 1904, was negatived. (Serial No. 4 of the statement accompanying G. R. R. D. No.8046, dated 7th August 1908.)

G. 18. Maximum rate in Satara.—The maximum rate per acre for water under s. 55 is fixed at Rs. 12 in the Satara district.

(G. R. 4873-20-5-11).

G. 19. Remissions in times of draught.—In times of draught the Collectors can delegate their powers to Mamlatdars.

(G. R. 5295 dated 1st June 1911 entry 26)

G. 20. Penalty. In the Nasik district Government sanctioned the levy of 10 times the ordinary waterrate as a penalty for taking water without permission.

(G. R. 4034 dated 1st May 1914.)

G. 21. Question regarding the levy of assessment for water taken from streams in non-precarious tracts in which patasthal assessment has been abolished.—In Government Resolution No. 2759 dated 15th March 1907 certain talukas were declared to be undoubtedly precarious and all patasthal assessment was abolished in them. Since then proposals were submitted to Government, which resulted in the total abolition of the patasthal assessment in certain other precarious tracts and partial abolition on individual streams or pats in certain areas, without any pronouncement being made whether they were precarious or not.

2. Government concur with the Commissioner, C. D., that in dealing with the application of the orders contained in Government Resolution No. 13535 dated 18th December 1915, it should be definitely decided what tracts are precarious and what tracts are non-precarious and 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 section 55 of the Land Revenue Code.

3. The Commissioners, C. and S. Divisions, should accordingly be asked to consider those cases in which no definite pronouncement has been made and decide whether such talukas or portions of them should be classed as precarious and entitled to future exemption from assessment under sec. 55 of the Code.

4. As regards the remaining tracts classed as non-precarious the general principles promulgated in Government Resolution No. 13535 dated 18th December 1915 should be applied to them, subject to the proviso that assessment under section 55 of the Land Revenue Code 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.

R. D. 4967 dated 20th April 1917.

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

Land revenue to be a paramount charge on the land.

all rights of the occupant [^a] or holder over all trees, 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 [^a] or alienated holding, [^b] or may otherwise dispose of such occupancy [^a] 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]

[a] As to the local modification of the words "occupancy" and "occupant," see para. 5 of foot-note [a] on p. I, *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.

SUMMARY (Sec. 56)

Section-History	N 1, N 2
Meaning N 3 to N 5, N8/G 3, G 9, G 10/J 2	
Rules	N 6
Alienated villiage... ..	N 7
Defaulters-consequences of being ...	G 5
Forfeited holding :—	
(1) When ceases to be a	J 1
(2) When given on new tenure	G 7, J 2
(3) When sold... ..	G 6
(4) When not sold	G 2, G 11

Forfeiture:—

(1) explained	G 8, J 2
(2) not affected by payment or security	G 4, G 11
(3) when begins	G 1, G 11
(4) when not desirable	G 5
Irrigation watterate—s. 56 does not apply to	G 10
Land-occupancy—when to be given to paupers	G 5
Tagai under Agricul- } s. 56 does not turists' Loans Act. } apply to ...	G 9

NOTES.

N. 1.—Section, history and meaning.—In the original draft bill No. I of 1875, there was section 129 which partially corresponded with s. 56. The provisions of draft s. 129 were in fact simply a declaration of what was held by the High Court to be the then existing law:—

5 B. H. C. R.	49
10 " }	416
" }	419
11 "	97
Regulation 4 of 1827 s. 69 (2)	
" 17 " "	s. 5 (3)
" 19 " "	ss., 3 and 4

N. 2. The Select Committee modified and split up draft section 129 into two (121B and 121C). Of these, section 121B corresponded with the original section 56 and was finally passed in 1879.

The original section stood as follows:—

" 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 or alienated holding together with all rights of the occupant or holder over all trees, crops, buildings and things attached to the land,

‘ or permanently fastened to anything attached to
 ‘ the land, liable to forfeiture whereupon the collec-
 ‘ tor may levy all sums in arrear by sale of the oc-
 ‘ cupancy or alienated holding, (A) freed from all
 ‘ tenures, incumbrances and rights created by the
 ‘ occupant or holder or any of his predecessors in
 ‘ title, or in any wise subsisting as against such oc-
 ‘ cupant or holder (A) or may otherwise dispose of
 ‘ such occupancy or alienated holding under rules
 ‘ or orders made in this behalf under s. 214.”

N. 3. Section 6 of Bombay Act VI of 1901 amend-
 ed this section as follows :—

- (1) the words between A—A marked
 above were repealed, and at the end
- (2) the words between d—d in the pre-
 sent section were added.

N. 4. The objects of the amendment in 1901
 were as follows :—

- (a) Freedom after forfeiture from in-
 cumbrances and rights created by
 the holder can now be held
 applicable not only to disposal by
 (1) *sale* but to *all* other disposals
 viz.
 - (2) restoration to the defaulter
 - (3) transfer to another person
 - (4) entry of the forfeited land
 as Govt. waste &c. &c.

NOTE.—When sale is held *before* adopting the
 disposal (4), the surplus is to be paid to the default-
 er under Sect. 183. If the sale is held after enter-
 ing the forfeited land as waste, Sect. 183 does not
 apply and the surplus after sale will go to Govern-
 ment.

- (b) The words, ‘ unless the Collector
 otherwise directs’ provided a safe-
 guard (in addition to a notice of
 intended forfeiture referred to in
 the proviso to Sec. 153) against

fraud on the part of a holder against his mortgagee &c.

- (c) Incumbrances (such as an arrear of Takavi under Act 19 of 1883) in favour of Govt. could not be extinguished by the forfeiture.

NOTE.—Takavi arrears due to Govt. under Act 19 of 1883 cannot be extinguished by forfeiture of the land, for the improvement of which Takavi was granted. They have therefore always to be recovered from the sale proceeds of the land. If the sale takes place immediately after forfeiture, the surplus goes to the defaulter under Sec. 183. But if the forfeited land is first entered as Govt. waste under disposal (4) in (a) above, the surplus will also go to Govt. as the defaulter's right to the surplus under Sec. 183 is extinguished by this disposal.

N. 5. Bombay Act 4 of 1913 Sec. 17 repealed the words "or orders" after the word "rules."

N. 6. Rules (vide.....)

N. 7. Alienated village &c. 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 Secs. 159 to 163.

N. 8.—'Holding' The word 'holding' in this section means a 'Khata' or ledger entered in the name of the defaulter in the village accounts. It is impossible to assign an arrear of land revenue to one particular piece of land or building site entered in the 'Khata.'

GOVERNMENT RESOLUTIONS.

G. I. Failure in payment of land-revenue.— Failure in payment of land-revenue makes the occupancy liable to forfeiture. The Collector is empowered to declare the occupancy forfeited at any time after the arrear is due. Forfeiture takes place when the Collector declares it. He can declare it at the end of the period named in the notice. (G. R. No. 4000, dated 31st July 1879.)

G. 2. Forfeited occupancy need not necessarily be sold.—It is not obligatory on the Collector under the Code to sell a forfeited occupancy in realization of arrears. He may either sell it or otherwise dispose of it. (G. R. No. 5730, dated 27th October 1879.)

G. 3. Effect of Sections 56, 57 & 153 on Defaulter's holding or occupancy.—In the following paragraphs is concisely stated what the law of the Code regarding defaulter's holding is.—

Section 56 declares such holding liable to forfeiture;

Section 153 says 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, Section 57 empowers the Collector to take immediate possession of the land;

Sections 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 Section 214 (e);

If the forfeited holding (occupancy or alienated holding) is sold, the proceeds must be credited to the defaulters' accounts (Section 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 (Section 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;

Section 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. No. 3796, dated 21st July 1880.)

G. 4. Giving of security not to affect forfeiture—Although proceedings could be stayed under Sections 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 dated 16 September 1880).

G. 5. Grant of occupancy of land to pauper cultivators.—It is not expedient or desirable to issue any order prohibiting absolutely the grant of the occupancy of land to pauper cultivators. In allowing land to be taken up for cultivation by persons who possess little or no capital the Collectors must exercise their discretion on consideration of the varying circumstances of different districts. In Collectorates inhabited in parts by hillmen and tribes whom it is desired to wean from their wild life and induce to take to 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.

With reference to the question of the grant of remission or the temporary suspension of the collection of arrears of land-revenue when a Collector finds that there are special exceptional circumstances whether of season or otherwise in any year which prevent for the time being the punctual payment of the land assessment by the rayats, and that more liberal remissions and relief than he is authorized to grant are required, he should report the facts of the case to Government for orders in place of having immediate resort to the sale of the holdings and the distraint of the property of the defaulting cultivators.

Those who have been once defaulters should not be again allowed to take up land without the special orders of the Collector. If the penalty of becoming a defaulter is absolute disqualification from again holding land under Government, the effect may be beneficial. (G. R. No. 4297, dated 25th July 1881.)

G. 6.—Sale of forfeited holding or occupancy.—When a sale of an occupancy or alienated holding is made under Sections 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 land can be sold 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 Chapter XI of the Code. The proclamation for the sale of unoccupied Government waste land should be used for the sale of forfeited holdings. (G. R. No. 6455, dated 29th October 1881).

G. 7.—Sale of forfeited lands on restricted tenure:—It will be seen (from G. R. No. 8698, dated 15th December 1901, circulated with G. R. No. 9183, dated 29th December 1902) that there is nothing to prevent the Collectors from disposing of lands on restricted tenure by public auction when there are several applicants for the same land. (G. R. No. 9915, dated 19th October 1906, R. D.)

G. 8.—Forfeiture explained.—The ordinary Legal signification must be given to the word 'forfeiture' in S. 56. The High Court has overruled the contrary decisions in I.L.R. 22 Bombay 389 and 24 Bombay 34. (G. R. 2615 dated 12th March 1907.)

G. 9.—Tagai under Agriculturists' loans Act.—sections 56 and 153 do not apply to recovery of loans under the Agriculturists' loans Act. Such loans are to be recovered from the persons to whom they are made and not out of the land (G. R. 9109 dated 7th October 1910).

G. 10.—Irrigation water rates—Section 56 does not apply to water rates leviable under the Bombay Irrigation Act 1879. These rates are not land-revenue as they are due for water only.

(G. R. 4837 dated 19th May 1911).

G. 11.—Under sections 56 and 153 a forfeited occupancy lies fully at the disposal of the collector from the date of the order of forfeiture. The collector is fully competent to grant the land to anyone he pleases after the forfeiture. Payment of dues after the order of forfeiture does not in the least affect that order (G. R. 1013 dated 22nd October 1912).

JUDICIAL DECISIONS.

J. 1. The rules under the Land Revenue Code empower a Collector to restore a forfeited occupancy to the original occupant. But when a forfeited occupancy has been disposed of by grant to a new occupant it ceases to be a forfeited occupancy and the rule has no longer any application (I. L. R. 36 Bombay 91).

J. 2. In 1995 defendants nos. 1 and 2 mortgaged their lands to the plaintiff, one of the conditions of the mortgage being that the mortgagors were to remain in possession of the land and to pay the Government assessment. Default having occurred in payment of assessment, the Collector demanded payment first from mortgagors and then from the mortgagee. As nobody paid the assessment the Collector eventually forfeited the land in 1902; but shortly afterwards regranted it to defendants 1 and 2 on the new tenure. The mortgagee (plaintiff) next obtained a decree on his mortgage and in execution of it attached the land. The attachment was however raised by the Revenue Authorities under sec. 70 of the Code. The plaintiff sued for a declaration that the land was liable to be attached and sold in execution of his decree.

Held that the land was, under sec. 56 of the Bombay Land Revenue Code vested in defendants 1 and 2 free from the incumbrance which had been created and from the equities theretofore existing between them and the plaintiff (I. L. R. 37 Bombay 692).

Forfeited holdings may be taken possession of and otherwise disposed.

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] This was substituted by Bom. L. of 1910, 1st Sch., part II Serial No. 3, for the original section.

N. I. Vide G 2 under s. 56.

Receipts.

[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-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.

[a] This was substituted by Bom. I of 1910, 1st Sch., Part II, serial No. 3, for the original section.

N. 1 *Vide* orders under s. 85.

G. 1. Responsibility of accepting revenue.—The revenue should be paid to the Patil in the presence of the Kulkarni and when the former is absent, the kulkarni might receive it. (G. R. No. 3845, dated 19th May 1883.)

G. 2. Receipts exempt from stamp duty.—Every receipt given under Section 58, is exempt from stamp duty; but receipts given not only by Dumaldars but also by any Inamdar to the Village officers for sums paid by such officers to the Dumaldar or Inamdar 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. No. 2641, dated 27th March 1884.)

G. 3. Village accountant bound to give receipt.—The village accountant receiving a payment of land-revenue is bound to tender a receipt for the same in some form, and if a receipt book is not produced by a rayat, the accountant has no choice but to prepare and tender it to the rayat on a separate paper. (G. R. No. 3661, dated 7th May 1884.)

G. 4. 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. 259, dated 12th January 1885.)

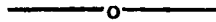
G. 5. Government Resolution No. 5915 dated 15th June 1908, R. D. sanctioned a new form of receipt which is a counterfoil of the daybook (village form IX.).

As the details of land etc. cannot be entered in the counterfoil receipt, ryots have a right to

- (a) inspect village forms viii-A and viii-B
- (b) have a copy of viii-A or viii-B on payment of one anna each, and
- (c) to have the copy of viii-A corrected from time to time free of charge. (paragraphs 14 to 16 on page 113 of Mr. Anderson's Manual).

Penalty
for failure
to grant
receipts.

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.



CHAPTER VI.

OF THE GRANT, USE AND RELINQUISHMENT OF UNALIENATED LAND. [a]

Written
permission
of
Mámlatdár
or Mahál-
kari re-
quired pre-
vious to
taking up
unoccu-
pied land

[^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 Mámlatdár or Mahálkari.

[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 s. 60, see para. 5 of foot-note [a] on page I, *supra*.

N. 1. Application for leave to extend cultivation is exempt from Court Fees. (*Vide* para. II of Section 19 of the Court Fees Act, VII of 1870.)

N. 2. The applicant delivers an agreement or lease in respect of the land and the permission is given in a prescribed form.

N. 3. *Vide*, J I under s. 211.

G 1 It was not the intention of the Legislature to interfere with the right of an Inamdar to give out unoccupied land for cultivation in his village.

G. R. 5730 1st October 1881 and 959, 10th February 1882.

G. 2. In the case of minors or Lunatics the Collector cannot accept an agreement from their friends or relations who have no legal power to act on their behalf.

(G. R. 7074, 11th October 1882.)

G. 3. Application for leave to occupy land when made by a person who does not at the time of application hold any land is exempt from Court Fees, (G. of I. N. No. 3626, dated 23rd September 1884, published in the B. G. G. Part I., page 735, 1884.)

J. 1. The sale of unoccupied land, held by Mamlatdars under Section 62 and permission to occupy such land given under Section 60, are within the scope of Section 211 as proceedings, which the Commissioner has jurisdiction to call for and revise and to pass such order thereon as he deems fit and no suit would lie against Government on account of that officer exercising his legal powers under that section. (P. J. 230, Parapa *vs.* The Secretary of State for India, 1891.)

[^a] 61. Any person who shall unauthori- Penalties
zedly occupy any land set apart for any special for unau-
purpose, or any unoccupied land which has not thorized
been alienated, shall, occupation of
land.

if the land which he unauthorizedly occupies forms part of an assessed survey number, pay the assessment of the entire number for the whole period of his 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 Collector may deem reasonable, be liable to forfeiture.

Forfeitures under this section shall be adjudged by the Collector, and any property so for

feited shall be disposed of as the Collector may direct.

[a] As to the local repeal of s. 61, see para. 5 of foot-note [a] on p. 1, *supra*.

[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 1895, second Schedule.

[f—f] Words repealed by Bom. VI of 1901, s. 7, are omitted.

SUMMARY. (s. 61).

1 Section 61—	(1) Amendment of	...	G 27
	(2) meaning of	...	N 1
	(3) Retrospective effect	G 11 J 1	
	(4) when—should. not be enforced	...	G 5, 18
2	Costs of measurement &c.	...	N 3
3	Crops when forfeited	...	N 6
4	easements	...	G 12, 13
5	encroachments		
	(1) how to detect	G 15, 20, 21, 23	
	(2) Penalties for	...	G 19, N 4
	(3) Silt deposited on canal-banks	...	G 24
6	encroachments in		
	(1) Alienated villages or lands	G 4, 9, 25	
	(2) municipal limits		
	(a) Roads	...	G 26
	(b) streams	...	G 6, N 5
	(c) Tanks	...	G 6, N 5
	(3) open spaces not being parts of roads	...	G 5

- (4) public streets in
- | | | |
|------------------------|-----|------------|
| (1) Alienated villages | ... | G 9 |
| (2) Govt. villages | ... | G 2, 7, 14 |

NOTES.

N. 1. This section corresponds to Sections 33 and 39 of Bombay Act I of 1865. 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. The 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 up to a fixed amount as an alternative from fine by a multiplied assessment is made to meet cases in which the extent of the unauthorized occupation is trifling, but the occupation itself mischievous, as for instance when a landholder ploughs up and incorporates in his field the strip of land dividing him from his neighbours. (Select Committee's report on the Revenue Code Bill.)

N. 2. Suit by person in possession for declaration of title against Government.—The plaintiff alleged that he purchased certain land in July 1888 from the Patel of the village of S and had been in possession ever since and that his vendor had previously been in possession. He now sued because his possession had been threatened by the orders of Government officials. It was admitted that the plaintiff had been in actual possession since 1888.

The District Judge held that the burden of proof of title to the land lay upon the plaintiff. He was of opinion that he had failed to prove it, and he dismissed the suit.

Held that the plaintiff being in possession (not shown to have wrongfully originated) such possession was good against the whole world except a

person who could show better title, that the burden of proving such title lay upon the defendant, that he failed to prove it, and that therefore the plaintiff was entitled to the declaration sued for. (I. L. R. 25 Bombay 287.)

N 3. The cost of measurement and correction of record in cases of encroachment under Section 61, should be borne invariably by Government. The fines or occupancy prices levied would cover the cost in case encroachment is found to have been really made.

N 4. As regards determining the amount of fine leviable under this section, see table given in Appendix 4.

N 5. Under sec. 50 (2) (b) of the Bombay District Municipal Act 3 of 1901 all public streams and tanks are vested in a Municipality. The words 'public streams' do not include either the banks or the beds of such streams. (*Vide G 6* under sec. 37.) The words 'public tanks' however include the beds and any adjacent land appertaining to the tanks (G. R. 6111 dated 9 September 1887). Encroachments in the beds or banks of public streams within municipal limits can therefore be dealt with under sec. 61.

N 6. Under sec. 61 the *crops* are liable to forfeiture so long as they are standing on the land and their value cannot be recovered after their removal from the land.

N 7. Open space between two bastions of an old castle-like building presumably belongs to the owner of the building. The Collector, however, can decide each case on its merits under Section 37 and declare whether the such open space forms part of the road or the building.

G 1. The assessment leviable under section 33 of the Survey Act (now section 61 of the Land Revenue Code) is liable to the one anna cess but

not the excess which may be imposed as a fine. (G. R. R. D. No. 1007, dated 1st March 1871).

G 2. As a matter of principle, it is absolutely necessary to repress rigidly the practise of making encroachments on public streets to which many of the people are so much addicted. (G. R. 4456 dated 7th August 1875.)

G 3. Remission of assessment chargeable on lands unauthorizedly occupied.—The Collectors and Assistant and Deputy Collectors, when dealing with cases of unauthorized cultivation under this section, may remit such portion of the assessment chargeable as may appear to them in view of the circumstances to be reasonable and desirable. The power to grant remission hereby conferred is to be exercised only in cases where a strict enforcement of the provisions of this section would seem to be inexpedient. (G. R. No. 1625, dated 30th March 1880.)

G 4. Section 61 not applicable to alienated villages or lands.—Section 61 is not applicable to alienated villages or lands. The Collector cannot therefore take steps under this section in cases of encroachment on Gurcharan (or lands assigned for special purposes) in alienated villages. In such cases the Inamdar's proper remedy is a suit in the Civil Court. (G. R. No. 5205, dated 25th June 1885.)

G 5. The order (G. R. No. 5965, dated 20th August 1886—printed under Section 37) regarding encroachment on public roads is inapplicable to any open space or portion of open ground which cannot be reasonably claimed as forming part of public road. Whether any such piece of ground is a part of public road or not is a question of fact, which must be determined according to the circumstances in each case. If a person has taken possession of land to which he has no right, the law should be enforced against him with the view of ousting him, or if that is found inexpedient, the oc-

cupancy should be recognized to be his on his giving usual occupant's *Kabulayat* and paying the usual occupancy price, if any. (G. R. No. 3815, dated 23rd June 1887.)

G 6. Encroachments on tanks in Municipal limits.—The word "tank" is ordinarily applied to basins in the earth constructed or adopted for the storage of water. All public tanks, and also any adjacent land appertaining thereto in Municipal limits are, under Section 17 of Bombay Act VI of 1873, vested in, and belong to, the Municipality. Under this section it is clear that the bed of any such public tank belongs to the Municipality. And when once the soil has so vested there is nothing in the law to make it cease to be Municipal property on its nature being altered and its ceasing to be the bed of a tank. The test is whether the land has, at any time since the Municipal Act VI of 1873, and since the constitution of a Municipality, been a public place for storage of water, if it has, it has vested in the Municipality, and if it was dried up permanently before the contingencies arose, it remains Government property. So long as an old basin known to have been formed or constructed for the storage of water remains capable of holding water and does usually hold it at some period of the year it remains a tank. When the bed of a tank is Municipal property according to this view it is not liable to assessment when cultivated or otherwise used. Section 45 of the Land Revenue Code, no doubt, makes all land liable to land-revenue unless wholly exempted under the provisions of any special contract or any law for the time being in force, but looking to the Municipal Act Sections 17 and 18, of which the latter declares that all rent of Municipal property shall go to the Municipal fund, it must be held that Municipal lands are implied by the intention of the Municipal Act exempted from land-revenue, and must be considered 'alienated' (that is, transferred so far as

the rights of Government to payment of rent or land-revenue are concerned) and therefore are not liable to assessment under Section 52 or to the penalties provided by Section 61 of the Land Revenue Code. The Collector should decide whether the bed of a disused tank belongs to Government. The other party may be left to its own remedy or appeal. G. R. No. 4551, dated 6th June 1885, (*Vide* Order No. 2 under Section 37) does not affect this. Stream means a current of water, and does not include bed, but tank means the basin itself. (G. R. No. 6111, dated 9th September 1887.)

G 7. Procedure for the summary eviction.— The procedure to be adopted for the summary eviction of any person liable to be evicted under Section 61 of the Land Revenue Code is clearly stated in Section 202. In cases in which portions of public road have been unauthorizedly occupied, the Collector should, after satisfying himself in each case that an encroachment has really taken place, strictly follow the procedure prescribed in Section 202. In case any building has been erected on land encroached upon, the notice given under Section 202 should contain a specific instruction to remove such building and vacate the land by such date as Collector might think reasonable. (*Vide* Clause 6 of Section 61 and Clause 2 of Section 202.) (G. R. No. 1697, dated 13th March 1888 reaffirmed by G. R. 3534 of 10th May 1895.)

G 8. In Taluka towns Mamlatdar's responsibility.— There has recently come before Government an instance of unauthorized occupation of Government land by the erection of buildings thereupon by a private individual in a town which is the Head-quarters of a Taluka. Such cases are most discreditable to the Mamlatdars under whose personal observation, it may be presumed buildings are erected upon public property. There are Municipalities in taluka Head-quarter towns, and the

Mamlatdar was formerly the chief executive officer of the committee and had the best opportunity of knowing of any encroachments upon public property ; neglect of duty in such cases therefore was the more inexcusable. Under the present system of local Government it is more necessary than formerly that village and taluka officials should feel their responsibility for protection of public property ; and the attention of the Collectors and the Commissioners is therefore especially directed towards seeing that the duty is performed with promptitude and efficiency. (G. R. No. 3789, dated 11th June 1888.)

G 9. Course to be taken by the alienee.—The provisions of Section 61 do not apply to alienated lands (see above). Accordingly in a case in which the Inamdar of a village had permitted a man to build over the road passing through the village to the great inconvenience of inhabitants, the Collector declined to interfere on the ground that the village was "alienated." The Commissioner recommended that the view held in G. R. No. 5205, dated 25th June 1885 might be reconsidered with reference to the points—

(1) That the Inamdar in the present instance is not the owner of the soil under the ruling at 6 B. H. C. R. A. C. J. ; and

(2) That Section 37 of the Bombay Land Revenue Code reserves the rights of Government in public roads.

This recommendation was disposed of by G. R. No. 3837, dated 3rd June 1890, by which the view held in the resolution above referred to has been re-affirmed in the following terms :—

" Section 61 applies only to unauthorized occupation of—

(a) any land set apart for any special purpose, and

(b) any unoccupied land which has not been alienated.

“ Section 218 of the same Code renders inapplicable to alienated land such provisions of the Code as in terms apply to unalienated lands or the holders thereof.

“ It therefore follows that when land has been 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, the Collector cannot interfere to protect the rights of the transferee by evicting the unauthorized occupier summarily under Section 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 Section 88 no power can be conferred upon him to exercise the powers of a Collector under Section 61, though Section 88 enables powers under Sections 65 and 66 to be conferred by commission, *expressio unius est exclusio alterius*.

“ The power of summary eviction conferred by Section 61 on the Collector extends not only to unalienated lands, but also to lands 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 unauthorized occupation land appropriated to special purposes.

“ Land can only be ‘ set apart ’ under the Code for certain purposes in unalienated villages, when it is the property of Government and unoccupied (Section 38.)

“ The wording of Section 61 ‘ set apart for any special purpose,’ is not limited in its application to assignments under the Code for the special purposes enumerated in Section 38, but would give the Collector power to protect against unauthorized occupation of any land lawfully set apart whether under the Code or not, for any special purpose.

“ 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. Unauthorized occupation, even by the alienee of land so set apart, could be dealt with by the Collector under Section 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 Section 61 of the Bombay Land Revenue Code, there can be not the slightest room for doubt that it could be dealt with under Section 133, Criminal Procedure Code, by the District, Sub-Divisional or other duly empowered Magistrate, 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 Section 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 Section 61 to protect it from unauthorized occupation as land set apart.

“ But if it is only a bye-way used for village traffic alone and only since the alienation of the village, then action could not be taken under Section 133 of the Criminal Procedure Code, and certainly not under Section 61 of the Bombay 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 Section 60, any land in the village on which the public had not a superior claim for special purposes.” (G. R. No. 3837, dated 3rd June 1890.)

G. 10. Section 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 an unauthorized occupation of land, which commenced before 17th July 1879, has been since continued, the Collector may, unless the occupier has in the meantime acquired a complete prescriptive title to the land,—

- (a) require payment of assessment under paragraphs 2 and 3 of Section 61 for the whole period of occupation, except for any time prior to the 17th July 1879;
- (b) summarily evict the person unauthorizedly occupying;
- (c) forfeit any crop raised on the land subsequently to the 17th July 1879;
- (d) require the removal of any building or other construction, which the person unautho-

rizedly occupying the land may have erected thereon ;

- (e) failing obedience to the requisition under (d), forfeit the building, or construction, whether it was erected before, or since the 17th July 1879.

These orders supersede those in G. R. No. 3274, dated 25th June 1880. (G. R. No. 6202, dated 1st September 1890.)

G. 11. Unauthorized Occupation creating a prescriptive title.—The questions as to what period of unauthorized occupation of Government land should be considered as creating a prescriptive title to the land, and whether when such a title is established the unauthorized occupier is to be allowed to continue in the possession of the land rent free, have been decided by the following orders :—

“ ‘ Sections 35 and 36 of Regulation XVII of 1827 I. L. R. IX. show that the Legislature accepted the principle of Bombay 227. prescription creating a right of property or of fiscal exemption against the State as against the individual,’ and article 149 of Schedule II. of Act XV. of 1879 bars a suit by the Secretary of State in Council by the lapse of sixty years from the date when the period of limitation would begin to run under that Act against a like suit by a private person, and, under Section 28 at the determination of the period limited to any person for instituting a suit for possession of any property. his right to such property is extinguished.

“ The right of a private person to sue for possession of immoveable property on any interest would be barred by the lapse of twelve years from the date when the possession of the defendant became adverse to him. L. L. R. IX. Madras 183 See also Savigny on possession. Sir E. Perry's Translation, p. 275.

“ The question at what precise moment possession has become adverse must, of course, depend on the circumstances of each particular case. ‘ The enjoyment necessary to create a title by prescrip-

tion must not be a mere succession of independent trespassers ; it must be, if not continuous, at least of such a character that an intention to assert a right as owner may be inferred from it.'

"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. Rs. Nos. 728, dated 28th January 1891, and 3274, dated 12th May 1891.)

G. 12. Section 15 of the Easements Act (VIII of 1891), renders 60 years of peaceable and open enjoyment in the assertion of a title to an easement as such and as of right sufficient for the acquisition of a right against Government. No grant of an easement in respect of Government land should be made by any officer except (1) with the express sanction of Government or (2) under some rule or order of Government at the time in force clearly authorizing the grant. Strict vigilance should be exercised by all revenue officers and enjoined by the superior officers upon their subordinates in order to interrupt the growth of any unwarrantable claim to an easement upon or in respect of Government land. (G. R. R. D. No. 3864, dated 6th June 1891.)

G. 13. The commonest easements are :—

- (1) a right of way through Government land
- (2) a right to take water from a well, nala or spring in Government land
- (3) a right to take cattle to water at a well or tank or water-channel in Government land
- (4) a right to conduct water to one's own field through Government land
- (5) a right to graze cattle in Government land
- (6) a right to cut wood or gather rab on Government land

(7) a right to take earth, stones, muram, &c., from Government land

The interests of Government would suffer if local officers allowed the practices described above to grow by prescription into absolute rights without taking proper steps to prevent them.

Peaceable enjoyment without interruption for sixty years may convert such practices into rights as against Government. (G. R. 1376 dated 24th February 1892.)

G 14. The orders in G. R. No. 1697, dated 13th March 1888, supersede those in G. R. No. 4344, dated 18th June 1886. (G. R. R. D. 3534 dated 10th May 1894.)

G 15. Measures for detecting encroachment.†
—Encroachment on Government land within the village site can be prevented only by constant supervision and control of village officers without whose cognizance such encroachments cannot occur. (G. R. R. D, No. 954 dated 31st January 1896.)

G 16. *Vide* G. 16 under Section 37. (G. R. 1873 dated 27th February 1896.)

G. 17. *Vide* G. 17 under Section 37. (G. R. 9661 dated 1st December 1896.)

G. 18. Persons encroaching before location of boundaries should not be evicted—Although it cannot be admitted that the location of a boundary under Chapter IX would necessarily exempt a person from penalty of unauthorized occupation of land within it, if encroachment before the location could be distinctly proved it would hardly be ever expedient to apply sec. 61 to land which had been included in an occupied number at an original or revision 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. No. 3630, dated 13th May 1897.)

G. 19. The penalties for encroachment should be promptly enforced.—The penalty for encroachment on Government land, including roads, is prescribed under Section 61, *viz.*, Rs. 5 or a sum equal to ten times the assessment of the area encroached upon if such a sum be in excess of Rs. 5, summary eviction and forfeiture of crops raised. These penalties, if promptly and fully enforced, will prove to be sufficiently deterrent. (G. R. No. 44 dated 4th January 1900.)

G. 20. Measures for detecting encroachments.—The attention of all Revenue Officers is called to G. R. No. 9661, dated 1st December 1896 (given under Section 37) and to the necessity for the care and diligence in the collection of all available evidence, both oral or documentary, of Government title.

(2) In order to afford some check on the numerous encroachments which at present escape undetected, as soon as the Accountant of any village has learnt surveying, the first opportunity should be taken to execute an accurate survey of the village site. When surveying village sites the necessity of allowing cultivators plenty of space for stacking grass, tethering cattle and similar purposes should be carefully borne in mind.

(3) The proper procedure will be to map out the village site accurately (beginning so far as possible in the more important villages.) The map should show all plots actually in the possession of private individuals, and all persons claiming sites should be called on to produce evidence of title. All claims which Government cannot be certain of disproving should so far as possible be compromised by leasing the land for a nominal occupancy price and reasonable ground rent.

(4) All leases which may be effected or grants of permission to occupy which may be made in pursuance of these orders should be carefully noted

in the record. (G. R. No. 4054, dated 13th June 1901.)

G. 21. Government are aware that inquiry and survey can only proceed gradually, but it is desirable that a beginning should be made in places where trained village Accountants are available and the pressure of work is not unduly heavy. It is not the intention of Government 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 a village 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.

2. Apprehensions of loss to Government interests do not, in the opinion of Government, outweigh the advantages anticipated, and Collectors should carry out the inquiries in a liberal spirit of compromise. It is most important for administration purposes that there should be a record of rights in open lands in or near village sites and the absence of one has led to very unsatisfactory results. (G. R. No. 1663, dated 12th March 1902.)

G. 22. The Collectors have full discretion to remit fine under this section. (Entry 21 of G. R. No. 4347, dated 25th June 1902.)

G. 23. The open spaces, principal roads and streets, where encroachment is likely to occur, should be surveyed when opportunity occurs in the principal villages in any taluka, the Village Accountants of which have all received survey training. An absolutely accurate plan of the whole village is not required. For this purpose the theodolite and prismatic compass would not be indispensable. (G. R. R. D. No. 4964, dated 21st May 1906.)

G. 24. Deposit of silt on Canal banks in Sind—no encroachment.—Silt deposited on canal banks does not amount to occupying land within the con-

templation of Section 61. The depositor renders himself liable to damages for trespass on land or to prosecution under Section 61 of Bombay Irrigation Act or Section 425, Indian Penal Code. (G. R. R. D. No. 8539 dated 4th September 1906.)

G. 25. Sec. 61 does not apply to alienated villages or lands. (G. R. No. 10386 dated 16th November 1910.)

G. 26. Sec. 61 does not apply to roads within municipal limits which are made over to a municipality. (G. R. No. 447 dated 17th January 1912.)

G. 27. Recovery of the cost of removing a building or other encroachment on land unauthorizedly occupied from the trespasser.

The following amendment to Section 61 of the Bombay Land Revenue Code, with the note on the clause, prepared by the Remembrancer of Legal Affairs, is approved :—

Amendment
of Sec. 61 of
Bom. V of
1879.

“ In Sec. 61 of the Bombay Land Revenue Code, 1879—

(a) after the word ‘ forfeiture,’ where it occurs for the second time in the last paragraph but one, the following words shall be inserted :—

‘ or to summary removal ’; (Cf. Bom. II of 1876 S. 26).

(b) the following words shall be added to the last paragraph of the section :—

‘ and the cost of the removal of any encroachment under this section shall be recoverable as an arrear of land revenue.’ ”

Note on the clause.

There is no provision in the Bombay Land Revenue Code, 1879, under which the cost of removing a building or other encroachment on land unauthorizedly occupied can be recovered from the trespasser. This clause inserts the required provision

which has been based on the similar authority contained in the Bombay City Land Revenue Act, 1876, Section 76.

The amendment should be included in the next Repealing and Amendment Bill. (G. O. No. 10382, R. D., dated 30th October 1916.)

J. 1. The use of the word "shall" in the first clause of Section 61 does not restrict the application of this section to cases of unauthorized occupation subsequent to the Act 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. (*Pranla vs. the Secretary of State*. P. J. 366 of 1897).

J. 2. Under section 37 of the Bombay Land Revenue Code all public roads are the property of Government and must be taken to be in the possession of the local Government officers on behalf of Government. 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 section 441 of the Indian Penal Code.

Queen-Empress v. Fakirgavda.

C. R. 49 of 1888, p. 393.

J. 3. 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. (Sections, 147, 426, and 447 of the I. P. Code.)

I. L. R. 39 Madras, p. 57.

J. 4. On the 2nd May 1912 the plaintiff gave notice to Government under Section 80 of the Civil Procedure Code (Act V of 1908) of a suit which he intended to file for a declaration of ownership of certain property. Shortly afterwards, the Mamlatdar threatened to demolish the property which was the subject matter of the notice. The plaintiff

thereupon filed up the present suit against Government on the 19th June 1912. The defendant contended that the suit was bad under Sec. 80 as having been instituted within two months of the date of the notice. Held, that the suit was not bad under Sec. 80, inasmuch as the defendant's agent had during the currency of the notice threatened to demolish the property in dispute.

The Secretary of State for India in Council
V.

Gulam Rasul Gyasudin Kuwari.
I. L. R. 40 Bombay, p. 392.

Unoccupied land may be granted on conditions. [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 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.

[a] As to the local repeal of ss. 62 and 63, see paragraph 5 of foot-note [a] on p. I, *supra*.

Secs. 62 and 63 were substituted by Bom. IV of 1913, ss. 21 and 22, respectively, for the original sections.

N 1. For memo. of conditions to be imposed in respect of sale by auction of the occupancy right of Government lands, see Appendix 5.

N 2. For conditions regulating the cutting of trees for tahal, see Appendix 6 to the Code.

N 3. *Vide* J I under s. 211.

G I. Grant of land to Kolis and other wild tribes.—The concession (of giving land without

payment of occupancy price) given by G. R. R. D. No. 1044, dated 19th February 1875, should be strictly confined to Kolis and other wild tribes. In each case the condition that the grantee shall not transfer it in any way to another person should be imposed. (G. R. R. D. No. 6210, dated 22nd August 1883).

G 2. Mention of non-transferable tenure in the Administration report.—The area of land given out in each district during a revenue year on each non-transferable tenure, should be mentioned in the Administration reports. (G. R. R. D. No. 1607, dated 12th March 1907.)

G 3. Rewards to meritorious Government servants.—Where it is desired to reward a meritorious Government servant, land may be given on the restricted tenure, provided the grantee specially desires it on the ground that it will preserve the land in his family. (G. R. No. 8526 dated 21st August 1908.)

G 4. Building sites.—There is no objection to grant building sites on restricted tenure in suitable cases. (G. R. No. 2682, dated 15th March 1909.)

G 5. Lease or mortgage of lands on the unalienable tenure.—On the question of the grant of increased facilities to holders of Land on the unalienated tenure to lease or mortgage, Government have directed that it is desirable to maintain the elasticity which the present practice allows, and are of opinion that until the burden of dealing with applications for alienation is shown to be excessive, power to grant permission should remain entirely in the hands of the collector and such sub-divisional officers as he may think fit to exercise it—rarely, if ever should the authority be delegated to mamlatdars.

Where non-alienated tenure has been extended to the persons of the more intelligent classes for

whom any restriction on alienation is unnecessary the restriction may be removed on the application of the individuals 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 the ordinary tenure. (G. R. No. 8708, dated 28th September 1910.)

G 6. Grant of lands to criminal tribes.—Revised forms of leases for the grant of lands for agricultural purposes and for building sites to certain criminal tribes are given in Appendix 6. (G. O R. D. No. 12176, dated 11th December 1916.)

G 7. Waste lands.—Conditions to be imposed in making grants of waste lands to deserving military men.

G. R. R. D. 14850, dated 18th December 1917.

„ 12029, dated 6th October 1917.

„ 2086, dated 1st March 1911.

„ 1963, dated 24th February 1911.

G 8. Waste lands may be given in cases of want or to encourage local recruitment. (G.R.R.D. 14425, dated 29th November 1917.)

Grant of
alluvial
land
vesting in
Govern-
ment.

[^a]63. When it appears to the Collector that any alluvial land, which vests under any law 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 mortgaged with possession, the mortgagor shall be deemed to be the occupant thereof.

[a] As to the local repeal of ss. 62 and 63, see para. 5 of footnote [a] on p. 1, *supra*.

Ss. 62 and 63 were substituted by Bom. IV of 1913, ss. 21 and 22, respectively, for the original sections.

SUMMARY (SEC. 63.)

1	Section 63 (1) meaning of	...	...	N	I
	(2) not applicable to				
	(a) Abandoned riverbed	...	N	3	
	(b) Alluvial land artificially formed	...	N	4, G	1, 4
	(c) Alluvial land formed on alienated land	...	N	2	
	(3) Alluvial land bounded on one side by water and on the other side by a foot path	...	N	6	
	(4) Beds of rivers or streams...		N	5	
2	Irrigation Depart- ment	} when—to take revenue from allu- vial land...	...	G	1, 4
3	Sale ...		—of alluvial land		
		"	to a stranger	G	3
4	Suit ...	notice of—against Government	...	G	2

NOTES.

N I.—This section provides for the disposal of the occupancy of such alluvial or water-forsaken lands as under the provisions of the Code (Sec-

tion 37) vests in Government. The object of the Section is to secure to the neighbouring landholder, in consideration of the river frontage he would otherwise lose, right to purchase the occupancy of the new land at a price not exceeding three times its annual assessment. (Select Committee's report on the Revenue Code Bill.)

N 2.—This and the following sections refer to alluvion formed on Government land. Alluvial lands formed on alienated lands are dealt with in Section 46.

N 3.—Alluvial land distinguished from abandoned river bed.—Alluvial land is bounded on one side by the water of a river or stream while an abandoned river bed is bounded on both sides by other lands.

N 4.—Artificially formed alluvial land—land artificially formed by obstructing flow of water is not alluvial land which has (naturally) 'formed' under this section.

N 5. Beds of rivers or streams—such beds occasionally under water in the rains should not be treated as alluvial land or should not be permanently disposed of.

N 6. Foot path.—A foot path adjoining alluvial land is sufficient to extinguish riparian rights.

GOVERNMENT ORDERS.

G 1. Department to which revenue from alluvial land should be taken.—Certain alluvial lands were formed by increased storage of water caused by a dam constructed by the Irrigation Department. The revenue from such lands was ordered to be credited to the Irrigation Department. (G. R. R. D. No. 5770, dated 28th October 1879.)

G 2. Notice in a newspaper to Collector under this Section not sufficient.—D gave a notice to the Collector in a newspaper that within two

months from its date the occupancy of the number named (to which Section 63 was applicable) should be given to him on his paying the occupancy price, otherwise he would institute a civil suit. The question was referred to the Remembrancer of Legal Affairs, who gave his opinion as follows:—

“It is not generally desirable that the Collector should accept as sufficient, for the purposes of the Civil Procedure Code, a notice published in a newspaper.” (G. R. No. 4803, dated 8th June, 1892.)

G.3. The sale of an alluvial land to a stranger set aside.—G. unauthorizedly occupied alluvial land formed adjacent to his field, and enclosed it by an embankment. G. offered not only three times but twenty times the assessment, but the land was put to auction and sold to S.

Government cancelled the sale as illegal. S was evicted, and the occupancy price, with reasonable compensation for loss, actual or prospective, which the dispossession did cause, was ordered to be paid. G. was ordered to be put in possession on payment of a sum specified. (G. R. No. 321, dated 19th January, 1903.)

G.4. Sections 63 and 64 and the rules regarding alluvial land do not apply to such land formed by the silting up of a nala near a Public Works Department dam. The disposal of the land rests with the Collector. The proceeds may be credited to Irrigation Department. (G. R. R. D. No. 6201, dated 31st July 1905).

[^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

Tempor-
ary right
to alluvial
lands of
small extent.

shall be at the disposal of the Collector, subject to the provisions of the last preceding section. [b]

[a] As to the local repeal of ss. 64 and 65, see para. 5 of footnote [a] on p. I, *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".

J. I. Alluvial land:—The bed of a public navigable river is the property of the Government, 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 Regulation II of 1825.

If private property be submerged and subsequently again left bare by the water, it belongs to the original owner.

20 Bombay Law Reporter. page 49.

Haradas Acharjya Chowdhuri

Vs.

Secretary of State for India in Council.

Uses to which occupant of land for purposes of agriculture may put his land.

[a] **65.** An occupant of land [d] assessed or held for the purpose of agriculture [d] 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 [e] use for the purpose aforesaid [e].

Procedure if occupant wishes to apply "his land" to any other purpose.

But, if any occupant [f] wishes to use his holding or any part thereof for any other purpose [f] the Collector's permission shall in the first place be applied for by the [g] occupant.

[a] 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 [a].

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 [c] permitted to be used for any purpose unconnected with agriculture [c] it shall be lawful for the Collector, subject to the general orders of Government, to require the payment of a fine in addition to any new assessment which may be leviable under the provisions of section 48.

(a) Vide (a) under s. 64.

[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."

Fine to be levied for such use in addition to special assessment.

[d-d] 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."

[e] The word "registered" was repealed by Bom. IV of 1913, s. 24 (b).

[f-f] This was substituted by Bom. I of 1910, Schedule I, Pt. II, Serial No. 4, for the original paragraph.

[g] The word "Registered" was repealed by Bom. IV of 1913, s. 24 (b).

[h-h] These words were substituted by Bom. IV of 1913, section 24 (a) for the original words "appropriated to any purpose unconnected with agriculture."

SUMMARY (Section 65.)

- 1 Section 65 (1)—Applicable to
 - Surveyed Inam villages ... G 13
 - (2)—Connected with s. 48. ... NI
 - (3)—Explained ... G 6,8,10,11
 - (4)—Inconsistent with s. 134 ... N 4
 - (5)—Not applicable to (a) Inam lands. G 1,2
 - (b) lands not used for agriculture. J 1
- 2 Agricultural purpose—manual ... G 9
- 3 Delegation—of powers ... G 14
- 4 Earth, stone &c —removal of ... G 3, 16
- 5 Farm buildings—defined ... N 3, G 4
- 6 Fines—abolition of ... N2, G15
- 7 Lands rent free but not Inam ... G 5
- 8 Municipality—no concession to ... G 7
- 9 Quarries—in occupied lands ... G 16

NOTES.

N. 1 As regards new assessment leviable under section 48 referred to in this section, *Vide* notes under s. 48 and the rules thereunder.

N. 2. Fines under section 65 are now abolished (*Vide* G 15.)

N. 3. Buildings erected for the storage of agricultural implements or for sheltering cattle used in the cultivation of the land as well as houses occupied by occupants who themselves cultivate the 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. (Bombay Govt. Gazette Part VII for 1911, page 195)

N. 4. It will be seen from G 1 and G 2 under this section that section 65 is inapplicable to Inam lands. It appears that this section is inconsistent with section 134 as it now stands.

G. 1. Section 65 not applicable to alienated lands.—Where M asked for permission to convert a portion of his *patilki inam* into building sites, the permission was refused, as only occupants as defined by Section 3, clause 16, are entitled to ask and obtain permission under Section 65.

The Collector then proposed to convert a portion of that land into *gaonthan* and another piece of land to be exchanged for *patilki inam*.

The proposal was sanctioned. (G. R. No. 4148, dated 23rd May 1885.)

G. 2. B applied for permission to build a factory on a Deshpande land belonging to N. The case being referred to the Legal Remembrancer his report was approved, which was as follows:

“1. Section 65 is inapplicable to the land in question.

"2. The alienation of land forming part of a District Hereditary Officer's *watan* is illegal under Section 5 of Bombay Act III. of 1874 as amended by Section I of Bombay Act V. of 1886, without the sanction of Government. But without knowing what is the nature of the title claimed by N in the piece of land which B wishes to acquire, it is not possible to decide whether that section can be held to apply to it.

"3. The Collector apparently need not concern himself in the matter, unless action is asked for under some specific enactment. The sanction of Government does not appear to be necessary merely to permit B to build a factory." (G. R. No. 3181, dated 23rd May 1887.)

G 3. Removal of earth, stone, etc., by Occupant.—Occupants of lands assessed for purposes of agriculture are liable to payment of fine under the Land Revenue Code rules for the removal by them, of earth, stone, etc, from their lands for purposes of trade.

Such cases should be governed by paragraphs 2 and 3 of Section 65 of the Code. Permission of the Collector should be applied for and may be granted. * * * Where an occupant takes action without obtaining the Collector's permission in the first instance, recourse might be had to Section 66 of the Code. (G. R. No. 6883, dated 16th October 1888.)

G 4. Houses in cultivated lands in Kanara.—Owing to the absence of village sites throughout the greater part of Kanara, the dwelling houses of the cultivators—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 con-

sidered to be farm buildings within the meaning of Section 65, Land Revenue Code, so long as they are occupied and *bonâ fide* 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. No. 1637, dated 3rd March 1891.)

G 5. Fine for non-agricultural appropriation of rent free land.—The opinion expressed by the Commissioner, N. D., in his following memorandum No. 1631 dated 12th May 1892, was concurred in by Government:—

“I have the honour to submit, for the orders of Government, the following case regarding the levy of fine from one L. J. on a portion of land built upon by him after its purchase from the original holder, a Sadhu, who was allowed to enjoy it rent-free as kacha at the time of the Survey.

2. The land built upon measures 7 gunthas and forms part of 20 gunthas of land standing in the name of Sadhu J. in Survey No. 71, assessed at Rs. 4-8-0, including water rate, in Navagam, an uninhabited village in the Chorasî Taluka of the Surat District. On the above 7 gunthas of land five sheds have been built, for which the purchaser receives a rental of annas 12 per shed. There is no village site in the village, and the Survey No. being less than an acre in extent, and having on it a *math* and temple, was allowed to be enjoyed free of assessment by the Sadhu, who is entered in the Kaim Kharda as the holder of the land.
3. The Sadhu, having held the land on the ordinary survey tenure, had full occupancy rights over it, and he could, therefore, sell it to any one he pleased. It appears to me, however, that though the land was held

rent-free, it was land assessed for agriculture purposes. It was not alienated land, nor land set apart for a special purpose, *e. g.*, for temple or *math*, and I am of opinion that Section 65 of the Land Revenue Code is applicable to it, and that the occupant can be called on to pay a fine for using the land for a non-agricultural purpose. (G. R. No. 4583, dated 30th May 1892.)

G 6. Permission must be express and not implied.—The following opinion was concurred in by Government.—

“Section 65 of the Land Revenue Code confers on occupants, who have applied to the Collector for permission to use land for certain purposes the privilege of acting as if the application had been granted within three months after acknowledgment of its receipt, if no answer to that application has been received by the applicant.

Maxwell on
interpretation
of Statute 453,
et seq.

Noseworthy
vs. Buckland,
L. R. 9 C. P. P.

“When a Statute confers a right, privilege or immunity, the regulations, forms or conditions which it prescribes for its acquisition are imperative in the sense that non-observance of any of them is fatal. The strictest compliance with the conditions prescribed is required.

“Tacit or implied permission could not be deemed to have been granted therefore, if the applicant had received any answer within the three months. If express permission were granted there would, of course, be no necessity for implication.

“Section 65 does not require the Collector to grant the application within any stated period, but only limits his power to refuse in case he has given no answer within the three months, when he shall be deemed to have granted the application.

“It is perfectly open to him to refuse before that period expires, and if he sees reason, on further information afterwards received, to grant

permission either on the same or on another application.

“An answer postponing decision on the application could neither be deemed to be ‘no answer’ at all, nor could it be deemed to grant it. It would be an answer refusing permission at least *in presenti* but there is nothing in the Act to prevent the Collector subsequently giving the permission.” (G. R. No. 5893, dated 20th July 1892.)

G 7. No concession to a 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. No. 8633, dated 3rd November 1892.)

G 8. The Permission cannot be conditional.—It is not open to the Collector to attach conditions to the permission under Section 65 and to cancel the permission or hold it to be void if the conditions are not fulfilled. He can either refuse or grant the permission. (G. R. No. 127, dated 6th January 1898.)

G 9. What constitutes appropriation.—The sub-letting of land for storage of manure is an agricultural purpose. (G. R. No. 7702, dated 30th October 1899.)

G 10. Obligation of the Collector to acknowledge applications for permission.—Appeal No. 464 of 1898, Valav Purushottam Ghelji *vs.* the Secretary of State, has rendered it impossible, that any person should defeat the clear intention of the legislature, that, without the express permission of the Collector, no occupant should appropriate his holding to non-agricultural purposes. It is, however, none the less incumbent on the Collector to fulfil punctually his statutory obligation to furnish immediately to applicants for such permission an acknowledgment of their applications. Any failure so to do may involve Government in trouble-

some and expensive litigation. (G. R. No. 8053, dated 11th November 1899.)

G 11. The remission of premium and the remission or reduction of the enhanced assessment as an act of grace in special cases require the sanction of Government. (G. R. R. D. No. 476, dated 24th January 1903.)

G 12. A factory was built on certain land (without permission) in 1870. Part of the compound was used for stacking cotton in the fair season and grass grown on the same piece in the rains was sold by the occupant.

It was ordered that 30 times the assessment of 1865 can be levied.

2. As to the question whether 30 times the assessment is to be levied only on the area built over and 5 times the assessment on the rest, the rules at the time of appropriation were ordered to be followed and attention was called to the general principles laid down in G. R. No. 6364, dated 12th September 1903.

3. Even if an appropriation to non-agricultural purposes took place many years ago, the present assessment on the lands can be altered now and Government will sanction assessments in all similar cases to the extent of 10 times on lands actually built and two times on compounds. (G. R. R. D. No. 1, dated 4th January 1904.)

G. 13. Surveyed alienated villages.

1. When land assessed for purposes of agriculture only is subsequently appropriated to any purpose unconnected with agriculture, the assessment upon the land so appropriated shall, unless otherwise directed by Government, be altered in accordance with the provisions of the second paragraph of section 48 of the Bombay Land-Revenue Code, 1879, and fixed and revised by the Collector subject to the rules contained in rule 56 and subject to rule 57 of the Land-Revenue Code Rules :

Provided that the powers of the Collector under rules 56 and 57 of the said rules other than the power of estimating the situation 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 sections 65 or 66 and of the said Code upon such holder or holders under section 88 (d) of the said Code.

“ Provided also that in any case where rule III under rule 56 of the said rules is applicable, the holder or holders of an unalienated village, to whom such a commission has been granted, may for the purposes of the said rule enter into a written agreement in such terms as may be approved by the Collector with a holder of any of the land specified in such commission, and an agreement with Government under Section 67 shall not be necessary.”

2. For the purposes of determining the amounts of the fines leviable under section 66 of the Bombay Land-Revenue Code, 1879, rules 71, 72, 73, 74 and 75 of the land-Revenue Code Rules shall be applied :

Provided that the powers of the Collector under section 65 or 66 respectively of the said Code shall be exercised in accordance with the provisions of rules 71, 72 except the proviso, 73, 74 and 75 of the said rules by the holder or holders of the alienated village in respect of land specified in a commission conferring the powers of a Collector under sections 65 or 66 respectively of the said Code upon such holder or holders under section 88 (d) of the said Code.

3. When the Collector receives an application under section 65 of the said Code 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 to 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. 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 :

Provided that no such application shall be granted or refused by the Collector in respect of land specified in a commission conferring the powers of a Collector under section 65 of the said Code upon such holder or holders under section 88 (d) of the said Code, but shall be forthwith forwarded for determination by such holder or holders and that any such application in respect of any such land may be made to and determined by such holder or holders direct.

4. When the Collector receives information that the holder of land assessed to purposes of agriculture only has rendered himself liable to any of the penalties specified in section 66 of the said Code, 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. 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.

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 of the said Code upon the holder or holders of the alienated village under section 88 (*d*) of the said Code but shall forthwith communicate the information for the orders of such holder or holders of the alienated village and that any such information may be received and acted upon by such holder or holders of the alienated village direct.

5. 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 Mamlatdár of the taluka in which the alienated village is situated and the Mamlatdar 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 and such altered assessment or fine shall be levied in the same manner as other land-revenue and shall be credited wholly to the holder or holders of the alienated village where such holder or holders are entitled to the whole land-revenue of the village or proportionately to the share of such holder or holders when such holder or holders are entitled to a proportion only of the land-revenue in accordance with the conditions under which such holder or holders hold the alienated village.

6. Nothing in these rules shall be deemed to apply to lands which are alienated lands apart from the alienation of the village in which they are situated nor to lands in the actual possession and enjoyment of the holder or holders of the alienated village.

7. For the purposes of these rules 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 the provisions of section 53 of the Bombay Land-Revenue Code.

G. N. 5641 of 5th June 1907.

„ 12022 of 24th November 1908.

„ 2533 of 11th March 1911.

G. 14. Delegation of power of granting permission.—The power of granting permission to appropriate land to a non-agricultural purpose should be left ordinarily to all Assistant or Deputy Collectors in charge of a taluka or talukas in respect of lands in towns and villages not brought under Rule 56 clauses (II) to (VII). In special cases, *e. g.*, where the Assistant or Deputy Collector is inexperienced the Collector may reserve the power if he thinks it necessary. In villages of classes I to IV the power may also be delegated by the Collector to selected Mamletdars and in villages of class V to all Mamletdars. (G. R. R. D. No. 3459, dated 2nd April 1908 and 5295 of 1 June 1911.)

G. 15. Fines are abolished in those cases only where appropriation to a non-agricultural use is made with permission. (G. R. R. D. No. 3459 dated 2nd April 1908.)

G. 16. Quarries in occupied lands.—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. No. 10424 dated 27th August 1917.)

J. 1. Possession of land as owner for fifty years
 --User of land as graveyard and also as timber depot—Order by Government for discontinuing the user as timber depot—Order ultra vires
 Limitation Act (IX of 1908), sch. I, Art. 14.

Plaintiffs were in possession of the land in dispute as owners ever since 1860 and used a portion of it as a graveyard, and on another portion of it they built a shed which was used as a timber shop. In 1871, Government assessed the land and entered it in the Revenue Registers as "Government waste land." The plaintiffs paid no assessment on the land. In 1908, the District Deputy Collector passed an order directing the Mamlatdar to "cause the building and the wood to be removed forthwith from the said land." This order was finally confirmed by the Commissioner on the 24th April 1909. The plaintiffs filed the present suits on the 2nd February 1910, to obtain a declaration that they were absolute owners of the land, to have set aside the order of 1909, and to get a permanent injunction, restraining Government from disturbing the plaintiffs in their possession of the land. The Lower Court dismissed the suits holding that the plaintiffs were not absolute owners but occupants only, and the suits were barred under Article 14 of the first schedule to the Limitation Act, 1908. The plaintiffs having appealed :—

Held, as the land in dispute was not used for the purpose of agriculture, neither Section 65 nor Section 66 of the Land Revenue Code (Bom. Act V of 1879) applied to the case, and the orders passed by the Revenue authorities to evict the plaintiffs were ultra vires. *Rasulkhan Hamadkhan v. Secretary of State for India.*

I. L. R. 39 Bombay 494.

[^a] 66. If any such land be so [^b] used with-^{Penalty for so using land with out permission.}out the permission of the Collector being first obtained, or before the expiry of [^c] the period prescribed by section 65 [^c], 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 [^d]

used and from the entire field or survey number of which it may form a part, and the [e] 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 [d] used, such fine as the Collector may, subject to the general orders of Government, direct.

Tenant responsible to occupant in damages.

Any [f] tenant of any occupant or any other person holding under or through an occupant, who shall without the [e] occupant's consent [g] use any such land for [g] any such purpose, and thereby render the said [e] occupant liable to the penalties aforesaid, shall be responsible to the said [e] occupant in damages.

[a] As to the local repeal of s. 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, Sch I, Pt. II, Serial No. 5, for the original words.

[d] This word was substituted by Bom. IV of 1913, s. 25 (a), for the original word "appropriated".

[e] The word "registered" was repealed by Bom. IV of 1913, s. 25 (b).

[f] The words "co-occupant or any" were repealed by Bom. IV of 1913, s. 25 (b).

g-g] These words were substituted by Bom. IV of 1913, s. 25 (a), for the original words "appropriate any such land to."

N. I. As regards determining the amount of fine leviable under this section, see table given in Appendix 4.

SUMMARY (s. 66).

Section 66—compared with sections 48	
and 67	... .. G 1, 5, 7
Fines—(1) on compounds	... .. G 2
(2) ordinary and extraordinary	... G 4, 8
(3) none before Act 1 of 1865	... G 3, 9
Squatters and trespassers	} how to be dealt with ... G 6, 10

G. I. Precis of the law and rules on appropriations.—The following is a brief summary of the Law and the rules on the subject of granting permission to appropriate land assessed for purposes of agriculture to any other purpose, and of determining the amount of fine and altered assessment thereon :—

(a) Section 48 allows, on appropriation, revision of an assessment fixed under the Code (not of assessment fixed before the Code,—G. R. No. 4758, dated 3rd July 1886).

(b) If under Government orders specific appropriation has been prohibited, contravention, complete or attempted, entails liability to summary eviction.

(c) But appropriation may in certain cases be admissible:—

(1) For the more convenient occupation of the land for agricultural purposes as by farm buildings, wells and the like (Section 65, paragraph 1).

(2) By the Collector's assent :—

(a) express or

(b) implied from three months' silence after acknowledgment of application by the registered occupant for permission.

(d) That in cases where such assent is necessary and has been expressly or impliedly given, a fine is impesable whether a revised assessment may be levied or not.

(e) The amount of the fine is to be regulated by the general orders of Government. * * *

When the appropriation is not permissive but contrary to, or without waiting for, the express or implied orders of the Collector, then a fine may be imposed (vide Rule 74.)

And lastly the Collector may make his permission subject to such conditions as Government may,

in any special case, require the registered occupant to agree to, as the terms on which it shall be granted. (Section 67.)

Thus there is absolutely no limit to the terms on which permission may be granted. The only limit is to the penalty imposable in addition to eviction for forbidden appropriations.

When there was no administrative objection to a proposed appropriation, then the condition should not exceed a certain maximum, which should only be reached in special cases, of which the Collector should be the judge.

But when the circumstances are so exceptional that the Collector considers the ordinary maximum inadequate, he can refuse his permission and refer to Government, who alone can judge whether any and what special terms shall be offered to the registered occupant.

If the Collector consider that his permission would give the privilege on too easy terms, he has only to express his dissent within three months of the application. It is open to the Collector, when he thinks any appropriation would be inadequately compensated for by a fine on the ordinary graduated scale, to refuse his permission except on condition of payment of a fine calculated on the area actually appropriated at the rate of Rs. 250 per acre (the rate for land prescribed for Class 1). If no application is made, or if the appropriation is made either without waiting for three months after his application for permission has been acknowledged, or in defiance of the Collector's orders, the Collector can then annul the appropriation by evicting the occupant or other person holding under him.

Unless when the Collector considers the circumstances of a proposed appropriation so exceptional, as to require reference to Government under Section 67, no terms can be imposed in excess of the maxi-

mum allowed. The Collector is in each case, to exercise his own discretion as to what are special cases, bearing in mind that the ordinary rate should not exceed the maximum prescribed for the class to which, under notifications issued, the land in question properly belongs. (G. R. No. 6035, dated 25th August 1890.)

G. 2. Discretion in imposing a uniform rate.—When fines have to be levied at all, they should be levied at a uniform rate over the whole compound area and the rate should be imposed with reference to the circumstances of each case, for which discretion is allowed to Collectors by G. R. No. 8495, dated 20th November 1893. The uniform rate should not be so high as to discourage reasonably large compounds, or so low as to encourage the inclusion of unnecessarily large areas. (G. R. No. 6482, dated 2nd July 1894.)

G. 3. Appropriations before 1865.—No fine should be levied on agricultural land appropriated without permission to non-agricultural purposes when Bombay Act I of 1865 was in force. A note should be made that the lands are to be subjected to building assessment on the introduction of the next revision settlement. (G. R. No. 9805, dated 30th November 1894.)

G. 4. There is no reason to suppose that Collectors will generally hesitate to apply the ordinary rates in ordinary cases, or will use the discretion given them to levy less than the ordinary rates in localities in which the provision of maxima, amounting to double or quadruple times the ordinary rates, sufficiently indicates that the ordinary rates are obviously and entirely inadequate. (G. R. No 10468, dated 19th December 1894.)

G. 5. Treatment of appropriations noticed after a long time.—In a case 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, it was held that the provisions of the Code as to guarantee against enhancement of assessment (*vide* Sections 102 and 106) cannot take away the power to impose a fine. The period of appropriation being long, the occupants should be informed of their liability under Section 66, but special terms should be offered under Section 67. (G. R. No. 6629, dated 30th August 1895.)

G. 6. Misappropriation by strangers.—The Collector should issue a notice to the occupants to show cause within 3 months why they should not be dealt with under section 66 for unauthorized misappropriation by trespassers who are not tenants of occupants. (G. R. No. 679, dated 22nd January 1896.)

G. 7. What was intended by the orders of 1894 (G. R. No. 6482, dated 2nd August 1894) was that, when the levy of a fine at a uniform rate would press heavily, an agreement under Section 67 might be negotiated. Such an agreement would not ordinarily affect occupancy rights. The orders or Section 67 does not require the relinquishment of such a right as a condition of the new agreement. (G. R. No. 4823, dated 28th June 1897.)

G. 8. 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 the prosperity of the people, &c. (G. R. No. 6505, dated 16th October 1900.)

G. 9. No fines could have been legally imposed under Bombay Act I of 1865, and Section 66 cannot be applied retrospectively. (G. R. No. 8516, dated 6th December 1901.)

G. 10. Eviction of squatters who settle on agricultural lands without the consent of the occupants.

It was proposed to Government that for the words "or other person holding under or through

him" in section 66 the following words may be substituted "or any other person whether holding under or through him or not."

2. Government in their order No. 10060 dated 20th August 1917 did not consider that any change in law is necessary. They, however, circulated the following copies of the opinions of the Remembrancers of Legal Affairs. No. 1449, dated 2nd November 1895.

I understand from the papers that there are legal occupants in perpetuity, who stand in the relation of tenants to Government that the third persons have unauthoritatively encroached on the lands of the tenancy, and that it is the wish of the Government as the landlord and reversioner to turn them out.

2. I further understand that the appropriation complained of has been in contravention of the terms of the section 65 of the Land Revenue Code.

3. The Collector's difficulty is that the terms of section 66 ib. appear to limit the action of the executive, in the way of guarding against that kind of unauthorised occupation or misappropriation of lands reserved for one purpose, to another, to the occupant and any tenant or other person holding under or through him, whereas here it is alleged in one part of the papers that the squatters are trespassers and have built their huts on the fields without and against the consent of the registered occupants. The Commissioner suggests that in reality there has been collusion between the squatters and the occupants.

4. The general principle is that a reversioner cannot sue for anything as an injury to his reversion unless it permanently injures his estate or operates in denial of his right. Here if Government should finally resolve to proceed by suit against the trespassers, the action might be so

grounded, unless they, the defendants, admitted that their occupation during the present tenancy was permissive. But I doubt whether there is any need to have recourse to that formal remedy.

5. As I read section 68, one of the terms lawfully annexed to his occupancy in the case of an occupant is certainly the due observance of the conditions imposed by section 65: So if an occupant allows another to misappropriate part of an agricultural holding for unauthorised purposes, he is answerable as though he has done so himself. And his permission may be inferred by conduct. For in the natural course of things no man would allow another to build on his fields, and so deprive him of a part of that land for which he has to pay rent, without immediately taking step against him, or coming to some private agreement with him, for their mutual advantage. In the absence of any attempt to oust the trespasser I think any court would presume that there was collusion, and therefore that the trespasser was holding under or through the occupant within the meaning of section 66.

6. It appears from the Collector's letter that the trespassers assert a title, and if that is so, the occupants ought to have it tried without delay. Otherwise it is practically a case of 'Qui facit per alium facit pro se,' and they are endangering their landlord's right. If after due notice they decline to do so, it is submitted, though not without doubt, that the Collector would be justified in treating the trespassers as holding under the occupant. Owing to the terms of section 61 there is certainly a technical difficulty of the kind felt by the Revenue officers, but I believe a Court would adopt the views I am expressing and override it.

7. The course I should recommend, as appearing to me the practical and reasonable course to be followed in such cases, is that the Collector should issue notice to the occupants to show cause (within

three months) why they should not be dealt with under section 66 in respect of these unauthorized misappropriations, and if within that time they should take no steps to have the encroachments repelled and the trespassers evicted by process of law, the Collector would assume that the trespassers were there with their consent and in the capacity of their sub-tenants, and would then take steps as by law provided under section 66 of the Land Revenue Code.

No. 30 dated 6th January 1896.

There seems to be no room for doubt that the Bombay Land Revenue Code, 1879, contains no provision for the summary eviction of persons trespassing on occupied unalienated land, or (when neither occupants within the definitions in section 3 (11) and (16) of that Code, nor tenants within the definition in section 3 (15) nor holding under or through a tenant or occupant), appropriating such land to purposes other than agricultural.

2. It is submitted that the obvious reasons for the omission to provide for the eviction by the Revenue authorities of such trespassers, on behalf the occupants, i.e., the persons "legally invested with a right to the possession and enjoyment or disposal of such land," (vide section 3 (10), Bombay Land Revenue Code, 1879.) were—

(a) that the persons so legally invested with a right to such possession, enjoyment and disposal, had already a summary remedy provided by the Legislature in the Mamlatdars' Courts Act (Bombay III of 1876), as well as the means of protecting their rights by recourse to the ordinary courts of law, and

(b) that it was not deemed either necessary or desirable that the Revenue authorities should be called on to assume the functions of a court for the recovery of

such possession on behalf of a private individual.

3. Occupants, as a rule, are not conspicuously remarkable for sleeping over their rights to the possession of land for which they have to pay land revenue and if they do so have only themselves to blame for the inevitable consequences, viz. loss of title by adverse possession or whether the possession taken was permissive or not, ouster by the Revenue authorities on unauthorised appropriation to non agricultural purposes by the trespassers.

4. Section 66 of the Code does not require the Collector to go into the delicate question of fact whether the persons so unauthorisedly appropriating land are occupants, tenants, or others holding through or under the occupant or tenant, but empowers the Collector to turn the whole set out "if any such land be so appropriated," irrespective of the persons by whom the appropriation was made and to fine the registered occupant, providing further that the registered 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 effected the appropriation with the registered occupant's consent.

No provision is made giving the registered occupant a similar right to damages from persons not legally invested with the right to possession who appropriate without such occupant's consent, because the ordinary law gives such right against trespassers.

5. The evident reason why Section 66 was so drafted, it is submitted, 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.

6. Therefore Section 66 makes all who are legally invested with the right to possession of unalienated land responsible for its preservation from unauthorised appropriation, and liable to forfeit all their rights if they neglected their responsibilities.

7. If however Government deem in any case that the eviction of the registered or other occupants could work hardship wholly or partly undeserved, there is nothing to prevent the exercise of clemency which seems to have been expressly contemplated in Section 67 of the Code, or the restoration of the occupancy after eviction. .

8. In the present instance the occupants seem to have let the time to pass by within which they might have employed the summary and cheap procedure expressly provided by the Legislature in Bombay Act III of 1876, and the only summary procedure now possible is that provided in Section 66 of the Code which would involve their own eviction.

If the procedure involved entails hardship it is only because they have by their apathy left no alternative between that and a civil suit which would be much more expensive.

9. As long as the occupants are left in possession, they are responsible for the eviction of trespassers, and the hands of Government are tied by their inaction whether undesigned or collusive.

10. When they are ejected, if the trespassers continue their trespass they can be dealt with under Section 61 of the Code. Otherwise the land reverting to Government, the buildings can be removed as placed there by trespassers.

11. The original occupants or registered occupants might then, as a matter of grace, be restored to the occupancy.

Permis-
sion may
be granted
on terms.

[a] **67.** Nothing in the last two preceding sections shall prevent the granting of the permission 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].

[a] As to the local repeal of ss. 67 and 68, see paras. 5 and 4 respectively of foot-note [a] on p. I, *supra*.

[b] The words "in special cases" were repealed by Bom. IV of 1913, s. 26.

[c-c] These words were inserted in s. 67 by Bom. VI of 1901, s. 8 (D).

[d-d] These words were substituted by Bom. IV of 1913, s. 26, for the original words "agreed on between Government and the registered occupant."

SUMMARY (s. 67.)

S. 67—Application of	...	...	G 1
Brick-kilns	...	...	G 5
Building regulations	...	...	G 4
Forms of agreement:—			
Registration of	...	...	G 6, 7
Standard	...	...	G 2, 3
Subdivisions under	...	...	G 8

G. 1. 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 in such cases 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. No. 127, dated 6th January 1898.)

G. 2. Forms of agreement.—Collectors are authorised to enter on behalf of Government into agreements in the forms given in appendix 8.

(G. R. R. D. No. 1188, dated 13th February 1904).

1254, " 11th " 1910.

5124, " 26th April 1918.

G. 3. From paragraph 4 of Government Resolution No. 1188, dated 13th February 1904, and Form B attached to that Government Resolution, it will be seen that by these orders Collectors are authorized to enter into agreements under section 67, Bombay Land Revenue Code, 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.

2. Under the orders, the power to exact a fine for building without permission is maintained, but it is within the discretion of the Collector to exercise it or not. The orders of Government Resolution No. 1188, dated 13th February 1904, are not cancelled by paragraph 4 of Government Resolution No. 4283, dated 6th June 1904. The effect of the two orders is that in cases in which conversion has taken place without permission, the Collector is to judge each case on its merits; if he thinks proper, he is to offer to the occupant an agreement; if the occupant refuse it, or if the Collector does not think proper to offer it, the fine under section 66 should be exacted. Form B, attached to Government Resolution No. 1188, dated 13th February 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 that form, no reference to Government is necessary. Any material modification of those terms should however, until further orders, be submitted for the orders of Government. Similarly agreements in Forms A and C should be offered in the cases for which they are prescribed, and it is unnecessary to obtain the orders of Government in each case, unless some material divergence from the terms of those agreement is deemed desirable. (G. R. R. D 5504, dated 18th July 1904.)

G. 4. Building regulations to be attached to agreements.—In all areas notified under Section 187

(1) of the Bombay District Municipal Act, 1901, revised regulations sanctioned in G. R. G. D. No. 3543, dated 15th June 1906, should be adopted with such modifications as the Committees may make.

2. In all places outside the notified areas, where the grant of permission is made conditional on passing agreements under Section 67, Collectors should attach to such agreements building regulations, conforming so far as they may consider necessary to those (*vide* Appendix 9) recently published for Salsette (G. R. G. D. No. 3543, dated 15th June 1906) or where they consider such regulations unnecessary, should omit the last sub clause of condition (5) in all the three forms of agreement sanctioned in G. R. No. 1188, dated 13th February 1904.

3. The revised regulations do not affect the agreements prescribed in G. R. No. 1188, dated 13th February 1904 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. (R. D. No. 7496, dated 6th August 1906.)

G. 5. Appropriation of agricultural lands for the manufacture of bricks.—In Sind agriculturists owning land which they are unable to cultivate on account of Kalar or mounds of earth or which is too high to obtain a flow supply, apply for permission to dig earth with the double object of turning the land into flow and of making bricks for sale.

2. The operation is completely legitimate under Section 65 if made with the *bonâ fide* and sole object of making improvements for the better cultivation of the land or its more convenient occupation for purposes of agriculture. In such a case it being necessary for those purposes to remove the materials, the occupant may sell them for what they will fetch, it being understood that any profit he may

thereby derive, is purely incidental and is not his actual *purpose*. If the purpose in view is, in the Collector's judgment, the profit derived from the sale of materials then the land is being appropriated to purposes unconnected with agriculture.

3. In the former case no formal permission seems to be necessary. But a person who sets about excavating his land without permission must do so at his own risk and subject to the view which the Collector may eventually take as to his real purpose.

4. When an application for permission is received, if the Collector is *satisfied* that the real purpose of the proposed operation is the improvement of the land, he is apparently bound to let it proceed without interference. But if not so satisfied, then he should treat it as an appropriation to non-agricultural purposes and refuse permission if he considers it for any reason undesirable, *e.g.*, if it means the creation of a rice swamp which would be objectionable on sanitary or other grounds, even though such swamp might be calculated incidentally to yield better crops.

The Collectors are authorised to enter on behalf of Government, under section 67 of the Land Revenue Code, into agreements in the case of appropriation of agricultural land for the manufacture of bricks on such terms or conditions (*Vide Appendix 10*) as may be agreed on between Government and the registered occupant. But the conditions under section 67 must be imposed by Government. (G. R. R. D. No. 8823, dated 12th September 1906 and 4016 of 19th April 1907.)

G. 6. Registration of Standard agreements necessary.—These documents (agreements executed under G. R. No. 6411, dated 16th September 1903, and No. 1188, dated 13th February 1904) are not leases within the meaning of section 105 of the Transfer of Property Act, and do not fall within Section 90 (d) of the Indian Registration Act. They

should therefore be registered with payment of the usual fees. (G. R. R. D. No. 2926, dated 23rd March 1909.)

G. 7. Registration.—So long as the permission is given in return for the agreement of the occupant to give up some of the Land or any other similar thing, the whole document amounts to an agreement and requires registration (Preamble of G. R. No. 10868, dated the 9th November 1909.)

G. 8. Sub-divisions.—Agreements under this section do not allow sub-divisions of Land. (R. 2101, 23rd February 1916.)

Occupant's
rights are
condi-
tional.

Proviso

[^a] 168. An occupant [^b] is entitled to the use and occupation of his land for the period, if any, to which his [^c] 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 [^d] or conditions [^d] lawfully annexed to his [^c] tenure [^c]:

[^e] 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 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 [^f] rules made by the Governor in Council in this behalf [^f], 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.

(a) As to the local repeal of ss. 67 and 68, see paras 5 and 4 respectively of foot-note* e (a) on p. I, *supra*.

(b) As to the local modification of the word "occupant," see para, 5 of foot-note [a] on p. I, *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 s. 68 by Bom. VI of 1901 s. 8 (1).

(e) This proviso to s. 68 was added by Bom. VI of 1901, s. 8 (2).

(f-f) These words were substituted by Bom. IV of 1913, s. 27 for the original words "the orders of Government."

N. I. This 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 Section 73 A 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, page 246.)

G. 1. When should annual leases be taken.—It is not the intention of Government that land should be given out on annual leases, except in the special cases in which a permanent tenure is unsuitable or impracticable. (G. R. No. 7873, dated 8th November 1901.)

G. 2. Free power of transfer should be allowed.—Under the rules as amended, agreements in one or other of the forms in Appendix B 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.

(2.) In the exercise of discretion to sanction lease mortgage, sale, or other encumbrance, when such sanction is needed by the agreement, the Collector will be guided generally by the considerations, whether or not the occupant can continue to cultivate efficiently without borrowing, and whether the transfer or encumbrance is desirable in his interest. Permission should, however, ordinarily be granted without question to a transfer from one agriculturist to another for the purpose of cultivation by the latter in person, and to a lease to one agriculturist by another who is unable to cultivate in person, and it should be made generally known that, except for very special reasons, sanction to such transfers and leases will not be withheld. (G. R. No. 8610, dated 11th December 1901.)

G. 3. *Regrant 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 Government 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 repayment of it as a condition of restoration to the former occupant.

2. The conditions prescribed in G. R. No. 5621, dated 8th August 1901, are based on instructions given by Government of India and must 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. No. 4503, dated 2nd July 1902.)

G. 4. *Applicability.*—Sections 68 and 73 both in their original and amended form affect only unalienated land. (G. R. R. D. No. 5024, dated 21st July 1902.)

G. 5. Delegation of powers.—Mamlatdars and mahalkaries may grant Government waste Land for one year for temporary cultivation. (G. R. No. 5295 of 1st June 1911, item 36.)

69. The right of Government to mines and mineral 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.

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

N. I. The object of this section is to reserve the rights of Government 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. (Select Committee's report on the Revenue Code Bill.)

G. I. Reservation unnecessary in Kabulayats of unalienated lands.—This section applies to all unalienated lands. It is therefore unnecessary to make express reservation of the Government rights to mines and minerals in the leases or Kabulayats relating to such land. When however such land is transferred to the ownership of any person, so that it would come within the meaning of the term "alienated" as defined in Section 3 (19) of the Code, the rights of Government and the assignees in that behalf to the minerals ought to be expressly reserved as this section would not apply in such a case. (G. R. No. 6688, dated 15th December 1879.)

G. 2. Rights of Tálukdárs over minerals existing in Lands in their possession :—

A Talukdar possesses no rights to mines and minerals in the lands which he holds from Government on payment of jama. Government have no

objection to the disposal by the Tálukdárs of minor products, such as stone and kankar, occurring in their Lands. When such products are required for a public purpose they should not be removed from a Tálukdári holding without either the consent of the Tálukdár or proper payment if such be demanded by the Tálukdár. (G. R. No. 5096, dated 6th August 1898.)

G. 3. Kankar, Stone and Laterite quarries are exempted from the operation of the Indian Mines Act, VIII of 1901. (G. N. No. 4231, dated 19th June 1901.)

G. 4. Slate, lime and clay :—Mining rules do not apply to minor minerals such as slate, lime and clay. Special rules are, therefore, unnecessary. The provisions of the Land Revenue code and the rules under it are sufficient for practical purposes. (G. R. R. D. No. 9405, dated 21st November 1905.)

J. I. RIGHTS TO MINERALS.

—:o:—

Appeal No. 732 of 1913.

Mukund Gopinath Patel and others (appellants and original defendants) vs. Chabildas Lallubhai (respondent and original plaintiff.)

(BEFORE THE HON. JUSTICE SIR STANLEY
BATCHELOR AND THE HON. MR.
JUSTICE SHAH.)

This was an appeal from the decree of the Assistant Judge of Thana reversing the decree of the first court.

The plaintiff was the proprietor of the "alienated" village of Magathene and was granted a commission under Section 88 of the Land Revenue Code by the Government. Survey Settlement was introduced in the village about the year 1867-1868.

The land in dispute was comprised in Survey No. 34 of that village and was what is known as *Varkas* land. The defendants were the holders of

this land and the *Khatas* of that land stood in the name of the defendant's grandfather since 1865. In October, 1910, the defendant commenced working a stone mine in that land. The plaintiff objected to this and claimed to be the full owner of the land and to be entitled to all the minerals situate therein and sought to prohibit the defendants from working or opening any mines therein. He, therefore, filed this suit and prayed for an injunction, restraining the defendant from opening or working any stone mines in the land described in the plaint or in any other land situate in the village of Magathene, and for the recovery of Rs. 25 as damages for the working of the stone mine and further damages at Rs. 2 per day from the filing of the suit upto the closing of the mine.

The defendants contended that the village did not belong to the plaintiff and that he had no right to it except that of collecting the assessment and that the land in dispute was their *Surti* land and that they were the owners of all the mines and minerals in it. They also disputed his claim for damages and contended that the suit for injunction could not lie.

The joint Sub-Judge, who tried the case, held that the plaintiff was not entitled to an injunction and that he was not the owner of the minerals. As the defendants were the holders of land before the survey of the village took place, the introduction of the survey did not extinguish their rights to the minerals. In appeal, the Assistant Judge of Thana reversed this decree of the first court. He held that by Section 69 of the Land Revenue Code the right of the Government to mines was expressly reserved and the occupants of unalienated lands had no right to the mines or the minerals in the land.

The defendant appealed.

Mr. M. R. Jayakar, with Mr. Ramdatt Desai, appeared for the appellants.

Mr. Hormazdiar C. Coyajee, with Mr. S. S. Patkar, and Mr. D. S. Varde, appeared for the respondent.

Their Lordships confirmed the decree of the Lower Appellate Court as to injunction but varied the order as to costs, each party to bear his own costs.

Times of India, dated 19-2-16.

Occupancy when not liable to process of Civil Court; the Court to give effect to Collector's certificate.

70. [a] 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) such occupancy [e] 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 [e] 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 [e].

[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).

[e] Words repealed by Bom. IV of 1913, s. 28 (c), are omitted

71. *Repealed by Bom. IV of 1913, s. 29.*

[^a] **72.** If an occupant [^b] who is either ^{Intestate} a Hindu, a Mahomedan or a Buddhist dies in-^{occupancy} testate and without known heirs, the Collector ^{or holding} shall dispose of his occupancy [^c] by sale, ^{to be sold.} subject to the provisions of this Act or of any other law at 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 [^c] 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.

[a] As to the local repeal of s. 72, see para. 4 of foot-note [a] on p. I, *supra*.

[b] As to the local modification of the words "occupant" and "occupancy," see para. 5 of foot-note [a] on p. I, *supra*.

[c] As to the local modification of the words "occupant" and "occupancy," see para. 5 of foot-note [a] on p. I, *supra*.

SUMMARY (s. 72.)

Section 72 (1) applicable to:—

- | | |
|--|-----------------|
| (a) registered and un-
registered occu-
pants | } G 1,3
J 1. |
| (b) house and move-
able property in
towns where land
registers are kept. | |
| (2) not applicable to alie-
nated lands | G 2. |
| (3) distinguished from:— | |
| (a) Section 56 | G 1. |

(b) Regulation 8 of	
1827	G 5.
(4) to be supplemented by	
s. 81 in case of alleged	
vendees	G. 4

Powers under this section :—

delegated to sub-divi-	
sional officers	G 7.

G. I. Opinions of law officers on the subject:—

The following opinion of the Remembrancer of Legal Affairs on the question, whether Section 72 of the Code is to be put into force in every case in which a registered occupant dies intestate and without known heirs, irrespective of the fact that there are occupants who, though not registered occupants, have vested interests in lands, is given here in full:—

“The ordinary law regarding the property of a person who dies intestate and without known heirs is that contained in Section 10 of Regulation VIII, of 1827. Under it the District Court appoints an administrator for the management of the property, and after he has had 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.’

“2. Section 72 of the Revenue Code excepts occupancies belonging to Hindus, Mahomedans or Buddhists from this general law, and directs that in their case ‘the occupancy shall be disposed of by the Collector by sale, subject to the provisions in force * * * , for the sale of forfeited occupancies in realization 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 this 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 Nazir of the District Court (who is generally the administrator appointed under Section 10, Regulation 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.

"3. The doubt which seems to have prompted the Commissioner's (C. D.'s) letter is whether when occupancies are thus sold by the Collector, they are to be sold 'freed from all tenures, encumbrances and rights created by the occupant,' like forfeited occupancies (*vide* Section 56 of the Revenue Code) or whether the right, title and interest of the deceased occupant merely is to be disposed of.

"4. The intention of Section 72 of the Code appears to be to prevent the occupancies of persons dying intestate coming under the management of the District Court's administrator. The section was inserted by the Select Committee who, in paragraph 32 of their final report on the Revenue Code Bill, dated 1st May 1877, said its purpose was 'to enable the Collector to dispose of the occupancy of an occupant dying intestate and to stay the operation of the law regarding property left by persons dying intestate until the occupancy has been sold and arrears due to Government secured.' Much correspondence and trouble are saved by keeping the control of such property in the hands of the Collector, who is obviously far better able than the District Court's Nazir to manage and sell it to the advantage of the deceased's estate. It was not, I think, the intention of the Legislature to forfeit in such cases subordinate rights created by the deceased occupant. The words in Section 72 'subject to the provisions * * * in force for the sale of forfeited occupancies in realization of the land-revenue' may, at first sight, be thought to bear this meaning, but it ought not to be concluded that it was the intention of the Legislature thus to

abrogate vested rights unless such intention is very clearly and unmistakably indicated in the language of the enactment. The words which I have quoted do not appear to me 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.' (Maxwell, interpretation of Statutes, 179.)

"5. On these grounds I am of opinion that, under Section 72 of the Revenue Code, all that the Collector sells is the right, title and interest of the deceased occupant and that subordinate rights are not affected by such sale. This was also the opinion of my *locum tenens*, the late Mr. Cordeaux, who wrote (*vide* paragraph 2 of his memorandum quoted in the preamble of G. R. No. 2711, dated 26th April 1882, see order No. (1) above) 'the occupancy in this case is not forfeited by Government before it is disposed of by sale. It is sold as the heritable transferable property of the deceased occupant.'

"6. But although subordinate rights are not affected by the sale, I am still of opinion, as stated in my report quoted in the preamble to G. R. No. 3102, dated 20th April 1883, (printed under Section 79), that if the deceased was a registered occupant the Collector is not bound to recognize

his vendees or other subordinate holders. If the deceased person is the registered occupant, the Collector is not bound to recognize 'any person to whom any interest in any portion of the occupancy * * * has been assigned.'

"7. It follows from this view of the law that I differ from the late Mr. Cordeaux in thinking it necessary that the Collector should hold an inquiry for the purpose of ascertaining 'whether the occupancy has not passed to some other person who is in lawful possession.' The Collector, if he held any such inquiry, would not be competent to pass any order determinative of the rights of the respective claimants and possibly many claimants would object to reveal their title to him. I agree, therefore, with the Commissioner that inquiry is unnecessary. The title of the deceased should be sold for what it is worth, the purchaser making his own terms with, or taking such steps as he thinks fit against other claimants in such a case as that which the Commissioner has stated as a representative case, it may be that the purchaser of a deceased registered occupant's right, title and interest will sometimes acquire nothing by the purchase except the right to become the registered occupant. In such cases it will usually be to the interest of the assignee or of one of the assignees of the deceased registered occupant to become the purchaser.

"8. A fuller consideration of the subject leads me to think that the opinion submitted in the last sentence of my memorandum No. 446, dated 6th April 1883 (quoted in the preamble of G. R. No. 3102 of the 20th idem), was not correct. Looking by the wording of Section 79 of the Revenue Code alone, I said 'there is nothing to prevent the Collector recognizing' the deceased occupant's assignee without selling the deceased's right, title and interest. When thus writing, I overlooked the im-

perativeness of the words 'the Collector shall dispose of the occupancy by sale' in Section 72. Those words appear to me to leave the Collector no option. The right, title and interest of the deceased must be sold for what it will fetch. The reason of this 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 Regulation VIII. of 1827 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 realize by the sale of the deceased's right, title and interest whatever he can for the benefit of the estate.

"9. In order to complete this explanation of the meaning and intention of Section 72 of the Revenue Code I agree with the late Mr. Cordeaux that the word 'occupant' which is used in it, must be taken in its general sense, as defined in Section 3, clause 16 of the Code, and not be deemed to apply to registered occupants only. If the person who has died intestate and without known heirs is an occupant but not a registered occupant, his right, title and interest will be sold by the Collector without affecting in any way the title of the registered occupant." (G. R. No. 783, dated 27th January 1885.)

G. 2. Section 72 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. No. 3812, dated 13th May 1885.)

G. 3. Collector to take the initiative.—Government having decided in their Resolutions marginally noted that the provisions of Section 72 should be enforced, not only in the case of registered occupants, but in the case of occupants also, it was

pointed out that it would not be always possible for the Collector who must take the initiative in the matter to comply with those provisions inasmuch as the names of "occupants" were not recorded in the Collector's book. The point was referred to the Legal Remembrancer, who gave his opinion as follows:—

G. R. No. 2711,
dated 26th
April 1882.
G. R. No. 783,
dated 27th
January 1885.
(Vide orders
Nos. (1) and
(2) above.)

"Section 19 of the Bombay Village Police Act (VIII. of 1867) imposes upon the police patil the duty of taking charge of all unclaimed property and of reporting his proceedings to the Magistrate to whom he is subordinate. Property left by a person who dies intestate and without known heirs is 'unclaimed property' within the meaning of this section, 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 Section 72 of the Revenue Code. As a matter of practice, I believe every case of a person dying intestate is reported by the village officers to the higher authorities, whether under the provisions of Section 19 of the Village Police Act or otherwise, and there is little probability, I should think, of any case of any importance escaping notice. The Collectors can only take action in the cases which are reported to him, and I do not think there is any need for special measures to ensure every case being reported. The number of occupants, not being registered occupants, who die intestate and without known heirs, is probably inconsiderable." (G. R. No. 3813, dated 13th May 1885.)

G. 4. The following opinions have been concurred in by Government:—

(a) The Advocate-General's opinion:—

"In the case of a registered occupant, such as described in Section 72 of the Land Revenue Code, dying intestate and without known heirs and of

another person claiming that the occupancy has been sold to him by the deceased though not transferred in the Government books, I am of opinion that the provisions of Section 72 come into force, by which it is enacted that—

‘The Collector shall dispose of his occupancy by sale, subject to the provisions of this Act or of any other law at the time in force for the sale of forfeited occupancies in realization of the land revenue.’

“It is difficult not to consider the provisions of Section 56 as being provisions for the sale of forfeited occupancies in realization of the land revenue within the meaning of Section 72. And having regard to the provisions in Section 72—

‘That the Collector shall not be bound in any case to recognize any person to whom any interest in any portion of an occupancy or absolute holding has been assigned, unless the transfer has been recorded in the revenue records in accordance with the foregoing provisions.’

“I think that the Collector is empowered to sell the occupancy of the deceased registered occupant without regard to the rights (if any) of the alleged vendee.

“But I think that the Collector should exercise this power so as to interfere as little as possible with any right, the existence of which is established to his satisfaction. In my opinion the provisions of Section 81 which afford an alternative procedure in certain cases for the sale of a forfeited occupancy in realization of land revenue may properly be regarded as included among the provisions referred to in Section 72. If therefore, the Collector is satisfied that the occupancy has really been sold by the deceased registered occupant to the alleged vendee, and that such procedure will meet the justice of the case, I think that he may properly substitute the name of the alleged vendee in

the revenue records for that of the deceased registered occupant.

“I observe that section 56 enables the Collector to dispose of a forfeited occupancy under rules or orders to be made under Section 214. I am not aware whether any rules have been made in this behalf under Section 214, but if such rules have been made and the Collector has power thereunder to dispose of a forfeited occupancy without prejudice to rights previously created by the occupant, it seems desirable that he should adopt such mode of procedure in cases similar to the one suggested under Section 72, when the case does not seem to him to be one in which the provisions of Section 81 can be properly applied.” (G. R. No. 10023, dated 14th December 1885.)

G. 5. The Legal Remembrancer's opinion :—

“But if there be no heir, assignee or other person claiming through the deceased intestate, the property lapses to the Crown by escheat.

“The property vests in Her Majesty not by virtue ^{1 Bengal} of Regulation VIII. of 1827, but by virtue of the ^{L. R. O. C. 87.} territorial law of British India.

“On failure of heirs, the Collector, it appears to me, would be as much ‘entitled to receive charge of the property’ on behalf of Her Majesty as any other person to whom rights accrued on the death of the deceased.

“If any heir subsequently appear, the result would be the same as if the estate had been claimed by a private person, whose right was afterwards found to be excluded by a better title.

“In such a case Government would be responsible to such heir. But there is no necessity for a sale by the Court, nor do I think that the property could be sold, if the Collector claimed that he was entitled to receive charge of the property on behalf of Her Majesty.

“In order, however, to avoid the risk of litigation in such cases as to claims that might afterwards be brought forward, I think the High Court might be moved to direct under Section 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 Her Majesty by escheat.

“The point has, so far as I can ascertain, never been decided, but there are several cases on record in which Government have claimed the right to specific property by escheat, and there is no law which requires that instead of taking the specific property Government would be entitled only to the proceeds realised by its sale. Legislation is, therefore, I would submit, unnecessary.

“The question involved might perhaps be raised in a test case if desired, and if the High Court hold that intestate property must in all cases be sold, whether the right of the Crown is put forward or no, steps might be taken to modify the law as to the procedure to be taken in such cases. But I think the rights of the Crown do not depend upon Regulation VIII. of 1827, and Section 10, clause 4, only prescribes the procedure when no claim whatever is preferred to the property.” (G. R. No. 8407, dated 15th December 1888.)

G. 6. The Collector to hold inquiry in person.— No exception appears to have been made in the case of large towns, and this section is applicable to house and moveable property in large towns where land registers are kept. But it is an error to regard entries in the revenue record as evidence of title. They do not more than indicate the person responsible for Government assessment and invested with the privileges of the registered

occupant. In contested cases under Section 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 inquiry as may be necessary. His decision is no award, and the aggrieved party has his remedy of a suit in a Civil Court. (G. R. No. 8488, dated 27th November 1899.)

G. 7. Delegation of powers.—Sub-divisional officers can pass orders under this section. (G. R. No. 5295, dated 1st June 1911 item 42.)

J. I. Entry in Collector's book gives no title.—The fact 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. The Collector's book is kept for the purposes of revenue not for purposes of title. (L. L. R. XIII, Bombay 75, *Bhagogi vs. Bapugi* 1889.)

(b) **73.** [x] [c] An occupancy [c] [a] shall, ^{Occupancy to be transferable and heritable.} subject to the provisions contained in section 56, and to any conditions lawfully annexed to the [d] tenure, and save as otherwise prescribed by law, be deemed an heritable and transferable property.

(a) As to the local modification of the words "occupant" and "occupancy," see para. 5 of foot-note (a) on p. 1, *supra*.

[b] As to the local repeal of s. 73, see para. 4 of foot-note [a] on p. 1, *supra*.

[x] This section was substituted for the original s. 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] This word was substituted for the original word "occupancy" by Bom. IV of 1913, s. 30.

(1) **Applicability.**—Sections 68 and 73 both in their original and amended form affect only unalienated land. (G. R. No. 5024, dated 21st July 1902.)

Power to
restrict right
of transfer.

[^a] **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, [^b] 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.

[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.

SUMMARY (s. 73A.)

Section 73 A—not applicable to Inam	
villages 	N 3
Collector—powers of 	N 1, G 6
Entries in Govt. Records 	G 3, 4
Lands—(1) on ordinary tenure 	N 2
(2) restricted tenure 	G 9
(3) given to Bhils... 	J 1
Pardanishin lady 	N 4
Persons exempted under clause (2) ...	G 2,5,6,7
Powers—delegated to sub-divisional	
officers 	G 8
Villages—to which clause (1) is made	
applicable 	G 1, 6

N. 1. The power reserved by Government under clause 2 of this section does not take away the Collector's power under the last sentence of clause I. to transfer any particular occupancy from the new to the old tenure.

N. 2. Ordinary tenure should not be converted into restricted tenure without publication of notice and investigation into the circumstances with a view to protecting creditors against fraud. (Government Gazette Part VIII for 1908 page 11.)

N. 3. The grant of Lands on restricted tenure in Inam villages is not authorised by the provisions of the Land Revenue Code.

N. 4. A parda-nishin woman is the most unsuitable person to exempt from the operation of clause 2.

G. 1. Villages in which clause I of the section is made applicable.

(a) 79 villages in Nandurbar Taluka.	}	G. N. No. 1116 A.
		Dated 18-2-1902.
(b) 66 villages in Navapur Taluka.	}	G. N. No. 5348.
		Dated 2-8-1902.
		G. N. No. 6279. Dated 14-7-1910.
(c) 17 villages in Shirpur Taluka.	}	G. N. No. 1116 B.
		Dated 18-2-1902.
(d) 42 villages in Taloda Taluka.	}	G. N. No. 1116 C.
		Dated 18-2-1902.
(e) 11 villages in Shahada Taluka.	}	G. N. No. 1116 D.
		Dated 18-2-1902.
		G. N. No. 296. Dated 10-1-1908.
(f) Sakri Taluka.	}	G. N. No. 1116 E.
		Dated 18-2-1902.

G 2. Classes of persons exempted under clause II of the section:—

(a) All Brahmins and Banias (Vanis) holding lands in the villages of Nandurbar and Navapur Talukas to which the provisions of section 73A (1) have been declared applicable. G. N. No. 10363 A. Dated 22nd October 1907.

(b) All Brahmins and Banias (Vanis) holding Lands in the villages of Shirpur Taluka to which the provisions of section 73A (1) have been declared applicable. G. N. No. 11559. Dated 13th November 1908.

(c) All Marwadis, Khatris, Parbhush, Bhoris and Parsis in the villages in the Shirpur Taluka to which the provisions of section 73A (1) have been declared applicable. G. N. No. 3875. Dated 22nd April 1909. G. N. No. 355. Dated 11th January 1916.

(d) All Marwadis, Khatris, Parbhush, 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. No. 9147. Dated 21st September 1909. G. N. No. 355. Dated 11th January 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. No. 9147A. Dated 21st September 1909.

G 3. Alterations of tenures should be noted in all survey documents. (G. R. No. 2961, dated 11th June 1874.)

G 4. Change in the village and taluka revenue forms.—A subsidiary column 19A after Col. 19 in

Village Form No. 1 should be added to show the non-transferability of the land with a note in the remarks column of the number and date of the Kabulayat and Taluka Form No. 31 and village Form No. 18 B, should be divided into two parts (1) for registering the agreements of lands held on the ordinary survey tenure and (2) for registering those of lands held on the restricted tenure. (G. R. R. D, No. 8236, dated 24th November 1902.)

G 5. Exemption should be given to all Brahmins and Baniyas among the petitioners of villages of Velavad, Pimplod, Natavad, Umarda, Kotli, Kothada, and Gherasgaon of Nandurbar Taluka, District West Khandesh, at once 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, dated 13th July, 1906.)

G 6. Procedure for personal exemptions.—With regard to personal exemptions, these should be granted only in the following circumstances. When in any area which has been notified, under section 73A (1), any person belonging to a class which has not been exempted by a notification under section 73A (2) desires to transfer his occupancy or his interest therein and seeks the sanction of the Collector to such transfer under section 73A (1), he may take the occasion to apply for exemption under section 73A (2). The Collector should then consider the application and after due inquiry should submit the applicant's name for exemption by notification in the *Bombay Government Gazette* in accordance with the provisions of section 73A (2) or should refuse the application as he may see fit. The exemption, if granted, will continue only during the lifetime of the grantee.

The effect of notification under Section 73A (1) —If a person holding an occupancy declared non-transferable under section 73A of the Land Revenue Code relinquishes his non-transferable

occupancy, the Collector cannot regrant it to him on the ordinary tenure, for otherwise the Collector would be exercising the power of exemption reserved to Government alone by section 73A (2).

Where any land has been declared non-transferable under section 73A, such land *per se* remains non-transferable for so long as the declaration remains in force, except during such period as such land is in the hands of a person exempted from the non-transferable tenure under sub-section (2) who by virtue of his particular status is permitted to transfer land not ordinarily transferable. Hence it cannot be contended that the power of making land non-transferable under sub-section (1), when once exercised, is spent and cannot be revived. But when an exempted person transfers the land to a non-exempted person, the force of the exemption is spent and the land becomes subject to the conditions of its tenure affixed under sub-section (1). A non-exempted person cannot therefore transfer land to which section 73A (1) applies without the Collector's consent, whoever may have been the previous holder and whatever may have been the terms under which the non-exempted person acquired the land.

A notification under sub-section (1) may only be issued before the introduction of the original survey settlement; but powers under sub-section (2) may be exercised "from time to time" as the wording expressly declares.

In any area which has not been notified under section 73A (1) of the Bombay Land Revenue Code, the Collector is empowered to attach to the grant of an occupancy a condition that the occupancy shall not be transferable without his previous sanction, and it has been directed that this condition shall be attached in the case of grants to members of backward classes only. The Collector is therefore precluded by the orders of Government from attaching the condition to a grant of occu-

pancy made to a member of the more intelligent classes. When the condition has been attached to the grant, the land of which the occupancy is granted may not be transferred without the consent of the Collector. If the Collector gives permission to transfer, the condition of non-transferability without his previous sanction will continue to apply to the occupancy, unless he is pleased to cancel it. Thus any land in the areas now under consideration, of which the occupancy has been granted by the Collector subject to the condition that it shall not be transferred without his permission, will continue to be subject to that condition unless and until the condition is cancelled by an order of the Collector to that effect. The Collector has no authority to attach the condition of non-transferability to any existing occupancies in areas not notified under section 73A (1); he can only accept relinquishment of such occupancies, and grant fresh occupancies subject to that condition.

In tracts or villages which have been notified under clause (1) of section 73A, the condition of non-transferability without the previous sanction of the Collector became attached to all occupancies existing at the date of the notification, and also attaches to all new occupancies granted after that date, unless and until a notification is published under section 73A, (2) granting exemptions from the operation of the Section. No notifications have been published under clause (2) of section 73A, exempting from the operation of the section any part of a tract or village notified under clause (1); but there have been notifications exempting from such operation persons and classes of persons. As soon as a notification of such exemption appeared in the *Government Gazette* the occupancies held by such persons, or by members of such classes, became freed from the condition of non-transferability without the previous sanction of the Collector, and from the date of the notification the Collector became

bound, when granting new occupancies to those persons, or to members of those classes, to grant them without that condition. In villages, therefore, which have been notified under section clause (1) of section 73A, and in which there are persons or classes of persons who have been exempted under clause (2) of that section, all occupancies, old and new, exist and must be granted subject to the condition of non-transferability except only those occupancies, old and new, held by or granted to the persons, or the members of the classes of persons, exempted under clause (2). When with the previous sanction of the Collector a person holding an occupancy to which the condition in question is attached, transfers his occupancy to another person, if the transferee has not been exempted under clause (2), the special condition continues to attach to the occupancy ; but if he has been exempted, the special condition ceases to attach to the occupancy. If a person who has been exempted transfers his occupancy to a person who has not been exempted, the special condition will, by virtue of the notification under clause (1) of the section, attach to the occupancy as soon as it is transferred to the non-exempted person. If a non-exempted person relinquishes his occupancy, the Collector cannot re-grant it to him free of the special condition. When the Collector grants the occupancy of Government waste land, the condition of non-transferability without the previous sanction of the Collector attaches to the grant unless the grantee has been exempted under clause (2). To a person not exempted under clause (2), the Collector may grant permission to transfer only in the case of a given particular transfer ; he cannot give a general permission to transfer ; if he deems the person fit to exercise such a general power, he should proceed in the manner prescribed in order No. 2 above. When a person who has been exempted by name under clause (2) dies, the exemption granted to him

expires with him. The occupancy of land in his occupancy at the time of his death remains free of the condition imposed by clause (1) only if the person or persons to whom the occupancy passes have been exempted under clause (2); if the occupancy passes to a person not exempted under clause (2), it becomes at once subject to the operation of the section *i. e.*, to the condition of non-transferability without the previous sanction of the Collector. Similarly, on the death of a person who is a member of a class which has been exempted under clause (2), the lands in his occupancy will be free from, or subject to, the special condition according as the persons to whom the occupancy of them passes are, or are not, persons or members of a class of persons, exempted under clause (2).

It will be observed that in the areas referred to in paragraph 4 above the non-transferable tenure stands on a basis essentially different from that on which it rests in areas dealt with in paragraph 5. In the former the restrictive condition is imposed and may be removed at the discretion of the Collector guided by the executive orders of Government. In the latter it applies to all occupancies by the force of the notification under Section 73A (1) and can be removed in particular instances only by a further notification under Section 73A (2). (G. R. R. D. No. 3875, dated 22nd April, 1909).

G. 7. In 1899 certain Land in the village of Umbardi Budruk in the Nandurbar Taluka was mortgaged to a Bania who has subsequently been exempted from the operation of the section 73 A. Government rejected to have the Bania's mortgage rights recorded in the Record of Rights Register. (G. R. No. 7672 dated 25th August 1910.)

G. 8. Delegation of powers.—sub-divisional officers can pass orders under this section. (G. R. R. D. No. 5295 dated 1st June 1911, item 42.)

G. 9. Land on restricted tenure should be sold on restricted tenure only. (G. R. No. 5964 dated 23rd June 1911.)

J. 1. A Bhil was given land gratis. The word Bhogawata in the Kabulayat was held to show that the tenure was a restricted one. (Appeal No. 693 of 1892, page 152 P.J., dated 20th April 1894. Dhabu vs. Harsing.)

Relin-
quishment.

[^a] 74. The occupant may relinquish his land, that is, 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 Mámlatdár or Mahálkari 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 subdivision of a survey number may be relinquished.[^a]

[a-a] This section was substituted by Bom. IV of 1913, s. 32 for the original section.

SUMMARY (s. 74.)

Equity of redemption when extinguished	... ..	J. 4.
House—Retention of—after relinquishment allowed...	... ..	G. 9.
Notices—(1) Exempted from		
(a) Registration	... ..	N. 1.
(b) Court fee	... ..	G. 1.

(2) In Inam villages	G. 2, 3, 4, 5.
	J. 1.
(3) In respect of Inam lands.	G. 7, 12.
(4) Of absolute relinquish- ment before	
(a) Avalkarkuns ...	G. 10.
(b) Forest settlement officer	G. 8.
(5) Of partial relinquishment not allowed	G. 11.
(6) On behalf of minors and lunatics	G. 6.
(7) Valid without the con- sent of heirs	J. 2.
Sale—Of land after relinquishment in- valid	J. 3.

N. I. Notices given under section 74 or section 76 of the Bombay Land Revenue Code, 1879, of relinquishment of occupancy by occupants, or of alienated land by holders of such land, are exempted from registration. (*Vide* section 90 (I) (e) of the Indian Registration Act (XVI of 1908.)

G. 1. Stamp duty on notice of relinquishment.—A notice of relinquishment is not a surrender of a lease under Article 16 of Schedule of Stamp Act, 1879. If the notice can properly be regarded as "an application for leave to relinquish land" then it is exempt from Court fee by section 19 (cl. XI) of Act VII of 1870. (G. R. No. 3009, dated 10th June 1880.)

G. 2. Relinquishments and agreements in alienated villages.—When a Survey Settlement has not been introduced into an alienated village, neither Section 74 nor any other section which relates to the rights and responsibilities of occupants in unalienated villages has any force in it.

When a Survey Settlement has been introduced into an alienated village, then Section 74 is appli-

cable to the occupants in it, and relinquishments must, of course, be made to the Mamlatdar or Mahalkari until Government give the Inamdar power to receive them under Section 88 (e). (G. R. No. 3439, dated 15th June 1881.)

G. 3. Government do not consider that it was the intention of the Legislature to interfere with the right of an Inamdar to give out unoccupied land in his village or holding for cultivation or to accept the relinquishment of the same from the occupant. (G. R. No. 5730, dated 1st October 1881.)

G. 4. Resolution No. 5730 of 1st October 1881 is not inconsistent with Resolution No. 3439 of 15th June 1881. No doubt, when a Survey Settlement has been introduced into an alienated village, Section 74 is made applicable to it by Section 217. But Section 88 (e) empowers the Governor in Council to authorize the Inamdar to receive notices of relinquishment instead of the Mamlatdar, and it was doubtless the intention of the Legislature that interference with Inamdars should ordinarily be avoided in this manner. (G. R. No. 7045, dated 23rd November 1881.)

G. 5. As regards Rajinamas and Kabulayats in alienated villages it is necessary to note that they are given in one of the three following ways :—

1. Absolute relinquishment (Section 74).
2. Relinquishment in favour of another person and the agreement executed by that person (Section 74).
3. Agreement executed by a person taking up new land (Rule 32).

As regards 1 and 2.

- (a) In *unsurveyed* alienated villages Inamdars should continue to exercise the powers as they have hitherto been doing, Section 74 not being applicable to such villages.

- (b) In *surveyed* alienated villages the Inamdars should, as far as possible, under Section 88, be invested where necessary with the powers contemplated by Section 74.

As regards 3.

Section 60 does not apply to alienated lands, and the power of the Inamdars in respect of such agreement is unrestricted whether in *surveyed* or *unsurveyed* villages (G. R. No. 959, dated 10th February 1882).

G. 6. Relinquishments of minors' lands:—Friends or relatives are not legally constituted administrators or managers of estates of minors or lunatics and have no power to act in any way for such minors or lunatics, and the Collectors would not be justified in accepting a notice of relinquishment, or agreement to occupy, from such friends or relatives. (G. R. No. 7074, dated 11th October 1882.)

G. 7. Applicability of Sections 74, 76 and 79 to alienated lands.—The extent, to which the provisions of Sections 74 and 79, are to be held applicable to alienated lands has been explained in the following letter from the Legal Remembrancer:—

" 2. The only sections of Revenue Code, which with reference to the point in question, it is practically necessary to consider are sections 74, 76 and 79. Section 76 says that the provisions of section 74 are to apply 'as far as may be,' to the holders of alienated land.

" 3. The section does not say 'the registered holders of alienated land,' because the Code nowhere recognizes such persons and does not clothe them with any special rights or responsibilities as it does 'registered occupants.'

" 4. For this I am unable to concur in the argument that in Section 79 of the Code the word 'registered' was meant to apply to 'holder of alienated land' as well as 'occupant.' The Legis-

lature was not cognizant of the existence of 'registered holders' as distinguished from holders in general of alienated lands and for aught that appears in the Code the Collector may quite legally record in his books the name of every co-holder of such lands.

"5. But Section 76 makes the provisions of Section 74 applicable to holders of alienated land only 'as far as may be,' and it seems to me that the provisions of paragraph 2 of Section 74 cannot apply to such holder. If there is a sole holder the provisions of the 1st paragraph of that section apply without difficulty and as also do the provisions of Section 79. And if there are two or more co-holders, and they act jointly, and the Collector's records bear their joint names, both sections will also operate without trouble.

"6. If there are two or more co-holders, and the name of one only is entered in the Collector's book, the one whose name is entered, may certainly relinquish or transfer his own interest under Section 74, and Section 79 would apply to him; but I doubt very much whether a resignation by him would legally bind his co-holders. There is also nothing in paragraph 1 of Section 74, that would prevent any one of the co-holders from relinquishing or transferring his own individual interest; but if the Collector's records do not bear his name and the Collector declines to record the relinquishment or transfer of his individual interest in the holding, Section 79 cannot operate against him or his transferee.

"7. Another difficulty which militates against the construction of Section 79, *viz.*, that the word 'registered' is meant to apply to 'holder of alienated lands,' as well as 'occupant' is that the liability for the land-revenue due on alienated holdings is nowhere legally imposed on the 'registered holder,' alone or even in the first instance.

Section 136 of the Code says that 'the superior holder shall [be primarily responsible to Government for land-revenue of alienated land.' The singular number imports the plural, and if there are two or more superior holders with co-equal rights they all are primarily liable for the land-revenue; to the one whose name is entered in the Collector's book no special or prior liability legally attaches: although for convenience sake it may be the practice to look to him for payment."

Government therefore left undecided the question *viz.*, whether the obligation of recording the name in the Revenue Records applies alike to holders of alienated and unalienated land till an amendment of the Code. (G. R. No. 5019, dated 19th June 1885 and Government Memo No. 7859, dated 15th November 1886.)

G. 8. Officers authorised to accept notices of relinquishment.—When an occupant agrees before a Forest Settlement officer to relinquish his land he should be told by that officer to sign a notice of absolute relinquishment in his presence and that officer should then write an endorsement on it that he has satisfied himself as to the identity of the party signing the notice and send the notice to the Mamlatdar who, if he accepts it without further inquiry, will be held to have exercised due care enjoined by Rule 76 of the rules framed under section 214. (G. R. No. 1081 dated 10th February 1886 and G. R. No. 1708 dated 4th March 1886)

G. 9. Retention of house allowed:—From No. 17 of the Survey Rules (Survey and Settlement Manual, page 37) it will appear that the custom of obliging a rayat who threw up a field, to relinquish at the same time the house attached to that field was abolished under the authority of Government letter No. 5593 of 1848-paragraph 42. (G. R. R. D. No. 5512, dated 3rd August 1886.)

G. 10. Avalkarkuns are authorised to accept notices of relinquishment under this section during

the absence of Mamlatdars from head quarters. When Mamlatdars accept such notices without further enquiry they will be held to have exercised the due care enjoined by Rule 74. (G. R. No. 1743, dated 2nd March 1889.)

G. II. Occupancy defined—Partial relinquishment not allowed:—An occupancy signifies the sum of the rights vested in an occupant as such [Bombay L. R. Code, Sec. 3 (18)]. Amongst other rights which an occupant possesses is that of constructing wells in the land for the better cultivation thereof (*ib.* Section 65). Section 74 of the Code authorizes an occupant to relinquish his occupancy either absolutely or in favour of a specified person. If at the time of such relinquishment a well constructed by the occupant as aforesaid, still exists in the land, it, too, must of necessity be included in the relinquishment. The Code does not authorize a partial relinquishment. A well constructed in land by its occupants becomes part and parcel of the land by accession *solo cedit quod solo in edificatur*. So long as the person who constructed it remains the occupant of the land, the well continues to be his property, but if he relinquishes absolutely, that is throws up the occupancy, all his rights in and over the land and its accessories cease and determine and he can claim no reservation. If he relinquishes in favour of another person, *i. e.*, transfers his occupancy, a revenue officer will be clearly justified in declining to recognize for the purpose of Section 74 of the Land Revenue Code, any such transaction which is not really a relinquishment of the occupancy, *i. e.*, a transfer of the aggregate of the rights vesting in the transfer or in virtue of his being the occupant. A transfer of a portion only of such rights is not a transaction of such a kind as the section contemplates. (G. R. No. 7152, dated 8th October 1890.)

G. 12. The entry is a matter of grace:—Government accepted the following opinions given by the Remembrancer of Legal Affairs:—

Section 74 is certainly extended by section 76 to holders of alienated land, but only 'as far as may be,' and this limitation appears to me to preclude the creation by these sections, by inference of a special class of 'registered' holders of alienated land similar to 'registered' holders of unalienated land. The concluding clause of Section 79 again seems to presuppose some foregoing provisions of the Code for the record of transfers of alienated land as in the case of unalienated land, but it is not enough of itself to create such provisions. Section 136, on the other hand contrasts 'superior' holders and not 'registered' holders of alienated land with 'registered' occupants of unalienated land and the definition of 'superior' holders in section 3 (13) is materially different from that of 'registered' occupants in Section 3 (17). Superior holder could not be read as equivalent to 'registered' holder. * * * *

The object of section 76 is to ensure Government receiving notice of (*such*) a transfer (of a share) and not to limit in any way the right of the holders to make it. When the notice has been given 'as far as may be' in the manner required by Section 74, the transfer must be recognized and cannot be ignored on the strength of any provisions in section 74 or 79 which apply strictly only to 'registered' occupants of unalienated land.

No person can claim an entry in Government records as of right of his name as the registered holder. In view of the general practice of making such entries (G. R. No. 5019, dated 19th June 1885, under section 74) and to the apparent intention of the Code to have legalized that practice (G. R. No. 5519, dated 12th August 1891, under section 136) it is for Government to decide whether they will direct the entry to be made as a matter of grace. (G. R. No. 10013, dated 9th December 1905.)

J. I. The first and second defendants were sub-tenants of the third defendant, who had certain land which was part of the inam village of D. In 1883

the third defendant 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 any one 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 Section 74 of Bombay Act V. of 1876.

Held, also, that the plaintiff was entitled to sue in ejectment, although he had not been put in possession of the land. (Bhutia Dhondu vs. Ambo.—I. L. R., Bombay, Vol. XIII, 1889, page 294.)

J. 2. The holder of a survey field is not incompetent to resign it without the consent of his heirs. So also to the validity of a resignation of miras land by a mirasdar to Government the consent of his heirs is not requisite. (A mirasdar is now no less than an occupant.) B. H. C. R. 197, B. H. C. R. 133.

J. 3. Sale by a Khatedar after Rajinama.—C, a registered khatedar of unalienated lands subject to the provisions of the Land Revenue Code, executed a rajinama relinquishing the khata in favour of D, and on the same day, D executed a kabulayat to the Mamlatdar undertaking to pay the land revenue and applied to have his name entered in the Government records as the registered khatedar of those lands. Some years later C sold the very lands to the plaintiff, who sued to recover possession from D, alleging that there having been gift of the lands by C to D, it could not operate in

absence of a registered document under Section 123 of the Transfer of Property Act —

Held, that the Rajinama by C was an extinguishment of his interest in the lands and the effect of the kabulayat was that D came in by agreement with Government as an occupant in his own right; that, therefore, C had no interest in the lands capable of transfer at the date of sale; and that the plaintiff got nothing by his sale-deed.

18 Bombay Law Reporter page 976.

J. 4. Rajinamas and Kabulayats.—One Venkappa mortgaged four survey numbers to Virappa for Rs. 300 on the 30th May 1876. Subsequently the mortgagor transferred his right under the mortgage to the mortgagee by Rajinama and Kabulayat. These documents were not registered. A suit was filed to take accounts of the mortgage under the provisions of the Dekkan Agriculturists' Relief Act. Held that (1) the Rajinama and Kabulayat, governed by the Bombay Land Revenue Code (Bombay Act 5 of 1879), are not compulsorily registrable, (2) they cannot in themselves be documents of transfer; but they are fairly conclusive evidence that a transfer has in fact been made, (3) the suit was rightly dismissed by the Court of first instance, as the Rajinama and Kabulayat effectually extinguished the plaintiff's equity of Redemption. (L. L. R. 42 Bombay, page 359.)

75. *Repealed by Bom. IV of 1913, section 33 (1).*

[^a] **76.** The provisions of the [b] last section [b] shall apply, as far as may be, to the holders of alienated land: provided that,

(a) it shall not be lawful to relinquish, as aforesaid, any portion of any land held wholly or partially exempt under the circumstances

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section 49.

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.

Relinquishment of land described in section 51.

a] As to the local repeal of s. 76, see para. 5 of foot-note [a] on page 1, *supra*.

[b-b] These words were substituted for the original words "the two last sections" by Bom. IV of 1913, s. 33 (2).

N. I. See J. 4 under section 74.

G. I. Absolute resignation by an Inamdar of a part of his holding given as a subordinate (pôt) inam.—There are cases in which an Inamdar or his predecessor in title has, without parting with his own inam right, made a grant of some land in his holding to a third person and his heirs in perpetuity either entirely rent-free or on terms which are advantageous to the grantee. But afterwards finding that the burden of paying the Government dues on the land included in such sub-grant while he receives little or no rent from the sub-grantee is greater than he can support naturally seeks to get rid of this result by absolute relinquishment of this portion.

In such cases it is not desirable to permit such resignations because they would encourage Inamdars to break faith with their sub-Inamdars. So

long as the relations of the Inamdars and their *pot* inamdars remain in *status quo*, either the one or the other can resort to the Civil Court if so minded to obtain a declaration of their respective rights. If such resignations are accepted with the consent of the sut-Inamdars, the proportionate deduction shall be made in the amount payable by the Inamdar and the resigned holding should be considered to all intents and purposes as unalienated land and the full assessment should be levied upon it. (G. R. No. 4235, dated 27th May 1885.)

77. If any person relinquishes land, the way to which lies through other land which he retains, the right of way through the land so retained shall continue to the future holder of the land relinquished.

78. Nothing in [a] section 74 [a] shall affect—

[b] the validity of the terms or condition of any lease or other express instrument under which land is, or may hereafter be, held from Government.

[a-a] These words were substituted for the original words "section 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.

[a] **79A.** Any person unauthorizedly occupying, or wrongfully in possession of, any land

(a) to the use and occupation of which he has ceased to be entitled under any of the provisions of this Act, or

(b) [b] which is not transferable without previous sanction under section 73A or by virtue of any condition lawfully [c] annexed to the tenure [c] under the provisions of section 62, 67 or 68,

may be summarily evicted by the Collector.

[a] Section 79A was inserted by Bom VI of 1901, s. 12. As to its local modification, see foot-note [a] on p. 1, *supra*.

[b] This word was substituted for the original words "of which the occupancy right" by Bom. IV of 1913, s. 36.

[c] These words were substituted for the original words "annexed to the occupancy" by Bom. IV of 1913, s. 36.

H 659-6.

SUMMARY (s. 79A.)

Section 79A—(1) Not applicable to		
civil court decree ...	J	1.
(2) Object of—...	N	1.
(3) Retrospective effect.	G	1
Suit against a public officer ...	J	2.
Tahal	G	2.

N. 1. Section 79-A of the Land Revenue Code was specially enacted in order to provide for breach of agreements such as A, B, and C under Section 67. If for instance any person builds a privy in an unauthorised place or does not leave the stipulated amount of vacant ground, then the Collector can first evict him from the whole occupancy, and take possession of it. Then after removing the offending structures, &c he can restore it to the evicted occupant on any terms or payments which may be agreed and in accordance with the rules of Government. Thus, if the Collector cannot meet the cost of demolition out of the sale of the materials demolished, he might make the evicted party pay this cost as a condition of restoration.

G. 1. Retrospective application.—The following opinion of the Remembrancer of Legal Affairs was circulated for information :—

The mere fact that the unauthorised transfers of land originally granted on the non-transferable tenure were made prior to 1901 will not prevent the application of section 79A to the case of any person who is now unauthorisedly occupying the land in question. There is nothing in the section or the rule against retrospectivity to justify a contrary view.

The transferees cannot directly claim the benefit of section 41 of the Transfer of Property Act, 1882 (*re* transfer by ostensible owner), because of the Crown Grants Act, 1895. But on the other hand it has been held that Government are as much bound by the equitable rules of estoppel as would be any other person, *cf.* I. L. R., 25 Bom. 714, at pp. 746, 750 and I. L. R., 26 Bom. 271, at p. 277. If, therefore, any transferee can prove that the revenue authorities have, by their declarations or conduct, so acted as to misled him into the reasonable belief that the transferors had the usual power to transfer, then it might be held that the Collector was estopped from treating the land as non-transferable without sanction and could not avail himself of the power conferred by section 79 A. The mere facts that the tenures were entered in the revenue records in the same way as ordinary occupancies, and that assessment was accepted from the transferees, would, in the absence of special circumstances, not operate as such an estoppel, *cf.* I. L. R., 23 All-442, and 5 Bom. L. R., 956, at pp. 966, 967, and 972, 973. *Prima facie* there would be good grounds for contending that rajinamas and kabulyats accepted by the Mamlatdars and Mahalkaries would not operate as an estoppel. (G. R. R. D. No. 9257, dated 20th September, 1907.)

G. 2. Unless a distinct condition relating to *tahal* is inserted eviction under section 79-A is

not justified. (G. R. No. 1339, dated 7th February 1912.)

J. I. Possession under decree of the civil court.—The powers given to the Collector by section 79-A of the Land Revenue Code, 1879, 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 in rightful occupation.

The talukdari settlement officer,

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page 837.

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—35 Bombay 72.

J. 2. Suit against public officer.—The collector, holding powers of the Talukdari settlement officer and acting under section 79-A of the Bombay Land Revenue code, 1879, 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 section 80 of the civil procedure code, 1908, was given:

Held, that the declaration and the notice were distinct acts on the part of the collector done by him in his official capacity; and therefore, a notice

to the collector by the plaintiff was necessary under section 80 of the civil procedure code as a condition precedent to the maintenance of the suit.

Talukdari Settlement officer *vs.* Bhaijibhai.
14. Bombay Law reporter page 577.

80. In order to prevent the forfeiture of an occupancy [a] under the provisions of section 56 or of any other law for the time being in force, through non-payment by the [b] occupant [a] of the land revenue due on account thereof, it shall be lawful for any [c] person interested [c] to pay on behalf of such [b] occupant [a] 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 [c] 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.

[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. 37, are omitted.

[c-c] These words were substituted for the original words "co-occupant tenant, mortgagee or other person interested in the continuance of the occupancy" by Bom. IV of 1913, s. 37 (a).

[d-d] These words were substituted for the original words by Bom. IV of 1905, 1st Sch.

[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).

81. *Repealed by Bom. IV of 1913, s. 33.*

Governor
in Council
empower-
ed to
suspend
operation
of section
60 or 74.

[^a] **82.** It shall be lawful for the Governor in Council by notification in the *Bombay Government Gazette* from time to time :

(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.

[a] As to the local repeal of section 82, see para. 5 of footnote [a] on p. I, *supra*.

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CHAPTER VII.

OF SUPERIOR AND INFERIOR HOLDERS.

Amount
of rent
payable
by tenant.

83. A person placed, as tenant, in possession of land by another, or, in that capacity, holding, 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 regarded to all of the circumstances of the case, shall be just and reasonable.

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.

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.

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-remission of the services, either respectively originally fixed or duly enhanced as aforesaid.

SUMMARY (s. 83.)

Government officials.

Paying rent by mistake ... J. 17.

Inamdar and mirasdars.

Rent J. 6.

Inamdar and occupants.			
(1) Local fund	...	...	J. 1, 5.
(2) Village pasture	...	...	J. 2.
Inamdar and tenants,			
Relations	...	...	J. 8, 19.
Landlord and tenant.			
(1) Cess imposed by an Act.		J.	4,
(2) Eviction of tenant	...	J.	9, 14.
(3) Relations	...	J.	2, 3,
			7, 10, 11,
			12, 13, 15,
			16, 18, 20.
			21, 22, 23.
(4) Trees planted by tenant.		J.	24.
Tenant.			
Distinguished from inferior			
holder	...	...	G. 1.

G. 1. Section 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. No. 5843, dated 30th October 1880.)

G. 2. Putting speculative rents out of the question, there is no reason why assistance should not be accorded where survey rates have been introduced and nothing more demanded. Under Section 83 a tenant shall be regarded as holding land at the rent

agreed on between him and the landlord, if there is evidence of such agreement: and the Collector is bound to give assistance if required, for the recovery of so much rent as is lawfully due. If the question what is lawfully due should be of a complicated or difficult nature to determine, it is open to the Collector to refuse assistance. (Para. 7 of L. R's. No. 1502, dated 17th December 1808; *vide* G. R. No. 6841, dated 30th December 1880)

J. 1. In the absence of a special agreement to the contrary, the local fund cess must, as between an Inamdar and an occupant under him, be paid by the occupant. (S. A. 325 of 1871.)

J. 2. Unless authorised by the terms of his grant, an Inamdar cannot enclose lands at will, and certainly not lands which have been immemorially used as village pasture lands. (P. J. 3, Vishwanath *vs.* Mahadaji, 1879.)

J. 3. Section 83 of the Land Revenue Code (Bombay Act V. of 1879) is applicable only when the evidence as to the commencement and duration of the tenancy is not forthcoming by reason of its antiquity, which, in the case of a tenancy at most only forty years old, there is no reason for presuming will be the case. (Kalidas Laldas *vs.* Bhaji Naran—L. L. R., Bombay, Volume XVI., page 647, 1892.)

J. 4. A tenant is liable to pay a cess imposed by an Act passed subsequent to the lease, in addition to the rent agreed upon in that lease. (Ram Tukoji *vs.* Gopal Dhondi,—1893. I. L. R., XVII, Bombay, p. 54.)

J. 5. An Inamdar is a "superior holder" within the definition of Regulation XVII. of 1827 and Bombay Acts I. of 1865 and V. of 1879. He is therefore the person primarily liable to pay the Local Fund cess under Section 8 of Bombay Act III. of 1869.

There is no provision of law entitling an Inamdar to charge for his expenses in collecting the cess.

(Secretary of State for India *vs.* Natu,—I. L. R., Bombay, Volume XVII., page 422, 1893.)

J. 6. Mirasdars in an Inam village cannot always claim to hold at a fixed rent. An Inamdar can enhance his rents within the limits of custom. (Vishwanath Bhikaji *vs.* Dhondappa,—I. L. R., Bombay, Volume XVII., page 475, 1893.)

J. 7. Where the plaintiff sued in ejectment, and the defendant set up a right as a permanent tenant.

Held, that, the setting up of this right was a repudiation of the landlord's title and absolved him from the obligation which would have devolved on him of giving to the defendant a notice to quit if the defendant had set up a tenancy from year to year. (Baba *vs.* Vishwanath Joshi,—I. L. R., Bombay, Volume VIII., page 228, 1884.)

J. 8. Appasaheb, the Chief of Kagvad, let certain land to the defendant for a term of twelve years by lease, dated 12th June 1857. Appasheb died in the same year without male issue, and his Saramjam was resumed by the British Government. In 1858 the Collector treated the defendant as occupant of the land in question for the purposes of assessment, and again in 1860 entered his name as occupant in the Government books. In January 1868, the widow of Appasaheb adopted the plaintiff as her son. In 1881, the plaintiff sued the defendant to recover possession of the land let to the defendant in 1857. The defendant contended that the land was not the private land of Appasaheb, but belonged to the State of Kagvad, which was resumed on his death by the Government, and that the plaintiff's claim was barred by the law of Limitation. The Subordinate Judge allowed the plaintiff's claim, holding that the land was the private property of Appasaheb, Chief, of Kagvad, and that the claim was not barred. The District Judge on appeal held that the land was not the private property of the Chief, but was the property of the State, and that

on the resumption of the State by the British Government the defendant's lease came to an end and the relation of landlord and tenant previously existing between the Chief and the defendant ceased. He also held that the plaintiff's claim was barred by limitation and reversed the decree of the Subordinate Judge. On appeal to the High Court—

Held, that, no distinction could be drawn between the public and the private property of an absolute Chief, which Appasaheb was.

That in the absence of a contrary intention, the resumption by the British Government of a Saramjam or Inam leaves the occupancy rights of the Saramjamdar or Inamdar untouched.

That a Saramjamdar or Inamdar may acquire occupancy rights during the continuance of the Saramjam or the Inam.

Held, also, that the fact that the revenue officers placed the defendant's name in the Government books as the occupant paying assessment did not make the defendant's possession adverse, and could not prejudice the plaintiff's right as landlord. (*Ganpatrao Trimbak Patawardhan vs. Ganesh Babaji Bhat*,—I. L. R. Bombay, Volume X., page 112, 1886.)

J. 9. A tenant repudiating the title under which he entered becomes, liable to immediate eviction at the option of the landlord. (*Vishnu Chintaman vs. Balaji bin Raghujji*,—1888. I. L. R., XII, Bombay, p. 359.)

J. 10. Where Survey Settlement (under Act I of 1865) is introduced, Section 83 and not Section 68 applies in determining the nature of tenancy. (*P. J. 19, Khanderao vs. Balsing*, 1889.)

J. 11. Where there is no satisfactory evidence of the commencement of a tenancy by reason of its antiquity, nor any evidence of the period of its duration, nor of any usage of the locality as to the duration of such tenancies, the tenancy must be presumed co-extensive with the duration of the

tenure of the landlord. (P. J. 179, Jaikrishna vs. Lakshamanrao, 1890, and I. L. R. XIV, Bombay, page, 392.)

J. 12. Where the terms of a lease did not appear to create a perpetual tenancy, there being no circumstances in the evidence from which the Court ought to infer that the intention of the parties was to create such a tenancy:

Held, that, the lease was not a perpetual lease. (Ramabai Saheb Patwardhan vs. Babaji,—I L. R., XV, Bombay, page 704, 1891.)

J. 13. A plaintiff sued to recover possession of certain fields, etc., alleging that he was a permanent tenant of the defendant, having purchased the right of occupancy from previous occupants of the land. The lower Court held that the plaintiff's vendors were mere yearly tenants and not permanent tenants, but that the sale of their right to the plaintiff was valid, and that the plaintiff had been wrongfully dispossessed by the defendant, no notice to quit having been given.

Held, that the plaintiff could not recover. For his plaint 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. (Lalu Gopal vs. Bai Motan Bibi,—1893, I. L. R., XVII, Bombay, page 631.)

J. 14. The District Judge cannot, in his judgment, give the notice, (to quit) which the plaintiff is bound to give to his tenants. (I. L. R. XVIII Bombay, 107—Abu Bakar vs. Venkat Ramana).

J. 15. Section 83 of the Land Revenue Code does not apply to a tenancy which commenced about 40 years ago, but it applies to a tenancy with respect to which there is no satisfactory evidence to show the commencement as well as the terms of

a tenancy. (*Lakshman vs. Vithu*, 1894, I. L. R., XVIII, Bombay, page 221).

J. 16. The mere fact that a tenancy has commenced subsequently to the commencement of the landlord's tenure, does not prevent the application of section 83 (1) of the Bombay Land Revenue Code in cases where by reason of the antiquity of the tenancy no satisfactory evidence of its commencement is forthcoming. (*Ramchandra Narayan Mantri vs. Anant*, 1894, I. L. R., XVIII, Bombay, 433).

J. 17. 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 Government 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 Government and that the rent had been paid under a mistake. (*Vithaldas vs. Secretary of State for India*, XXVI, Bombay, 410.)

J. 18. To claim the benefit of the presumption created by Section 83, 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 tenancy. (*Vishwanath vs. Taty*, Bombay, Law Reporter, Vol. VI, 1904, page 645.)

J. 19. A grant to an Inamdars may be either of the Royal share of revenue or of the soil; but ordi-

narily 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 an alienee only of the land revenue, then his relation towards those who hold land within the area of the Inam grant very 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 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. (*Rajya valad Imam vs. Balkrishna Gangadhar*, XXIX, Bombay, 415.)

J. 20. Section 83 creates no new rights; it simply insists on the Courts adopting a better method of ascertaining whether in fact the right existed. (*Nahanchand vs. Modi Kekhushru*, 1906, I. L. R. 31, Bombay 183)

J. 21. Where a rayat of a non-transferable holding executed a conveyance in respect thereof in favour of the defendants, but continued notwithstanding to reside on the property and carry on the cultivation for some time and the rent of the holding was paid by the defenants in the name of the rayat:—

Held, that if the transaction was not intended to be an operative transaction, the mere fact that the rayat went away from the holding to reside elsewhere would not be sufficient to make out a case of abandonment so as to entitle the landlord to re-

enter. (*Mathura Mandal vs. Ganga Charan Gope*, 1906, I. L. R. 33, Calcutta, 1219.)

J. 22. A lessee who may have lost possession of a portion of the lands covered by his lease, is not entitled to suspend the payment of rent if the dispossession has been effected, not by the landlord but by other lessees under him. (*Kali Prasanna vs. Mathuranath*, I. L. R. Vol. 34, Calcutta, page 191, 1907.)

J. 23. The saving clause of Section 83 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. (*Raghunath vs. Luxman*, Bombay Law Reporter II, page 93.)

J. 24. Permanent Tenant—A permanent tenant, the origin of whose tenancy is lost in antiquity and who has planted trees upon the lands demised, has a right to cut them down and to use them.

The English Law of fixtures and the principles upon which it is based have no applicability in this country.

Sitabai vs. Sambhu Sonu, Indian Law Reports, 38 Bombay, 716.

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

Annual tenancy terminates on the 31st March.

Three months' notice of termination of tenancy to be given by landlord to tenant, or vice-versa.

the end of which it is intimated that the tenancy is to cease. Such notice may be in the form of Schedule E, or to the like effect.

[a-a] These words were inserted by Bom. VII of 1914, s. 2.

Order
granting
suspensions or
remissions
to inferior
holders.

[^a]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—

(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 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.

Crop-share fixed by custom or agreement.

(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.

Meaning of assessment.

(7) Explanation—

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.

Sind excluded.

(8) Nothing in this section shall apply to any land situated in the Province of Sind.

[a] This section was inserted by Bom. VII of 1914, s. 3.

N I. The objects and reasons of Section 84A.— This section is on the lines of section 51 of the Agra Tenancy Act (United Provinces Act II of 1901), section 30 of the Panjab Tenancy Act, 1887, and section 18 of the Central Provinces Tenancy Act, 1898. The object is to secure for Tenants and other inferior holders a share in the concessions granted by Government under the 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 sus-

pension to the superior holder, the latter can recover the whole of the rent or land revenue at once from the inferior holders. The new section 84—A. will remedy this defect in the Act. The principle of the legislation has already been approved by the Bombay Legislative Council in section 94A of the Land Revenue Code, but the provisions contained in that section have a more limited scope than those now proposed. The conditions of Sind being different, it is not necessary that the section should apply to that Province.

(Bombay Government Gazette, 1914 Part VII, page 192.)

[^a]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. Recovery of superior holders' dues.

(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.

[a] This section was substituted by Bom. I of 1910, 1st Sch, 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 page 1, *supra*.

SUMMARY (S. 85.)

Section 85.

- (1) When applicable ... G 4, 6
 (2) When not applicable ... G 1, 2, 10. J 1

Alienated share of a village.

Meaning of ... G 3, 5

Inamdars—

- (1) Accepting a bond or promissory note for land revenue... G 7, 8
 (2) Requisition to village officers... G 9

G. 1. Local Fund may be received direct:—

The superior holder may receive payment of the cess from his tenants or inferior holders without the intervention of the village officers. Section 85 refers to rent or land revenue only. (G. R. No. 3761, dated 10th June 1882).

G. 2. In the case of large Inamdars who, customarily, receive at their houses the dues in kind there is no objection to their receiving their dues direct and giving a receipt for such payments as provided in section 58 (2) of the Land Revenue Code. (G. R. No. 6020, dated 15th August 1883).

G. 3. Alienated share of a village explained.—

A person holding an Inam No. in a Government village cannot be said to be the holder of an alienated share of a village. The expression "holder of an alienated share of a village" denotes not the

holder of an isolated piece of Inam land either in a Khalsa or in an alienated village, but a holder who shares with Government either singly or jointly with other holders the revenue of an alienated village. (G. R. No. 6037, dated 26th July 1884.)

G. 4. Section 85 of the Code 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-thirds. (G. R. No. 7484, dated 19th September 1884.)

G. 5. The effect of the entry of an Inamdar's name.—The Collector has no authority to determine the extent of the right, title and interest of the judgment debtor, and there was no occasion for him to issue any order for payment of an amount not specified in the decree. The report of the Legal Remembrancer contains the following observation:—

The registration of an Inamdar's 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 shareholders and rival claimants. (G. R. No. 6206, dated 14th September 1887.)

G. 6. It would be better to leave the wording of Section 85 as it is. It should continue to be interpreted as at present, *i. e.*, that an Inamdar is prohibited from collecting direct where both the Patel and village accountant are hereditary. But care should be taken when watan lapses to Government that the watan is continued in the name of Government so that the officiator may be regarded as a nominee of Government as owners of the watan. (G. R. No. 7591, dated 2nd August 1907.)

G. 7. An Inamdar accepted a bond on account of arrears of land revenue due from a land holder of his village. He was, therefore, fined by the Collector under Section 85 (4) and Government re-

fused to interfere with the Collector's order. (G.R. No. 8265, dated 24th August 1909.)

G. 8. To take 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 Section 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. (L. 1028, dated 9th December 1910.)

G. 9. 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. No. 7307, dated 5th August 1912.)

G. 10. Sheri lands in alienated villages.—This section does not apply to the case of an Inamdar of an alienated village who holds himself Land in the village which he lets out to a tenant. The rent due for that land is not due to him as the superior holder of an alienated village. (G. R. No. 1425, dated 5th February 1915.)

J. 1. Section 85 does not bar the jurisdiction of civil courts to try suits by superior holders to recover the arrears of their dues from inferior holders. A superior holder, who seeks to recover his dues through a Civil Court, does not recover them directly from the tenant or the inferior holder within the meaning of Section 85 (4). *Vishwanath Ganesh Paranjpe v. Kondaji Sakharam*, 19 Bombay Law Reporter, page 820, I. L. R. 42 Bombay 49.

Superior holders entitled to assistance in recovery of dues from inferior holders, etc.

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 :

Provided that such application be made with-
 in the revenue year or within the year of tenancy
 in which the said rent or land revenue became
 payable.

But applica-
 tion must be
 made within
 the revenue
 year or within
 the year of
 tenancy.

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

[b] 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 pro-
 ceed on such
 application
 being made.

[b] (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.

[b] (3) But, if it appears to the Collector that the question at issue between the parties is of a 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 [a] or any survey settlement confirmed by section 112, grant assistance to the extent only of the assessment so fixed upon the said land.

Assistance
 may be refus-
 ed or granted
 to a limited
 extent only.

[b] (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.

Civil suit not
 to be barred.

[c] (5) One appeal only shall lie from any order passed under this section.

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

[b] These sub-sections were originally paragraphs of section 87. They were numbered as sub-sections by Bom. IV of 1913, s. 39.

[c] This sub-section was added by Bom. IV of 1913, s. 39.

SUMMARY (ss. 86 and 87.)

1 Sections 86 and 87.

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N. 1. *Vide* Sections 84 A, 135 (i) 148 and 192 and orders printed thereunder.

N. 2. For form of notice to be issued under Section 87, see Appendix XI.

N. 3. *Vide* G. R. No. 5424, dated 5th August 1902 and G. R. No. 4450, dated 11th June 1904 under Section 88.

N. 4. As regards assistance suits in Inam villages, see also Sections 145 and 146 of Joglekar's Alienation Manual.

N. 5. A Municipality is deemed to be a superior holder within the meaning of Sections 86 and 87 of the Land Revenue Code. (*Vide* Section 166 of the Bombay District Municipal Act, III of 1901.)

N. 6. If a man has agreed to pay rent collectively in respect of two lands, one being in one district and the other being in another district, it is doubtful whether the Mamlatdar in one district can grant assistance for the whole amount.

N. 7. Notice fee recovered in executing decrees should be credited to Government.

N. 8. Assistance cases should not be sent to the Record room until the decrees are fully executed. Till then they should be considered as awaiting cases.

N. 9. Can travelling expenses of the defendant be awarded as cost when the plaint is rejected? It appears that such cost can be awarded when the defendant is unnecessarily dragged into a Mamlatdar's office, and the grounds for awarding such cost are the following :—

- (a) The inquiry in assistance suits is summary.
- (b) The office holding the inquiry is a Civil Court. (See Section 195.)
- (c) Under G. R. 4468, dated 10th July 1882 (under Section 192) the court is authorised to pass orders with respect to costs.
- (d) The defendant or his agent is compelled to attend in person. (*Vide* last paragraph of the form of notice in Appendix XI.)

N. 10. 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. (*Vide*, Appendix XI.)

“ 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 fourth amount of the sum decreed will be imposed as fine under Section 148.”

N. 11. As a second appeal is not now allowed by Law a Collector will generally not entertain petitions for revision under Section 211, as Civil

Courts are always open to the parties for further litigation.

G. 1. Applications for assistance—Single application sufficient against several inferior holders.—A superior holder when applying for assistance to collect rent from his tenants need not make a separate application on a separate stamp for each tenant's case. He may put as many cases as he can into one paper, provided the total amount of rent for the recovery of which the application is made is sufficiently covered by the stamp. (G. R. R. D. No. 2818, dated 4th June 1874.)

G. 2. Recovery—of dues by adjustment in accounts.—If a sub-sharer in a dumala village owns land which is entered in the accounts not as Inam but as the holding of an ordinary occupant in the village, and if it has been the practice for the revenue of such land to be adjusted in the accounts as a set-off against the share of such sub-sharer in the revenue of the village instead of being paid in cash, the practice should not be lightly disregarded, and no assistance should be rendered by the revenue officer to the principal Dumaldars in the recovery of rent of such land in cash. When applications for such assistance are made, the revenue-officers applied to should refer the parties to the Civil Court for a decision of their respective rights ; and if they obtain a settlement of their dispute, assistance may be given in accordance with the terms of the Court's final decree. (G. R. No. 2689, dated 24th May 1880.)

G. 3. Assistance—to be given to joint holders.—If a village held in Inam by more than one person is entered in the accounts in the name of only one person, and if a dispute arises between the registered holder and the other sharer or sharers as to the right of recovering the revenue, and the Collector on the matter coming before him is satisfied that the person in whose name the village stands has all along had the sole management of it, he should

consider such holder alone to be entitled to receive the rents or land-revenue due by the tenants until such time as some arrangement for partition of the village for sharing or exercising jointly the right of management is made by the parties either privately or by a suit between themselves. In such cases the parties applying for assistance should be referred to the Civil Court. (G. R. No. 3350, dated 29th June 1880.)

G. 4. To Deshmuks and Deshpandes.—When a village is held by an Inamdar subject to the right of a Deshmukh or Deshpande or some other such Hakdar to a share in, or a charge on, the revenue of the village, the Deshmukh, Deshpande or other Hakdar stands *pro tanto* to the Inamdar in the relation of superior holder, and is, therefore, under Section 86 of the Code entitled to assistance in the recovery of his dues from the Inamdar. The definition of "land" in the Code is so drawn as to make the terms "holder" and "superior holder" apply to persons entitled to a share in, or a charge on, the revenue as well as to persons in the possession and enjoyment of the land itself. (G. R. No. 4379, dated 20th August 1880.)

G. 5. Collector to refuse assistance in complicated cases.—There is 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 liability to pay rent to landlord.

A tenant shall be regarded as holding land at the rent agreed on between him and the landlord if there is evidence of such agreement, and the Collector is bound to give assistance if required for the recovery of so much rent as is lawfully due. If the question what is lawfully due should be of a complicated nature or difficult to determine, it is open to the Collector to refuse assistance. (G. R. No. 5841, dated 30th October 1880, and G. R. No. 6841, dated 30th December 1880.)

G. 6. In villages whether surveyed or unsurveyed.—Holders of alienated villages are entitled to have assistance for the recovery of their dues from their tenants under this section whether a survey settlement has been extended to their villages or not. (G. R. No. 4150, dated 18th July 1881.)

G. 7. Superior holders.—Mortgagee in possession. ✓
—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. No. 5406, dated 17th September 1881.)

G. 8. Sharers in alienated villages.—In accordance with the definitions in clauses 4, 13 and 14 of Section 3 of the Code and the decision of Government in their Resolution No. 4379, of 20th August 1880, [see G. 4. above] all the sharers in alienated villages, whether their names are entered in the accounts 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 the revenues of the village and not from other private property of the Inamdar. (G. R. No. 5454, dated 21st September 1881.)

G. 9. Of village officer's remuneration.—Section 17 of the Bombay Hereditary Offices Act provides for the assessment of the amount of Haks payable in alienated villages by Inamdars, &c., or others owning or occupying land therein. The Collector has power from time to time to determine the amount of such payments recoverable, provided that no larger demand shall be made than one equivalent to the amount that would be payable under the scale in force for the time being in the case of Government villages. Section 81 of the same Act provides that recoveries of emoluments under the Act may be made as provided by any law for the time being in force relating to the recovery of the land-revenue.

Where, therefore, 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 rayats to pay as usual, rendering him such assistance as the law 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. No. 5795, dated 4th October 1881; and G. R. No. 6750, dated 11th November 1881.)

G. 10. To Sub-sharers:—The sub-sharer is entitled to a certain sum representing his share or proportion of revenue due to all the co-sharers and this sum he is entitled to receive not direct from the inferior holders but through the hereditary patil and village accountant. Failure on the part of the inferior holders to pay their dues will generally affect all the sharers alike, who, as a body of superior holders will be entitled to assistance for the recovery thereof. He is entitled to assistance under Section 86 as against the co-sharers, whether as co-sharers or 'inferior holders' the definition of which term in clause 14 of Section 3 is quite as applicable to them as to tenants. (G. R. R. D. No. 5838, dated 6th October 1881.) (*Vide* also G. R. No. 4330, dated 5th July 1882.)

G. 11. Up to what amount.—In a case of the nature given below assistance should be given to the following extent.—

A is a registered occupant of a holding assessed at Rs. 10; one half of it belongs to his brother B, who has leased it on permanent tenure to C for Rs. 7, who in his turn has rented it to D for Rs. 10. A, B, C, each apply for assistance for the recovery

of their rent by precautionary measures. In each case assistance should be given to the extent of their net profit, *i. e.*, 5 Rs. to A, 2 Rs. to B, and 3 Rs. to C. (G. R. No. 7056, dated 24th November 1881.)

G. 12. Grounds on which Collector's decision to proceed.—The Collector's decision under this section should proceed on the grounds indicated in the first paragraph of Section 83 of the Code, *viz*:—

(a) If any agreement between the superior holder and the tenant is proved, the rent agreed upon between them.

(b) If there is no satisfactory evidence of such agreement, the rent payable by the usage of the locality.

(c) In the absence of any agreement or usage, such rent as may under the circumstances of the case be deemed just and reasonable.

(d) If owing to the complicated and difficult nature of the dispute the Collector is unable to settle it summarily, he can refuse assistance, or, where the survey assesment has been fixed may grant assistance to the extent of such assesment. (G. R. No. 3904, dated 17th June 1882.)

G. 13. Occupants of Government lands.—Under the Code occupants of unalienated lands and holders of alienated lands come under the common denomination of "Superior holders" and are alike entitled to assistance for the recovery of rent or revenue due to them under the provisions of Section 86 and the following sections of the Code. (G. R. No. 3904, dated 17th June 1882.)

G. 14. Costs to be awarded.—Inasmuch as the office of any authority holding a summary inquiry under the Code is a Civil Court, such court may direct by whom the costs of each party are to be paid whether in whole or part. (G. R. No. 4468, dated 10th July 1882.)

G. 15. Delegation of powers—to Mamlatdars.—In districts where the practice still obtains the

Mamlatdars may continue to exercise the powers under Sections 86 and 87 of the Code, which powers they previously exercised under Regulations XVII. of 1827. Where, however, the practice has been discontinued the Collectors are authorized to delegate to the Mamlatdars in their districts the powers of receiving applications and issuing orders under Sections 86 and 87 of the Code. (G. R. No. 2598, dated 31st March 1883.)

G. 16. Decisions in assistance cases are not decrees.—Orders passed by a revenue officer under Section 87 of the Bombay Land-Revenue Code are not decrees, or orders having the force of a decree passed by a Revenue Court within the meaning of Article 7, Schedule I of the Court Fees Act. For the purposes of certain sections of the Penal Code a formal or a summary inquiry under the Land Revenue Code is to be deemed (Section 196) a judicial proceeding, and the office of the authority holding such inquiry is to be deemed a Civil Court, but the order passed by a revenue officer under Section 87 of the Code 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. To copies of such orders Article 9, and not Article 7 of the above schedule applies. (G. R. No. 5630, dated 31st July 1883.)

G. 17. To Mahalkaris.—G. R. No. 2598 of 31st March 1883, should be held applicable to Mahalkaris, who should continue to exercise the same powers under Sections 86 and 87 of the Code which they previously exercised under Regulation XVII. of 1827, (G. R. No. 6924, dated 15th August 1883.)

G. 18. The Collector's power of refusing assistance.—The power given to the Collector in the second paragraph of Section 87 of the Land Revenue Code of refusing assistance to a superior holder for the recovery of dues from his inferior holders when the question at issue between the parties ap-

appears to him to be of a complicated or difficult nature is a discretionary power; and the ordinary rule in appeals is not to interfere with the exercise by subordinate authorities of their lawful discretion. But this rule is subject to the qualification that it is a duty of the appellate authority to see that the subordinate exercises a sound discretion.

2. If a Collector declares a case under Section 87 of the Code to be of a complicated or difficult nature merely because the amount of rent which the superior holder has been in the habit of receiving, and which, therefore, he is *prima facie* still entitled to receive appears to him to be exorbitant, it is obvious that he uses his discretionary power simply in order to avoid giving effect to the law in what appears to him to be a hard case; or, in other words, he evades the law. (G. R. 168, dated 8th January 1884.)

G. 19. Superior holders not registered in Collector's books.—The provisions of Sections 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. Such persons may or may not be the persons whose names are registered in the Collector's books as the occupants or alienees of the land. It would have deprived our rent-law of its general applicability to all landlords and their tenants, if, in taking proceedings under it, revenue officers had to pay regard to the circumstance whether the applicant's name is recorded in the Collector's books or not, because that circumstance depends upon special considerations which do not necessarily enter into the questions regarding the relation of landlord and tenant. The question whether an applicant is the superior holder of the person from whom he seeks to recover rent is one which

should be determined in each case with reference to the statements of the parties and the evidence they produce.

The order given in para 8 of G. R. No. 7907, dated 13th November 1882, that "the only persons whom the Collectors can recognize as superior holders are those whose names are recorded in the Government accounts" should be withdrawn.

If when a tenant is asked for his reason for refusing to pay rent to a person who applies for assistance under Section 86 of the Revenue Code, he states that some other person and not the applicant, is his landlord, that is a very proper matter for enquiry; and when after enquiry it appears that there is a dispute between the two persons as to which of them is entitled to be the landlord of the tenant, the Collector is quite justified in declining to render assistance to either of them if the question raised by them appears to him to be "of a difficult or complicated nature." Nor is it absolutely necessary that the tenant should be made a party to any suit which the litigant landlords think fit to institute in order to get the dispute settled. (G. R. No. 3778, dated 10th May 1884.)

✓ G. 20. Collector not to withhold assistance.— Paragraph I of Section 87 of the Code leaves the Collector no discretion as to withholding assistance for the recovery of rent or land-revenue which after a summary inquiry he finds to be lawfully due. The words are "He shall hold a summary inquiry and shall pass an order for rendering any assistance to the superior holder for the recovery of such amount, if any, as appears to him to be lawfully due." In these inquiries the Collector exercises in a summary way the jurisdiction of a Civil Court, and like those Courts he has no authority to go behind the liability and listen to appeals *ad misericordiam*. Even if he should do so, the last paragraph of Section 87 enables the landlord to go

to the Civil Court to recover from his tenant such amount as the Collector disallows, and the object of the Collector would be frustrated. (G. R. No. 8402, dated 25th October 1884.)

G. 21. Even where the question at issue is of a complicated or difficult nature, Section 87 clause 2, assumes that there can be no such question about the survey assessment. (G. R. No. 1339, dated 14th February 1885.)

G. 22. 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 from 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. No. 3727, dated 8th May 1885.)

G. 23. Opinions of law officers on the subject.—The following opinion of the Honourable the Advocate-General, and the reports from the Remembrancer of Legal Affairs clearly solve the question as to whether the Collector is bound to grant assistance to a superior holder whose name is not recorded in the Collector's books:—

(a) Opinion of the Honourable the Advocate-General.

" I. I think that a question whether an applicant for assistance in the recovery of rent or land-revenue is the superior holder of the land in respect of which the rent or land-revenue is claimed may be a question at issue between the parties within the meaning of Section 87 of the Bombay Land revenue Code, 1879. 'The parties' referred to in that section are the person claiming assistance as superior holder on the one side, and the person against whom the assistance is asked on the other ;

and it is open to the latter, unless estopped from so doing, to set up as a defence that the former is not the superior holder. If the question raised by this defence be, as it well may be, of a complicated or difficult nature, the Collector may, at his discretion, refuse the assistance asked for.

"2. I think the Collector is bound under Section 86 of the Land Revenue Code to grant assistance to an applicant whose name is not recorded in the revenue records, but who appears from the evidence produced to be the superior holder, unless (a) such applicant is denied by the person against whom the assistance is asked to be the superior holder, and the question whether he is so or not or any other relevant question appears to the Collector to be of a complicated or difficult nature; or (b) the case falls within the latter portion of Section 79. No condition of registration in the revenue records is attached to the definition of superior holder in the 13th clause of the 3rd section of the Code, and I think it impossible to imply such a condition in the other passages in the Act in which the term 'superior holder' is used. But at the same time I think that the Collector may in cases brought before him under Section 86 exercise the discretion given to him by Section 79 of refusing to recognize any person to whom any interest in any portion of an occupancy or alienated holding has been assigned, unless the transfer has been recorded in the revenue records, as Section 79 seems to me to be of general application and not limited by the particular chapter of the Act in which it occurs. But there may be many cases in which the name of a superior holder is not recorded in the revenue records which do not fall within the words of Section 79. If it be thought desirable to give the Collector power in all cases to refuse to recognize a person as superior holder unless his name is recorded in the revenue records, I think that further legislation is necessary."

(b) Memorandum from the Remembrancer of Legal Affairs, No. 452, dated 11th April 1885:—

"1. The Remembrancer of Legal Affairs has the honour to report that he concurs in the opinion of the Honourable the Advocate General as to the provisions and scope of Section 79 of the Land Revenue Code.

"2. The undersigned's memorandum No. 446, dated 6th April 1883, quoted in the preamble of Government Resolution No. 3102 of 20th idem, indicated his opinion as to the general applicability of the section in question and further urged the desirability of its provisions being, as a rule, strictly enforced.

"3. The operation of Section 79 in the case of an application under Section 86 of the Code would be that if the person who makes the application bases his right to make it upon a transfer which ought, under any of the provisions of the Code, to have been recorded in the revenue records, but has not been so recorded, the Collector may decline to recognize the applicant, *i. e.*, may refuse to take any action upon his application."

(c) Memorandum from the Remembrancer of Legal Affairs, No. 535 dated 28th April 1885:—

"1. The word 'assigned' may be taken to be equivalent to the word 'transferred.' When one person conveys or makes over property to another he transfers or assigns it to that other person.

"2. Section 79 of the Code says that 'the Collector shall not be bound in any case to recognize any person to whom any interest in any portion of an occupancy or alienated holding has been assigned, unless the transfer has been recorded in the revenue records in accordance with the foregoing provisions.

"3. The scope of this clause is limited by its last words; it can only be applicable in the class of cases in which the foregoing provisions of the

Code provide for transfers being recorded in the revenue records.

"4. Thus Section 70 of the Code provides how effect is to be given to decrees of courts which declare an occupancy right to be vested in some person other than the person whose name has been hitherto entered in the Collector's records. So long as the person who is entitled to have his name entered in the revenue records under that section abstains from taking the necessary action to get his name entered, the Collector is not bound to recognize him as the occupant.

"5. So also with regard to private conveyances, whether of occupancies or of alienated holdings, in favour of another person, Sections 74, 75 and 76 provide a means whereby the name of the transferee may in certain cases be substituted in the revenue records for that of the transferer. If in any such case the transferee should apply to the Collector for assistance to recover rent from the inferior holders without having first of all got his name entered, the Collector would not be bound to recognize him.

"6. In the case of a partition amongst owners who have hitherto held jointly the entire estate standing in the revenue records in the name of one of them only, the Collector is also, I think, not bound to recognize a separated sharer who applies for assistance to recover rent from the inferior holders of his allotted share without having first of all got the lands in that share entered in the revenue records in his name. 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 recognize him until his name is duly entered in the revenue records as the registered oc-

cupant or the holder, as the case may be, of his share."

(d) Memorandum from the Remembrancer of Legal Affairs, No. 668, dated 29th May 1885:—

"1. I do not think that Section 79 of the Revenue Code was applicable to the case reported on in my No. 537 of 15th April 1884 at all.

"2. Certain inam lands had stood in the Collector's books in the name of Pachhabibi. At her request they were transferred to the name of her only surviving male relative Sadat Saheb, and on the death of the latter his daughter Chhotibibi's name was substituted for his.

"3. The lands belonged to Pachhabibi and to Chhotibibi and Chhotibibi's sister. Each of these was entitled to a share; but whether each managed her own share or Pachhabibi managed the whole had not been ascertained. Pachhabibi, however, applied for assistance for the recovery of rent from her tenants, after the lands had been entered in the Collector's records in Chhotibibi's name. Here there was no question of any interest in the alienated holding having been assigned to Pachhabibi; her interest had, apparently, remained the same, notwithstanding the mutations of names which had taken place. Pachhabibi was not therefore, a 'person to whom any interest in any portion of an alienated holding had been assigned,' and it was not open to the Collector under Section 79 of the Revenue Code to decline to recognize her. (G. R. No. 5243, dated 26th June 1885.)

G. 24. 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. No. 10501, dated 31st December 1885.)

G. 25. Procedure in cases of death of tenant.— In cases of applications for assistance under Section 86, if the tenant against whom the assistance is applied for, die after the application is made, the procedure to be followed should be that prescribed in Section 368† of the Civil Procedure Code, *viz.*, the Mamlatdar 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. (G. R. No. 632, dated 26th January 1887, and G. R. No. 4672, dated 21st July 1887.)

† Now Rule 4 of Order XXII of Act V of 1908.

G. 26. Applications by Jahagirdars need not be stamped :—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. No. 3584, dated 21st October 1887.)

G. 27. The present practice of allowing the superior holder to make a single application for assistance under Section 86 against several inferior holders is correct ; and no new rule seems to be called for. (G. R. No. 8721, dated 23rd December 1887.)

G. 28. Expenses of a sale in assistance cases. —The recommendation of the Commissioners that the Bhatta payable to a karkun deputed to conduct a sale following as consequence of an application for revenue assistance should not be separately charged, is approved, except in cases in which the services of the karkun have been entirely placed at the disposal of the holder of a khotee or Inam village for any considerable time to execute assistance decrees. In such cases the pay and allowances of the karkun must be recovered from the khot or Inamdar. (G. R. No. 1880, dated 20th March, 1888).

The general practice, with regard to levying expenses in assistance cases which is at present followed and which has been approved by Government Resolution No. 1880, dated 20th March 1888, may be summed up as follows :—

In the enquiry stage,—proceedings originate with a plaint or petition which requires a Court fee stamp of 1 anna when the amount of the claim is less than Rs. 50, and 8 annas when it is Rs. 50 or more. A process fee of 3 annas 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 4 annas or 6 annas per witness, according to the class to which he belongs. All these expenses generally follow the decree, an exception being made only in those cases where the Court considers that the plaintiff was over-hasty in seeking its assistance, or for such similar reason. ✓

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 decree passed and directing them to enforce it. As a rule the defendant pays the money due on verbal orders from these officers, and there is no further trouble. But where this is not the case and an attachment and sale of the defendant's property is rendered necessary, expenses of sale are recovered at the following rates :—

2 annas in the case of moveable property ;
 4 annas in the case of immoveable property ; or
 $\frac{1}{4}$ th of the amount realized by the sale ;
 whichever is the greater. (G. R. No. 2459, dated 26th March 1883.) Where a formal notice is issued prior to the attachment and sale of the defendant's property, a notice fee is also charged at the rate of 4 annas if the amount of the decree does not exceed Rs. 5, and 8 annas in other cases. These expenses also fall on the defendant, *i. e.*, they follow the decree.

When a karkun has to be sent for conducting a sale in the rare cases in which a sale becomes necessary, it is the practice in some districts to levy the karkun's bhatta, or travelling allowance for the day along with the expenses of sale, and this charge also falls on the defendant.

G. 29. If the question whether the applicant for assistance is the superior holder or not, is at issue in the Courts and the Collector has been made judicially cognizant of this proceeding upon the application for assistance, he must refuse assistance. (G. R. No. 6476, dated 26th September 1888.)

G. 30. Of arrears.—The law (proviso to Section 86) does not contemplate the grant of assistance to superior holders for the recovery of land-revenue due to them from their tenants for past years. Accordingly in a case in which an application was made by an Inamdar for assistance to recover from his tenants, the revenue due to him, for the past years, he was referred to a Civil Court. (*Vide* G.R. R. D. No. 3035, dated 13th April 1885.) The Inamdar filed a suit against one of his tenants, and eventually got a decree in his favour, and then on the strength of this decree, made an application for assistance to recover his dues from other tenants. On this, the point, whether the assistance applied for by the Inamdar should be granted or not, was referred to Government. On this reference the following orders were passed :—

“ His Excellency the Governor in Council is of opinion that the Collector may now give to the Inamdar the assistance he asks. A test case was taken into Court by the Inamdar and won by him on original hearing and on appeal. It is better for him and for his tenants who will eventually, if sued, have to pay the demand and will further be mulcted in costs that the arrears should be paid without further delay, and this can be effected through the intervention under the law of the local revenue-

officer whenever a *prima facie* case for interference appears. (G. R. No. 64, dated 5th January 1889.)

G. 31. Of sums not sanctioned by law.—A Jahagirdar 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 holdings. He filed suits on these agreements and obtained decrees in his favour. He then applied for assistance under Section 87 to recover the sums decreed upon from his tenants. In this case it was decided that, although there was nothing to prevent the Jahagirdar from enforcing the agreements in a Civil Court, they would by no means entitle him to recover from his tenants as local-fund cess, with the assistance of revenue officers, more than he could recover under the Bombay Local Fund Act (III. of 1869), without such contract, that such agreements would not extend the powers of revenue officers, which were strictly limited to the recovery of sums *leviable by law*, and that it would be illegal, therefore, to assist the Jahagirdar in recovering more than what the law authorized by the special procedure of the Land Revenue Code, Sections 86 and 87. (G. R. No. 4013, dated 3rd June 1889.)

G. 32. Persons representing superior holders need not necessarily be pleaders.—The question whether superior holders applying under Section 86 of the Code for assistance in recovery, of dues from inferior holders can be represented by any person who is not a pleader, has been disposed of by the following orders:—

“The difficulty arises from Section 196, Bombay Land Revenue Code, which declares that all formal and summary enquiries under that Act shall be deemed judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal 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 would seem that such enquiries are judicial proceedings for the purposes only of Sections 193, 219 and 228, Indian Penal Code, and under the maxim *expressio unius est exclusio alterius* are not judicial proceedings for the purposes of any other enactment.

"The office of the authority making such an 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 and acts authorized by law to be made or done, are not made or done by parties to suits or appeal within the meaning of Section 36,* Civil Procedure Code, and, Section 39† of the Civil Procedure Code would not appear therefore to apply.

"That such officers are not Civil Courts for all purposes is clear from Section 87 of the Bombay Land Revenue Code, which provides for recourse to the Civil Courts as distinguished from such officers.

"Regulation II, of 1827, Section I, 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 Section 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 Section 87, Bombay Land Revenue Code, was under clause (5) of Section 26 of Regulation 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 Section 8 of the last

* Now rule I of order III of First Schedule to Act V of 1908.

† Now rule 4 of order III of First Schedule to Act V of 1908.

mentioned Act for pleaders engaged in such suits there pending to appear in the Civil Courts. This seems to indicate that Section 47 of Regulation 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 Section 87, Bombay Land Revenue Code, are by Section 196, judicial proceedings only within the meaning of the specified sections of the Indian Penal Code, Section 47 of Regulation II of 1827 would not apply to them.” (G. R. No. 840, dated 1st February 1890.)

G. 33. Applications need not be made in person; may be sent by post.—An application by a superior holder for assistance for the recovery of rent (under Section 86 of the Code) is not liable to rejection if sent by post.

The Code itself merely requires from a superior holder an application that is written; neither presentation in person, verification, nor examination of the applicant can be required as a condition precedent to the issue of a notice by the Collector as directed in Section 87. The words of that section are imperative.—“On application being made under Section 86 to the Collector, he shall cause a written notice thereof to be served.”

As there is nothing to require or justify verification by, or an examination of, an applicant under Section 86, there seems to be no necessity for his personal attendance. The Legislature in dispensing with the verification required for a civil plaint (Civil Procedure Code, Section 51*), and with the examination required on a criminal complaint (Criminal Procedure Code, Section 200), 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

* Now rule 15 of order VI of First Schedule of Act V of 1908.

they had no title, caused the Collector to harass cultivators unnecessarily, Section 182 of the Indian Penal Code would afford adequate protection.

No advantage could be gained by pseudonymous application as the assistance given would be only to a *bona fide* superior holder. *Bona fide* disputes as to titles are appropriate matters for summary enquiry under Section 87. But the applicant is not required to support his title by his own or other evidence before, as well as after, notice.

The object of Sections 86 and 87 is as stated in G. R. No. 3778, dated 18th May 1884 (see *supra* order No. 21), 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 Courts are dispensed with.

Under Section 196 enquiries under Sections 86 and 87 are judicial proceedings only for the purposes of Sections 193, 219 and 228 of the Indian Penal Code, and on the maxim—*expressio unius est exclusio alterius*—none of the formalities required by other enactments for the initiation of judicial proceedings are necessary to such enquiries unless expressly required by the Code.

There is nothing in the Code to indicate that the making of an application involves the formal attendance of the applicant, and Section 65 seems to contemplate that in the instance there considered at least, an application may be made by a person not present to receive the answer.

Both departmental and public inconvenience might arise from the detention of applicants till their identity and status could be ascertained, and questions of titles are clearly to be postponed till they can be enquired into in the presence of the opponent.

There can, of course, be no objection to an applicant's employing the post instead of a private

messenger for the bare delivery of his application. (G. R. No. 8027, dated 12th November 1890.)

G. 34. The Collectors may delegate their powers under Sections 86 and 87 to Mahalkaris under Section 13 of the Land Revenue Code, taking care to make the Assistant Collector in charge of the Taluka the immediate superior of the Mahalkari for the purposes of Section 203 of the Land Revenue Code, *i. e.*, the purpose of appeals. (G. R. No. 8616, dated 12th December 1891.)

G. 35. When once struck off the file can be re-entertained.—When applications for assistance under Sections 86 and 87 of the Land Revenue Code are received, the Mamlatdars fix a certain day for the enquiry, but it sometimes happens that the applicant does not appear on the day fixed, and the result is that the application is filed. After some time, however, the applicant puts in his appearance, adduces sufficient excuse for his non-appearance on the appointed day, and urges the proceeding may be resumed. In civil cases this is permissible under the provisions of Section 99* of the Civil Procedure Code, but as applications for assistance do not appear to be of nature of civil plaints,—and the fact that they are allowed by Government to be received by post without verification seems to support this view,—the question is whether when such applications are once struck off the file they can be re-entertained or not.

This question has been decided by the following orders:—

“For the reasons stated in G. R. No. 840, of 1st February 1890 (see *infra* order No. 32) proceedings before revenue officers under Sections 86 and 87 of the Land Revenue Code are not subject to the provisions of the Civil Procedure Code.

“It is presumed that the Legislature purposely trammelled revenue officers as little as possible with binding rules of procedure in such cases,

* Now Rule 4 of Order IX of Act V of 1908.

intending that they should act on equitable principles without being bound by precise provisions.

“Applying this view of the law to the question referred to, it would appear in the circumstances above described that the application should be re-entertained, provided that petition for re-entertaining it be made within the year prescribed in the proviso to Section 86 of the Land Revenue 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 Section 86 by means of any such petition or second application.” (G. R. No. 8720, dated 17th December 1891.)

G. 36. Certain Naikwadis in the Karhad Taluka hold lands belonging to the Pant Pratinidhi free of assessment, in lieu of service as shet sanadis. As the naikwadis rendered no service or only partial service Government directed that the Pant Pratinidhi was within his rights in demanding either the whole or part of the assessment and is entitled to assistance in enforcing his demand. (G. R. No. 1229 dated 13th February 1895.)

G. 37. Any superior holder may apply for assistance.—The High Court’s Judgement in Appeal No. 26 of 1897, Sambu bin Bapu vs. Kamalrao Vithalrao has the following remarks:—

Section 71 was inapplicable as regards any private or Deshmukhi alienated land. There is nothing in Section 86 requiring an applicant to be a “registered superior holder.” The term is unknown in the Land Revenue Code.

Possibly it might conduce to better Revenue administration if the Collector were empowered to

hold an inquiry and determine who should be "recognized" holder of alienated lands to whom tenants should attorn until the decree or order of a competent Court is produced. But such at present is not the law.

The facts of the case are as given below:—

V died leaving a will dividing his estate among his sons K and four others by one wife and B by another. K managed the estate during the life-time of V. The will not being operated upon, the Collector entered the name of K. Some tenants paid revenue to B and against them K got assistance from revenue Courts. The Sub-Judge granted an injunction against K, and this was upheld by the High Court. (G. R. No. 6899, dated 17th September 1897.)

G. 38. In appeals* pleaders cannot claim a right to represent their parties.—For the reasons stated in G. R. No. 840, dated 1st February 1890, a Collector is not legally bound to admit pleaders in proceedings under Section 86. Enquires under Sections 86 and 87 are judicial proceedings for the purpose of Sections 193, 219, 228, Indian Penal Code (*vide* Section 196). They are not judicial proceedings in the sense that they require the various formalities laid down by the Civil Procedure Code for such proceedings. Section 47 of the Regulation II of 1827 and Section 36† of the Civil Procedure Code do not apply, and therefore a pleader cannot claim any right to appear in such enquiries. (G. R. No. 8915, dated 8th December 1897.)

G. 39. No assistance for recovery of interest should be given.—Government officers should not permit a misapplication of the powers given to them by the law, *i. e.*, in giving assistance for rent in the guise of interest. (G. R. No. 1279, dated 21st February 1898.)

* Each appellant must make a separate appeal unless two or more persons jointly hold land on account of the rent for which assistance has been granted.

† Now rule I of order III of First Schedule to Act V of 1908.

G. 40. In cases of land held on Kauls or perpetual leases.—There are villages in which the tenants are in the habit of paying to the Inamdars a rental determined by Kauls or perpetual leases and a local fund cess calculated on the amount they actually pay. If a survey settlement is introduced in such a village, the Inamdar becomes liable for the cess calculated on the survey assessment under Section 6 of Bombay Act III of 1869, and if this amount happens to be greater than the amount previously paid, he is entitled to recover the amount of the enhanced cess after introduction of the survey settlement. But as the Kauls are perpetual leases, he cannot increase that rental so as to make it equal to the survey assessment. (G. R. No. 3865, dated 10th June 1898.)

G. 41. Year to mean the longest period.—The ordinary and natural sense of the second clause is that the applicant is plainly to be 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 1896 to 28th April 1897, the period of limitation would differ according as the rent became payable in 1896-97 or 1897-98. In the first case the longest period is the expiry of the tenancy, in the second, 31st July 1897. If the year of tenancy expires on 28th February 1897, the rent not being payable within the year, if the same tenancy continued another year, the longest period will be on or before 28th February 1898. In such a case the applicant is not bound to make his application before 31st July 1897. (G. R. No. 3617, dated 23rd May 1899.)

G. 42. Appointment of village Officers in an Inam village.—Whenever an appointment of a village officer is made in an Inám 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. No. 5733, dated 17th August 1899.)

G. 43. Territorial limits of the Mamlatdar and the Special Head Karkun need not be defined.—Assistance cases under Land Revenue Code stand on a different footing to possessory suits under the Mamlatdar's Court Act and the remarks on procedure in regard to the latter in G. R. J. D. No. 7843, dated 26th November 1898, do not apply to the former. There is therefore no object to be gained in defining the territorial jurisdiction of the Mamlatdar and the Special Head Karkun for the latter. (G. R. R. D. No. 7780, dated 1st November 1899.)

G. 44. Execution of assistance decrees.—Arrangements should be made to provide sufficient establishment to secure the prompt and vigorous execution of process in all villages in which Assistance has been granted under the orders of the revenue authorities. (G. R. No. 705, dated 30th January 1900.)

G. 45. 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 Sections 42 and 43 (Vatan Act). It is desirable that quarterly statements of collections and arrears of revenue in alienated villages should be submitted. (G. R. No. 809, dated 3rd February 1900.)

G. 46. The Commissioners should instruct all Mamlatdars in their Divisions and in Sind that by declining to recognize transferers whose names are not entered in the records, or by any other legal means, they should discourage the employment by money-lenders of the provisions of the Land Revenue Code as a means of recovering extortionate in-

terest and evading the Deccan Agriculture Relief Act.

The impression, that a Mamlatdar cannot refuse to recognize a mortgagee (with possession), if he had omitted to have his name entered in the Revenue records, is erroneous. (G. R. No. 1078, dated 16th February 1900.)

G. 47. Head Karkuns in certain talukas of the Satara District were authorised to dispose of such rent suits as may be transferred to them by Mamlatdars. The Commissioner should fix a pecuniary limit to the cases which an Awalkarkun is permitted to try. (G. R. No. 1133, dated 19th February 1900.)

G. 48. The instructions contained in G. R. No. 809, dated 3rd February 1900 (see above) need not be carried out in the Northern Division. (G. R. R. D. No. 2388, dated 11th April 1900.)

G. 49. Free Notice of hearing to the superior holder.—A notice of the date of hearing should continue to be furnished to applicants without charge. A copy of the notice served on an inferior holder or co-sharer should be sent by endorsement to the applicant for information and guidance. (G. R. No. 4932, dated 8th August 1900.)

G. 50. Prompt assistance to be given :—Local officers should clearly understand that their duty in giving aid in the recovery of revenue of alienated villages is not less binding than the duty of collecting the Government revenue. (G. R. No. 4931, dated 16th July 1901.)

G. 51. The order to be passed under Section 87 is one for rendering assistance for the recovery of such amounts as appear to be lawfully due, and when such order is passed any or all of the measures prescribed in Chapter XI. may be taken until the amount held to be lawfully due is collected. When a superior holder has not paid revenue on the date on which it is due, there is failure to pay

and it is then open to the Collector to recover from co-sharers or persons in actual occupation. This course should be adopted when the exact amount due from any individual is known but not otherwise. (G. R. No. 5084, dated 20th July 1901.)

G. 52. Assistance must be refused to mortgagees who have omitted to have their names entered in the Revenue Records. This modifies G. R. No. 1078, dated 16th February 1900. (F. 3813, dated 5th October 1901.)

G. 53. In pursuance of G. R. No. 5084, dated 20th July 1901 the Commissioner, C. D., issued the following Circular ^B₃₅₇₃, dated 16th August 1901:—

1. Every Mamlatdar should see that the village officers furnish the Inamdars with the *vasulbaki* 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.

2. 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.

3. 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.

4. Execution of decrees passed in assistance cases should not be deferred for years as is at present the case. 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.

5. As a general rule no decrees should remain unexecuted beyond six months from the dates thereof.

6. 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. (*vide* G. R. No. 7092, dated 8th October 1901.)

G. 54. Serving of processes.—Government Resolutions, No. 881, dated 14th February 1873, and No. 4702, dated 18th August 1873, authorise the Collectors of Districts to engage temporary peons for the service of revenue processes and to pay them at daily rates for the number of days they may have been employed, the amounts so paid being drawn on contingent* bills supported by a certificate that the fees realised in stamps were sufficient to cover the expenditure charged in the bill. The entertainment of a temporary clerk throughout the year without the sanction of Government is irregular. Paragraph 9 of the Committee's report in the preamble to G. R. No. 1880, dated 20th March 1888 (see footnote to G. 28), states that the work of the karkun who issues summonses and notices and keeps register is represented by the Court Fee on the petition which covers also the cost of stationery and that of the peon, whom Government has to send out, process serving is fairly met by the process fee

* The remuneration of process servers is paid from Government Treasury and debited to "land revenue." (G. R. No. 7350 dated 21st October 1882.)

annas 3 for such summonses or notices served. (G. R. No. 2827, dated 28th April 1902.)

G. 55. Inamdars to furnish rent rolls.—Inamdars should at the beginning of each revenue year furnish the rent-roll (Village Form No. 11) to the village officers—hereditary, if there be any. (G.R. No. 3782, dated 4th June 1902.)

G. 56. Judi and other haks in Inam villages.—The J. of L. complains that the moveable property of the Inamdar is liable to be attached and sold, in case of default in payment of the judi, cash allowances of Kadim Hakdars and remuneration of village officers. He says that these items can at the most be treated as shares of the revenue of the inam village and the loss, if any, should be borne proportionately by all. Government do not agree in this view, and they consider that the liability in question should be maintained.

2. As regards judi, Government have ordered in their Resolution No. 5652, dated 8th June 1908, that Inamdars should receive a proportionate deduction when they bind themselves to give suspensions and remissions to their tenants on the same scale as in Government villages. No further relaxation can be allowed in this respect.

3. With regard to Kadim Hakdars generally, excluding the village officers, the existing orders must be maintained. In Government villages they receive their allowances without deduction in bad and good times alike, and there appears to be no valid reason for giving inferior treatment to those of them who belong to alienated villages.

4. As regards the village officers, patil and kul-karni, Government observe that there is a decided tendency on the part of these officers to show slackness in the collection of the Inamdar's dues, and Government consider that the only remedy is to give the Inamdar greater authority over them by making their remuneration dependent on the effi-

ciency of their work. Government therefore propose to issue the following orders :—

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 net 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. No. 10112, dated 6th October 1902.)

G. 57. 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. No. 5084, dated 20th July 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. No. 7537, dated 29th October 1903.)

G. 58. 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 Section 86 or upon reference under Section 90, in the case of an Inamdar who is the holder of a commission under Section 88. (G.R. No. 1493, dated 24th February 1904).

G. 59. The orders in G. R. No. 5084, dated 20th July 1901 (see above) should be applied not to Inam villages alone, but they apply equally to alienated holdings in Government villages.

2. The Satara 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. No. 5120, dated 5th July 1904).

G. 60. 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.

2. 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* the rayats 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.

3. 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. No. 9920, dated 21st December 1904.)

G. 61. Recovery in a Sharakati Dumala.—Collections in Sharakati Dumala village should be divided among the sharers in proportion to their shares. (G. R. No. 1468, dated 21st February 1905).

*G. 62. Year, in case of suspended revenue:—*The condition (in the proviso) prescribed in Section 86 should be considered to be complied with if the application for assistance is received within the year to which the payment has been postponed by order under the suspension and remission Rules. (G. R. No. 4849, dated 17th May 1906.)

*G. 63. Special Head Karkuns:—*They should be appointed under Section 13 to be Mahalkaris for talukas excluding the head quarter stations and the Collectors should then assign to them within their local limits the power to hear and to dispose of applications under Sections 86 and 87 and the duties and powers contemplated in Sections 71 and 154 of the Code.

2. The Commissioner should fix a pecuniary limit to the cases which these Head Karkuns should be permitted to try.

3. The effect of the devolution of work should be carefully watched. (G. R. R. D. No. 8269, dated 11th October 1906.)

G. 64. Government are not in favour of allowing officials of the status of Awalkarkuns to try rent suits without pecuniary limit and think that the limit of Rs. 50 which has been generally adopted is better to be adhered to. (G. R. No. 8507, dated 27th August 1907.)

G. 65. Mukhtyarkars in Sind:—The Collectors and Deputy Commissioners may delegate their powers under Sections 86 and 87 to Mukhtyarkars. (Serial No. 1 of the statement accompanying G. R. D. No. 8046, dated 7th August 1908.)

G. 66. Rent of lands as an agricultural holding should be awarded to a Sawakar. (G. R. No. 12771, dated 15th December 1908.)

G. 67. Treasury Head Karkuns should not be authorised to dispose of assistance cases. (G. R. No. 4143, dated 18th November 1909.)

G. 68. The original documents filed in assistance cases should be destroyed after two years. If the parties really require the documents they should apply for them within two years. (G. R. No. 1018, dated 1st February 1911.)

J. 1. Not to bar Civil Suit.—The concluding part of Section 87 shows clearly that the Mamlatdar's order does not preclude the parties from having recourse to the Civil Court if dissatisfied with it. (*Ganesh Hathi vs. Metha Vyankatram Harijivan*,—I. L. R., 1884 VIII., Bombay, page 188.)

J. 2. Where G was convicted under Section 183, Indian Penal Code, for having resisted by force the Taluka General Duty Karkun when the latter came to distrain some goods, grain, &c., at his house for making recovery of dues on behalf of the Khot who had applied for assistance to the Mamlatdar under Section 86, *Held*, that as it did not appear on the face of the conviction that the Mamlatdar was an officer to whom, under the provisions of Section 12, the powers of the Collector constituted by Section 87 had been delegated under any general or special order of the Government, nor that the Karkun employed to distrain was an officer directed to perform that duty by the Commissioner under the orders of the Government, the conviction must be reversed. (Cr. R. 13—24th February 1887—*Imperial vs. Yeshwant Hari*.)

J. 3. Of enhanced rents.—Sections 86 and 87 of the Land Revenue 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 Section 85 of the Code, and they had refused, he would have become at once entitled to his ordinary civil remedy, objection as to the absence of legal demand for enhanced rent not being taken.

Held, that the suit was properly tried by the Court of first instance on the merits. The lower Appellate Court having dismissed the suit on the ground that the Inamdar was not a party to the suit, a point on which no issue was raised, although it had been taken in the written statement, and which was not made a ground of appeal.

Held, that the point must be considered to have been abandoned at the trial ; it was, therefore, not open to the lower Appellate Court to dismiss the suit on that ground. (GOVINDRAO KRISHNA RAIBAGKAR *vs.* BALABIN MANAPA, 1892, I. L. R., Bombay, Volume XVI., page 586.)

J. 4. Powers exercised by Government under the Code do not extend to Inamdars. (P. J. 198, Sarwotamrao *vs.* Sakharam, 1893.)

J. 5. Swamitwa agreed upon between a Representative Watandar and his Deputy is not recognised by the civil courts. A fortiori assistance to recover this swamitwa cannot be given by Revenue Courts. (Appa V. Sadhu, I. L. R., 18 Bom. 752.)

J. 6. The defendants were liable to pay the assessment and local fund to the plaintiff who held a sanad under the Summary Settlement Act, 1863, held the plaintiff was a superior holder under Section 3 and that the defendants were in law the tenants of the plaintiff, whatever the nature of

their holding might have been. (*Sursanggi vs. Naran*, Bombay, Law Reporter, Vol. II, 1900, page 855.)

J. 7. The plaintiff, an Inamdar, sued to recover assessment due for the years 1895-96 and 1896-97 from Defendant 2, who came in as a purchaser from the original occupancy tenant on the 5th April 1899. The lower Court passed a personal decree against Defendant 2 for the arrears of assessment.

Held—That Defendant 2 was not liable, since an Inamdar suing for assessment was not entitled to a charge on the lands, but only to a money decree against the occupants. *Ratanji vs. Sakharam* (1884) P. J. p. 69 followed. [*Vinayak vs. Laxman* (1904). I. L. R. XXVIII, Bombay, 92.]

[^a] **88.** It shall be lawful for the [^b] 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):

Commissioner may, by commissions, confer certain powers on holders of alienated lands.

- (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 authorized 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 (e) to (f) shall be conferred only on holders of lands to which a survey settlement has been extended under the provisions of section 216.

[a] As to the local modification of section 88, see para. 5 of foot-note [a] on p. 1, *supra*.

[b] This word was substituted for the original words "Governor in Council" by Bom. IV of 1913, s. 40 (r).

SUMMARY (S. 88.)

1 Section.—

To be read with another Section ... N 1

2 Collector as official guardian
does not require a Commission ... G 2

3 Commission.

(1) Generally given in surveyed
villages G 3

(2) Held by a sharer in a Jaghir
village... .. J 1

(3) Not applicable to property out-
side the limits set forth in it... N 2

(4) Points to be considered before
granting N 3

4 Precautionary measures—

Power of—does not include power
to inflict punishment G I

5 Vital and agricultural statistics—

Condition for furnishing—when to
be imposed G 4

N. 1. Vide G. R. No. 2901, dated 15th April 1886,
under Section 141.

N. 2. The commission under this section does
not apply to property outside the limits set forth in
the commission.

N. 3. The following points are to be borne in
mind when granting a commission under this Sec-
tion :—

**A—General in respect of unsurveyed and
surveyed villages. (Vide schedule F. to
L. R. C.)**

1. Is the person recommended
 - (a) a holder or alienated lands (sec.
88 L. R. C.) or
 - (b) his agent (sec. 89 L. R. C.) includ-
ing one on behalf of minor's
guardian or on behalf a Native
State holding Inam villages in
British territory ?
2. Is the village *other* than a shara-
kati Inam village (item 14 under
village acts in the accompaniment
to G.R.R.D. No. 9032 of 26-9-1911).
3. Is there a part of a village sepa-
rately assigned to and held by a
sub-sharer as in the case of Mugaon
taluka Wai (vide G. R. R. D. No.
3232 of 10-5-1902).

**B—In respect of unsurveyed villages
only :—**

1. Whether powers under (a) and (b) only are recommended (proviso to sec. 88 L. R. C.)
2. Whether the Collector considers holder fit to be entrusted with the powers and can be trusted not to rack-rent the tenants. (G. R. No. 7537 dated 29th October 1903.)
3. Whether the holder has given an undertaking on an eight anna 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.)
4. (An agreement on plain paper undertaking to suspend or remit rent as in Government villages is not now necessary in view of the new section 84-A in the L. R. C.)

C—In respect of Surveyed Villages.

1. Are there any sub-sharers and if so whether their consent which is necessary has been obtained? (G. R. R. D. No. 6984 dated 16th July 1907.)
2. (An agreement on plain paper is not necessary as stated in B (4) above.)
3. Whether the agreement is consistent with the Collector's report *i.e.*, about co-sharers, and about chapters 8 and 9 extended to the village.
4. Whether powers other than those under clauses (a) and (b) are recommended.

5. Powers under clause (c) are not to be recommended because the dates of Instalments should be the same as in the neighbouring villages.
6. Powers under clause (d) should not be recommended because powers of a Collector should not be generally given. (G.R. R.D. No. 6984 dated 16th July 1907.)
7. Powers under clause (e) (Second part) are generally unnecessary.
8. Powers under clause (e) (first part) should only be recommended when the Inamdar resides in the village.
9. Powers under clause (f) should not be recommended (as the work is done by the taluka staff.) (G.R. No. 7169 of 24-7-09.)

G. I. Inamdars may be invested with powers to take precautionary measures but cannot inflict punishment.—Section 88, clause (a) of the Code and the Commissions issued under it empower the holders of such Commissions to take such precautions as the Collector is authorized to take under Sections 141 to 143. Sections 141 and the first and second paragraphs of Section 142 provide precautionary measures for the security of land-revenue, and there is no objection to the holder of the Commission acting under them. The third paragraph of Section 142, however, relates to the infliction of a penalty for disobedience of an order made by such holder, and enacts that such penalty may be inflicted on conviction after a summary inquiry. This involves a *quasi-judicial* proceeding (*vide* Section 195), and is obviously something quite distinct from the precautionary measures provided for securing the payment of land-revenue. The holder of a Commission cannot, therefore, exercise this power, but if he wishes to have a penalty

inflicted under Section 142 on any of his inferior holders, his proper course is to move the Collector to enquire into the matter, and not to inflict the the penalty himself.

Section 143 enables the Collector, if the revenue is not discharged within two months after the crop has been deposited under Section 141, clause (b), to take such portion thereof as he may deem fit for sale under the provisions of Chapter XL applicable to sales of moveable property in realization of the revenue due and of all legal costs. This power 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 when it is done the holder of the Commission is bound to make an immediate report thereof, under Section 90, to the Collector. At this point "precautions" cease and the Collector has to step in under Section 90 to determine whether the attached crop may be sold or not. (G.R. No. 106, dated 6th January 1883.)

G. 2. Procedure to be adopted in recovering rent and revenue due to estates of which the Collector is the official guardian.—It is not necessary to issue a commission to the Collector in his capacity of guardian. In his capacity of Collector he can exercise all the powers specified in Section 88. He is not required to apply to the Mamlatdar for assistance, on the contrary any assistance which the Mamlatdar, can give is given by him as a deputy of 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. No. 5424, dated 5th August 1902, and No. 4450, dated 11th June 1904.)

G. 3. The rule should be that in the absence of special reason to the contrary every Inamdar, who introduces or has introduced a surety settlement into his village should be granted a commission,

provided that he agrees to give suspensions and remissions according to the rules applicable to Government villages. It is most important to induce Inamdars to introduce Survey Settlements into their villages and the fact that they will thereby acquire a claim to commission should be impressed upon them. * * *. 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. * * * Endeavour should be made, in the Collector's discretion to overcome objections.

The commissions eventually granted will confer powers under all clauses of Section 88 except clause (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. No. 6984, dated 16th July 1907.)

* 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, dated 15th July 1908, quoted in the pre-ample to G. R. No. 511, dated 18th January 1909.)

G. 4. The condition requiring an Inamdār to furnish the vital and Agricultural statistics should be imposed only when the village officers are paid by the Inamdar. (G. R. No, 7229, dated 23rd July 1907.)

J. 1. A sharer in a Jahagir holding a commission under Section 88 has no right to sue alone to recover the highest rate of assessment, unless he is acting by the consent of all the co-sharers as the Manager of the Jahagir. (Balkrishna vs. Moro—L. R., III. Bombay 23—and P. J. 263 of 7th August 1895—Appeal No. 40 of 1894.)

Form of such
commission,

[^a]89. Every such commission shall be in the form of Schedule F, and shall be liable to be withdrawn at the pleasure of [^b] the Commissioner [^b]; and a commission may, if the [^c] Commissioner see fit, be issued to one or more agents of a holder of alienated lands as well as to the holder in person.

[a] As to the local modification of section 89, see para. 5 of foot-note [a] on p. I, *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).

Reference
must be made
by holder of
commission to
the Collector
in certain
cases.

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 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 1830, 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.

G. I. Inamdar's report exempt from Court fee stamp.—The report required to be made by an Inamdar under this section is not an application or petition within the meaning of article I, clause (b) of Section 2 of the Court Fees Act, and therefore

does not require a stamp. (G. R. No. 987, dated 11th February 1882.)

G. 2. Mamlatdars and Mahalkaries can order sale under this Section (G.R. No. 5295 dated 1st June 1911 item 47.)

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 Penalty for continuing compulsory process. 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.

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, Power under commission to extend to current and previous year's arrears. but not to that of former years.

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, Holder of commission not to enforce any unusual or excessive demand. 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.

Penalty for so doing.

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.

But holder of commission may establish his right to enhanced rent in Civil Court.

[^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 resettle 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 due in accordance with the decree in any such suit in the manner hereinbefore mentioned.

[a] As to the local modification of section 94, see para. 5 of foot-note [a] on p. 1, *supra*.

Recovery as revenue demand of dues of certain superior holders for specified period.

[^a]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 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.

[a] This section was inserted by Bom. IV of 1913, s. 41.

G. 1. This section is inserted to save Inamdars the trouble and expense of filing assistance suits. If applications by Inamdars are made in numbers, the cost of special establishment required should be borne by Inamdars in proportion to the revenue collected—no cost should be levied at present. (G. R. No. 3334, dated 19th March 1915.)

G. 2. Government are not disposed to extend Section 94 A of the Land Revenue Code to all surveyed inam villages which have no hereditary vil-

lage officers and the question of modifying it so as to make it applicable to villages in which the kulkarni watan has been commuted will be considered along with the other legislation which may be necessary in connection with the commutation of kulkarni watans. (G. R. R. D. No. 8783, dated 12th September 1916.)

CHAPTER VIII.

OF SURVEYS, ASSESSMENTS AND SETTLEMENTS OF LAND REVENUE [a]

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.

[a] This title was substituted for the original title by Bom. IV of 1913, s. 42.

SUMMARY (S. 95.)

Survey.

(1) general principles in Survey and
Settlement Manual N 1

(2)—Of:

(a) Kadim Inam lands	...	G 5
(b) Lands used for agriculture alone		G 3
(c) Salt lands	... ..	G 2
(d) Talukdari estates	... ..	N 2
(e) Vacant lands in village sites...		G 1
Survey officers—Supervising Tapedars in Sind	... ..	G 4

N. 1. The general principles and rules which form the basis of Revenue Survey operations are described in the Survey and Settlement Manual.

N. 2. The Governor-in-Council has the power to order Survey of Talukdari estates (Section 4 of Act VI of 1889.)

G. 1. With a view to the settlement of the land-revenue it is competent to Government, if they think fit, to direct under this section the survey of vacant lands in village-sites. When such an order is given, the officer in charge of the Survey will fix the assessment under Section 100. In respect of lands not within the local operation of an order under this section, the assessment has to be fixed under Section 52 by the Collector. (G. R. No. 4344, dated 18th June 1886.)

G. 2. It is evident from this section that salt land may also be the subject of a revenue survey as under this section a survey may extend to any land as the Governor in Council may direct. Section 48 renders land revenue leviable upon land from which any other profit or advantage than that ordinarily acquired by agriculture is derived. (G. R. No. 6139, dated 21st August 1889.)

G. 3. Non-agricultural buildings should be excluded from agricultural assessment and the form of declaration (Appendix 14) should be expressly limited to lands used for agriculture alone. (G. Rs. No. 4267, dated 29th May 1896 and 4582 dated 16th June 1904.)

G. 4. All Supervising Tapedars in Sind are appointed Survey Officers for the purposes of Chapters VIII and IX within the limits of their respective charges (Government Notification No. 6415, dated 25th June 1908, printed at p. 944 of B. G. G. Pt. I of 1908.)

G. 5 Question of the application of a survey settlement to kadim inam lands.

Government agree with the Commissioners that it is not necessary to take separate action for the survey of kadim inam lands. 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. The question of the settlement of the lands should await the decision of Government on the question of compulsory introduction of survey settlement into inam villages. G. O. No. 6392, R. D. dated 10th June 1918.

96. It shall be lawful for the survey officer deputed to 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 instructed 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.

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

Survey Officer may require by general notice or by summons, suitable service from holders of land, etc.

Assistance to be given by holders and others in the

measurement
or classifica-
tion of lands.

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.

N. I. Vide Section 135 G.

G. I. The cost of dividing the large waste survey numbers with a view to give them out for cultivation is to be borne by Government. (G. R. No. 1135, dated 3rd February 1909.)

G. 2. It should be noted that under Section 97, only the expenses incurred in hiring labourers to act as flag-holders or for other similar purposes can be recovered and not expenses of supervision and of clerical labour. These latter can be recovered only under Section 135 (G) in connection with the preparation of plans and maps of sub-divisions of Survey numbers. (G. R. No. 3639, dated 21st April 1910.)

Survey num-
bers not to be
of less than a
certain ex-
tent.

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 sanction of Government. A record of the minima so fixed shall be kept in the Mámíatdár's office in each táluka, and shall be open to the inspection of the public at reasonable times.

Exception.

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.

99. *Repealed by Bom. IV of 1913, s. 44.*

[a-a] These words were substituted for the original words 'Survey records' by Bom. IV of 1913, s. 43.

G. I. 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.	Min im-um area.		Authority.	
		A.	G.		
Gujarat (all districts).	Dry crop.	1	0	G. R. No. 2161, dated 29th May, 1869.	
	Garden...	0	20		
	Rice ...	0	20		
Deccan (all districts).	Dry crop.	1	0	G. R. No. 6577, dated 16th August, 1905.	
	Rice ...	0	10		
	Garden...	0	10		
Thana ...	Rice ...	0	10	Government Notification dated 6th October, 1869 (B. G. G. Part I, page 1129.)	
	Garden...	0	10		
Ratnagiri ...	Jirayat ...	3	0		
	Rice ...	0	5		
	Garden...	0	5		
Belgaum, Dharwar Bijapur.	Varkas...	2	0		
	Dry crop.	6	0		
	Rice ...	1	0		
North Kanara settled Talukas of the below Ghat Districts. viz:—	Garden...	0	20	G. R. No. 5994, dated 11 November, 1872.	
	Dry crop.	5	0		
	Rice ...	0	5		
Above Ghat Districts	1 Karwar.	Garden...	0	5	G. R. No. 8071, dated 13th October 1896.
	2 Ankola.	Kumri ...	5	0	
	3 Kumtha.	Dry crop.	3	0	
	4 Honavai.	Rice ...	1	0	
1 Haliyal.	Garden...	0	20		
	2 Yellapur.	Rice ...	1		0
3 Sirsi.					
4 Siddapur.	Garden...	0	20		

These limits are not observed in the Phalni operations now carried on for the purposes of the Record of Rights. (vide G. R. No. 9578 dated 21st September 1908, printed under Section 113.)

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.

G. 2. Pardi Numbers.—The provisions of this section are not intended to apply to Pardi Numbers. (G. R. No. 4314, dated 25th July 1881.)

G. 3. The Director of Land Records should be Commissioner of Survey for the purposes of Section 98. (G. R. No. 5370, dated 31st July 1901.)

G. 4. Sub-division of surety numbers. Proposed measures for the prevention of sub-division of agricultural land in irrigated tracts.

Letter from the Commissioner, C. D. No. V.-1264 dated 5th September 1916.

“The minute sub-division of Agricultural holdings in certain parts of the Presidency has, as Government are aware, attracted attention from time to time. You will remember a discussion which occurred in the Legislative Council last year on the initiative of Divan Bahadur Godbole. Government felt it impossible to take any action, but there can be no doubt I think that the existence of a serious evil was recognized. The most minute sub-division is to be found in the Konkan talukas, and it is the despair of all officers of the Land Record Department as I have good reason to know. But I desire to invite the attention of Government not to the Konkan but to those areas in the Dekkhan which are under command of our new perennial canals. By the skill of the Irrigation Department and the expenditure of crores of rupees inferior dry crop lands periodically subject to ruinous famines are being converted into valuable productive properties. But this change is being accompanied by the curse of excessive sub-division, and unless something is done to put a stop to this most unfortunate development, we shall not get the full benefit of

our irrigation schemes. I have the honour to call the attention of Government to the present position, and to suggest with due respect the desirability of legislation empowering us to re-distribute holdings in suitable blocks and to prevent extensive subdivision. I have suggested long ago that a bill on the lines of the Town Planning Act might be possible. And Mr. Keatinge has several times put forward views—with which I entirely agree—urging the necessity of assigning long-term rights of water to suitable and suitably situated properties.

2. The nature and extent of the present evil can best be understood from a map of.

- (1) part of Manjri village,
- (2) three maps showing survey numbers in Mundhwa village, and copies of certain *pot hissa* (sub-division) maps from Hadapsar village.

“From these maps you will see what has come about on an old canal and what we may expect in the course of time on all our canals, and what I wish to prevent. It is not merely that many of the holdings are so small that they cannot be properly cultivated. They are usually very unsuitably shaped, tending to run in long narrow strips. If water is to be supplied economically, so that as many people as possible may get it and so that its wealth-producing powers may be utilized to the greatest advantage, it cannot be sent down a long canal merely in order that a particular minute patch at the end of that channel may be watered. It is being recognized more and more clearly that the only effective way of preventing waste is to surround the sugarcane fields with substantial mounds, and all the newer rules provide for acre plots and surrounding mounds. But this is impossible if we are to recognise small subdivision of irregular shape. Again unless we have plots of a fixed size, it is necessary to

measure what has been actually irrigated or else to demarcate the sub-divisions and then to inspect them and see that no sub-division has water without paying for it. There are very serious objections to measurement; and demarcation and inspection are almost as bad. Nor is it merely a case of water wasting, inconvenience in administration, and minor abuses. Minute and irregular sub-division offers very serious obstacles to real agricultural development, connotes the increase of uneconomic holdings, and destroys all hope of the introduction of manufacturing or planting interests.

"3. It is probably as true in the cases of agricultural lands as it is in the case of building sites that a re-adjustment of holdings could be so made as to benefit nearly every holder. Anybody owing three or four irregularly shaped plots in various localities would be glad to exchange them for one nicely shaped piece of the same area, or even to take little less. But although almost everyone would agree that such re-adjustment would be of general benefit, it is quite impossible to arrange it without the machinery of a special act. It has been suggested, I believe, that we might proceed by agreement among the parties concerned. I deprecate any such idea. Every individual would try to get the better of his neighbour, and obstinate people would hold out to the end and wreck the whole scheme after an infinity of trouble had been taken. Moreover, it would be quite impossible to arrange for a readjustment of charges on the various properties without the clear authority of legal provisions. One has only to consider the complications which might ensue and to agree that ordinary processes of negotiations and agreement are out of the question. In a word the position is hopeless without an Act to provide machinery or compulsory action—such an Act indeed as the Town Planning

Act with its provisions for schemes, the re-constitution of plots, transfer of rights, contribution, compensation, and a tribunal of arbitration. I venture to think that there is a good case for an Agricultural Estates Planning Act.

"4. Agricultural holdings differ from building cites in that they are so much more liable to sub-division. A Town Planning Act does not object to future sub-division, because on the whole such sub-division is not very probable to any great extent, neither would it be very serious evil. But in the case of our agricultural holdings it would be of little use to consolidate them now if hereafter they are again subjected to the vicious degree of sub-division which has in the past done so much harm. Accordingly any scheme to be of permanent use must be able to prevent or control future sub-division. It is possible that a sufficient check may be furnished by the power of Government to refuse water to plots too small in size or inconveniently shaped or situated, or by agreements whereby long-term rights of water were granted. It may be necessary to amend section 21 of the Irrigation Act, for it is difficult to see why anybody should claim as a matter of right a constant supply of water he has done nothing to bring. The idea in the Act no doubt is that the grant of this right is a return for the land given up by the cultivator for a water course. It might be better to acquire the land needed for water courses.

"5. These and similar points require further consideration. My suggestion is that, if Government are convinced that there is a serious evil which ought to be stopped or prevented and that a reconstitution of agricultural holdings is desirable by operations somewhat on the lines of the Town Planning Act it is advisable that a committee should be appointed to consider definite recommendations for submission to Government. Such a

committee might include Mr. Inglis and perhaps another irrigation expert, an experienced Collector, the Director of Agriculture, a non-official and possibly myself."

Order :—The letter from the Commissioner, C. D., deals with two questions ; first, the evil of excessive sub-division of Agricultural land generally, and, secondly, the sub-division of Agricultural land in irrigated tracts in particular. The first question is under the consideration of Government in a separate correspondence. As regards the second question the Commissioner, C. D., the Settlement Commissioner and the Director of Land Records and the Director of Agriculture should be requested to discuss it in conference and to submit to Government their joint report on the subject, after consideration of the remarks made in the following paragraphs, which are intended to serve merely as a basis of discussion, and are subject to subsequent modifications.

2. The first point is to consider in what circumstances the redistribution scheme is to be initiated. The land suitable for the purpose has to be selected by Government. It is doubtful whether, as under the Town Planning Act, it can be left to the people themselves to say whether they will have the scheme or not. The object being the proper utilisation of a water supply provided by Government, it seems that Government should have the determining voice, though it may be proper to call for objections from the persons interested.

3. The land both before and after redistribution should be valued on the dry crop basis. As a part of the area will be deducted for communications, etc., the area for redistribution will be less than the total of the original holdings. It should be distributed as far as possible in proportion of the value of the original hold-

ings. The site of each individual's new holding should be as far as possible on the site of his old holding. Those whose new holdings are below the Proportion which they would receive on the basis of their old holdings will have to be compensated at the cost of those whose new buildings are in excess of their proper share. Those who have to be dispossessed altogether will have to be paid in cash, and it will probably be desirable to allow them the usual 15 per cent. on account of forcible dispossession. The compensation will be paid by Government and collected from the holders on whom the liability may fall.

4. It will possibly be necessary to fix a minimum size of a holding. This should be fixed as small as possible consistently with proper economy of water. It may not be possible to prevent ownership in a holding passing, and the number of owners multiplying, in accordance with the law of inheritance. What should be the object to be secured is a minimum unit of cultivation and irrigation.

5. As the redistribution of the land will be a permanent arrangement, there must be some guarantee on the other hand that as long as a sufficient water supply can be maintained in the reservoir with due care and attention on the part of Government, a supply of water for perennial irrigation will be given to the redistributed holdings. For the supply guaranteed, the water rate will be charged, whether water is taken or not. The rate may be levied on a scale, either fixed or rising, for a period which may extend to 20 or 24 years; but it should be subject to revision if during that period the ordinary rates are revised or if other redistribution schemes come into force in the neighbourhood. It is desirable that Government should keep a free hand in the matter, and

that there should not be different rates for the same facilities on one canal.

6. The conditions as to levelling Bandhs, etc., should be provided by rules.

7. Power may have to be taken to transfer mortgages from old holdings to new and also to pay them off if possible. It may also be necessary to make provision in the redistribution scheme for land to be taken for improved methods of sugar cultivation and manufacture.

R. 4094, dated 2nd April 1917.

Officer in charge of a survey to fix assessments.

100. Subject to rules [a] made in this behalf, under section 214, the officer in charge of a 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.

Regard to be had to Proviso to section 52.

In fixing such assessment, regard shall be had to the requirements of the proviso to section 52.

Proviso.

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.

[a] Words repealed by Bom. IV of 1913, s. 45, are omitted.

N. I. Vide G. R. No. 4437, dated 10th June 1904, under Section 102.

G. 1. The following scales for eliminating fractions when fixing survey assessments, sanctioned by G. R. No. 2210, dated 18th April 1873, have been and are still in force:—

SCALE No. I.

For all Collectorates except Thana, Kolaba, Ratnagiri and Kanara.

From Rupees.	To Rupees.	Fixed as assessment.
0 0 1	0 3 0	0 2 0
0 3 1	0 6 0	0 4 0
0 6 1	0 10 0	0 8 0
0 10 1	0 14 0	0 12 0
0 14 1	1 4 0	1 0 0
1 4 1	1 12 0	1 8 0
1 12 1	2 4 0	2 0 0
2 4 1	2 12 0	2 8 0
2 12 1	3 4 0	3 0 0
3 4 1	3 12 0	3 8 0
3 12 1	4 8 0	4 0 0
4 8 1	5 8 0	5 0 0

and so on.

SCALE No. II.

For use in Thana, Kolaba, Ratnagiri and Kanara.

0 0 1	0 0 6	0 0 6
0 0 7	0 1 6	0 1 0
0 1 7	0 3 0	0 2 0

For higher figures the same scale as in the other Collectorates.

G. 2. Lands formerly included in military cantonments and now in civil limits should be assessed to land revenue (G. R. No. 5628, dated 19th August 1882).

G. 3. (2) The proposal to settle whole Talukas as far as possible at one time instead of proceeding with the settlement of a group of villages, as soon as the measurement and classification of them are completed, will be more satisfactory to the people who are likely to be confused by successive settlement operations in the same taluka and will also tend to administrative convenience, and is approved. (G. R. No. 2674, dated 3rd April 1883.)

G. 4. Judi on service lands.—In settling the amount of judi to be paid on each share the following rule should be observed :—

(i) Up to one rupee.

Take the nearest half anna, *i. e.*, neglect 3 pies and under and count 4 and 5 pies as 6 pies except in the Konkan and below-ghat talukas of the Kanara District where the nearest 3 pies should be accepted, other fractions of an anna being inadmissible.

(ii) Above one rupee.

Take the nearest anna, *i. e.*, neglect 6 pies and under and from 7 to 11 pies as one anna.

Provided that—

(1) When the application of the scale results in the sum total of the new amounts being greater or less than the old amount of judi upon any inam estate, the difference should be distributed equitably over the new amounts of judi by a deduction or addition in the larger shares so as to make the total equal to the old amount of judi.

(2) Subject to Proviso (1), no new judi shall be less than 6 pies ; or in Konkon less than 3 pies.

Proviso (2) may be ignored if Dharsod should result in an increase of the total judi on the whole original holding. G. R. R. D. 15227, dated 17th December 1917.

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 [^a] under section 55 [^b] under the Bombay Irrigation Act, 1879 [^b], or in any other manner

The assessment so made may be on land or on means of irrigation, etc.

Bom. VII of 1879.

whatsoever that may be sanctioned by Government.

[a] "Levied" was substituted for "leviable" by Bom. VII of 1879, s. 2.

[b-b] These words were inserted by Bom. VII of 1879, s. 2.

SUMMARY (S. 101.)

Assessment on

- | | | | | | |
|---------------|-----|-----|-----|-----|------------------|
| (1) Wells | ... | ... | ... | ... | G 1 |
| (2) Bandharas | ... | ... | ... | ... | G 2, 3, 5 |
| (3) Patasthal | ... | ... | ... | ... | G 6, 7, 8, 9, 10 |

Rivers and streams.

- | | | | | | |
|---|-----|-----|-----|-----|------|
| (1) When free use of water by Rail-ways | ... | ... | ... | ... | G 4 |
| (2) When rate payable by G. I. P. Railway | ... | ... | ... | ... | G 11 |

G. 1. The following orders respect to the revision of the assessment on lands irrigated from wells are still in force :—

1. That in the case of old wells constructed before the first settlement, all special water assessment should be abandoned, and the maximum jirait rate alone levied.

2. That in the case of new wells constructed subsequent to the first settlement, the ordinary dry crop rate should be imposed without any addition whatever on account of the new wells.

3 The first rule was intended in the first instance to be applicable to the drier Talukas of the Deccan Collectories, where the rain-fall is, as a rule, light and uncertain. It is now generally adopted in the Deccan and Southern Maratha country.

4 Boorkees of permanent construction are to be treated as wells. There is no objection to classing at a higher rate land within a certain distance from a stream from which water can be obtained by means of a Boorkee. The same principle may be adopted in the case of land which derives benefit

from its proximity to a tank. This should form part of the Regular process of classification, in order that it may be tested by the Classing Assistants in the same manner as other classification returns. (G. R. No. 1028, dated 25th February 1874.)

(5) Government have given a general assurance that the above two rules will be adhered to in fixing assessment on all lands irrigated from wells in the Deccan and Southern Maratha Country Districts. (G. R. No. 6682, dated 10th November 1881.)

G. 2. If bandharas are erected without permission, they will be either removed, or the lands watered from them assessed as Bagayat. Mamletdars and their subordinates and village officers are to report if they find bandharas so erected without permission. (G. R. No. 3172, dated 23rd June 1874.)

G. 3. The following are the rules regarding fixing water assessment on lands irrigated from Bandharas (dams) built across streams or nullas :—

I. Lands under bandharas existing at the original settlement, have been assessed at garden rates, and will, at the revision, pay whatever revised rates may be determined upon.

II. Lands classed as dry crop at the original settlement, but which have been converted into garden by the use made 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 the quantity of water obtainable, the number of months for which it can be depended upon, the description of cultivation which it will render practicable, the cost of providing the means for obtaining water or forming the water courses (paths) necessary for its utilization.

III. When lands are classed at the revision settlements as dry-crop, and it is desired to convert them into garden during the currency of those settlements by the construction of temporary or per-

manent 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, and any person erecting a bandhara or drawing water without such permission will be liable to the penalties prescribed by law. On giving permission the Collector may couple it with such conditions as to payment of garden rates, the removal of obstructions to the stream arising from the means employed to obtain water, &c., as may be desirable. In those collectorates in which it may have been the custom to levy extra rates at once without waiting for the expiration of existing settlements, the practice will continue, but where such has not been the practice, it will be left to the Collector, under the orders of the Commissioner, to make 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 future 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. No. 3618, dated 14th July 1874.)

G. 4. Free use of water by Railways.—Provided no pumping stations are erected or bunds thrown across rivers and streams by Railway Companies without the previous sanction of Government, no objection need be raised to the free use of water. (G. R. No. 8842, dated 1st December 1893.)

G. 5. In tracts where water supply is fitful and inconstant, and where, therefore, according to the orders in Government Resolution No. 3969, dated 25th May 1904, patasthal irrigation will be regulated by section 55 of the Land Revenue Code, the maximum of encouragement and the minimum of penalty and trouble should be imposed on intending irrigators. In modification, therefore, so far as necessary, of the rules promulgated with Government Resolution No. 3618, dated 14th July 1874, requiring the Collector's permission to be obtained before bandharas are made, the people of such tracts should be informed that they are at liberty to take water without notice or application, but that on the extent of irrigation being ascertained they will be liable to pay the rate fixed by the Collector under section 55 of the Code. The village records show the sources of irrigation and the lands for which those sources are likely to be utilised. Village officers, Circle Inspectors, Mamlatdars and their superior officers will be expected to inspect lands for the purpose of ascertaining what areas have been irrigated and that the irrigation has been duly charged for (G. R. No. 6663, dated 11th July 1906.)

G. 6. Assessment of patasthal lands.—In the opinion of Government, it will be far preferable to adopt a broad and liberal policy, and to abolish patasthal assessment altogether in the precarious areas. The amount of revenue thus sacrificed will not be large and the result will be a much needed stimulus to private enterprise in the husbanding of the supply of minor rivers, streams and nalas, and the irrigation of the small areas commanded by them. There is a danger that a cultivator who takes water from a pāt may be called on to pay assessment even though pāt may fail at a criti-

cal time, while the man who makes no use of the water may obtain a remission or suspension of assessment. Such a danger must discourage the full utilisation of the water. If, on the other hand, the 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. The Government of India, on the recommendation of the Irrigation Commission, have accepted the principle of liberality to the cultivators of irrigated land and the encouragement of irrigation by every possible means, in the arid portions of the Deccan. For the purpose of constructing wells, they are willing even that free grants of money should be made, although no additional revenue will be derived in consequence. It will be in full accordance with the policy to refrain from assessing for water, lands of precarious tracts which may be irrigated from the small channels and dams constructed by the enterprise of the cultivator.

2. In talukas specified below, which are all undoubtedly precarious tracts, patasthal assessment shall be abolished.

District.	Taluka.
Sholapur.	All Talukas.
Ahmednagar.	... { Shevgaon. Jamkhed. Karjat, Nevasa. Rahuri. Sangamner, Kopargaon.
Poona.	... { Indapur. Bhimthadi.

As regards other talukas, Collector should make recommendations. In most cases it will

be found that there are distinguishable from one another pats, and bandharas [whether temporary (kacha) or permanent (pucka)], the supplies of which are fairly certain or decidedly precarious. In most instances, the maximum rate on the pat will be a tolerable *prima facie* guide. The dividing line may probably be put at Rs. 5. But this will not, in all cases, be a trustworthy guide. The selection therefore, of pats for exemption must be made after inspection by the Sub-divisional or Settlement Officer, as the case may be. Where the rate exceeds Rs. 5, he will have to make a good case for exemption; and where it is below that figure, for retention of the pátasthal assessment. Where the táluka is under settlement, the recommendations should be made in the settlement report, and recommendations made in reports already submitted will be disposed of in the orders issuing on them. In other cases, the Collector will make a separate report to Government containing his recommendations, and showing their financial effect. To the report a statement should be appended showing for every pat, whether exempted or not, (1) the village, (2) character of bandhára, kacha or pucka, (3) maximum rate, (4) total pátasthal assessment, (5) whether exempted or retained, (6) total of (4) for all pátasthal villages, and (7) remaining pátasthal assessment after deduction of total exemptions from (6).

3. For those pats on which the pátasthal assessment is retained, it will be necessary to provide a system of remissions in case of failure of water-supply. It is fairly established that the supply of these small irrigation channels varies roughly with the taluka rainfall. In the case, however, of streams which communicate directly with the Western Gháts, this may not always be the case. But taking the shortage of rainfall below the average as a starting guide, the Collector, if he has

reliable information that the pàts have failed, should, by the 15th December in each year, announce a remission, roughly adjusted to his estimate of failure, of 4 annas, 8 annas, or 12 annas in the rupee of the recorded assessment in all the pàts of the tálukas, with any notorious or well-established exceptions. Beyond this, no inquiry should ordinarily be made regarding individual villages or pàts.

4. The Collector will make the decision on his own authority, but will report for the information of the Commissioner, who should submit a general report for his Division to Government. The Collector in testing his information, and the Commissioner in examining the Collector's reports, will be careful to secure equality of treatment by comparison of similar tracts. Thus, much the same measure of liberality would probably be required in Pimpalner of West Khandesh, as in Kalvan and Báglan of Násik and *vice versa*.

5. It should be understood that by the abolition of pátasthal assessment it is not intended to injure any rights which the holders of lands subject to that assessment now have to the water of the streams. Those rights should continue to be entered in the revenue record. The construction of additional bandharas or similar works on any streams should be subject to veto by the Collector, which should be exercised with due regard to the exercise of existing rights, and the capacity of the stream. The Collector will not usually object unless applied to by a person whose right has been so recorded, and 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. No. 2759, dated 15th March 1907).

G. 7. There is no intention on the part of Government to interfere with the assessment and management of land under regular pátasthal irriga-

tion. The case in which (see G. R. No. 6663, dated 11th July 1906, printed as foot-note to Section 101) Government desire that water rate shall be levied only when water is obtained, and have directed that the cultivators may take the water under liability to subsequent assessment, is the case of patasthal lands watered by a highly irregular supply, and this description cannot be applied to the large irrigated tracts of Western Khandesh. (G. R. No. 3833, dated 15th April, 1907.)

G. 8. The concessions allowed under Government Resolution No. 2759, dated 15th March 1907, should be extended at once to the whole of the Bijapur District, the Parasgad Taluka of the Belgaum District and the Ron, Navalgund and Gadag Talukas of the Dharwar District. The Commissioners are also authorised to specify talukas or well defined tracts in them in which the detailed examination prescribed in paragraph 2 of the Resolution quoted above can safely be dispensed with. (G. R. No. 7087, dated 18th July 1907).

G. 9. The orders in Government Resolution No. 2759, dated 15th March 1907, are not intended to apply to tanks or bandharas in charge of the Public Works Department, which are or have been repaired at the cost of Government.

Nothing in the orders contained in Government Resolution No. 2759 dated 15th March 1907, shall be held to prevent the taking over by the Public Works Department, of bandharas and pats where the supply of water can be materially improved by the expenditure of Government money, and the imposition of a charge under section 55, Land Revenue Code, sufficient to give a fair return on the money expended. (G. R. No. 3422, dated 1st April 1908.)

G. 10. Nandgaon taluka should be exempted from detailed examination and patasthal rates

should be abolished in that taluka. (G. R. No. 6551, dated 24th June 1908).

G. II. The G. I. P. Ry. Company is charged a rate of one rupee per 10000 cubic feet of water taken by the Darna river by constructing a well on the bank of that river. The rate is fixed for 10 years. (G. R. A. I. 235, dated 29th January 1909).

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 modifications which he may deem necessary, fixed for a term of years 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.

Assessments 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.

SUMMARY (S. 102.)

1	Section 102—meaning of the word ‘fixed’	G 7
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3	Rice rates	G 8
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	(1) Notification with reasons for alteration.	
	(a) In non-Talukdari villages					G 11
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5	Survey-settlement.—					
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(4) Notification of guaranteed period	G 2
(5) Temporary for a year or two	.
not recognised	... G 2, 3, 4
(6) To exclude building sites	... G 6
6 Water rate in Sind	... G 12

G. 1. Sanction for Inam villages.—The extension to Inam villages coming under Settlement after the general settlement of the Taluka, of the rates generally sanctioned and applied, is authorized by G. R. No. 5921, dated 16th November 1878. This general sanction shall be deemed to be the sanction required by Sections 102 and 103. (G. R. 6386, dated 6th December 1880).

G. 2. Notification of survey settlement guarantee.—When the assessments fixed by the Survey Department have been sanctioned by Government finally, a notification determining the period for which they are guaranteed is required to be published in the *Government Gazette*, in the form prescribed in Appx. 14. When the assessments have been sanctioned provisionally for one year only, no such notification is necessary.

If, however, the assessment has been revised with reference to the general consideration mentioned at the close of Section 106 of the Code and sanctioned by Government, the publication of the settlement, even if fixed for one or two years only, would be necessary. The Code does not recognize anything of the nature of a temporary or *interim* settlement. (G. R. No. 3299, dated 19th May 1882.)

G. 3. It must be fixed for a term of years.—Section 102 says that "it shall be lawful for the Governor-in-Council to declare such assessments (*i.e.*, the assessments fixed by the Survey Superintendent) with any modification which he may deem necessary fixed for a term of years not exceeding thirty." The words "it shall be lawful" are according to well-established rules of interpre-

tation imperative, not optional. If new rates fixed by a Survey Superintendent are sanctioned with or without modification by Government, the Code (Section 102) requires Government at the same time to decree a "Survey settlement," *i.e.*, to declare that the rates sanctioned shall not be liable to increase for a term of years.

The law will not be complied with therefore if Government declare the sanctioned assessment fixed for one year only. Section 104 of the Code, which contains distinct special provisions (1) for the year in which a survey Settlement is introduced, and (2) for the next following 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 initiation of a term of settlement. But setting aside Section 104, it is a misuse of language to call a settlement for a year a settlement for a term of years. Moreover, if it would be legal for Government to sanction a term of one year once, it would be equally legal for them to do so successively year by year for an indefinite period, which would obviously be an evasion of the intention of the Legislature. The proposal to sanction survey settlement for one year only was not adopted. (G. R. No. 784, dated 3rd February 1892.)

G. 4. Provisional settlement not allowed:— Declaring the survey rates provisional is not warranted by the provisions of the Land Revenue Code. (G. R. No. 3120, dated 26th April 1895).

G. 5. Announcement when rates remain unaltered.—For every village, in which it is decided at revision of settlement to continue unaltered the assessment previously subsisting, it will be sufficient if an announcement is made by the Collector, Assistant Collector, or Deputy Collector in charge of the taluka to the occupants and holders especially assembled for that purpose that the assess-

ment of each survey number of the village has been fixed at the same amount as had been previously levied. The time of jamabandi will generally be the most convenient for making such announcements. In all other cases an announcement of the new assessment must be made number by number. (G. R. No. 6593, dated 19th October 1900.)

G. 6. Building sites excluded.—Lands which are really building sites should be excluded from the operation of the officer engaged in revision settlement of agricultural lands and left to be dealt with separately. (G. R. No. 4763, dated 17th July 1903.)

G. 7. Meaning of the word "fix":—The word "fix" is used in a double sense in Sections 100 and 102.

The declaration does not really in itself "fix" the assessments but grants a particular period to the fixity, which are otherwise provisional and can be modified by Government under the second sentence of section 102 or revised under Section 106. The use of the word "if any" in Section 48 shows that an assessment may be fixed, although it has been declared under Section 102 for a term of years. (G. R. No. 4437, dated 10th June 1904.)

G. 8. Rice rates at second revision settlement—Govt. in paragraphs 6 and 7 of their Resolution No. 6975 dated 14th July 1916 R. D. passed the following orders :—

6. Of the two questions relating to the rice rates, which have been discussed at length in these papers, the first is as to the method to be adopted with regard to imposing an enhancement on old rice and on what was new rice at the first revision settlement. It is agreed that they should have the same relative increase ; but while the assistant settlement officer proposes that the assessments should be increased 25 per cent. all round, the Commissioner considers that the increase should be in proportion

to the increase in the maximum rate for jirayat in the villages. His argument is that the considerations justifying an alteration in the assessment must necessarily be the same for both. Ordinarily this is so, where there is no change for grouping. If however as in the present case, there is such change, the number of separate rice rates may be less than the numbers of dry crop rates and the relative distance between the lowest and highest rice rates may be less than in the case of the dry crop maxima. Thus, in the case of Shivra and Umbra in the new group I, it would be unfair to raise the rice rates by 66 % if, as the Assistant Settlement Officer's report indicates, rice land is already assessed at rates which are on a level with the rice assessments of the other villages in the group. The Assistant Settlement Officer's proposals are therefore accepted on this point.

7. The second question refers to the treatment of what the Assistant Settlement Officer designates as newer rice i.e. dry crop land which has been converted into rice land in the course of the current settlement. The Commissioner calls in question the propriety of the orders passed in Government Resolution No. 3805 dated 6th April 1916 and states that they appear to overrule the views held by all settlement officers and to order a fresh method of treating new rice. In these orders Government stated that they were not prepared to modify the orders passed in Government Resolution No. 887 dated 3rd February 1899 on the recommendation of the Survey Commissioner in connection with the first revision settlement of the Chikhali taluka in Surat district. The object of the orders was not to impose a tax on the 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 Government Resolution No. 887 dated 3rd February 1899 was by no

means new, for at 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. As Mr. Bell has shown, this was done in various ways; but in order to avoid taxing the portion of the improvement due to the expenditure of the occupants' capital and labour, the taxation was always based on the dry-crop rate. The present question is whether it is necessary to continue on similar lines in connection with the talukas in the Deccan now under revision. It is clear that in order to avoid injustice, extensive measurements and enquiry would be necessary. It is also probable that the lands which were easiest to convert were taken up first, and that for newer rice the cost of conversion has been heavier. Government therefore consider it advisable to follow the orders in the Nasik settlements sanctioned in Government Resolution No. 2059 dated 22nd February 1916 and to leave newer rice to come under the ordinary dry-crop rates. (G. R. No. 6975, dated 14th July 1916.)

G. 9. Instructions in connection with the transmission of petitions of objections relating to settlement reports—

It is not necessary for Collectors to submit petitions of objections together with his forwarding remarks on settlement reports (*vide* G. R. No. 7447 of 21st October 1886). The Collectors may send their remarks and then later on forward petitions of objections with remarks on them. It is a rare thing for such petitions to disclose reasons which induce any change of opinion. If in fact any such change occurs, there is nothing to prevent further consideration.

All officers should remember that delay in the issue of final orders on settlement reports may cause serious loss, and that it is not desirable or fair to deprive those that come after them, and Go-

vernment themselves, of the chance of considering proposals of such importance with due deliberation. (G. R. R. D. No. 7152 dated 19th July 1916.)

G. 10. Land revenue.—The Royal Commission on Decentralisation, in paragraph 252 of their report, recommended that the general principles of assessment, such for instance as the proportion of the net profits on the land which Government shall be entitled to take, and the period of settlements, should be embodied in Provincial legislation, instead of being left to executive orders, as is the case outside Bombay.

The Government of India wrote to His Majesty's Secretary of State that it was not expedient to take action on the proposal.

This opinion of the Government of India was accepted by the Secretary of State.

The whole correspondence in this matter has been republished at pages 550-554 of the Supplement to the Bombay Government Gazette dated 13th July 1916 and with G. R. No. 7504 dated 31st July 1916. (R. D.)

G. 11. Settlement reports.—In Government Resolution No. 7447 dated 21st. October 1886, Government directed that in the case of revision settlements the Settlement Officer should, as soon as he had worked out his revision of groups and rates, forward to the Collector a notification 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 chavdi 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. In Government Resolution No. 517 dated 21st. January 1897 Government directed that a similar course should be adopted in Sind.

After careful consideration of the proposals contained in these papers, the Governor in Council is of opinion that the orders passed in Government Resolution No. 7447 dated 21st. October 1886 should be amplified, and is therefore pleased to direct that, in the notification for local publication in the villages, the Settlement Officer should also publish a brief summary of the reasons for the proposed alterations in the rates and grouping and further, to approve of the suggestion made by the Sind Settlement Committee that 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.

The two amended forms of notification appended to this Resolution are sanctioned in supersession of the forms approved in Government orders No. 12161 dated 7th. Dec. 1914 and No. 8551 dated 11th. Aug. 1915. (G. R. No. 8914, R. D. dated 14th. Sept. 1916).

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 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.			
		Number of group.	Maximum rates.			Maximum rates.		
			Dry crop.	Rice.	Garden.	Dry crop.	Rice.	Garden.
1	2	3	4	5	6	7	8	9
	Group I ...							
	Group II ...							
	Group III ...							

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Reasons for alteration in the rates—

Reasons for alteration in the groups—

The result so far as the village of _____ is concerned is that the rates in the village are $\frac{\text{raised}}{\text{lowered}}$ 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

II

Form of Notification for Sind.

It is hereby made known to the people of the under-mentioned 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 & proposed rates of each village being as shown against its name :—

Number.	Name of village.	By former Settlement.				By revision Settlement.				
		Number of group	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 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 of proposed thereof.

G. 12. Question whether when assessment has been fixed for a term of years on land in Sind under Section 102 of the Land Revenue Code, an extra rate or cess can be imposed, before expiry of such term, on account of improvements in the supply of water to such land actually brought into force during such term—

The following copy of the memorandum from the Remembrancer of Legal Affairs No. 1981 dated 1st August 1917 should be forwarded to the Commissioner in Sind and the Collectors in Sind including the Deputy Commissioner, Upper Sind Frontier, for information with reference to Government Resolution No. 8118 dated 4th July 1917, with the intimation that Government concur with the legal Remembrancer that no alteration in the form of notification under Section 102 of the Land Revenue Code is necessary:—

Memorandum from the Remembrancer of Legal Affairs No. 1981 dated 1st August 1917:—

“The question is whether when assessments have been fixed for a term of years on land in Sind under Section 102 of the Land Revenue Code, an extra rate or cess can be imposed before the expiry of such term, on account, of improvement in the supply of water to such land actually brought into force during such term.

2. “The ordinary land revenue (section 105) is fixed in Sind, and elsewhere, under section 109. It appears in Sind to be an assessment fixed with reference to the means of irrigation existing at the date of assessment (Section 101); these means of irrigation are not at the said time charged a separate rate under Section 55 or the Irrigation Act. In these circumstances Section 105 reserves to Government the power to charge the extra rate on account of improvement in irrigation brought into force during the term of the guarantee.

"3. The notice that assessments have been sanctioned by Government, which is issued under Section 103 and rule 90 of the Land Revenue Code rules in the form of appendix 15 contains in paragraph 2 a reservation of the right to impose an extra rate for the use of water on land which is either newly irrigated with, or is furnished with an increased supply of, water provided by Government. The notification of the fixing of assessments under section 102 in the form of appendix 14 contains no reservation, but is subject to the provisions of Section 105. I do not think it is necessary to alter this form, but there is no objection to inserting a reference to Section 105 if desired." (G. R. 11081 dated 14th September 1917).

G. 13. Alteration in the forms of notifications guaranteeing settlements under sections 102 and 103 of the Land Revenue Code. Letter from the Settlement Commissioner and Director of Land Records No. S. T.—55 dated 31st October 1917:—

"Government in Order No. 10438 of 27th August 1917, Revenue Department, ruled that land used for non-agricultural purposes before the commencement of a settlement and included in an agricultural survey number as *pot kharab* cannot be assessed during the term of the guarantee given to the agricultural lands, even though the guarantee was confined to lands actually used for the purpose of agriculture alone. They direct in paragraph 2 that steps should be taken to exclude expressly such lands from the guarantee at the next revision settlement. I must confess I do not quite see how to give effect to these orders and request that orders may be passed as to how the wording of the guarantee notification should be changed in order that it may expressly exclude such lands. The form of guarantee in 1896 was purposely changed (vide Government Resolution No. 4267 of 28th of

May 1896 and the Remembrancer of Legal Affairs' opinion accompanying the Government Resolution) in order that it may apply only to lands used for purpose of agricultural alone: and from the order of Government under reference it would appear that Government think that this revised form also some how does not answer the purpose for which it was intended, though the general impression is that the notification does exclude all lands not actually used for agriculture, and therefore very definitely covers even *pot kharab* used for a non-agriculture purpose before the notification is issued, I enclose a copy of the form of the guarantee notification which I have included in the new Land Revenue Code Rules which in the respect we are now considering is worded as it always has been since 1896, and request that early orders may be passed in the matter so that I may change the proposed form, in order that it may henceforth carry out the object for which the Remembrancer of Legal affairs (see R. 4267-96) revised it in 1896, but failed in his object."

Government memorandum No. 460 dated 16th January 1918 :—

"The undersigned presents compliments to the Settlement Commissioner and Director of Land Records and with reference to his letter No. S. T.—55 dated 31st October 1917 is directed to forward a copy of the form of the notification under Sections 102 and 103 of the Land Revenue Code as amended by the Remembrancer of Legal Affairs to avoid the difficulties which the omission to mention *pot kharab* land might lead to and to state that the form has been approved by Government."

Form of Notice under Sections 102 and 103, Land Revenue Code, 1879, for Revised Settlements.

(For original settlements see note 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 as-

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 _____ to _____ :—

Class of land.	Approximate increase or decrease in the rupee of existing assessment.
	annas.

Dry crop	...	...
Rice etc.	...	...

2. Notice of the same is hereby given under Section 103 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.

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 now 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 :—In case of original settlements the following changes should be made in the above form :—

- (1) Substitute "original" for "revised" occurring in line 3 of paragraph I and in line I of paragraph 3.
- (2) After the word "assessments" in line 7 of paragraph I 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 I substitute "Maximum Rates."

Rs. a.

- (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 the special exceptions inscribed in the settlement records."

G. R. R. D. No. 819 dated 28th January 1918.

G. 14. Settlement Report.—Instruction for local publications of the alterations in the rates and grouping proposed by the Settlement Officer in

talukdari villages together with the part of the Settlement Officer's report relating thereto.—

Letter from the Talukdari Settlement Officer No. 593 dated 27th November 1917 :—

“ I have the honour to state that by Government Resolution No. 8914 dated 14th Sep. 1916, it has been ordered that a notification should be published in each village showing the alterations in grouping and rates due to a revision settlement and that a copy of the Settlement Officer's report should be deposited in the Taluka office for perusal by interested parties. I now request that orders may be obtained whether these instructions apply to the case of jama settlement also in talukdari villages. Prima facie the same principle should apply, as the important thing to the talukdar is the settlement of jama and not that of the assessment which has no meaning for him apart from jama. I am also more inclined to give the talukdars an opportunity of stating their point of view because at the last revision settlement of jama for Dholka in the year 1892 the whole settlement had to be redone, after it had been sanctioned, on account of the representations of the talukdars.

“ 2. At the same time if the talukdars are to be allowed to see the jama report, I think it will be sufficient if the copy of the report is placed in the Kacheri and no notification issued in the villages, as it would be obviously impossible to make a satisfactory summary of jama proposals dealing as in Dhandhuka with 75 or more separate estates. Of course, the notification regarding the new survey rates will be posted in the ordinary way.”

Memorandum from the Commr. N.D., No. T.S.O.—165 dated 14th December 1917 :—

“ Submitted to Govt. for the issue of necessary orders.

“ The Commr. agrees with Mr. Gordon.”

Order.—The Talukdari Settlement Officer should be informed that only the proposals regarding the grouping and rates should be published together with the part of the report relating thereto. Govt. do not consider it desirable to publish proposals for reduction of the 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. O. No. 1240, R. D. dated 6th February 1918.)

[^a]103. When the levy of the assessment fixed under sections 100 and 101 upon any land has 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.

[a] This section was substituted by Bom.IV 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*.

G. 1. Assessments to affect Agricultural lands alone :—These assessments in accordance with section 103 affect lands used for the purposes of agriculture alone. Lands which at the time of the announcement were appropriated for other purposes do not come within the purview of that Survey at all. The Collector can therefore assess them under Section 52 and the assessment must be made in accordance with the rules in force at the time of making it, not in accordance with the rules, if any, in force when the appropriation took place. (G. R. No. 6513, dated 19th September 1903).

G. 2. Form of notification guaranteeing settlements under Sec. 103 (Appendix I to rule 90 (1)) without alteration should be used in the absence of rules and a separate notice specifying the increases in the rates should be issued. The clause regarding

the assessment of new rice land, which was inserted in the existing form of notification under paragraph 6 of G. R. No. 508 dated 23rd January 1900 should be omitted. (G. R. R. D. No. 6543, dated 1st July 1916).

Excess assessment not to be levied in the year in which a Survey Settlement is introduced ;

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.

nor in the following year if the number is resigned that year.

[a] In the year next following that in which any [b] original or [b] revised survey settlement has been introduced, any occupant [c] who may be dissatisfied with the increased rate imposed by such new assessment on any of the survey numbers [d] or sub-divisions of survey numbers [d] held by him shall, on resigning such number [d] or sub-division [d] in the manner prescribed by [e] section 74 [e] on or before the 31st March, receive a remission of the increase so imposed.

[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*.

[d-d] These words were inserted by Bom. IV of 1913, s. 47.

[e-e] These words and figures were substituted for the original words and figures " sections 74 and 76" by Bom. IV of 1193, s. 47.

SUMMARY (S. 104.)

Section 104.—Illustration for correctly understanding the Section...

Year of introduction.

- | | |
|--|------|
| (1) Meaning of | N 2 |
| (2) Practice of showing new assessment in the | G 11 |

Note.—The illustration in N 1 covers G. Rs. other than G 11 noted above.

No. 1. Illustration for correctly understanding section 104.

ORIGINAL SURVEY ASSESSMENT

(of a survey number as defined in amended section 3, (6)).

A—Rs. 10 Mamul assessment,	Rs. 20 Original assessment,
B—Rs. 10 ditto,	Rs. 5 ditto.

If the rates are introduced in 1879-1880, only Rs. 10 are to be levied in that year. The excess of Rs. 10 in the case of A is foregone and no refund of Rs. 5 in the case of B, is to be allowed in that year. The guarantee of 30 years and levy of Rs. 20 or 5 are to begin from the year 1880-81. (Sec. 104 L.R.C.)

REVISED ASSESSMENT

(of the survey number).

A—Rs. 20 original assessment,	Rs. 40 Revised assessment,
B—Rs. 5 ditto,	Rs. 2 ditto.

In the case of A if the rates are announced (introduced) in 1910-1911, then in that year the excess of Rs. 20 is to be foregone. In the case of B an abatement of Rs. 3, if the rates are announced before the first instalment, or a refund of Rs. 3, if the rates are announced after Rs. 5 are recovered at the first instalment, is to be allowed in Government villages only, and the guarantee and levy of Rs. 2 in the case of B are to begin from 1911-1912 (Section 104 Land Revenue Code, G. R. No. 2706 dated 5th April 1895, G. R. No. 1447 dated 27th February 1901 and G. R. No. 11605 dated 23rd December 1913).

2. As regards A, the guarantee of 30 years is to begin from 1911-12 but the actual levy is to be as follows :—

1911-12 and 1912-13	Rs. 25 0 0
1913-14 and 1914-15	Rs. 30 0 0
1915-16 and 1916-17	Rs. 35 0 0

(G. R. No. 3541 dated 4th May 1885, G. R. No. 2981 dated 20th April 1886 and 2579 of 30th March 1895).

NOTE 1.—These reduced amounts are levied in Khalsa villages as a matter of grace, but in inam villages, they depend upon the wish of the Inamdars. (G. R. No. 6556 dated 16th September 1890.)

NOTE 2.—The new section 84A, however, authorizes a Collector to apply the rule to Inam villages.

During the remaining period of the guarantee Rs. 40 are to be levied.

3. It will be seen from the above examples that the year of *introduction* of original or revised rates is an intermediate year between the expiry of the last settlement and the beginning of the new guarantee. Government have now directed that a *revised* settlement should generally be introduced in the last year of the former settlement and that if the excess of the old assessment over the revised reduced assessment has been collected in this last year, refund should not be made, but the amount recovered in excess should be deducted from the assessment due in the following year.

Accordingly, in the case of B, under Revised Assessment above, if Rs. 5 have been collected in 1909-10 (the 30th year of the original settlement) Rs. 3 recovered in excess will not be refunded, but will be taken as advance payment for the years 1910-11 and 1911-12. The guarantee of 30 years will *then* begin from 1910-11.

(G. R. Nos. 6651 dated 3rd July 1908, 8824 dated 12th December 1916, and 1148 dated 30th January 1917).

N. 2. The year of "introduction" is the year in which a notice is given under section 103 newly

substituted by section 46 of Bombay Act IV of 1913. In this year the excess of the *new* over the old assessment is remitted and not *vice versa* (Section 104 and G. R. No. 2826, dated 7th May 1887).

G. 1. No doubt the use of the expression "remitted" would *prima facie* imply that the new assessment is legally leviable in the year of introduction but the clause "the revised assessment should be levied only from the next following year" appears to be quite general; if it applied only to cases in which the new assessment is in excess of the old, it would be mere surplusage. But as the old rates were too high in the case referred to, Government authorised the collection to be restricted to the revised rates in the then current revenue year. (G. R. No. 4739, dated 4th June 1897.)

G. 2. Year of introduction—what it means.—The Revision Survey Settlements must be held to have been introduced in the year in which the provisionally sanctioned assessments are announced under Section 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. No. 8057, dated 22nd December 1900.)

G. 3. System of remissions.—Remissions are allowed under Section 104 only in the year of introduction of the new survey settlement, and as the modifications have not to be introduced, they do not require to be remitted during the first year of their operation.

The first of the triennial periods, within which the levy of enhancements is restricted to 33 and 66 p. c. of the original assessment, commences from the date of announcement of the provisionally sanctioned assessments, not from the date on which the final assessments are brought into operation.

The scale of $\frac{1}{3}$ and $\frac{2}{3}$ may be adopted instead of 33 and 66 per cent. prescribed under the orders granting the concessions in the matter of the levy

of enhancements. (G. R. No. 8057, dated 22nd December 1900.)

G. 4. Levy of revised rates.—It is directed that the land revenue settlements should invariably be introduced between the 1st of August and the date of the first instalment of the collection of land-revenue, and that reductions in the assessments should be given effect to in the year of introduction. Care should be taken to submit proposals for revision of settlements in time to obviate any unavoidable loss of revenue, which might otherwise result from non-observance of these orders. (G. R. No. 1447, dated 27th February 1901.)

G. 5. If in any case Mamul rates recovered were less than the rates held to be recoverable, the difference cannot be levied. (G. R. No. 4598, dated 5th July 1902.)

G. 6. As laid down in G. R. No. 4559, of 1885 revised assessment comes into force in and from the year after its introduction, and the guarantee should run from the year in which the revised rates (whether enhanced or reduced) are first levied; the revised rates having been introduced in 10902-03, their levy should commence from 1903-04, and therefore the guarantee also should commence from the latter year. The order in G. R. No. 1447, dated 27th February 1901, that reductions should be given effect to in the year of introduction is a special concession made by Government, and does not affect the period of guarantee. (G. R. No. 1396, dated 27th February 1903.)

G. 7. Although new rates may legally be announced or introduced before the expiry of the term in which the old rates were guaranteed, 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 expired on 31st July 1904, the new settlements must be introduced on 1st August 1904 and the revised

rates would be leviable from 1st August 1905. (G. R. No. 2973, dated 5th May 1903.)

G. 8. It was directed in G. R. No. 1447, that "reductions in the assessments should be given effect to in the year of introduction," and in paragraph 1 of G. R. No. 1396, dated 27th February 1903, it was pointed out that this was a special concession made by Government irrespective of the Land Revenue Code. But this concession is intended to be given at all revisions of settlement. (G. R. No. 5508, dated 13th August 1903.)

G. 9. Remission to whom to be given.—As a general rule, 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. No. 2108, dated 31st March 1882.)

G. 10. Announcement and introduction of rates and the first year of their levy.—The announcement and introduction of rates are identical, for, the assessment is introduced by being announced. The revised assessment comes into force in the sense that it is levied, in and 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 rates are first levied as the first year of the thirty. Accordingly in the year of introduction no enhancement is to be levied, and in the year following also (see clause 2) an occupant may escape the enhancement by relinquishing his land but not otherwise. It is not enacted in this section that if the new assessment is less than the old, the difference between the new and old assessment will be remitted in the year of introduction, and if the assessment is introduced after the old assessment of the year of introduction has been collected, there remains nothing further to be done in that year. (G. R. No. 4559, dated 6th June 1885.)

G. 11. Government Resolution No. 4559, dated 9th June 1885 relates to the year from which the guarantee runs, and does not affect the practice of showing in the year in which a settlement is introduced the new assessment as the revenue and the amount by which it in any case exceeds the old assessment as a remission. This practice is in accordance with Section 104 of the Land Revenue Code and must be maintained. (G. R. No. 10088, dated 16th December 1885.)

G. 12. The year of introduction, not the year of levy.—The Code contemplates (1) the year of introduction, and (2) the year of levy. Section 103 lays down that when assessments have been announced in the manner provided, the Survey Settlement shall be held to have been introduced. Section 104 provides that revised assessment shall be levied from the next following year. It is therefore clear that the new rates do not have effect in the year of introduction. This view is supported by the speech of the Honourable Colonel Anderson in the discussion in the Legislative Council when Act I. of 1875, revising Act I. of 1865, was under consideration. He stated as follows :—

“If a settlement was introduced on the 25th August 1874 the new rates of assessment would take no effect in the year then current and in the ensuing year, 1875-76, the new rates would not be levied from any occupant who resigned his land before 31st March 1876.”

The new rates having thus no effect in the year of introduction, the old rates would have to be levied, and the question whether, when the new rates are less than the old, the difference between them should or should not be remitted for that year cannot therefore arise. At a later stage in the discussion this particular question was considered, it being proposed that the clause in the Bill might be altered so as to bring it into accord with the then

custom that where the new assessment was less than the old one, the new one only should be levied. This suggestion was, however, over-ruled, and looking to the manifest intention of the Legislature, as indicated by the discussion above referred to, His Excellency the Governor in Council was of opinion that he could not construe Section 104 of the Land Revenue code as authorizing remissions in cases in which the new assessment is less than the old. (G. R. No. 2836, dated 7th May 1887.)

G. 13. In continuation of G. R. No. 1780* dated 4th March 1895, it is directed that the remissions granted in future revision settlements, under the Igatpuri system of concessions, shall be calculated on the survey number or pot number, unless specific orders to the contrary are given. (G. R. No. 2579, dated 30th March 1895).

G. 14. How to calculate remissions—Remission in the Revision.—Survey Settlements should be calculated on the individual survey number. (G. R. No. 2706, dated 5th April 1895).

G. 15. According to the Record of Rights portions of a survey number are distributed among various holders. The concessions about the levy of enhanced revision assessment should therefore be calculated on the difference between actual assessment of holdings according to the old and revised rates as shown in the village accounts. (G. R. No. 11605 dated 23rd December 1913.)

G. 16. Reduction in Revision Survey assessments :—In accordance with the spirit of Section 104 of the Land Revenue Code Government consider that even if the new Revision settlement is introduced in the last year of the old settlement *e.g.* 1915-16 effect should be given in that year to all reduction in assessment determined by the revised rates.

* Printed on pages 159 to 162 of the Survey and Settlement Manual, Vol. III.

As the excess of the old assessment over the revised reduced assessment has been collected in 1915-16 refunds should not be made; but the amount recovered in excess should be deducted from the assessments due in 1916-17. (G. R., R. D. No. 8824 dated 12th September 1916).

G. 17. Government consider that the practice of introducing the revised settlement during the last year of the previous settlement should be generally followed.

(G. R. No. 1148 dated 30th January 1917.)

The fixing of assessment under section 102 limited to ordinary land revenue.

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 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 [a] of the Bombay Irrigation Act, 1879 [a].

Bom. VII of 1879.

[a—a] These words were added by Bom. VII of 1879, s. 2.

G. 1. No increase of consolidated assessment during current settlement :—The orders in para 7 of G. R. No. 6068, dated 11th August 1897, and G. R. No. 7019, dated 22nd September 1897, declared in effect that the consolidated assessment could not legally be increased on account of improvements in irrigational facilities effected during the currency of a settlement introduced under Section 102, but there was no objection to the imposition of rates under Section 55, as well as of crop rates under the Irrigation Act in respect of such improvements.

A notification contained in appendix 15 is legally sufficient to safeguard the rights of Government. (G. R. No. 5861, dated 13th September 1898.)

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.

[a] 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.

[a] This proviso was substituted for the original clause by Bom. IV of 1886, s. 1.

SUMMARY (S. 106.)

1	Field work—report by Survey Commissioner	...	...	...	...	G 1
2	Classification,					
	(a) Dry crop	...	...	...		} G 7
	(b) Rice	...	...	...
	(c) Garden	...	...	...
3	Re-classification of partial system		...	...		G 9
4	Revision Survey.					
	(1) Arrangements for	...	...	...	G 2, 3, 5	
	(2) Fresh Revenue Survey	...	...	...	N 1	
	(3) Principles of	...	...	...	G 4, 8	
5	Settlement report when to be made...					G 6

N. I. The "fresh revenue survey" is ordinarily called "Revision Survey."

G. 1. Before revision operations are commenced in any of the collectorates, in which the term of the original settlements has not expired, the Survey Commissioner should carefully consider and report for the orders of Government the extent to which any general revision of field work may be imperative. (G. R. No. 2516, dated 5th May 1881)

G. 2. Revision Survey Arrangements.—Every endeavour ought to be made by officers concerned to have proposals for revision submitted for the orders of Government in a complete form early enough to admit of orders being passed and rates announced before the end of the travelling season. (G. R. No. 7734, dated 20th October 1893.)

G. 3. The settlement officer should 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. R. Nos. 519, dated 22nd January 1895 and 5202, dated 27th June 1905.)

G. 4. Principles of revision.—The revision of the settlement will depend entirely 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. 7494, dated 12th October, 1897).

G. 5. The following arrangements are prescribed to ensure in future the punctual and methodical submission of revision settlement reports after the abolition of the Survey Department. The orders will apply at once in the Central and Southern Divisions :—

Before the 31st July in each year the Director of Land Records (and Agriculture) should report to the Commissioner of each Division, the taluka or talukas in that Division, the current settlement of which expires on the 31st July, *two* years later—sub-

mitting at the same time his recommendations as to the arrangements to be made for the submission in due time of proposals for revision.

The following is the general outline of the programme which should be observed :—

- (a) An officer should be selected with the approval of Government to prepare the proposals.
- (b) In the travelling season, following the Director's report, the officer selected should thoroughly visit the tract to be reported on.
- (c) His proposals should be submitted to the Collector before the 1st of June following, those of the Collector to the Commissioner before the 1st of August, and those of the Commissioner to Government before the 1st of October. (G. R. No. 800, dated 2nd February 1900.)

G. 6. The period of submission of settlement reports mentioned above was altered to 3 years before the expiry of all settlements by G. R. No. 347, dated 20th January 1903, but was again changed to *two* years, by G. R. No. 4955, dated 30th June 1904.

G. 7. The tripartite classification.—The tripartite classification (drycrop, rice and garden) in Village Form No. 1 is a record of soil classification which is final under Section 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 fields may change. (G. R. No. 5098, dated 22nd June 1905.)

G. 8. Rents paid by tenants should be taken into careful consideration in framing settlement proposals. (G. R. No. 2698, dated 13th March 1908).

G. 9. Reclassification.—At the original survey a Gat number, which was waste, was divided into four compartments only of nearly 50 acres each for

classification. The number was subsequently given out for cultivation. At the revision settlement the survey and classification of this occupied number were made according to the 'partial' system and the original classification was regarded as confirmed. This method of reclassification having been approved by Government, the land cannot be reclassified at the next revision settlement in view of the 2nd paragraph of Section 106 of the Land Revenue Code. (R. D. 14632, dated 4th December 1917.)

Conditions applicable to revisions of assessment.

[^a] **107.** In revising assessments of land revenue regard shall be had to the value of land and, in 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.

[a] This section was substituted for the original section 107 by Bom. IV of 1886, s. 2.

[b] 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.

SUMMARY (S. 107.)

Revision Survey.

- (1) Fresh notification for objections
when issued G 10, 12
- (2) Improvements effected by holder
not taken into account ... G 4
- (3) Increase of assessment to be
paid by degrees G 2, 3, 5

- (4) Limits of enhancement of assessment and remissions over 100 p. c. increaseG 1, 6, 9, 11
- (5) Objections to classification &c. invited... .. G 4, 7
- (6) Special assessment near Railway stations G 8

G. 1. Government have, with a view to check the tendency of assessments being considerably increased in revision, laid down the following limits up to which enhancement of assessment may be allowed:—

1st. The increase of revenue in the case of a taluka or group of villages brought under the same maximum dry-crop rate shall not exceed 33 per cent.

2nd. No increase exceeding 66 per cent. should be imposed on a single village without the circumstances of the case being specially reported for the orders of Government.

3rd. No increase exceeding 100 per cent. shall in like manner be imposed on an individual holding. (G. R. No. 5739, dated 29th October 1874, and G. R. No. 2619, dated 26th March 1884).

G. 2. With all the precautions above enumerated it is sometimes found that the increases resulting from the revised rates are, owing chiefly to the rectification of the original classification, so excessive in individual cases that their immediate collection would cause hardship to the rayats concerned. With a view to obviate this hardship, as also to enable the rayats to adjust themselves to increased payments by degrees, Government have ordered that while the rent rolls (Akaband 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 two first years of the revised settlement, enhancement in excess of 8 annas in the rupee for the 3rd and 4th years, and enhancement in excess of 12 annas in the rupee for the 5th and 6th years of the revised settlement. (G. R. No. 3541, dated 4th May 1885.)

G. 3. The above system of remissions has been ordered to be extended to all revision settlements. (G. R. No. 2981, dated 28th April 1886.)

G. 4. One of the chief principles laid down by the Bombay Government 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 holder during the currency of the past settlements. This principle received legislative sanction in the Bombay Survey and Settlement Act (I of 1865) Section 30. In 1879, Bombay Act I. of 1865 was repealed and the provisions contained therein were embodied in the Bombay Land Revenue Code (Act V, of 1879). In this Code, while Section 30 of the Bombay Act I of 1865 was re-enacted with little change as Section 106, another section (Section 107)§ was added to it, which, although it had never been so applied or interpreted as modifying the principle that the occupant should be secured in the enjoyment of the improvements effected by his labour and outlay, did reserve to Government the power to consider, in fixing a revised assessment, the increased value derived from *certain classes of im-*

§ 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.

provements. As however Government had never used nor ever intended to use this section to tax improvements, it was considered undesirable to allow it to stand in the Statute book, the more so, as in its existing state it was calculated to give rise to misapprehensions and misunderstandings which might tend to discourage the application of private enterprise and capital to agriculture. It was accordingly proposed to amend this portion of the Code (Land Revenue Code, Act V, of 1879) and to re-enact it in such terms as might set forth clearly, absolutely and without qualification the two following principles:—

(1) That assessments will be revised on consideration of the value of land and the profits of agriculture, and.

(2) That assessments will not be increased on revision on account of increase to 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.

With this object a bill (No. VI. of 1885) was introduced before the Legislative Council in the early part of the year 1885, which after a lengthy discussion was passed into law, Act IV. of 1886.

The latter portion of Section 106 and 107, are the amendments made by this Act.

By the above amendments the advantage of all improvements effected by holders, or at their cost in their holdings has now been fully assured to them.

While the above amendments were being discussed in the Legislative Council, one of the Honorable Members asked 'whether it would not be possible for Government to give an opportunity to the rayats to be heard as to enhancements before sanctioning the settlement.' The Council first objected to make any such provision as it would only delay and inconvenience the settlement oper-

ations, but subsequently at the instance of the President it was agreed that the wishes of the Honorable Member should be met by an executive order. A Government Resolution was accordingly issued to the following effect :—

“His Excellency the Governor-in-Council is desirous that the occupants of land should be given the fullest opportunities, while classing operations are in progress, of representing improvements and other circumstances which they consider should be taken into account in fixing the values of their fields. A formal notification* should in future be issued by the Superintendent of Survey, and published in each village, not less than three months before the operations are commenced, warning those concerned that they should bring to the notice of the Assistant Superintendent of Survey in charge of the party of classers, whilst the classing process is going on, any special circumstances bearing on the value of their lands and, failing due consideration from that officer, should appeal to the Superintendent of Survey.

“By the same Notification, moreover, the village communities should be advised to bring to the notice of the Survey Officers through their patel or panchayat any facts which, in their opinion, entitle their village to special consideration in fixing the standard of the new rates.”

The same Resolution ordered the publication of another notification † before the introduction of the settlement, with the object of acquainting the rayats of the proposed rates and grouping. The Resolution runs :—“The Superintendent of Survey shall, as soon as he has worked out his revision of groups and rates, forward to the Collector a notification in Vernacular of the district, giving the names of the villages coming under revision according to the groups or assessment circles in which it is proposed

* In the form of Appendix 16,

† In the form of Appendix 17.

to arrange them, and showing against each village the existing and proposed maximum rates, *i.e.*, the cash rates applied to what is technically termed 16-anna soil upon which the assessment of all lands in the village are graduated according to their relative values. It shall be the duty of the Collector to cause this notification to be published without delay by arranging to have one copy posted up in the chavdy or other conspicuous place in each village affected by the settlement. The Notification should state that for a period of two months from the date of publication thereof the Collector will be prepared to receive objections made by the village community and presented in writing by the revenue patel as their representative, to the proposed grouping of villages and maximum rates. Any objections † so received shall be forwarded by the Collector to Government through the Survey and Settlement and Divisional Commissioners, with such remarks by each officer as may appear necessary, and they will be taken into consideration by Government before final sanction is accorded to the proposals." (G. R. No. 7447, dated 21st October 1886.)

(b) The above notifications are now invariably issued in the case of every revision settlement and every objection raised by the rayat as to the groupings or rates is duly investigated and disposed of before the rates are finally introduced.

† (1) Government have now directed that a separate register should be kept of petitions against excessive individual enhancements made to the Survey and District authorities in connection with the introduction of revision settlements for ready reference and that the subject should be noticed in reporting the results of those settlements, (G. R. No. 2110, dated 20th March 1894)

(2) No form of register under G. R. No. 2110, dated 20th March 1894, need be prescribed. It was intended to facilitate the tabulation of materials for the notice of the working of the settlement to be *finished* under heading—Special measures—Settlements—in the Annual Administration Report. The observation under this heading should include besides general remarks, a summary of the number and the principal grounds of objections received and the manner in which they were disposed of. (G. R. No. 6529, dated 3rd August 1894.)

Further, to obviate the least possibility of improvements effected by the occupants at the expense of their private capital being taxed, Government have laid down that—"land which, though arable, was at the first survey included in a survey No. as unarable, and was left unassessed, shall also be left unassessed at the Revision settlement for the benefit of the occupant." (G. R. No. 2619, dated 26th March 1884.)

G. 5. This system of remission is not intended to be extended to alienated villages. (G. R. No. 6556, dated 16th September 1890.)

NOTE—This is now modified by new Section 84A.

G. 6. In calculating the 33 per cent. limit the patasthal rates, although imposed (Section 101) and levied along with the ordinary land-revenue, are not to be taken into account as they form no part of the land-revenue assessment proper being calculated on the average area of land actually under "pat" cultivation. Improvements by wells and budkis worked as auxiliaries to the flow supply and effected at the cost of the rayats are not liable to taxation. (G. R. No. 3880, dated 4th June 1891, and G. R. No. 3205, dated 5th April 1892.)

G. 7. In modification of G. R. No. 7447 [see G. 4. above], dated 21st October 1886, paragraph I, the notification shall give a statement as shown in Appendix 18. (G. R. No. 490, dated 21st January 1895.)

G. 8. *Special assessment.*—The order passed in G. R. No. 4145, dated 16th June 1891, regarding extra rate for villages situated near railway stations is not of general application, but, on the contrary, immediate proximity to a large and important railway station, market, shall be deemed an adequate cause for a moderate special increase of assessment. (G. R. No. 2712, dated 27th March 1896.)

G. 9. Under both the orders of 1884 and 1895, Government retain the option of imposing more

than 100 p. c. enhancement for good reasons shown. When remissions are recommended reasons for and against should be discussed. (G. R. No. 346, dated 13th January 1903).

G. 10. When by the orders of Government on proposals for a settlement, the rates of a village have been fixed at a higher figure than that recommended by the Settlement Officer and published in the notifications issued before the receipt by Government of the report, a fresh notification should be published showing the assessments as determined under the orders of Government in the form Q. (Appendix 18) appended to G. R. No. 490, dated 21st January 1895. (G. R. No. 6141, dated 7th September 1903.)

G. 11. The power to remit revised assessment in excess of 100 p. c. on individual holdings is delegated to the Commissioners of Divisions, who should consult the Settlement Commissioner and Director of Land Records. The sanction should extend only to cases in which the Commissioner and the Settlement Commissioner agree; cases in which they differ should be referred to Government for orders. The attention of the Commissioners is invited to Government Resolutions Nos. 2619, dated 26th March 1884, 1780, dated 4th March 1895, and 346, dated 13th January 1906, in which the option of imposing more than 100 per cent. enhancement in any case for good reason shown has been reserved by Government. (Entry No. 5 in G. R. No. 8046, dated 7th August 1908).

G. 12. Objections.—The attention of the officers concerned should be invited to Government Resolution No. 6141 dated 7th September 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 are received. (G. R. No. 15544, dated 28th December 1917.)

Preparation
of statistical
and fiscal
records.

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, [a] with any other particulars that may be prescribed [a] and other records, in accordance with such orders as may from time to time be made on this behalf by Government.

[a—a] These words were substituted for the original words "together with the name of the registered occupant of such survey number" by Bom. IV of 1913, s. 48.

SUMMARY (S. 108.)

Survey records.

(1) Akarband	N 1
(2) Faisalpatrak	N 1
(3) Khoti village	J 1, 2
(4) Papers forming	G 2
(5) Papers to be furnished to Revenue officers	G 1
(6) Second Revision Settlement	G 4
(7) Settlement Register	N 1
(8) Sud	N 1
(9) Village map	G 3

N. I. Settlement register means Faisal Patrak. This paper is prepared by the Survey Department in the form of Appendix 19.

In addition to this, another important paper prepared by the Survey Department and furnished to the Revenue Department to enable it to prepare the land register (Village form No. 1) is the "Akarband" (Appendix 20). In the Konkan Survey instead of the "Akarband," a paper called "Sud" (Appendix 21) is prepared.

G. 1. The Collector's office at head-quarters, the Mamlatdars, or Mahalkaris and the village accountants should each of them be furnished with a copy of the field map and register directly the survey rates are introduced, and in the event of any one of these copies being lost or destroyed, its place should be at once supplied. (G. R. No. 5189, dated 4th July 1850.)

G. 2. Records.—The records to be prepared by the Survey Officers for future administration are (1) the village map (2) the settlement register and (3) the detailed record of each holding (botkhat). (G. R. No. 4084, dated 2nd November 1868.)

G. 3. When village maps are destroyed by neglect or careless usage within five years of being supplied, new copies are to be paid for by those who have caused the loss; but in such cases the orders of Government should be taken. (G. R. No. 3292, dated 23rd May 1877.)

G. 4. Survey papers for 2nd Revision Settlement.—At the introduction of new settlements, the practice is to prepare in addition to Akarband (1) Faisal Patrak (2) Wasulbaki Patrak. In the Second Revision Settlements neither re-measurement, re-classification nor potpahani are carried out and therefore the Phaisal Patrak and the Wasulbaki Patrak are not necessary. The Akarband should have an additional column to show the name of the Khatedar and may be denominated the Settlement Register. In place of the Wasulbaki Patrak the Village Accountant should be instructed to take his old village form No. 5, with an alphabetical list of khatedars and to copy out the new assessments on the Survey numbers forming each khata from the new Akarband. Such a statement will enable the officer introducing the 2nd Revision Settlement to inform any khatedar attending at the time of announcement of the rates, how the new assessment on his khata compared with that levied under the

previous settlement. (G. R. No. 7755, dated 14th August 1909.)

J. 1. 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 page 584 of the "General rules of the Revenue Department," (Edition of 1893) and labelled "bot-khat" cannot be treated as a Survey Register under Section 108. (*Vaidkhan vs. Sakhya*, I. L. R. XX, Bombay, 729.)

J. 2. The decision of a Survey Officer determining the tenure on which a Survey No. is held is not final under the Khoti Act (I of 1880 as modified by Act III of 1904) and it can be reversed or modified by a competent court. (*Antaji Kashinath vs. Antaji Madhao* I. L. R. XXI, Bombay, 480.)

109. *Repealed by Bom. IV of 1913, sec. 49.*

110. *Repealed by Bom. IV of 1913, sec. 49.*

Revenue management of villages or estates not belonging to Government that may be temporarily under Government management.

[^a] **111.** In the event of any alienated village or estate, 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 III, see para. 5 of foot-note [a] on p. I, *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.

G. 1. Estate.—The word "estate" in Section III, means under Section 3 any interest in land and therefore applies to a whole village or part of a village. (G. R. No. 2855, dated 1st May 1882.)

G. 2. The court of wards is not a Government officer within the meaning of this section. (G. R. No. 7698, dated 7th August 1909.)

[^a] **112.** Existing survey settlements of Maintenance and revenue made, approved and confirmed under of existing settlements of land revenue, the authority of the Governor in Council shall be, and are hereby declared to be in force subject to the provisions of this Act.

[a] As to the local repeal of s. 112, see para. 4 of foot-note [a] on p. I, *supra*.

N. 1. Vide G. R. No. 6925, dated 19th November 1881 at G. II under Sections 216 and 217.

N. 2. Vide G. Rs. No. 10196, dated 19th December 1885, and No. 4758, dated 3rd July 1886, printed under Section 48.

[^a] **113.** Expenses properly incurred in Partition, making partition of estates paying revenue to Government shall be recoverable as a revenue 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.

[a] This section was substituted by Bom. IV of 1913, s. 51, for the original section.

SUMMARY (S. 113.)

Section 113.

New	...	...	...	...	N 2
Partition.					
(1) Collector's power	...	G 10, 12, 13.	J 2		
(2) Commissioner's powers	...	G 11			
(3) Expenses	...	...	N 1		
				G-1, 6, 7, 8	
(4) Fees paid to Government ser-					
vants	...	...	...	G 4, 9	
(5) Inam land or village	...	...	
(a) Dewasthan	...	...	G 5		
(b) Held under Summary set-					
tlement	...	...	G 2, 3		
(6) Stamp—duty	...	...	G 14,		
			J 1		

N. I. Scale of Bhatta—The scale according to which Bhatta is to be allowed to persons entrusted with the partition is as follows :—

For Clerks and Karkuns of collectors and other officers employed by the Collectors for each day actually on tour.—

	Rs.		Rs.		Rs.
on more than	275	to	500	3	0 0
Do	250	to	275	2	12 0
Do	225	to	250	2	8 0
Do	200	to	225	2	4 0
Do	175	to	200	2	0 0
Do	150	to	175	1	12 0
Do	125	to	150	1	8 0
Do	100	to	125	1	4 0
Do	87-8	to	100	1	0 0
Do	75	to	87-8	0	14 0
Do	62-8	to	75	0	12 0
Do	50	to	62-8	0	10 0
Do	37-8	to	50	0	8 0
Do	10	to	37-8	0	6 0

For Peons, &c.—

on more than Rs. 8-0-0.....0-2-0

on Rs. 8 and less.....0-1-0

(*Vide* Bombay Government Gazette, Part I,
page 865, 1884.)

N. 2. Subsections (1) and (2) of the old section 113 have been expunged by section 51 of Bombay Act IV of 1913 because they have become superfluous owing to the extended recognition of subdivisions. The former subsection (3) is retained in slightly altered form.

G. 1. **Persons entrusted with partition, Travelling Expenses of.**—The travelling allowance of the person entrusted with the partition, according to the scale laid down in the High Court's circulars, as also contingent expenses on account of carriage of instruments required in such partition, necessarily and properly incurred, are to be recovered under clause 3 from the parties to the partition. In the first place, however, the parties interested should be called on to provide whatever assistance in the way of carriage of labourers the person entrusted 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 from the parties concerned as a revenue demand. (G. R. No. 6280, dated 11th September 1882.)

G. 2. **Partition of Inams under Summary Settlement.**—In cases of Inam land and villages held under the Summary Settlement, the Collector shall be bound to accord separate entry, (a) in every case of partition supported by a deed of consent; (b) in every case supported by a decree of the Civil Court. (G. R. No. 3483, dated 5th May 1883.)

G. 3. The decree in case (b) of *G. 2.* above 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. (G. R. No. 8984 dated 14th November 1884).

G. 4. Disposal of fees paid to Government Servants entrusted with partition.—Classers.—When classers or other Revenue officers are deputed on a commission under Chapter XXV.* of the Civil Procedure Code, 1882, the Civil Courts grant them a certain fee for the execution of the said commission. (*Vide* Circular No. 39 page 17 of the High Court Civil Circular edition of 1903.) This fee should be recovered from the classers and the Revenue officers deputed on commission, and credited to Government in return for the loss of their services during the time they were engaged in executing the commission. (G. R. No. 7358, dated 28th September 1885, and G. R. No. 8520, dated 20th December 1888.)

G. 5. Of Devasthan Inams.—Having regard to the decision of the Bombay High Court in *Mancharam vs. Pranshunker* (L. L. R., Bombay, Volume VI., page 298, 1882), there seems no objection to the provisions of Section 113 of the Land Revenue Code being extended to the cases of Devasthan Inam lands paying only Judi to Government, provided that by the partition effected under the above section there will be no alienation of the property out of the family by which the services for which it was granted are to be performed. (G. R. No. 2457, dated 23rd April 1887.)

G. 6. Other Expenses.—The Collector should include the salaries and allowances of surveyors† and peons employed in effecting partitions in the expenses necessarily and properly incurred within the meaning of Section 113 (3) of the Land Revenue Code. The charge should be for the time the above officers are actually engaged in the

* Now Part III of the Civil Procedure Code—Act V of 1908.

† In calculating the expenses the estimates should be based on the uniform rate of Rs. 30 as the pay of the Circle Inspector. (Director of Land Record and Agriculture No. $\frac{L}{70}$ dated 8th January 1906.)

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 must not be made in more than one case. (G. R. No. 5894, J. D., dated 29th October 1888.)

G. 7. Charges, when incurred, in connection with partition of estates should be debited to Land Revenue, and the recoveries, when made, credited to that head by reduction of expenditure. (G. R. No. 3118, F. D. dated 27th April 1889.)

G. 8. G. Rs. No. 2379, dated 4th May 1889 and No. 5319, dated 5th October 1889 are cancelled. Circular No. 83 at pages 46 and 47 of the High Court's circulars having been cancelled the Collectors shall, in future, be left free to use their powers under the Bombay Land Revenue Code for the levy of the costs of the partition in execution of a Civil Court's decree of estates paying revenue to Government. (G. R. No. 1993, J. D., dated 14th April 1890.)

G. 9. Other Government Servants.—Government servants accepting commissions issued by Civil Courts are required to pay into the treasury, sums which they may receive as fees for their services. They are, when so engaged, regarded as being on duty and are allowed travelling allowance according to the rules in the Civil Service Regulations, the allowance being drawn in the usual way by presentation of bills on the Treasury. (G. R. No. 2053, J. D., dated 17th April 1890.)

G. 10. Collectors's power in partition cases.—The High Court has held in *Purbhudas Lakhmidas vs. Shankarbhai and others* (I. L. R. XI Bom, 662) that the duty of a Collector to whom a decree has been referred under section 265 (Now Section 54 of V of 1908) of the Civil Procedure Code for a partition, is not confined to a mere division of the lands declared to be divided, but includes delivery of the shares to their respective allottees. Thus the entire execution of such decrees devolves upon the Collector,

and he acts not, so to speak, as an officer or agent of the Court, but as a distinct tribunal invested by law with the sole power (subject to appeals and revision under Chapter XIII of the Land Revenue Code) of determining every thing relating to the execution. The procedure to be observed by the Collector is that laid down in the Land Revenue Code. (L. R. No. 870, dated 23rd June 1890; *vide* G. R. No. 4873, dated 14th July 1890.)

G. 11. Finality of partition.—In accordance with the opinion in case *Shrinivas vs. Gurunath* (I. L. R. 15 Bom. 527), if the aggrieved party could “apply for redress to the Collector” after a decree is once irregularly or improperly executed, the same party might apply to the Commissioner as a superior executive officer, though the ruling makes the partition not subject to revision or interference by a Civil Court under Section 265 (Now Section 54 of Act V of 1908) of the Civil Procedure Code. (G. R. No. 4558, dated 16th June 1897.)

G. 12. Revision of a partition by the Collector.—A Collector can revise either *suo muto* or under instructions from the Commissioner, a partition of lands wrongly or irregularly effected. The revised partition is the final partition. (G. R. No. 6548, dated 2nd September 1897.)

G. 13. Power to appoint special Circle Inspectors :—The Collector has power to appoint special Circle Inspectors and menials for partition and subdivision work performed for private individuals, the cost of which is deposited in advance. (G. R. No. 6067, dated 17th June 1907.)

G. 14. When stamped papers are required to be furnished in connection with the execution of a partition decree of a civil court. The value of the stamp required in such cases should be deposited in cash at the commencement of the proceedings and the requisite stamped paper should be purchased only when the proceedings are completed. This

course will obviate the necessity of refunding the value of stamps in case they were not used. The money should be credited to "Revenue deposits" in partition cases in respect of which the proceedings are commenced in a revenue court, and to civil courts' deposits when the proceedings are commenced in a civil court. (G. Rs. No. 10615, dated 19th October 1908 and 9829, dated 11th October 1909.)

J. 1. The words "a final order" in Section 2 (15) and article 45 (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. I. L. R. 29, Bombay 366, and I. L. R. 36, Allahabad 137.

J. 2. If a partition is not in accordance with the direction of the decree by mistake a Collector can reopen the partition and the court also should not allow a mistake of the Collector in carrying out its directions to work permanent injustice. I. L. R. 40, Bombay 118.

114. Whenever any one or more co-sharers in a khoti estate, into which a revenue survey has been introduced, [a] or in a talukdari estate [a], consent to a partition of the said estate, it shall be lawful for the Collector, or for any other officer duly empowered by him in this behalf, [b] 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 :

Partition of certain estates by the collector on application by 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 [c] as a revenue demand [c] from all the co-sharers in the estate divided.

[a-a] These words are repealed in the districts of Ahmedabad, Kaira, Broach and the Panch Mahals by Bom. VI of 1888, s. 3.

[b] Words repealed by Bom. IV of 1913, s. 52 are omitted.

[c-c] These words were substituted for the original words "under rule (3) of the last preceding section" by Bom. IV of 1913, s. 52.

115. *Repealed by Bom. IV of 1913, s. 53.*

Division of survey numbers into new survey numbers.

[a] 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.

[a] This section was substituted by Bom. IV of 1913, s. 54 for the original section.

SUMMARY (s. 116)

Section 116—G 8 under s. 67 referred to N 1
Separate demarcation—(1) expenses ... G 6,7
(2) Roads ... G 1
(3) Strips of survey numbers
cut off by

- (a) canals ... G 3
- (b) drainage ... G 5
- (c) railway ... G 4,5
- (d) roads ... G 2

N—1. *Vide* G. R. No. 2101 dated 23rd February 1916 at G 8 under-section 67.

G 1. Demarcation of lands taken up for roads:—
The principle that the land required for road purposes shall be demarcated at the expense of the road and by the officer entrusted with its construction is approved and should be given effect to in the case of all new roads. The most satisfactory method of demarcation is by means of continuous catch water drain, and this system should be adopted where suitable, elsewhere the demarcation must be by stones or earthen mounds as may be most convenient. A record of the area so demarcated and deducted from each survey holding as "Pot kharab" should be kept in the office of the Executive Engineer of the District. (G. R. No. 692-C. W. 1783, P. W. D., dated 21st November 1883).

G 2. Disposal of strips cut off by roads.—
Government further approve of the recommendation that 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 the 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 of the District or of the Local Boards concerned in the case of the local roads. In some instances they may be useful for stacking material or for barrow 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.*)

G 3. Division of numbers when a Canal bisects.—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. $\frac{P. W. D.}{Irrigation}$ No. 221—W. I,—538, dated 15th December 1885).

G 4. Lands intersected by Railways.—In the case of lands intersected by railways the procedure should be that hitherto followed, *viz.*, to acquire the old corners and then to make them over to the adjacent cultivators on easy terms. (G. R. No. 100, P. W. D., dated 13th January 1886.)

G 5. Invariable division into separate numbers when a railway bisects.—When several survey numbers are bisected by a 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 in all cases as punctually as possible after they occur. (G. R. No. 535, dated 28th January 1901.)

G 6. The cost of hired labour and of erecting boundary marks at the survey settlement should be recovered from the occupant. (G. R. No. 8626 dated 8th December 1903.)

G 7. Expenditure incurred in demarcation:—All expenses, incurred in connection with the re-demarcation required by rule of survey fields, parts of which have been acquired for railway purposes should be debitable to the Railway concerned as part of the cost of acquiring land, (Government of India R. D. No. 880— $\frac{213}{2}$ dated 10th June 1905—and Bombay $\frac{P. W. D.}{Railway}$ No. 2095, dated 9th August 1905).

Bombay
Act V of
1862 not
affected.

117. Nothing in section [a] 116 shall affect the provisions of Bombay Act V of 1862.

[a] Words repealed by Bom. IV of 1913, s. 55. are omitted.

[^a]117A. (1) Survey numbers may from time to time and at any time be divided into so many sub-divisions as may be required in view of the acquisition of rights in land or for any other reason.

Division of
survey num-
bers into sub-
divisions.

(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.

(a) This section was inserted by Bom. IV of 1913, s. 56.

N. I. The assessment recoverable from each occupant from time to time will correspond with the area of land in his possession. The aggregate assessment of all the sub-divisions in any survey number will not exceed the assessment imposed upon the whole survey number by the settlement, and the share of each occupant will be ascertained by survey, or by agreement among the occupants in the same survey number, or by the rule of proportion. This change is effected by new section 117A.

Provisions applicable on relinquishment or forfeiture of a sub-division.

[^a]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, 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.

[a] This section was inserted by Bom. IV of 1913, s. 56.

CHAPTER IX.

THE SETTLEMENT OF BOUNDARIES AND THE CONSTRUCTION AND MAINTENANCE OF BOUNDARY-MARKS.

Determination of village-boundaries.

[^a]118. The boundaries of villages situated in British territory shall be fixed, and all disputes relating thereto shall be determined by 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 pátels and other village officers of any two or more adjoining villages, and, 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 pátels and other village officers, and, 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.

[a] As to the local modification 118, see para. 4 of footnote [a] on p. 1, *supra*.

G. 1. Where large rivers of which the bed is fairly full throughout the year divide the states the rule of midchannel is adopted. Where the rivers run very dry and shift their channels but leave the banks as a permanent boundary the rule of midbed is preferred with a reservation of the right of use of the water. But where the banks are subject to erosion and as shifting as the channel the rule of midchannel is reverted to as a choice of evils. (G. R. P. D. No. 8820 dated 21st December 1891 and G. R. P. D. No. 1640 dated 9th march 1893).

G. 2. Persons encroaching before location of boundaries should not be evicted:—Although it cannot be admitted that the location of a boundary under Chapter IX would necessarily exempt a person from penalty of unauthorized occupation of land within it, if encroachment before the location could be distinctly proved it would hardly be ever expedient to apply Section 61 to land which has been included in an occupied number at an original or revision 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. No. 3630, dated 13th May 1897.)

J. 1. The Civil Court can adjudge a boundary dispute (P. J. 41 of 1898.)

J. 2. Power of the Court:—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 (*Kawasji vs. Hormusji* 1904 I. L. R. XXIX, Bombay page 73.)^o

[^a] **119.** If, at the time of a survey, the boundary of a field or holding be undisputed, and its 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 [^b] and records [^b] 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.

Determination of field boundaries.

If any dispute arise concerning the boundary of a field or holding which has not been surveyed, or if at any time [^c] after the completion of a survey [^e] a dispute arise concerning the boundary of any survey number, [^d] or subdivision of a survey number [^d] it shall be determined by the Collector, who shall be guided [^e] by the land records [^e]. if they afford satisfactory evidence of the boundary previously fixed, and if not, by such other evidence as he may be able to procure.

[a] As to the local modification of section 119, see para. 4 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.

SUMMARY (s. 119)

Section 119 interpretation	... G 7
	... J 1
Boundary (1) disputes	... G 1,3,4
(2) revision	... G 2,5
Maps prepared under s. 135 G.	... G 6

G 1. Boundary disputes to be decided free of cost.—Sections 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 such a dispute. The sections are silent as to any charge for the performance of such duties, and it is not open to Government therefore to attach any charge on account of such performance any more than on account of a judicial decision.

The cost of constructing a boundary-mark is recoverable as a revenue demand (Sections 122, 124, and 187) whenever it is necessary, whether it be needed in consequence of a dispute or not, but no charge can be made for the settlement of a dispute as to a boundary. (G. R. No. 2465, dated 29th March 1889.)

G 2. Revision of boundaries.—Section 119 does not contemplate revision of boundaries, on the ground of incorrectness in their location by the Survey. (G. R. No. 3796, dated 23rd May 1889.)

G 3. Enquiries into complaints as to incorrect boundaries.—The present practice of recovering cost in cases of inquiries set on foot on complaints as to the incorrectness of boundary marks fixed by the Survey should be adhered to. (G. R. No. 745, dated 29th January 1890.)

G 4. Power of Government in boundary disputes.—Government's power to settle boundary disputes under Section 119 cannot be objected to on the ground that Civil Courts alone have power to decide questions of title. The Collector's decision as to the position of the boundary line of a

survey number and as to the rights of the land holders is determinative. (G. R. No. 3416, dated 7th May 1904.)

G 5. The correctness of a boundary fixed at the time of the survey cannot be subsequently called in question.

(G. R. R. D. 10436 dated 28th October 1909.)

G 6. The Settlement Commissioner and Director of Land Records inquired :—

(a) whether maps prepared as suggested by, and under the powers conferred by, section 135-G. of the Land Revenue Code are "Land Records."

and

(b) whether, if they are "Land Records," they afford evidence of the boundary previously fixed when the Collector, under Section 119 (2), turns to them on the outbreak of a dispute.

Government passed the following orders :—

The previous fixing of the boundaries, which is spoken of in Section 119, would ordinarily, in the case of sub-divisions of survey numbers, relate back to the occasion when the sub-division was marked out (vide section 117-A), and that in any case a map prepared under section 135-G. would be the best possible evidence of the boundaries of the sub-division ; the continuation of the preparation of the maps is of the greatest utility to the holders as security for the maintenance of their boundaries ; Government do not consider that any action is required.

(G. M. No. 1043 dated 27th January 1917.)

G. 7. Interpretation of sections 119 and 121 of the Land Revenue Code.

Memorandum from the Remembrancer of Legal Affairs No. 739 dated 17th March 1917 :—

"Section 121 of the Land Revenue Code only comes into operation when there has been a settle-

ment of a boundary under any of the previous provisions of chapter IX. In the present case there was no such settlement. The only one of the provisions referred to which could have been applied in the present case is the second paragraph of section 119. But there was no settlement under that paragraph for that paragraph can be made use of, after the completion of a survey, only if 'a dispute arise concerning the boundary of a survey number or sub-division of a survey number.' Here there was no dispute as to the boundaries of the survey numbers in question, for the limits of the survey numbers were determined by the maps and records and remained unquestioned throughout all the proceedings. This was therefore a case in which the Assistant Collector had no jurisdiction, and in any opinion the Collector rightly reserved his order."

Memorandum from the Remembrancer of Legal Affairs No. 919 dated 11th April 1917:—

"Section 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 occupants 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 its boundaries: here, the Collector lays down the boundaries of the field much in the same way 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 the dispute) according to the evidence obtainable.

“ 2. Section 121 would, so far one can judge, apply to 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 as 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.

“ 3. If I read the present case correctly it is not similar to any of the above cases. There was no survey being carried out when the Assistant Collector passed his decision, but a survey had been carried out previously. There was no dispute as to the boundary of a survey number, for the boundaries of the survey numbers were known and admitted. At the time of the civil suit there was a dispute whether one party had by prescription acquired a right over part of a survey number, but this dispute was decided by the civil court. At the time of the Assistant Collector's decision there were no facts to which the provisions of section 121 could be applied. If there had been a dispute as to the boundaries of the survey numbers, the

dispute would have been of the kind mentioned in case (c), but this was not so in fact.

"4. Unless I am mistaken, sections 119 to 121 apply merely 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."

Government order:—Copies of the Legal Remembrancer's reports should be forwarded to the Commissioners (including the Settlement Commissioner and Director of Land Records) and Collectors, including the Deputy Commissioner Upper Sind Frontier.

(G. R. 7859 dated 28th June 1917.)

J. I. 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 section 121 of the code so as to oust the jurisdiction of the civil court.

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Settlement of
boundary dis-
putes by arbi-
tration.

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 same committee, for any of the causes set forth in [a] paragraph 14 of the Second Schedule to the Code of Civil Procedure, 1908^[a] When award may be remitted for reconsideration.

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.

[a—a] These words were substituted for the original words "section 520 of the Code of Civil Procedure" by Bom. IV of 1913, s. 58.

N. I. (Rule 14 of Second Schedule of V of 1908) —the Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrators, or umpire, 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.

Effect of the settlement of a boundary.

[^a] **121.** (1) The settlement of a boundary under any of the foregoing provisions of this chapter shall be determinative :

(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.

[^b] (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.

[a] Section 121 was numbered sub-section (1) of s. 121 by Bom. IV of 1913, s. 59.

[b] This sub-section was added by Bom. IV of 1913, s. 59.

N. 1. Vide G. 7, under Section 119.

N. 2. Clause (2) gives to the Collector after he has fixed a boundary the necessary power to enforce his decision summarily. Previously his decision was final but he had no power to enforce it.

J. 1. While the Land Revenue Code Bill was under discussion one of the Hon'ble Members proposed, with the object of not giving the decisions of revenue officers passed in boundary dispute cases the finality contemplated by Sections 119, 120 and 121, that Section 121 should be omitted altogether, and that the following clause should be added to Sections 119 and 120, *vis.*, "Provided that the determination of any boundary under these sections shall not debar any one claiming any right in the land from any legal remedy he would otherwise have for dispossession."

This amendment, when put to the vote, was lost. Under the sections as they now stand, therefore, the decisions passed by revenue officers are final, as will be seen from the following decision of the Bombay High Court :—

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 No. 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 officers was conclusive as to the boundary. The defendant appealed, and the lower appellate Court reversed the lower Court's decree. On appeal by the plaintiffs to the High Court,

Held, restoring the decree of the Court of first instance, that, under the provisions of Section 121 of Act V. of 1879, the decision of the Collector as to the boundaries was conclusive, and that the plaintiffs were entitled to possession. (Bai Ujam and another vs. Valiji Rasulbhai,—LL.R. Bombay, Volume X., page 456, 1886.)

J. 2. Where there was a settlement of boundaries under Section 119, the word "determinative" in Section 121 meant conclusive as to the legal rights of the adjoining holders. (Printed Judgment 11, Lakshaman vs. Narayan, 90.)

J. 3. Section 121 must be read with Sections 119 and 120. To attract the applicability of Section 121 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 Col-

lector to make a final determination of the dispute with the help of the Survey record and other evidence. Then the Collector's determination becomes final so as to oust the jurisdiction of the Civil Court. (Laxman *vs.* Antaji, I. L. R. XXV, Bombay, 312.)

Construction and repair of boundary-marks of survey numbers and villages.

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.

Requisition on landholders to erect or repair boundary-marks.

Such officer may require landholders to construct, [c] lay out, maintain [c] 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 [d] or sub-divisions [d] to construct, [c] lay out, maintain [c] or repair, within a specified time, the boundary-marks of their respective survey numbers [d] or sub-divisions [d] 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.

A general notification to be good and sufficient notice of requisition.

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 [d] or sub-divisions [d] within the limits of the lands to which the survey extends.

[^e] 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 [^f] made in this behalf under section 214, be determined by the Superintendent of Survey, according to the requirements of soil and climate.

[^{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)

[^{c-c}] These words were inserted by Bom. VI of 1901, s. 14 (2)

[^{d-d}] These words were inserted by Bom. IV of 1913, s. 60 (a).

[^e] This paragraph was substituted for the original paragraph by Bom. VI of 1901, s. 14 (3).

[^f] Words repealed by Bom. IV of 1913, s. 60 (b), are omitted.

SUMMARY (s. 122.)

Section 122

(1) G. 3 under s. 123 referred to	N. 1
(2) Meaning of	N. 2
Boundary marks.	
(1) Charges recovery ...	G. 16 J. 1
(2) Commissioner's power to write off outstanding charges. ...	G. 10
(3) Inam villages. ...	G. 1, 4, 13, 15.
(4) Inspection of ...	G. 23, 24.
(5) Kinds of	
(a) Bends	G. 19
(b) Chunam and stone ...	G. 8
(c) Frontier	G. 17
(d) Single mark system. ...	G. 25
(e) Superfluous ...	G. 7, 9, 12
(6) Maintenance and repair rules	G. 18
(7) Mistakes, correction of ...	G. 11

(8) Notification for repairs	...	G. 6
(9) Occupied lands	...	G. 5, 20, 21
(10) Railway lands.	...	G. 14
(11) Waste lands.	...	G. 2, 3, 17, 22.

N. 1 *Vide* G. 3 under section 123.

N. 2 Under clause 1 of section 122 it is open to the survey officer to give, without publication, separate notice, specifying a time, to individuals if only one sub-division is concerned, and clauses 2 and 3 of section 122 are designed to facilitate the giving of notice when a large number of fields are involved.

G. 1 In Inam villages.—Waste Inam fields, on which boundary mark charges are due, are to be sold annually as grass lands if the Inamdars are not present, and the charges liquidated from the proceeds.

If the Inamdars are present the payment of money should be peremptorily enforced as a revenue demand under Section 6 of Act III. of 1846 (now Section 122 of the Code). (G. R. No. 9976, dated 17th October 1851.)

G. 2 Repairs to boundary-mark in Khalsat unoccupied lands are to be made by the Local Officer at the expense of Government, unless the Collector is satisfied that the repairs would be as effectually and more cheaply made by the farmers, to whom the grazing of the land is annually sold, when a clause requiring this to be done should be included among the conditions of the sale. When the former course is adopted the farmers of waste numbers should be freed from all responsibility whatever connected with the boundry-marks, as the sale of the grazing farms must be injured by laying any amount of responsibility on them.

To provide funds for the repair of boundry-marks to Khalsat unoccupied lands, the Collector may deduct from the amount for which the grazing farms may be sold, a sum not exceeding five rupees for

every thousand acres of waste, and hold this amount in deposit until the 15th of July in each year when any unexpended balance of it should be brought to credit on account of the grazing farm, so as to prevent any accumulation of funds beyond the close of the revenue year.

In Talukas where the boundary-marks to unoccupied lands have been allowed to fall into great disrepair, and the sum provided by the foregoing rule would not suffice for their restoration, the Collector may expend from the collection on account of grazing farms double the amount allowed by the preceding rule, or up to ten rupees for every thousand acres of waste, on reporting his reasons for the information of the Commissioner. (G. Letter, dated 20th August 1852.)

G. 3 Writing off boundary-mark outstanding balances:—Collectors and Commissioners are authorized to write off advances made for the erection of boundary marks on waste lands when found to be irrecoverable for a period of 3 years after the introduction of the Survey assessment in consequence of the land not being taken up for cultivation. (G. R. No. 3566, dated 24th September 1862).

G. 4 Responsibility of Holders of alienated villages:—The owners of the alienated villages which have been surveyed, 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. (G. R. No. 2581, dated 19th June 1865.)

G. 5 All boundary-mark expenditure on occupied land should be collected immediately the distribution accounts are sent to the Collector. In case of any special circumstances rendering it expedient

to postpone that collection for a time, the Collector can do so with the sanction of the Commissioner of Division.

All boundary-mark expenditure should remain on the Survey Books till the measurement of the village is completed and the accounts made up. In cases where the final completion of a village is delayed on account of a little work, boundary disputes or such like, sending in the accounts of the completed main bulk of the village need not be delayed; a supplementary bill being forwarded afterwards on the completion of the outstanding work. (G. R. No. 4036, dated 5th November 1866.)

G. 6 The form of the notification need not be sanctioned by Government. It is the duty of the Collector to issue a proper notification. (G. R. R. D. No. 4800, dated 14th June 1884).

G. 7. Superfluous boundary marks. Circle Inspectors to cause them to be removed:—It is the duty of the village officer and Circle Inspectors to cause superfluous marks, that have been cut into two at the revision Survey as a sign that they need not be repaired, to be removed, and the Collectors should see that this duty is properly carried out. (G. R. No. 6560, dated 14th August 1884.)

G. 8. There is no objection to occupants constructing permanent boundary marks of chunam and stone. (G. R. No. 8, dated 3rd January 1885.)

G. 9. If not removed by occupants, cost of removal charged to them—If landholders do not remove the superfluous marks, the expense of removing them can be recovered from them. If, as is said to be the case, deep cuttings are made in the cancelled marks there can be no risk in letting the village officers under the supervision of Circle Inspectors or General duty karkuns to take measures for their removal, and it would clearly be an useless expense to depute members of the Survey Establishment on this duty in places where the

revision Survey is completed. In places in which the revision Survey has yet to be made, it will be preferable for the Survey Department to take measures at the time of the revision for the removal of redundant marks. (G. R. No. 4686, dated 9th June 1885.)

G. 10. The Commissioners of Divisions are authorized to write off outstanding balances on account of erection and repairs of boundary marks. (G. R. No. 7264, dated 13th October 1886.)

G. 11. Cost of correcting mistakes of revision Survey.—It would be very hard to expect an occupant to pay for a new survey of his field necessitated by the mistakes of revised Survey. (G. R. No. 5698, dated 28th August 1887.)

G. 12. Landholders responsible for their removal:—Under the terms of the Land Revenue Code the landholders are responsible for the removal of superfluous boundary marks and for any reasonable expenses incurred in connection therewith. The landholders should be impressed with the advantages of the speedy and entire obliteration of all superfluous marks and the village officers and Circle Inspectors should take steps for their complete demolition. (G. R. No. 3502, dated 13th May 1888.)

G. 13. Holders of villages which are alienated or held on similar other tenure, such as "Sanadi Inam" tenure, cannot be required to maintain the Survey boundary marks, unless the provisions of Chapter IX. of the Land Revenue Code have been formally extended to them. (G. R. No. 3613, dated 4th June 1888.)

G. 14. Rules for the demarcation of land permanently occupied for the use of Railways in India.—I. 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 will 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. No. 6937, dated 1st October 1890, and order No. 45 of Railway Board Circular, No. 27 R. C. of 1907, circulated with G. R. No. 7953, dated 12th August 1907.)

G. 15. 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. No. 2581, dated 19th June 1865, 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 Sections 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 Sections 123 to 125 for the preservation and maintenance of boundary marks. (G. R. No. 4799, dated 8th June 1892.)

G. 16. Recovery of the cost of boundary marks.—In all cases of the recovery of the cost of boundary marks or other unusual charges detailed lists of the amounts due from the several individuals should be sent to the villages for publication in the village chavdis. When the recovery is to be made by village accountants, both the sums due and amounts recovered will be shown in the proper village accounts. (G. R. No. 1789, dated 12th March 1898.)

G. 17. Expenditure on boundary marks.—The Collectors may sanction expenditure on boundary marks in Government waste and the Commissioners on frontier boundary marks. (Serial Nos. 10 (a) and (b) of statement I, accompanying G. R. No. 279, dated 26th January 1903.)

INSTRUCTIONS FOR THE MAINTENANCE AND REPAIR OF BOUNDARY MARKS.

G. 18. The Governor in Council is pleased to observe that while the law remains unaltered, the general notification required by Section 122 of the

Land Revenue Code must be issued as hitherto, and that it is doubtful if the notification can ever, with propriety, be dispensed with. Without it, it would be possible for any recalcitrant cultivator to object, with at least a show of reason, to his being charged with the expense of the repair of his boundary marks by Government agency, on the ground that, if properly warned, he would have repaired them more cheaply himself. 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 notice 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 (rayats') 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 test 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.

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.

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.

The mark of the recipient, if illiterate, should be taken in his own hand, in token of his signature.

11. The Mamlatdar, 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.

The result of the tests should be noted in the amended Form No. IV at the end of the form.

* Instructions 8 to 11 were added by G. R. No. 12186, dated 30th November 1908.

2. Stonesshould 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 the 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. No, 10527, dated 6th November 1906.)

G. 19. As regards maintenance of bend marks they should be maintained only at salient angles and should be dispensed with at minor bends. An exception, however, must be made to this concession in the case of land adjoining Government waste, all numbers set apart for special purposes and lands subject to special assessment, *e. g.*, for building and other non-agricultural purposes. (G.R. No. 1093, dated 31st January 1907.)

G. 20. Boundary mark charges—Accounts:— Provision on account of expenditure on boundary marks on private lands is made in the "Estimates 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. No. 4818, dated 7th December 1907.)

G. 21. Increased charge for marks in disrepair. —Government approved the action taken by the Commissioner, S. D., in ordering that all Collectors should make the charge for each boundary mark repaired by Government agency so high that if

† The words in quotation were added by G. R. No. 3804, dated 15th April 1907.

marks are out of repair the necessity of paying it will be a real incentive to people to keep marks in repair themselves. (G. R. No. 4981, dated 22nd May 1909.)

G. 22. Repairs of boundary marks in waste lands, where cutting grass or grazing is sold or granted free, should be done at Government cost. (G. R. No 8627, dated 26th September 1910.)

G. 23. The number of boundary marks seen by inspecting officers should be shown in the test returns accompanying monthly diaries of Mamlatdars and Prant officers. (G. R. No. 5792, dated 23rd June 1914.)

G. 24. Inspection of boundary marks by their numbers and not by Survey numbers should be given in the annual administration reports. (G. R. No. 9303, dated 1st October 1914.)

G. 25. Boundary marks:—The single mark system of boundary marks sanctioned in G.R. No. 7671 dated 18th August 1914, R.D. may be continued for one year more in order that further experience may be gained.

In Desh Districts very general approval of the system is indicated but the Collectors of the Konkan districts report that the system is not suitable to rice fields. It is objected that the large number of bends in rice fields require a large number of stones. However, if the ridge is properly maintained it is not necessary to place a stone at every bend. The new system may, therefore, be left to the choice of the ryots in the Konkan.

(G.R.R.D, No. 556 dated 19th January 1918.)

J. I. Sections 56 and 153 apply to the sales of land for the charges referred to in this section. The occupancy may be forfeited and sold. (I.L.R. XV. Bombay, 67.)

Responsibility for the maintenance of boundary-marks.

[^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 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.

[a] As to the local modification of s. 123, see para. 4 of footnote [a] on p. 1, *supra*.

G. 1. Demarcation of Forest lands. Liability of the Forest Department to pay its cost.—The Forest Department should be required to pay only half the cost of boundary marks put up to mark the line of division between forest land and non-forest land, and as the ordinary survey boundary mark is not efficient as a forest boundary mark, the Forest Department should not be required to pay for the ordinary survey boundary marks if they undertake to put up boundary marks of their own. But it would not be convenient to leave a boundary without survey marks when the Forest Department is not ready to put up marks suitable to their purpose at once. In such cases the Forest Department will pay half the cost of the boundary marks erected by the Survey Department. (G.R. No. 5637, dated 7th August 1886.)

G. 2. G.R. No. 5637, dated 7th August 1886, was intended to rule that the Forest Department should pay the usual occupant's share of the costs of boundary marks between land in its charge and other land. But when the Forest Department prefers to put up special marks by its own agency, at its own cost, and is prepared to do so at once, the special marks will be substituted for the ordinary survey marks. (G.R. No. 7063, dated 5th October 1886.)

G. 3. The cost of boundary marks constructed by the Revenue Survey Department in forest survey Nos. should be charged to the Forest Department. A special notice, over and above that required by Section 122 of the Land Revenue Code, of the intention of the Survey Department to erect boundary marks in forest Nos. should be given to the Forest Department. (G.R. No. 625, dated 26th January 1887.)

G. 4. What charges may be said reasonably incurred. The charge should include the salary and expenses of the officer, if any employed, and should not be such as would not be incurred if the work was being done at Government expense, nor should the landholders be made to pay for work which they are willing and able to do themselves. Copies of survey documents which may be required should be charged for at the rates given to section writers. (G. R. No. 646, dated 25th January 1894).

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.

[a-a] These words were inserted by Bom. VI of 1901, s. 15.

G. 1. The collector can take action under section 124 in alienated villages in which survey settlement has been introduced. (G. R. No. 7169 dated 24th July 1909).

125. Any person convicted after a summary inquiry before the Collector, or before a survey officer, Mámíatdár, or Maháikari, of wilfully erasing, removing or injuring a

a Penalty for injuring boundary-marks

boundary-mark, shall be liable to a fine not exceeding fifty rupees for each mark so erased, removed, or injured.

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.

G. 1. Award to an informer who is a Government Servant:—It cannot be laid down as a rule that in no case shall a Government Servant be allowed to accept a reward for laying information of the removal of boundary marks, the granting or withholding of it must be determined by the merits of each case, and left to the discretion of the officer who inflicts the fine. (G. R. No. 1682, dated 6th April 1870.)

G. 2. Enquiries into injuries to boundary marks.—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, batta to witnesses, etc. In such cases the best course for the Revenue Authority is to accept the petition or complaint and summon the witness *proprio motu*. The Government of India in their Resolution No. 3025 of 31st December 1878 (which may be found at page 13, order No. 27 of Civil Circulars of 1903) have sanctioned the procedure to be followed when a judge himself summons the witness in a suit, and this procedure may be adopted by Revenue Authority holding as such a judicial proceeding. (G. R. No. 6737, dated 11th November 1881).

G. 3. Special rewards to Village officers:—Commissioners are allowed discretionary power to reward Village officers with presents of turbans for

keeping boundary marks in thorough repair, on condition that such gifts are given only for exceptional merit. The expenditure incurred annually by each Commissioner for the purpose should not exceed Rs. 100. (G. R. No. 309, dated 14th January 1889.)

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 to fix, and from time to time to vary the limits of the same, respect being had to all subsisting rights of land holders.

Limits of sites of villages, towns and cities how to be fixed.

N. 1. Under this section the Collector should take action by varying the limits of the site so as to include such land as is already built upon or is likely in a few years to come under brick and mortar owing to the extension of a city. The city survey can then be notified as applying to the new site so determined by the Collector under this section.

N. 2. A city survey manual with chapters on Plane table surveys, and minor triangulation has been prepared by F. G. H. Anderson Esquire, M. A. I. C. S. Settlement Commissioner and Director of Land Records, Bombay. This is intended for the use of city survey officers.

G. (1) General Survey of village sites abandoned.—It having been deemed inexpedient to proceed further in the matter of the general survey of village sites contemplated in the Resolutions of

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Government noted in the margin, there is no objection to disposing of occupancies of building sites in accordance with the rules framed under the Land-Revenue Code, 1879. (G. R. No. 4099, dated 21st May 1884.)

G. (2) Principles of City Surveys and assessment:—Although Government have, under the provisions of this and the following sections, the power to order the Survey and assessment of lands in the sites of towns and villages, and can in exercise of that power impose assessment on any such lands it would not be just and fair if such assessment were ordered to be imposed in isolated cases only. Accordingly in a case in which certain lands in a village site, which had been exempt from assessment under certain circumstances, were assessed by the Collector on those circumstances being changed it was held by the Legal Remembrancer that the action of the Collector was objectionable. The Legal Remembrancer stated—

“I. * * *

“2. So far as regards the assessment of land of which the occupancy may hereafter be granted, the subject is free from difficulty. Under Sections 45 and 48 of the Land Revenue 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, it is competent to Government, if they think fit, to direct, under Section 95 of the Code the survey of vacant lands in village sites. When such an order is given, the officer in charge of the Survey will fix the assessment under Section 100 of the Code. But in respect of lands not within the local operation of an order under Section 95, the assessment has to be fixed under Section 52 by the Collector, subject

to rules or orders made in this behalf by Government. The Land Revenue Code Rules Nos. 23—28 (now 24—30) are the existing rules prescribed by Government for the guidance of Collectors in allotting building-sites, and I believe they are found sufficient.

“3. * * *

“4. The law as to the assessment to the land-revenue of lands in village-sites already occupied is precisely the same as that applying to lands which may hereafter be given out for the occupation described in paragraph 2. Government may direct a survey of all or any of such lands under Section 95, and then the assessment thereof will be made under Section 100 by the officer in charge of the Survey, or if no such survey is ordered by Government, the Collector may, under Section 52 fix the assessment. In either case the following limitations apply, *viz* :—

- (1) Land wholly exempted under the provisions of any special contract with Government or any law for the time being in force must be exempted (Section 45) ;
- (2) Respect must be had to 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 restrictions. (Section 52, proviso, and Section 100, paragraph 2.)

“5. Occupied lands in village sites may be divided into three classes (namely) :—

- (1) Lands granted under British rules ;
- (2) Lands held from a time anterior to the British rules ;
- (3) Lands unauthorizedly occupied since the introduction of the British rule.

“6. Lands of the 1st class have, I believe generally, been granted on stated terms under a written

agreement or lease or similar document and either the first or the second of the two limitations mentioned in paragraph 4 would prevent any modification of those terms now.

“7. In the second class there would, I imagine, be few lands for which an original documentary title could 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 recognize the claimants' proprietary right. Along with the fact of immemorial possession, the holders of these lands would, as a rule, be able to show that they have never been subject to the payment of land revenue.

“8. The holders of lands of the third class would, of course, have no documentary evidence of title. All that they could establish would be, at the most, about sixty years' possession and immunity all that time from payment of land-revenue.

“9. The City Survey Act (Bombay Act IV. of 1868) confirmed every entire or partial exemption from land-revenue proved to have been enjoyed for five years previous to the application of that Act or of Bombay Act I. of 1865 to the town or city. When the Land Revenue Code Bill was first introduced it was proposed to extend this rule to all village-sites, but after much discussion the provisions finally adopted were those set forth in paragraph 4. According to these, in the absence of a 'special contract with Government,' it has to be seen whether any land in a village-site is exempted from land-revenue under 'any law for the time being in force'; if it is not so exempted it is liable to be assessed, subject to the orders of Government, either by the Collector under Section 52 of the Code or by the officer in charge of a Survey under Section 100.

“10. The only Acts under which such exemption might possibly be claimed are Act X. of 1852

and Bombay Acts II and VII. of 1863, in the provinces to which they are respectively applicable. Government are aware that the High Court held some years ago that previous to the passing of Bombay Act III of 1868, neither Regulation XVII of 1827 nor Bombay Act VII of 1863 applied to village-sites. By Section 17 of Act X. of 1876 the Legislature, however, declared that Regulation XVII. of 1827 should be deemed to be and to have always been in force in the sites of villages, towns and cities. No such general declaration has been made with regard to Bombay Act VII. of 1863. But Section 127 of the Code enacts that Act XI. of 1852 and Bombay Acts II and VII of 1863 shall be deemed to be applicable and to have always been applicable to all lands within the sites of cities and towns in which an enquiry under Bombay Act IV. of 1868 has been made, which have been hitherto ordinarily used for purposes of agriculture only; but that the provisions of those Acts shall not be deemed applicable to any other lands within the limits of the sites of the said cities and towns. The effect of these two enactments, Section 17, Act X. of 1876, and Section 127 of the Land Revenue Code is, I think, to confirm the previous decision of the High Court as to Bombay Act VII. of 1863. The Judges would say that the Government of India, whilst declaring the Regulation XVII. of 1827 is in force in the sites of villages, towns and cities, made no mention of Bombay Act VII. of 1863 and that therefore their previous decision as regards that Act remains unaffected. Moreover the local Legislature has since declared of that Act XI. of 1852 and Bombay Act II. of 1863 that their provisions do apply to certain lands within the sites of certain towns and cities, thus leaving it to be inferred that they do not apply within the sites of other towns and cities or of villages.

" 11. For these reasons it appears to me that Act XL of 1852 and Bombay 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 Section 127 of the Land Revenue Code. If this view is correct it follows 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 in the second class, except the few which can establish a documentary title to exemption, and all lands in third class are liable to be assessed, under the law as it now stands, to the land-revenue.

" 12. * * * * *

" 17. But if it is not the present intention of Government to assess occupied lands in village sites generally, it seems to me impossible to justify the assessment of such holdings in isolated cases. On the principle that the greater includes the less, the Land Revenue Code, which empowers Government to direct the assessment of all such lands, may, of course, be held to authorize the assessment of any one particular holding. But such laws are not enacted to enable Government or their officers to levy a tax from one person out of a thousand and to let the other nine hundred and ninety-nine go free, and I very much doubt whether the Civil Courts would uphold a levy made on such a system.

" 18. * * *

" 19. The old rule regarding pardi lands has been embodied in No. 54 (now omitted) of the Land Revenue Code Rules. It applies only to patches of open ground 'surrounding houses.' So long as a piece of ground is 'pardi land' within the above description it is subject to the same rules regarding assessment as the house-site which it surrounds. When, however, it ceases to answer to the above description, the question of assessing it or of put-

ting fresh assessment upon it is, I think, legally open to consideration under paragraph 2, Section 48 of the Land Revenue Code. 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." (G. R. No. 4344, dated 18th June 1886.)

[^a]127. Act XI of 1852 and Bombay Act XI of 1852 and Acts II and VII of 1863, shall be deemed to be Bombay Act II and VII of 1863 how far applicable, and to have always been applicable, applicable to in the territories to which they respectively ex-lands in such tend, to all lands within the limits of the site of sites. any town or city in which an inquiry into titles has been made under the provisions of Bombay Act IV of 1868[b] which have been hitherto ordinarily used for agricultural purposes only ; but the provisions of the said Act shall not be deemed applicable to any other lands within the limits of the site of any such town or city.

[a] As to the local repeal of section 127, see para. 5 of footnote [a] on p. 1, *supra*.

[b] Bom. IV of 1868 is repealed by section 2 of this Act which has been repealed by Bom. IV of 1913, s. 5.

[^a]128. The existing exemption from pay- Existing exemption ment of land revenue of lands other than lands when to be which have hitherto been ordinarily used for continued in purposes of agriculture only, situate within the case of certain lands in sites of towns and cities in which towns and titles has been made under the provisions of cities in which Bombay Act IV of 1868, [b] shall be continued ; 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 Govern-

ment 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,^[c] or IV of 1868^[d] 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.

[a] As to the local repeal of section 128, see para. 5 of footnote [a] on p. I, *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.

[c] Bom. I of 1865 (except ss. 37 and 38,) is repealed by section 2 of this Act, which has been repealed by Bom. IV of 1913, s. 5.

[d] Bom. IV of 1868 is repealed by section 2 of this Act, which has been repealed by Bom. IV of 1913, s. 5.

Right to exemption to be determined by the Collector.

[^a] **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.

[^b] (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.[^b]

[a] As to the local repeal of ss. 129 to 131, see para. 5 of foot-note [a] on p. 1, *supra*.

[b—b] This sub-section was added by Bom. XI of 1912, s. 2, which also enacted that the original section 129 should be numbered sub-section (1) of s. 129.

N. 1. Under Section 129 (1) of the Land Revenue Code claims to exemption are to be determined by the Collector after a summary enquiry and his decision shall be final.

An enquiry officer appointed by Government to hold this summary enquiry is therefore like an Assistant or Deputy Collector exercising the powers of a Collector.

Appeals against orders passed by an Assistant or Deputy Collector lie to the Collector. On the same analogy appeals against the orders of an enquiry officer should apparently lie to the Collector.

N. 2. Vide G. 2 under Section 19.

G. 1. Claims to exemption. Assignment of power to decide.—It is better to assign powers (specially) under this section than to trust to Section 2 as continuing the powers already conferred by the Collector upon enquiry officers under Act IV, of 1868. The order passed by such officers shall be final in the sense of Section 212, but they may be modified by Government or a suit brought under Section 135. (G. R. No. 5728, dated 27th October 1879.)

[^a] **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,

unauthorizedly occupied for a period commencing less than two years before Bombay Act I of 1865^[b] or IV of 1868^[c] was applied to the town or city in which the said lands are situate, shall be liable to pay^[d] a price for the said lands^[d] in addition to the land revenue assessed thereupon.

The said^[e] price shall be determined according to the provisions of section 62.

[a] Vide (a) under s. 129. [b] Vide (c) under s. 128. [c] Vide (d) under s. 128.

[d—d] These words were substituted for the original words "the price of the occupancy of the said lands" by Bom. IV of 1913, s. 61.

[e] This word was substituted for the original words "occupancy price" by Bom. IV of 1913, s. 61.

G. I. Interpretation.—Section 130 in no way modifies Section 61 and should not be read with it. (G. R. No. 172, dated 12th January 1880.)

Survey of
lands in
such sites
how to be
conducted.

^[a]**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, ^[b]104, or 118 thereof shall be considered applicable to any such survey in any town or city containing more than two thousand inhabitants.

Proviso.

[a] As to the local repeal of ss. 129 to 131, see para. 5 of footnote [a] on p. 1, *supra*.

[b] Figure repealed by Bom. IV of 1913, s. 62 is omitted.

SUMMARY (S. 131.)

City survey—

(1) Budget provision	...	...	G 3
(2) Cadastral method	...	...	G 2
(3) Fees include cost of officer hearing appeals ...	...	...	G 5
(4) Map	...	...	G 4
(5) Municipality	...	...	G 1
(6) Non-agricultural lands	...	...	N 2
(7) No Notification necessary	...	...	N 1

N. 1. No notification under this section is necessary.

N. 2. Under section 131 of the Land Revenue code a city survey can only be made of lands other than those ordinarily used for agricultural purposes only within the site of a village which term includes a town or city.

G. 1. Surveys of cities or towns and preparation of maps and Records of Rights will not be undertaken by the survey department. This work should be done by municipalities.

(Government of India circular No. 11-190-1 of 23rd July 1906 and Bombay Government G.R. No. 5217 dated 3rd September 1906)

G. 2. A city survey should be made by cadastral and not by topographical method of survey. This G. R. prescribes the duties and procedure of an enquiry officer (G.R. No. 995 dated 4th February 1910).

G. 3. No budget provision is necessary for expenditure in connection with city surveys. The expenditure should be met from survey fees. (G.R. No. 4806 dated 18th May 1911)

G. 4. This G.R. prescribes the details in city survey and other village site survey maps. (G.R. No. 6315 dated 8th July 1914)

G. 5. Survey fees may include cost of an officer to hear appeals. (G.R. No. 10321 dated 24th August 1917)

In certain cases a survey-fee to be charged.

[^a]132. When a survey is extended under the provisions 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 [^b] ten rupees for each building site or any portion thereof held separately [^b]. 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 completion of the survey of the site of the town or city, or of such part thereof as the notice shall refer to.[^c]

[a] As to the local repeal of s. 132, see para. 5 of foot-note [a] on p. I, *supra*.

[b—b] These words were substituted for the original words "rupees five for each survey number" by Bom. IV of 1913, s. 63 (a.)

[c] The third paragraph of s. 132 repealed by Bom. IV of 1913, s. 63 (b) is omitted.

G. I. Survey fees.—Fees should be charged to Government and Municipalities. But inasmuch as Government pay the cost of a city survey in the first instance, the simplest plan would be to deduct from the total cost the estimated cost of surveying Government properties and to distribute the remainder over the municipality and private owners. Open sites should be charged for, but the Collector would charge lower rates for properties which cost very little to survey for that is one of the matters which he has to bear in mind. (G. R. No. 15407, dated 21st December 1917).

[^a] **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, [^b] or to the like effect [^b] 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.

[a] As to the local repeal of section 133, see para. 5 of footnote [a] on P. I, *supra*.

[b—b] These words were inserted by Bom. IV of 1913, s. 64.

G. 1. The lands within the sites of towns and cities are to be continued revenue free in perpetuity if they are found at the time of the introduction of city survey to be in authorised occupation; but if at the introduction of the survey the lands are found to have been held subject to the payment of Land revenue, the terms of lease on which they are held, should be entered in the sanad. (G. R. No. 10347 dated 26th October 1909 and G. R. No. 482 dated 19th January 1910.)

G. 2. Sanads.—The form of sanads for building sites after city survey should be printed. (G. R. No. 12163 dated 7th December 1914.)

G. 3. The enquiry officer appointed by Government in charges of a city survey is the officer

empowered to execute sanads (item No 7 (e) in part N of the Resolution of the Government of India, No. 48—c—70—c. dated 8th November 1915, circulated with Government order. J. D. No. 341 dated 15th January 1916.)

G. 4. Government adhere to the orders contained in G. R. No. 10347 dated 26th October 1909, which directed that the Sanad should only recite and set out the nature of each tenure and should in no way alter the tenure. G. R. R. D. No. 9656 dated 9th October 1916.

G. 5. Sanads.—Memorandum from the Settlement Commissioner and Director of Land Records No. S. V.—16th dated 14th July 1916:—

7.....The sanads have been signed by the Personal Assistant to the Collector: but this is irregular and it is perhaps desirable to appoint Special officer under G. O. J. D. 341 dated 15th January 1916 to legalise the work done by him.

Memorandum from the Remembrance of Legal Affairs No. 2253 dated the 8th September 1916:—

“It is necessary for the validity of a sanad under section 133 of the Land Revenue Code that it should be executed by the officer empowered by the Home Department Resolution Nos. 713-734 dated 2nd June 1913. If the sanads in question were signed before the amending resolution Nos. 48-C-70-c dated 8th November 1915, they should have been signed by the Collector; if afterwards, by the special Officer. As it appears that the sanads in question were not so executed and the Government will perhaps consider it unnecessary to ask the Governor General in Council to ratify them, I think it will be advisable to issue new ones.

“2. The Home Department orders do not contemplate any delegation of powers and therefore in my opinion the Personal Assistant to the Collector was not empowered to sign on behalf, of a Collector before the issue of the amending orders.”

Order.—Fresh sanads should be issued in accordance with the Legal Rembrancer's opinion. The name of the special officer whom it is proposed to appoint for the execution of the fresh sanads should be reported. (R. D. 10389 dated 30th October 1916).

[^a] **134.** If any land within the site of Assessment of lands hitherto used for purpose of agriculture only used for other purposes. 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 [^b] used for [^b] 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.

135. *Repealed by Bombay XI of 1912, section. 3.*

[a] As to the local repeal of section 134, see para. 5 of footnote [a] on p. 1, *supra*.

[b-b] These words were substituted for the original words "appropriated to" by Bom. IV of 1913, s. 65.

N-1 Gordon settlement with the holders of Deshpande Watan etc. was not "under the provision of any law." It does not therefore fall under section 134 of the Land Revenue Code.

N-2 The $\frac{1}{8}$ th of the present standard rate cannot be permanently commuted under section 134 as it is liable to change after 50 years.

N-3 Vide N. 4 under section 65.

N-4 The wording of the sanad given in respect of Jat Inam Lands (summarily settled) precludes

Government from levying anything more than the quit rent, permanently fixed. The sanad does not authorize the levy of building assessment when the Land is used for building purposes. Government will have to respect the sanads already issued and it appears that this section, as it now stands, will have to be cancelled.

—o—

[a] CHAPTER X-A.

OF THE RECORD OF RIGHTS.

Exemption
from pro-
visions of
this chap-
ter.

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.

[a] This chapter was inserted by Bom, IV of 1913, s. 66.

It contains the provisions, redrafted and amended, of the repealed Record of Rights Act, (Bombay Act 4 of 1903).

N. I. The provisions of this chapter shall be in force in all areas except where Government directs to the contrary.

Formerly Government had exempted Inam villages and permanent municipal districts from the Record of Rights but that exemption has now been withdrawn in the case of surveyed Inam villages (except those in the Ratnagiri District) and in the case of permanent municipal districts. (G. N. No. 288 dated 11th January 1913 and G. N. No. 11581 dated 23rd December 1913).

G. I. Cantonments.—Government of India have negatived a proposal to secure a Record of Rights in lands and buildings in cantonments. (G. R. No. 4196 dated 21st May 1915). •

135B. (1) A record of rights shall be maintained in every village and such record shall include the following particulars:—

- The record of rights.
- (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.

G. I. In exercise of the powers conferred by Sections 135 A and 135 B (2) of the Bombay Land Revenue Code, 1879 (Bombay 5 of 1879), the Governor in Council is pleased further to amend Government Notification in the Revenue Department, No. 263, dated the 12th January 1904, as follows, namely :—

For clause (5) of the said Notification the following clause shall be substituted:—

“(5) Lands included within the site of any village, town or city, as from time to time determined under section 126 of the Bombay Land Revenue Code, 1879 (Bombay 5 of 1879);

Provided that the provisions of Chapter X-A of the said Code shall apply to the lands included within any such site if a survey has been or shall hereafter be, extended to such site under section 131 of the said Code ;

Provided further that whenever the provisions of the said chapter shall, by reason of the foregoing proviso, apply to the lands included within any such site, then—

(a) the provisions of section 135 B of the said Code shall apply to tenancies for a term of 21 years and upwards within such site, and

(b) a register of tenancies shall not be maintained for the lands included within such site.”

G. N. R. D. 13565 of 23rd December 1918.

Acquisition
of rights to
be reported,

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 mortgage of the kind specified in section 100 of the Transfer of Property Act, 1882. IV of 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.

N. I. The procedure for recording all changes of Kabjedars of Inam lands is prescribed at pages 66 to 69 of the New Manual of Revenue Accounts compiled by Mr. Anderson.

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 acquisition of any right of the kind mentioned in sub-section (1) 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.

Register of mutations and register of disputed cases.

(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 Mámlatdár's first karkun.

Entries in
register of
mutations
how to be
certified.

(7) The provisions of this section shall apply ^{Tenancies.} 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.

J. I. Mamlatdar holding an inquiry into Record of Right.—A Mamlatdar holding an inquiry relating to Record of Rights, under chapter XII of the Land Revenue Code (Bombay Act V. of 1879), is a Revenue Court within the meaning of Section 195 (1) (c) of the Criminal Procedure Code 1889.

Emperor V. Narayan Ganpaya Havnik. 16 Bombay Law Reporter 678 and I. L. R. 39 Bom. 310.

135E. (1) Any person whose rights, ^{Obligation to furnish in-} interests or liabilities are required to be, or have ^{formation.} 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.

J. I. Forgery.—The defendant applied, in August 1908, to the Mamlatdar to record under the Record of Rights Act, 1903, a lease under which he claimed to be entitled to a rent of 400 cocoanuts from the plaintiff. The plaintiff having complained that the lease was a forgery the Mamlatdar declined to record it. On appeal, the Collector ordered, on the 11th August 1909, that the lease should be recorded. On the strength of that record, the defendant sued in the Mamlatdar's court to enforce the terms of the lease and recovered on various occasions the cocoanuts due under it. The plaintiff sued, within three years of the recovery of the cocoanuts, to recover back the value of the cocoanuts, on the footing that the alleged lease was a forgery. It was contended that the suit was barred under art. 93 of the Indian Limitation Act, on the ground that it was filed more than three years after the date of an attempt to enforce it against plaintiff.

Held, (1) that the suit was not barred under art. 93 of the Indian Limitation Act, 1908, for the words "attempt to enforce" would, in their ordinary and natural meaning, be applicable to an attempt to recover rent under the lease, which attempt first took place within three years of the institution of the suit;

(2) that the attempt to have the lease recorded, under the Record of Rights Acts, in August 1908, could not be put higher than an unsuccessful attempt to have the document registered in a case in which registration was necessary (art. 92); and that such an attempt was not an attempt to enforce the lease.

Achyut Rayapa Shanbhag V. Gopal Subbay
Shanbhag 17 Bombay Law Reporter 635 and I.L.R.,
40 Bom. 22.

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.

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.

Penalty for neglect to afford information.

Requisition of assistance in preparation of maps.

Certified copy of record to be annexed to plaint or application.

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.

(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 an appellate or revisional Court: provided that, in the case of an appellate or re

visional 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 the Code of Civil Procedure, 1908, or of the Mámlatdárs' 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 Procedure, 1908;

(iii) for the filing of an agreement to refer to arbitration 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;

(v) to a conciliator under section 39 of the Dekkhan Agriculturists' Relief Act, 1879;

XVII of
1879.

(vi) of any other kind to which the Governor in Council may, by notification in the *Bombay Government Gazette*, direct that this section shall apply;

(c) an application shall be deemed to relate to land if the decree or other matter,

with respect to which the application 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.

G. 1. This section shall apply to applications to file awards under the Indian Arbitration Act. 1899 (IX of 1899). (G. N. No. 2998 dated 31st March 1914)

G. 2. Government of India have remitted court fee of one anna chargeable on application to village officers for copies of entries in Record of rights. (G. R. R. D. No. 1421 dated 5th February 1916).

G. 3. The levy by village accountants of copying fees per entry or khata in respect of the village forms relating to the Record of Rights is as follows :—

No of village form.	Description of form.	Rate of copying fees.
VIIIA	Khatas of holding.	One anna per khata having 5 survey numbers or less and one and half anna for a khata of more than 5 survey numbers.
VIIIB	Annual khatas of dues and recoveries	One anna for each khata.

(G. R. No. 10809 dated 6th September 1917).

Refusal of assistance under section 87.

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 mutation or register of tenancies.

G. I. Proposed exemption from the levy of Court fees on certified extracts from the Record of Rights required for being filed with applications for assistance suits and in the applications for obtaining such extracts.

Government are not prepared to notify under section 135H of the Land Revenue Code that the provisions of that section shall apply to applications under section 86.

G. O. R. D., No. 6507, dated 14th June 1918.

135J. An entry in the record of rights ^{Presumption of correctness of entries in record of rights and register of mutations.} 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.

J. I. Probative value.—Section 135J of the Bombay Land Revenue Code enacts that entries in the Record of Rights shall be presumed in effect to be a true statement of their contents; and in the absence of any other evidence, the Court, under the section, would be obliged to be guided by any facts so entered in the Record of Rights.

Anandibai Bhaskar Nilkanth V. Narayan Dhonddev Tatoo. 17 Bombay Law Reporter 49.

135K. Applications for certified copies of ^{Certified copies.} 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.

Bar of suits
and exclusion
of Chapter
XIII.

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 any record or register that is maintained under this chapter, or to have any such entry omitted or amended, and the provisions of Chapter XIII shall not apply to any decision or order under this chapter.

Appeal.

(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.

CHAPTER XI.

OF THE REALIZATION OF THE LAND REVENUE AND OTHER REVENUE DEMANDS.

Liability for
land revenue.

[^a] **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.

[a] This section was substituted for the original section Bom. IV of 1913, s. 67.

N. 1. This section makes the occupant primarily responsible for " all arrears."

N. 2. Vide Section 185.

G. 1. Can revenue be recovered from co-sharers when the principal sharer is willing to pay.—The eldest superior-holder of an Inam village maintained that no part of the revenue in respect of the shares of his co-sharers should be received by Government direct from them as he was responsible for the payment of the revenue of the whole village under Section 136 of the Land Revenue Code. The co-sharers on the other hand alleged that they were also superior holders in respect of their shares and that the revenue of those shares should be levied from them direct. In connection with this case the following questions were referred for the orders of Government :—

1. When there is more than one superior holder, can Government under Section 136 hold the eldest or principal superior holder primarily responsible for the payment of Government revenue ?

2. If so, can they refuse to accept Government revenue from any other superior holder, should he be ready and willing to pay it?
3. In the event of the right of a junior superior holder to pay his share being recognized, would it be open, in the case of default of Government revenue to the principal sharer to say that he could not be held primarily responsible as Government had already held others to have the right of direct payment and he was no more a superior holder than they were?

These questions were disposed of by Government orders to the following effect :—

The Land Revenue Code does not expressly provide for the registration of the principal of the several co-holders of alienated land, and for the registered holder alone being ordinarily recognized by the Collector in matters affecting the revenue of the land. It has always been the practice, however, to register only the name of the principal holder of alienated land and for the Collector to look primarily to the registered holder for the payment of revenue. This is an arrangement necessary in the interests of Government, for it is obviously much more convenient that the Collector for the purposes of collecting the land-revenue should have to recognize only one registered holder in respect of each holding, than that he should have to call upon each of the several co-sharers (some of whom often hold very minute shares) to pay his quota of the revenue. That the legislation of the system was intended by the Code is clear from paragraph 2 of Section 136. In this it is enacted that "on failure of the person primarily responsible to Government for the land-revenue," that revenue may be recovered "from the co-occupant of unalienated land or the co-sharer of alienated land." This provision places co-occupants of unalienated land and co-sharers of alienated land in

corresponding positions ; and the use of the words " co-sharers of alienated land " would be meaningless, if the term " the superior holder " as used in paragraph 1 of the section where he is said to be primarily responsible for the revenue of alienated land were meant to include co-sharers as well as the principal or registered superior holder. So also Section 79 shows that the registration of holders of alienated land as well as occupants of unalienated lands was in the mind of the legislature, and from a comparison of Section 76 with paragraph 2 of Section 74 it is clear that registration of only the principal holders of alienated land was intended.

The last of the three questions above referred to indicates one class of difficulty which may arise if the long established practice of holding registered superior holder of alienated land alone responsible primarily for the land-revenue of his holding is abandoned. The only safe course therefore is for that practice to be maintained, at any rate as long as a registered holder is willing to pay the whole amount due on his holding. If he makes default, the Collector can recover, under paragraph 2 of Section 136 of the Land Revenue Code, from his co-sharers.

When the Code comes under revision the opportunity will be taken of making its provisions more clearly conform to the established practice and it will be easier to do this if in the meantime no departure from the existing practice has been made. (G. R. No. 5519, dated 12th August 1891)

*G. 2. Responsibility of payments:—*The effect of the High Court decision at Indian Law Reports, IV Bombay, 79, is that if a person voluntarily makes a payment on account of land which belongs to some body else, he is not thereby entitled, in the absence of contractual relations with that other, to recover such payment from him. The ruling does not prevent Government from recovering from

each holder, but only decides that if one holder pays for the land of another independent holder, he does so at his own risk and cannot recover unless there is a contract to that effect. The proper course is for the holder, who is made to pay for land not in his holding, to ask Government to recover from the real holder instead. (G. R. No. 4174, dated 10th June 1898.)

G. 3. Chapter XI when applicable to Inam villages:—The Collector cannot use any of the powers under Chapter XI of the Code in realizing Inamdar's dues from their inferior holders, except upon an application under Section 86 or upon reference under Section 90, in the case of an Inamdar who is the holder of a commission under Section 88. (G.R. No. 1493, dated 24th February 1904).

J. I. Where the actual amount of revenue remitted by money-order reached the Collectorate in time, but the remitter made a mistake in the towji number and the name of the registered proprietor, but was right as to the name of estates and the amount of revenue payable in respect thereof. *Held*, that it was the duty of the officer of the Collectorate to rectify the mistake.....and not to put up the property to sale which, if held, would be without jurisdiction and ought to be set aside. (*Hamid Hossen V. Mukhdum Resa* 1905 I. L. R. 32 Calcutta p. 229.)

Claims of Government to have precedence over all others.

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, or attachment, or otherwise howsoever, against any land or the holder thereof.

N. I. The meaning of this section is illustrated by the following example :—

A holds Land assessed at Rs. 10 which has a mortgage charge of Rs. 100.

2. If A has not paid Rs. 10 as land revenue due in respect of the land, the land itself can be forfeited to Government free of the mortgage charge. (sections 56 and 153.)

3. But if there is no arrear of land revenue due in respect of the land and if A owes to Government Rs. 100 on account of a toll contract which is recoverable as an arrear of land revenue under section 187, the land cannot be forfeited free of the mortgage charge under section 153, but only the right title and interest of A in this land can be sold under section 155. The bidder at the auction will therefore be responsible to the mortgagee for Rs. 100. If he bids Rs. 50 he will have to satisfy the mortgagee's claim of Rs. 100 in addition to Rs. 50. Thus the real value of the land is Rs. 150 although the highest bid is for Rs. 50.

4. If a Civil Court sells the right title and interest of A in the land in execution of a decree obtained by the mortgagee the land will fetch Rs. 150 and the amount will be in the custody of the Court.

5. If the Collector wants to get Rs. 100 on account of the toll contract from the Civil Court out of Rs. 150 he will have to appear before the Court by a pleader and to obtain an order to that effect. Simply a letter or a certificate to that effect to the Court will not do.

(Vide G. 1 under this section).

N. 2. Generally priority of Government claims is regulated in the following order.

- (1) Land revenue for the current year—this has priority of claim on the crop. (section 138 and 140).
- (2) Land revenue for past years.
- (3) Tagai under the Land Improvement Act.
- (4) Tagai under Agriculturists Loans Act.
- (5) Irrigation rates.

(6) Claims of other departments such as Abkari, forest etc.

N. 3. Vide section 151 of the Code and the note under it.

G. 1. A Civil court attaching agricultural produce or other moveable property of persons liable for the payment of land revenue.

One G had made a default in paying Government dues amounting to Rs. 146. His share in an Inam village to extent of Rs. 337 was attached and deposited in court by a Sub-Judge in pursuance of a decree passed against him. A Mamalatdar sent to the Sub-Judge a statement of accounts certified under section 149 L. R. C. by Prant Officer and requested him to satisfy the land revenue demand from G's share then in the hands of the civil court. The Sub-Judge replied to the Mamalatdar that he should formally make an application through the Government Pleader in the open court for removing the attachment and that orders regarding payment would be then passed on hearing both the parties.

Government thereupon sent the following draft rules for the approval of the High Court:—

1. (To be entered as rule 44-A of order 21 in the first schedule to the Code of Civil Procedure, 1908.)

'Where the property to be attached is agricultural produce and the judgment-debtor is a person liable for payment of land revenue, a copy of the warrant or order of attachment shall be sent to the officer of the Collector of the district in which the judgment-debtor resides.'

2. (To be inserted as rule 63 A of Order XXI).

(a) Where a court has attached any property of a person who is liable for the payment of land revenue, the court, on receipt of a certificate in the form hereinafter mentioned and a notice from the Collector to the effect that an arrear of land revenue or a sum recoverable as an arrear of land revenue is payable to Government by such person, shall pass

an order directing that the claim of Government shall after the expenses of sale (if such property is to be sold) have been defrayed, be satisfied out of the property in preference to any other claims, and effect shall be given to the order accordingly.

(2) The certificate above referred to shall state:—

(a) The name of the defaulter and such other particulars as may be necessary for his identification;

(b) The amount payable by him and the account on which it is due;

(c) That the said amount is recoverable as an arrear of land revenue.

(3) Such certificate shall be signed by the Collector and shall be sufficient authority to the court.

In reply, the hon. the Chief Justice and Judges informed Government as follows:—

The first draft rule will soon be considered by the Rule Committee.

As to the second draft rule, we regret that we cannot agree to it, that is to say, that on a mere certificate of the Collector assets realized in execution should be held without further enquiry to be, wholly or partly, the property of Government. The interests of many decree-holders entitled to rateable distribution may be concerned, and might be prejudiced by such a rule. It is therefore open to the Collector to appear before the court by a pleader and to obtain such an order as the court is legally empowered to pass in favour of Government. (G. R. R. D. Nos. 13 of 3rd January 1913 and 9188 of 23rd of September 1916.)

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 to the same.

The liability of the crop for the revenue of the land.

G. 1. Current year's revenue to have precedence :—The practice of crediting the amount of land revenue collected in the first instance against any arrears which may be due for former years should be discontinued. The demand of the current year should first be met* and the arrears of former years should, if possible, be recovered afterwards. (G. Rs. No. 727, dated 28th January 1885 and No. 80, dated 6th January 1905.)

G. 2. Land revenue for the current year.

This expression includes suspended revenue payable in that year as well as revenue for that year. (G.R. No. 6461 dated 14th June 1915)

Land revenue may be levied at any time during the revenue year.

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 144, payment will be required only on the dates to be fixed under the provisions hereinafter contained.

removal of crop which has been sold etc., may be prevented until revenue paid.

[^a] **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.

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.

N. I. The new section is necessitated by the system of granting suspensions of land revenue in years of scanty rainfall. Amounts suspended in one year became 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.

G. I. Inapplicability to water rates.—Over due water rates payable under Section 57 of the Irrigation Act (VII of 1879) can only be recovered like *arrears* of land revenue, and the provisions of Sections 140-145 of the Land Revenue 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. No. 2882, dated 9th April 1885.)

G. 2. Delegation of powers under Sections 140 to 143 and 145 :—The Collectors and Deputy Commissioners may delegate their powers under Sections 140 to 143 and 145 to such Mamlatdars and Mukhtyarkars as may be considered best fitted to exercise them. The delegation should not be made as a matter of course ; the choice of the officer to be entrusted should be made after careful selection. (Serial No. 1 of statement accompanying G. R. No. 8046, dated 7th August 1908 and G. R. 5295, dated 1st June 1911 item 62.)

G. 3. Powers under Sections 140 to 143 and 145 should be expressly delegated to each Mamlatdar when newly appointed to a Taluka. (G. R. No. 7773, dated 21st August 1913.)

G. 4. Powers under Sections 140 to 143 and 145 are not to be exercised by Mamlatdars unless they have been specially delegated to them by the Col-

lector. Delegation of the powers of a Collector to Mamlatdars, Mahalkaris etc. under Sections 86 and 87, does not carry with it delegation of all the powers of a Collector under Chapter XI of the Code. A Mamlatdar cannot, therefore, dispose of an application for assistance by way of precautionary measures under Section 86 unless he has been delegated the necessary powers under Section 140. (G. R. No. 239, dated 10th January 1914.)

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—

the removal thereof, or

place watchmen over it.

- (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.

G. 1. Inamdar's power to take precautionary measures and to attach property.—An Inamdar who holds a commission conferring upon him the power described in clause (a) of Section 88 of the Land-Revenue Code is entitled to take “such precautions as the Collector is authorized to take under Sections 141 to 143.” Referring to Section 138 of the Code it appears that the Collector is only authorized to take precautions under Sections 141 to 143 for the recovery of the land-revenue of the current year and Inamdar's power is similarly restricted.

The power to attach property conferred upon an Inamdar under clause (a) of Section 88 of the Code is not restricted by any reference to any other section or provision of that enactment, 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 a 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. No. 2901, dated 15th April 1886).

G. 2. The forms of orders to be issued under this section have been sanctioned by Government in their Resolution No. 674, dated 27th January 1891, and are printed as Appendix 22.

G. 3. Precautionary measures in extreme cases only.—As a rule, recourse should only be had to the precautionary Sections 141 and 142 of the Land Revenue Code in extreme cases; an indiscreet use of the powers given by them would lead in many cases to great hardship. (G. R. No. 680, dated 30th January 1892.)

G. 4. The effect of prompt measures for attachment.—The provisions of Section 140 and the last sentence of Sections 145 also make it clear that Sections 141-143 are intended to be used only in the case of current demands. In regard to the revenue for the past year, the Collector can recover as arrear by attachment and sale of the crops (balance after paying the current year's demand) as immoveable property under clause (d) of Section 150 if they are standing and (c) if they are reaped.

If the Collector takes prompt measures for the attachment by separate process on account of arrears of the balance of the crop which is realised on recovery of revenue due for the current year, the result would probably be much the same as if Sections 141-143 were resorted to with regard to the whole claim. (G. R. No. 498, dated 24th January 1903)

G. 5. Vide G. 2. under Section 138.

Collector's orders under last section how to be made known.

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.

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.

Penalty for disobedience of order.

Any person who shall disobey any such order after the 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.

G. 1. General prohibitions under special sanction.—General prohibitions not to remove crops without previous permission should not be resorted to for the collection of the revenue without the special sanction of the Collector, which will only be given after careful consideration in each instance. (G. R. No. 118, dated 7th January 1888.)

G. 2. For disposal of fines imposed upon an inamdar's tenant under Section 142 Vide. (G. R. No. 6513, dated 6th July 1909.)

J. 1. Bombay High Court decision on a reference by the District Magistrate of Poona.—In order to secure the payment of land revenue, the Collector of Poona had issued orders to the Mamlatdar to collect land revenue for 1906-07, by precautionary measures, wherever necessary. On the authority of this order, the mamlatdar of Indapur issued a general notice to all the holders of land, paying revenue to Government in the village of Kazad, directing them not to remove the crops growing on the land without the written permission of the mamlatdar. The accused removed from his field on the 4th November, 1906, the crop of bajri, etc., without such permission and disposed of it. For this act the mamlatdar accorded his sanction for the prosecution of the accused under Section 188 I. P. Code. Mr. Carmichael remarked that the conviction by Mr. Modnimbkar seemed to be illegal. He, in his capacity of Mamlatdar, accorded his sanction for the prosecution of the accused and tried the case himself. Mr. Modnimbkar was disqualified from trying the accused, for the offence was one mentioned in section 195 of the Criminal

Procedure Code, and it had been committed in contempt of his own authority. The accused had paid the fine. Mr. Carmichael recommended that the conviction be set aside, and the fine refunded.

Their Lordships quashed the conviction and sentence, and ordered the fine to be refunded. (Published in the "Times of India," dated 24th July 1917.)

Reaping,
etc., not to
be unduly
deferred.

Crop when
to be re-
leased.

143. The Collector shall not defer the reaping of the 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 costs, and release the rest.

Tempo-
rary
attach-
ment and
manage-
ment of a
village or
share of a
village.

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.

Powers of
manager,
and dis-
posal of
surplus
profits.

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.

[a] Words repealed by Bom. IV of 1905, 2nd Sch., are omitted.

N. I. As regards Government dues they can be recovered direct from the subsharers and inferior holders in accordance with G. R. No. 9920 dated the 21st December 1904. R. D. It, therefore, seems unnecessary to attach the village under section 144 of the Land Revenue code.

G. I. Recovery of rent and revenue due to estates of which the collector is the official guardian. A collector is in charge of an estate

- (a) under the Courts of Wards Act
- (b) under the Guardians and Wards Act
- (c) under the Land Revenue Code and
- (d) under the Khoti Settlement Act

2 As to the recovery of rent etc. under classes (a), (c), (d) a Collector has remedies under section 29 of Court of Wards Act, under section 160, and under section 187 of the Land revenue code respectively.

3 As to the recovery of rent etc. under class (b) the collector should recover them in the same way as under section 29 of Court of Wards Act (G. R. No. 2566. dated 19th March 1910).

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

Precautionary measures to be relinquished on security being furnished.

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.

N. I. Vide G. 2, G. 3, and G. 4 under Section 140.

G. I. The form of security-bond to be furnished under this section has been sanctioned by Government in their Resolution No. 674, dated 27th January 1891, and is printed as Appendix 23.

G. 2. Security bonds should usually be taken only from large and solvent rayats in which there may be some doubt about their willingness to pay. Full discretion is vested in Collectors to do as they think fit on the subject. (G. R. No. 6954, dated 11th December 1875.)

Government to determine the dates, etc., on which land revenue shall be payable.

146. Land revenue, except when it is re-covered under the provisions of the foregoing sections 140 to 144, 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.

Arrear.

Defaulters.

[^a] **147.** Any sum not so paid becomes thereupon an arrear of land revenue, and the persons responsible for it, whether under the provisions of section 136 or of any other section, become defaulters.

[a] As to the local modification of section 147, see para. 5 of foot-note [a] on p. I, *supra*.

N. I. In the Revenue Recovery Act I of 1890, which extends to the whole of British India, the word "defaulter" is defined 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."

[a]148. If any instalments of land revenue be not fully paid within the prescribed time, it shall be lawful for the Collector to impose as a penalty or as interest such charge on such instalments, and on the arrears, 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.

[a] This section was substituted for the original section by Bom. IV of 1913, s. 69.

SUMMARY (S. 148.)

S. 148 Scope of new Section ...	...	N 1
Penalty—(1) Assistance cases...	...	G 3
(2) Leviable when ...	...	G 2, 4, 7
(3) Maximum ...	...	G 1
(4) Notice of demand ...	...	N 2
(5) Powers of ...	...
(a) Mamlatdars ...	...	G 5
(b) Subdivisional officers ...	...	G 6
(6) Suspended arrears ...	...	N 4
(7) Tagai arrears ...	...	N 3

N. I. This new section extends the scope of old section 148 so as to allow the imposition of a charge as a penalty or by way of interest on unauthorised arrears of past years as well as on arrears of the current year. The section as it formerly stood limited this claim to arrears of the

current year, but there is no reason in equity why Government should not claim interest on arrears of past years also.

N. 2. From the wording of section 148 of the Land Revenue Code and from paragraph 5 of Mr. Cardeaux' Memo No. 1532 dated 21st November 1882 quoted in the last paragraph of the preamble of G. R. No. 2485, dated 27th March 1883, it appears that a penalty is to be first imposed in the case of rayats who are known to be able to pay but wilfully delay to do so, and that it will only be necessary in the subsequent notice of demand to insert between the words "together with" and "the sum of" the following words, namely, "the sum of Rs.—penalty (or interest as the case may be) and."

N. 3. Under this section penalty can be imposed for non payment of Tagai &c. recoverable as an arrear of land revenue and the penalty will have to be credited to the department or head to which the principal amount is credited. Only the notice fees should go to the Revenue Department making the recovery.

N. 4. Suspended arrears fall under "land revenue due for the current year." (Vide G. 2 under Sec. 138.) The proviso at the end of this section that no penalty should be imposed on suspended arrears was added after a good deal of discussion in the Legislative Council.

G. 1. Maximum Penalty.—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. No. 2485, dated 27th March 1883.)

G. 2. Interest or penalty under Section 148 of the Land Revenue Code should be levied only in

cases of proved contumacy. (G. R. No. 194, dated 9th January 1884.)

G. 3. Levy of penalty in alienated villages and its disposal.—In cases where assistance is given by revenue officers for the recovery of revenue due to holders of alienated villages, or other superior holders, if any penalty is ordered and levied under this section for default in punctual payment of revenue, it should be paid over to the superior holder. The Collector need not levy any penalty under this section, except in cases where he may consider that the superior holder is entitled to something more than his bare rent. (G. R. No. 9586, dated 4th December 1884 and G. R. No. 5780, dated 24th May 1915.)

G. 4. Failure to pay until compelled should not meet with impunity in years when there are no special circumstances excusing it. (G. R. No. 6680, dated 25th October 1900.)

G. 5. The power imposing $\frac{1}{4}$ th fine is delegated to Mamlatdars. (G. R. No. 5295, dated 1st June 1911.)

G. 6. Subdivisional officers have power to assess or to remit $\frac{1}{4}$ th penalty. (G. R. No. 5295, dated 1st June 1911.)

G. 7. The provisions of this section are not to be neglected either in Government or alienated villages to the encouragement of contumacy. (G. R. No. 6288, dated 4th July 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. Certified account to be evidence as to arrears.

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 of this Collectors may realize each other's demands.

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.

N. I. Before the passing of the Revenue Recovery Act (I, of 1890) the Collector of a district in the Bombay Presidency could not,† under the provisions of the Code, proceed to recover an arrear of land-revenue due on lands situated in a district belonging to any other Presidency. This difficulty has now been removed by the above mentioned Act. This Act extends to the whole of British India, and under Section 3 thereof the Collector of a district in one Presidency can recover an arrear of land-revenue due on lands situated in a district belonging to any other Presidency.

Section 3 of the Act (I, of 1890) runs as follows:—

(1) Where an arrear of land-revenue, or a 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.

† In a case where the Collector of Bellary (a district in the Madras Presidency) had requested the Collector of Dharwar to recover from certain persons in the Dharwar district arrear of land-revenue due on lands in the Bellary district, Government decided that the Land Revenue Code being applicable only to the Bombay Presidency, the Collector of Bellary was not a Collector within the meaning of Section 149 nor the land-revenue due on lands in the Bellary district the land-revenue within the meaning of Section 187 and that therefore the Collector of Dharwar could not proceed under the Code to recover the arrears, though he might use his influence for the recovery thereof (G. R. No. 2877, dated 21st May 1881.)

§ *Vide* appendix 26.

G. 1. Recovery outside British India.—Revenue cannot be realized outside British India by coercive process. (G. R. No. 3302, dated 20th April 1894.)

G. 2. Recovery of other than land-revenue in another Collectorate.—It is necessary to send a certificate under Section 31 of the Revenue Recovery Act when any 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 Land Revenue Code applies, (G. R. No. 552, dated 29th January 1901.)

G. 3. Mamlatdars can forward certificates under this section to other Mamlatdars. (G. R. No. 5295, dated 1st June 1911.)

150. An arrear of land revenue may be re-
covered by the following processes;—

(a) by serving a written notice of demand on the defaulter under section 152 ;

[^a](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; .

Process for recovery of arrears.

- (d) by sale of the defaulter's immoveable property under section 155 ;
- (e) by arrest and imprisonment of the defaulter under section 157 and 158 ;
- [^b](f) in the case of alienated holdings consisting of entire villages, or shares of villages, by attachment of the said villages or shares of villages under sections 159 to 163.

[a] As to the local repeal of section 150, cl. (b), see para. 4 of foot-note [a] on p. I, *supra*.

[b] As to the local modification of section 150, cl. (f) see paras. 4 and 5 of foot-note [a] on p. I, *supra*.

SUMMARY (S. 150.)

Coercive processes—(1) Mode of adopting	N 2
(2) Quarterly return discontinued ...	N 1
(3) When a person lives in a Native State ...	G 2
Distrain—(1) Preliminaries of ...	G 5
(2) Property in the possession of a Civil court....	N 3, G 4
Forfeiture—Of a whole khata when made	G i
Notice—Service between Nizam and Bombay Governments ...	G 3

N. 1. A quarterly return of coercive processes from the register in Appendix 24, was prescribed by G. R. No. 4477, dated 1st July 1902, but this return was subsequently discontinued by G. R. No. 6204, dated 4th July 1912.

N. 2. Any of the processes may, at the discretion of a Revenue officer, be adopted first, except that a Mamlatdar, Mahalkari or Head Karkun is bound to issue first a notice of demand. (*Vide* No. 2 under S. 152.)

N. 3. G. 4 under this section should be read with G. 1 under Section 137.

G. 1. Arrears of land-revenue, how to be apportioned when the revenue of some of the survey numbers of a defaulter has been paid.—It is only the occupancy or alienated holding *in respect of which an arrear of land-revenue is due*, that can be forfeited under Sections 150 (b) and 153. And 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 Sections 150 (d) and 155. Neither Section 56 nor Section 150 (b) nor Section 153 legalises 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 (compare I. L. R. XV., Bombay 67). 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 those numbers has been paid and the other instalments left unpaid, in such a case all the survey numbers in respect of which the second instalment was unpaid could be forfeited under Section 153 unless any of the holders or other persons interested availed themselves of the right given by Section 80. But even in such a case the Collector can act under rule 58 (now 60). But the *latter declaration* (under Section 155) is to be used "in cases of necessity," a *provision having the force of law*.

When an alienated holding is legally declared forfeited to Government, the land can be fully assessed, just as in the case of a resumption of an *inam* by Government (compare I. L. R. IX Bom. 419). (G. R. No. 4567, dated 30th June 1899.)

G. 2. Remedy where revenue cannot be recovered as a Land Revenue Demand.—In a case where Forest Revenue could not be realized as a revenue demand, or the purchaser lived in a native

State, Government ruled that a suit should be filed in the court within whose jurisdiction the cause of action arose, service of summons being effected under the Civil Procedure Code. On a decree being obtained, execution will be obtained by transfer of the decree to the proper court.

If the debtor appears in the British territory he should be detained till he gives security to appear and answer any decree that might be passed against him. (G. R. No. 7103, dated 20th September 1889.)

G. 3. Service free of charge by Nizam Government and Bombay Government.—Service of notices for the recovery of land-revenue, issued to defaulters by the Nizam Government as also by the British Government, should be free of charge. (G. R. No. 2610, dated 15th April 1890.)

G. 4. Distraint of property in the possession of the Court.—There is no apparent reason why distraint by a Collector under the Bombay Land Revenue Code, 1879, should not be extended to the property of a defaulter in the custody of a public officer, or even of a Court, though the Collector could not proceed by way of prohibitory order or notice under the provisions of the Code of Civil Procedure, but only by actual seizure, pending which there could be no attachment invalidating alienations.

The Court in which or the public officer in whose custody such property is deposited would apparently be protected in offering no opposition to such seizure or distraint, by a statement of account certified by the Collector under section 149, Bombay Land Revenue Code, 1879, which renders such statement conclusive evidence of the arrears of the amount of land revenue due and of the person who is the defaulter.

The distraint, however, could not be effected by a written order of the Court or officer and it is somewhat difficult to see how the distraint could be effected without the concurrence of such court or

officer concerned, though active resistance to the taking of the property by the lawful authority of a public servant duly authorized under section 154, Bombay Land Revenue Code, would apparently be illegal and punishable under section 183, Indian Penal Code. (G. R. No. 369 of 18th January 1901.)

G. 5. The preliminaries of a distraint.—The following general orders are issued for the guidance of Collectors and other officers concerned :—

1. It should be clearly intimated to taluka authorities, as well as to all village officers, that in each and every case before making any distraint an express order must be obtained from the Mamlatdar, Mahalkari or other officer, duly empowered under Section 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 the amount of arrears due, the approximate outturn of the defaulter's crop, the extent of his general means, and the reasons 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.

2. 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 Jamabandi 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 form of this register was prescribed by G. R. No. 4477, dated 1st July 1902. (*Vide* Appendix 24.)

3. 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. No. 8932, dated 23rd December 1901.)

Revenue demands of former years how recoverable.

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.

Proviso.

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 :

N. I. No reference to sec. 148 is made in sec 150. It is therefore doubtful whether the penalty specified in sec. 148 will be entitled to preference given by sec. 137 if it is not first demanded in the year in which the land revenue was due. For instance, if a contumacious Marwari withheld revenue in 1907-08 the ¼th penalty on that revenue will not have the preference under sec. 137, in 1909-10 unless it was not demanded in 1907-08.

When notice of demand may issue.

152. A notice of demand may be issued on or after the day following that on which the arrear accrues.

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.

SUMMARY (S. 152.)

Notice—(1) Form of ' N1

(2) Indiscriminate issue of—to be avoided ...	N 3, G 1, 2, 3, 4, 6
(3) Rules for cost and issue of..	G 5
(4) —Under Income Tax Act..	N 4
(5) When—issue first...	N 2, G 9
Notice fee—(1) Remission of	...G 5 (4), 10
(2) When levy of—becomes due	G 7, 8
Rules under S. 158	... .. G 5
Rules under S. 183	... .. G 5

N. 1. The form of notice is in Appendix H. to the rules under the Code.

N. 2. A notice of demand shall be issued first by a Mamlatdar, Mahalkari or Head Karkun in accordance with the 2nd paragraph of this Section and Rule L at G. 5 issued by the Commissioners under that paragraph.

N. 3. Rule 88 referred to in G. 6 is as follows:—
“Village officers to be held responsible for avoiding frequent issues of such notices.—The village officers shall be held responsible by the Collector for warning landholders verbally from time to time of the dates on which their instalments are due and for using their personal influence in securing prompt payment without resort to notices of demand or other compulsory process, and exemplary punishment should be awarded to any village officer who is remiss in the performance of this duty.”

N. 4. Notice of demand under the Income Tax Act 7 of 1918.—A notice of demand under Section 20 of Act 7 of 1918 is only an intimation in form E and the work of recovery commences when any of the steps referred to in Section 150 of the Land Revenue Code is first taken after the amount of Income Tax becomes an *arrear* under Section 35 of Act 7 of 1918.

Any officer above the rank of a Mamlatdar is not bound to issue a notice first under S. 152 of the Land Revenue Code in recovering an arrear of Income Tax as an arrear of Land Revenue.

As the powers of a Collector under Section 36 (1) of the Income Tax Act are not delegated to a Mamlatdar (*Vide* G. N. No. 9400, dated 18th September 1918) the latter, when beginning to recover an arrear of Income Tax, is bound to issue a notice under S. 152 L. R. C. in the first instance (*Vide* N. 2 above.)

G. 1. Issue of notices.—Indiscriminate issue of notices, which is apt to be considered a great proof of difficulty in collecting the revenue, should be avoided as much as possible. (G. R. No. 3813, dated 15th June 1877.)

G. 2. The Commissioner should impress on the Collector that notices for the recovery of Government demand must only be issued with proper precautions to prevent any abuse of the system and that Talatis needlessly harassing the rayats render themselves liable to punishment. (G. R. No. 4432, dated 23rd August 1879.)

G. 3. 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. No. 4921, dated 26th August 1881.)

G. 4. When a cultivator fails to pay his assessment punctually owing to real poverty, it is clearly inexpedient to add notice-fees to his other liabilities, as long as it can be avoided. (G. R. No. 6551, dated 3rd November 1881.)

G. 5. In supersession of all previous orders and rules on the same subjects, the Commissioner in Sind and the Commissioners, N.D., C. D. and S.D., have with the sanction of the Governor in Council

framed the following rules under Sections 152, 158 and 183 of the Bombay Land Revenue Code, 1879:—

I.—Notices of Demand (Section 152.)

1. Notices of demand shall be issued by the Mamlatdar or Mahalkari within whose charge an arrear accrues or by their Head Karkuns.

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 rupees five, and of eight annas in any other case.

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, Ankola and Honavar and the Petha of Bhatkal in the Kanara District where an order has been passed under Section 87 for payment of rent or land revenue and such rent or land revenue is not paid within 10 days from the date of passing such order, a notice shall issue as prescribed in rule 1 and a notice-fee of half an anna in the rupee shall be levied on the amount recovered in pursuance of such notice.

Special rules
for certain
parts of
Kanara
District.

Provided that this rule shall not apply to assistance suits 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."

II.—Arrest and imprisonment of Defaulters (Section 158).

1. The powers of arrest conferred by Section 157 may be exercised by Collectors and by any Assist-

ant 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 arrest 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 4
{ exceeds Rs. 25 but does not exceed Rs 100...0 8	
{ " 100 " " " 500...1 0	
{ " 500 " " " 1,000...2 0	
{ " 1,000 " " " 5,000...4 0	
{ " 5,000	8 0

3. The subsistence-money to be paid by Government to any defaulter under detention or imprisonment shall be fixed by the Collector, or by the Assistant or Deputy Collector, who orders the arrest within the following limits, *vis* :—

	Not less than	Not more than
	Rs. a.	Rs. a.
If the defaulter is a European ...	1 0	1 8
If the defaulter is a Eurasian or a native of Portuguese descent ...	0 8	1 0
In any other case	0 3	0 12

III.—Expenses of Sale (Section 183.)

1. 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 $\frac{1}{4}$ 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. G. N. No. 2459, dated 26th March 1883, G. N. No. 8714, dated 16th September 1911, G. N. No. 9263, dated 3rd October 1911.

G. 6. The coercive system of realizing Government demands requires more organized supervision than is at present given to it, and Government are convinced that if village officers were compelled to carry out strictly their duties under No. 87 (now 88) of the rules under the Land Revenue Code, notices

and coercive process would become practically known. The attention of all district officers is again invited to this most important subject. (G. R. No. 7175, dated 2nd October 1893.)

G. 7. Levy of notice fees.—The practice of charging fees only when the notices are actually served is not in accordance with the rules and no collusion between Kulkarnis and occupants can continue if the officer in charge of the taluka and the Mamlatdar take measures to ensure the prompt service of the notices. (G. R. No. 954, dated 31st January 1896.)

G. 8. The levy of fees for all notices issued, whether they are actually served or not, should be the practice. The rule under which remission may be granted makes sufficient provision for the avoidance of undue hardship. A notice should be held to be issued when it has been signed and dated. (G. R. No. 1194, dated 16th February 1898.)

G. 9. Notices necessary before distraint.—The suggestion, to dispense with notice under Section 152 and to issue a declaration of forfeiture under Section 153 in all cases in which a notice is necessary does not commend itself to Government. 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. (G. R. No. 10724, dated 31st October 1907.)

G. 10. Head Karkuns should also sign notices of demand and remit notice fees wrongly charged (G. R. No. 5295, dated 1st June 1911 item 72 and 73.)

[^a]153. The Collector may declare the occupancy [^b] 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.

The occupancy or alienated holding for which arrear is due may be forfeited

[c] Provided that the Collector shall not declare any such occupancy or alienated holding to be forfeited—

- (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.

[a] As to the local repeal of section 153, see para. 4 of foot-note [a] on page I, *supra*.

[b] As to the local modification of the word "occupancy," see para. 5 of foot-note [a] on p. I, *supra*.

[c] This proviso was added by Bom. VI of 1901, s. 16.

SUMMARY (s. 153)

Section 153, (1) Interpretation of	...	G	5
(2) Proviso to	...	N	2
(3) to be read with other orders	...	N	1
Forfeiture—(1) Collector to know extent of	...	G	2
(2) form of notice of	...	N	3
(3) Mamlatdars and Mahalkaris can issue notice of	...	G	4
(4) minors should not suffer by	...	N	4
(5) Sale of land without	...	J	2
(6) Talukdari village	...	J	1
(7) Watan land	...	G	1
(8) When—absolute	...	G	3

N. I. *Vide* G. R. No. 3796, dated 21st July 1880, printed under Section 56 and also orders under

Sections 169 and 185; also G. Rs. Nos. 2072, dated 16th March 1897 and 4567, dated 30th June 1899, printed under Section 150; so also P. J. 70 of 1895 printed under Section 172.

N. 2. This proviso to Section 153 was added by Bombay Act VI. of 1901, Section 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 contained in Sections 80 and 81 (para 6 [2] of Select Committee's Report on Bill No. IV of 1901. B. G. G. Pt. V., p. 250.)

N. 3. *Vide* Appendix 25 form of notice.

N. 4. Care should be taken that minors do not suffer by forfeiture for default made by their guardians.

G. 1. **Watan land, forfeiture of**—Watan land is "alienated land" within the meaning of clause 19, Section 3, of the Code, and when an arrear of land-revenue is due in respect of any such alienated holding, the Collector may under this section declare it to be forfeited to Government. The Collector, when he has forfeited any such alienated holding should not sell it but should enter the land comprised therein in his records as unoccupied unalienated land and deal with it according to the law and rules relating to such land. The arrear of Judi will still be recoverable from the Watandars under Chapter XI. (G. R. No. 3016, dated 10th June 1880). The above orders are made applicable to all alienated lands by G. R. No. 3796, dated 21st July 1880. In every case of default of payment of arrears of land revenue the holding should be forfeited.

G. 2. **Necessity of the Collector's knowing severe measures adopted.**—It is the plain duty of Collectors to keep themselves fully informed of the extent to which recourse is being had to the severe

forms of compulsory process for the collection of revenue and where they have been largely employed, of the special reasons which have qualified or necessitated their employment. (G. R. No. 5603, dated 8th August, 1901.)

G. 3. Forfeiture once lawfully made is absolute and there is no legal obligation on the Collector to cancel it even though the arrears be afterwards paid. (G. R. No. 7855 dated 31st August 1910.)

G. 4. Mamlatdars and Mahalkaris can issue notices under this section. (G. R. No. 5295 dated 1st June 1911, item 74.)

G. 5. Interpretation of section 153 of the L. R. Code.

1. A case has come to the notice of Government in which, for default in payment of land revenue in respect of thirteen survey numbers held by a person in whose name they were shown in the record of rights, the Mamlatdar issued a notice under s. 153 of the land Revenue Code calling on him to pay with fifteen days the land revenue and the local fund cess due on all the survey numbers, and intimating that in default of payment the lands mentioned in the notice would be forfeited. Although the arrears of land revenue were on account of thirteen survey numbers, only four survey numbers were mentioned in the Mamlatdar's notice, as the Mamlatdar considered that these would be sufficient to provide the arrears of revenue, if sold. The land revenue in respect of these four survey numbers was paid in time; but as the balance in respect of the remaining nine survey numbers remained unpaid, the Assistant Collector, on the Mamlatdar's recommendation, forfeited the four survey numbers in question. On application being made to him, the Assistant Collector refused to cancel his order of forfeiture, which was confirmed, on appeal, by the Collector and the Commissioner concerned. The applicant thereupon filed a suit against the Secretary of State for India

in Council. For the reasons stated below, Government compromised the suit and restored to the plaintiff the lands in dispute.

2. Under the survey settlement system 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. As therefore the plaintiff in the present case had paid in time the land revenue in respect of the four survey numbers mentioned in the notice, those survey numbers were not the lands on account of which land revenue was in arrear, and they were therefore not liable to forfeiture under section 153 of the Land Revenue Code. Apart from this point it appeared that all the formalities regarding the issue of proclamation and publication of notices as required by the proviso to section 153 of the Land Revenue Code, read with sections 165 and 166, has not been fully observed; and failure to comply with the required formalities had vitiated the forfeiture proceedings.

3. 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 Land Revenue Code by forfeiture of that survey number, because, as a specific assessment was fixed on it, that survey number is the occupancy (section 3, 17) in respect of which the arrear is due. The special feature of forfeiture is that it frees the occupancy from encumbrances (section 56). The Collector can sell other immoveable property belonging to the defaulter; for instance, other survey numbers entered in his name, but cannot forfeit such other property and the property is sold subject to encumbrances.

4. 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 62 of the rules under section 214, Land Revenue 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. Section 153 of the Land Revenue Code makes the observance of the formalities therein mentioned imperative and leaves no option or discretion to the revenue authorities. Under the last clause of section 166, the Collector may cause the notice to be published in any other manner, i.e. in addition to the ways prescribed, but not in lieu of them.

5. Mistakes in the use of section 153 of the Land Revenue Code are not infrequent, and the Governor in Council considers it desirable to draw the attention of the officers concerned to its proper use on the lines indicated above. (G. R. R. D. No. 11876 dated 3rd October 1917.)

J. 1. Talukdari villages fall within the description of "alienated holding" as defined by the Code. When a talukdari village is attached under Section 159 of the Code for arrears of land revenue, so long as the attachment subsists, an order of forfeiture under Section 153 is "illegal" (I. L. R. XVI, Bombay, 455, Samaldas Bechar Desai vs. Secretary of State for India.)

J. 2. Sale not illegal for want of forfeiture:—A sale duly confirmed by a Collector, of a holding, for default of payment of assessment, is not invalid and illegal because there is not on record a declaration of forfeiture by the Collector prior to the sale. (Ganapati vs. Gangaram—P. J. page 539—1895.) I. L. R. 21 Bombay 381.

154. The Collector may also cause de-faulter's moveable property to be distrained and sold. Distrain and sale of de-faulter's moveable property.

Such distrains 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.

SUMMARY (s. 154)

Section 154—to be read with a Govern-			
ment order	...	...	N 1
Cattle	...	...	J 3
Distrain—(1) account books for income-			
tax purposes cannot be			
distrained	...	...	J 2
(2) dwelling houses not to be			
broken into for	...	...	G 6
(3) form of warrant	...	...	G 5
(4) goods on a public road	...	...	J 1
(5) powers of (1) executing			
order for	...	...	G 2,3
(2) ordering to Mamlat-			
dars and Mahalkaris	...	...	G 9
(6) Talukdari village	...	...	J 2
Forfeiture—when—should not be made			G 1,4,7,8

N. I. Vide G. R., No. 8932, dated 23rd December 1901, under Section 150.

G. I. Eviction for non-payment not to be enforced in certain cases.—It is not the wish of Government that all holdings in respect of which arrears of land revenue may be due should *ipso facto* be declared forfeited, but that the provisions relating to forfeiture should only be held to apply to cases in which the Collector deems it necessary to resort to process for the recovery of such arrears. Where there is reason to think that if the people have time given them they will not fail to discharge

their liabilities, it would be harsh to treat them as contumacious defaulters, or as hopelessly insolvent, and it is not the wish of Government that the power of forfeiture should be enforced in such cases to their disadvantage and the risk of the outstanding revenue. (G. R. No. 4949, dated 18th September 1880.)

G. 2. Distraint may be executed by—Tappeddar or Munshi.—Distraints under Section 154 of the Code may be made in Sind by any Tappeddar or Munshi provided that he can read and write. (G. R. No. 3396, dated 13th June 1881.)

G. 3. Taluka Karkuns, Kulkarnis, Talatis and Patels.—Distraints under Section 154 of the Land Revenue Code should be executed by Taluka Karkuns, Kulkarnis, Talatis and Patels provided that they should be executed only by persons able to read and write. In special cases, however, the Collectors and their assistants may direct the warrant to any person whom they may consider competent to execute it. (G. R. No. 7858, dated 23rd December 1881.)

G. 4. Circumstances in which there should be no forfeiture.—Forfeiture of the right of occupancy though authorized as a penalty for non-payment of revenue, is not absolutely required in any case, and Government do not desire the penalty to be enforced when the failure to pay is clearly due to inability resulting from loss of crops or other calamity. (G. R. No. 7726, dated 17th October 1883.)

G. 5. Form of warrant of distraint.—The Code does not require any standard form of warrant for distraint, nor is such a form necessary or expedient for use by revenue officers.

The order of distraint may take the form of an ordinary order in the course of correspondence. (G. R. No. 9401, dated 21st December 1883, and G. R. No. 1302, dated 15th February 1889.)

G. 6. Dwelling houses not to be broken into—
Dwelling houses are not to be broken into for the purpose of distraining goods for the recovery of arrears of land-revenue. (G. R. No. 9982, dated 19th December 1884, and G. R. 11240 of 11th December 1913.)

G. 7. It is harsh and impolitic to evict an occupant who has fallen into arrears by no fault of his own but under the inevitable stress of famine as such eviction is attended by the loss of any improvements he may have made in his holding. (G. R. No. 8757, dated 6th November 1884). The views of Government on this point which were set forth in their circular letter to the Commissioners, No. 4454, dated 25th August 1879, have been repeated in Sections 137 to 142 of the Famine Relief Code of 1900. Section 141 of this Code which directly bears on this point is given below:—

“(a) In no case should the Collector apply such pressure to obtain payment as will cause an occupant to sell his plough, cattle or agricultural implements, or prevent or retard the resumption of agriculture. (b) The recovery of arrears, if any, should be from a surplus of means after sufficient is allowed for the subsistence of the occupant and his family and the restoration of his position as a payer of revenue, and occupants should not be driven to borrow from *Savkars* in order to pay arrears.”

(b) The sale of the occupancy right of old cultivators to recover arrears accumulated under stress of famine is contrary to the policy of Government. (G. R. No. 651, dated 23rd January 1885).

G. 8. It serves no good purpose to keep men without capital as occupants where there are capitalists to take their place, but occupants must not be deprived of their land without good cause, and it must not be forfeited if the revenue can be recovered by other means. (G. R. No. 8191, dated 9th October 1885.)

G. 9. Delegation to Mamlatdars and Mahalkaris of the power to distrain.—The Collectors may delegate the powers exercised by them under Section 154 of the Land Revenue Code, to Mamlatdars and Mahalkaris. (G. R. No. 5954, dated 31st August 1891), also R. 5295 of I-6-II.

J. I. Attachment of goods on a public road.—The defendant who was a Mamlatdar of Khanapur, in the Satara District, attached some pieces of jaggery which were being taken in five carts on a public road by the plaintiff's son from the fields of D, who owed arrears of land revenue to Government and had to satisfy two decrees in assistance cases. The defendant was not invested, by the Collector of Satara District, with the powers contained in section 140 of the Land Revenue Code. The plaintiff filed a suit against the defendant to recover damages for wrongful attachment. The Lower Court dismissed the suit on the grounds that it was barred by s. 4 (c) of the Revenue Jurisdiction Act; and that as the defendant acted bona fide and was authorised under s. 154 of the Land Revenue Code to distrain the property the suit was barred by s. 6 of the Revenue Jurisdiction Act. On appeal:—

Held, (1) that s. 4 (c) of the Revenue Jurisdiction Act was not a bar to the suit, in which there was a claim arising out of the alleged illegality of the proceedings taken for the realisation of land revenue. The proceedings mentioned in s. 4 (c) of the Revenue Jurisdiction Act must be in their inception legal.

(2) That the defendant was not entitled to claim protection under s. 6 of the Revenue Jurisdiction Act which required that the Act complained of should have been done bona fide in pursuance of the provisions of any law, as he was not invested by the Collector of the District with powers contained in s. 140 etc. of the Land Revenue Code and it was not proved that he believed the property

distrained to be that of defaulter, as required under s. 154 of the Land Revenue Code. The powers contained in ss. 140 etc. of the Land Revenue Code do not authorise the detention of anything but the crops of the land or the seizure of the crop or any other goods after removal from the lands.

Gangaram Hatiram v. Dinkar Ganesh Patwardhan
15 Bombay Law Reporter 665.

J. 2. Owing to the minority of a 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. To recover the arrears of assessment for past years from one of the Khatedars of the village, the Mamlatdar attached ornaments belonging to the Khatedar (plaintiff). The plaintiff having sued the Mamlatdar to recover damages for the wrongful attachment:—

Held, that the Mamlatdar was authorised to distrain moveable property of the plaintiff, both under section 154 of the Land Revenue Code, because he was invested with power of making attachment of moveables by delegation from the Collector of Ahmedabad and under sec. III of the Land Revenue Code, as modified by s. 33 of the Gujarat Talukdari Act.

To ascertain the liability of the plaintiff to pay income-tax, a mamlatdar removed the account-books belonging to the plaintiff from his house, against his wish and inspite of his protests. The plaintiff having sued to recover damages for the wrongful seizure of his account-books by the Mamlatdar:—

Held, that the seizure having been unauthorised and wrongful, the Mamlatdar was liable in damages.

18 Bombay Law Reporter 323.

J. 3. Cattle owners removing cattle attached without actual seizure under section 154.

Accused Nos. 2 and 3, having made a default in the payment of Land Revenue, the Mamlatdar proceeded to their house and made a *panchnama* declaring their buffaloes to be under attachment. At the instigation of accused No. 1, the other accused untied and removed the buffaloes. The trying Magistrate convicted the accused of the offence of theft. The sessions Judge referred the case to the High Court being of opinion that the removal of the buffaloes did not amount to theft because the buffaloes were not at the time in the possession of the mamlatdar, who had not actually effected the attachment by laying hands on the animals or some fastening thereof :—

Held, that the accused were rightly convicted of the offence of theft, for the Mamlatdar was to be deemed to be in possession inasmuch as he had a statutory right to take possession, he came to the place where the buffaloes were with the intention of taking possession, he made a declaration and *Panchnama* that he had taken possession, and he exercised the right or possession by forbidding the defaulters from removing them.

(21 Bombay Law Reporter, pages 251-255).

Sale of
defaulter's
immoveable
property.

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.

N. 1. *Vide* G. R. No. 4567, dated 30th June 1899, under Section 150.

N. 2. The sale under section 155 is like the one held by a Civil Court in execution of its decree, and 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.

G. 1. Difference of the effect of Sections 155 and 153.—In the case of a sale under Section 155 encumbrances created by the occupant remain whereas they disappear in the case of forfeiture under Sections 153 and 56. (G. R. No. 6391, dated 9th September 1890.)

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 two preceding sections.

v of 1908.
Exemption
from dis-
traint and
sale.

The Collector's decision as to what property is so entitled to exemption, shall be conclusive.

N. 1. *Vide* G. R. No. 4347, dated 26th June 1902, printed under Section 42.

N. 2. The proviso to Section 60 (1) of the Civil Procedure Code (Act V of 1908) exempts the following articles from attachment or sale :—

- (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 artizans, 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 (*re. special exemption by Government orders*) ;
- (c) 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;

- (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 of 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 twenty rupees monthly;
 - (ii) twenty rupees monthly, where the salary exceeds twenty rupees and does not exceed forty rupees monthly; and
 - (iii) one moiety of the salary in any other case;
- (j) the pay and allowances of persons to whom the Indian Articles of war (V of 1869) apply;
- (k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act (IX of 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.

(2) Nothing in this Section shall be deemed—

- (a) to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building site or land, or
- (b) to affect the provisions of the Army Act or of any similar law for the time being in force.

G. I. Of materials of houses belonging to an agriculturist.—The materials of a house or other building belonging to an agriculturist are exempted from distraint and sale under Section 156 of the Bombay Land Revenue Code, as (except in the one case, which can never arise under the Bombay Land Revenue Code, of a decree for rent) they would be under Section 266 (now section 60) of the Civil Procedure Code. (G. R. No. 2179, dated 26th March 1891.)

J. I. Exemption from distraint—Of houses dwelt in by agriculturist.—The expression “mate-

rials of houses and other buildings belonging to, occupied by, agriculturist," used in Section 266, (now section 60) clause (c) of the Code of Civil Procedure, 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 occupation 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. (Radhakisam Hakumji vs. Balvant Ramji—L. L. R. VII. 1883, Bombay 530 and XII, Bombay 366).

Arrest and detention of defaulter.

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 Mámlatdár or Mahálkari, 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.

Imprisonment in Civil Jail.

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:

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.

N. 1. Section 58 (1) of Act V of 1908, Civil Procedure Code, lays down that persons detained in the civil prison in execution of a decree shall be so detained (a) for six months where the decree is for the payment of a sum of money exceeding fifty rupees, (b) in any other case for a period of six weeks.

N. 2. By way of explaining this section the following questions and answers are given:—

- | | | |
|---|---|------|
| (1) Do six weeks or six months according to arrear of revenue referred to in sections 157 L. R. C. and 58 (1) of Civil Procedure Code include the first ten days of the Collector's arrest? | } | Yes. |
| (2) Under the rules, subsistence money from 3 to 12 annas is to be given. So should the Mamlatdar spend for each prisoner any amount within these limits? | } | Yes. |
| (3) Are arrears, Notice fee, $\frac{1}{2}$ fine under s. 148, costs of arrest and subsistence money to be recovered? | } | Yes. |

G. 1. Special delegation of power of arrest to Assistant or Deputy Collector.—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, it being remembered that Government are not in favour of arrest of defaulters except in extreme cases. (G. R. No. 1743, dated 1st March 1883.)

158. The Commissioner may, with the sanction of the Governor in Council, from time to time, declare by what officers, or class of

Power of
arrest by
whom to be
exercised.

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.

N. 1. See part II regarding "arrest etc." of G. 5. under section 152.

Power to attach defaulter's village, and take it under management.

159. If the holding, in respect of which an arrear is due, consists of an entire village, or of a share of a village, and the adoption of any of the other processes before specified is deemed inexpedient, the Collector may, with the previous sanction of the Commissioner, cause such 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.

N. 1. Vide G. 1. under section 144.

N. 2. Under the orders in G. R. No, 9920 dated 21st December 1904, (vide G. 60 under sections 86&87), quit rents due to Government in an Inam Village are to be recovered direct from tenants or subsharers. In view of this G. R. there seems no necessity to attach the village.

G. 1. A village was placed under attachment on account of revenue due in respect of it. The Government Revenue having been realized, the attachment was raised; but the expenses incidental to the realization having remained to be recovered, the sanction of Government was asked to replace the village under attachment under Section 159 of the Land Revenue Code for the recovery of the expenses. It was held that no reference to Government was necessary and that the Commissioner was empowered to pass the order applied for under the section referred to. (G. R. No. 6578, dated 13th December 1880.)

[^a] **160.** The lands of any village or share of a village so attached shall revert to Government unaffected by the acts of the superior holder or of any of the sharers, or by any charges or liabilities subsisting against such lands, or against such superior holder or sharers as are* interested therein, so far as the public revenue is concerned, but without prejudice in other respects to the rights of individuals; and the Collector or the agent so appointed shall be entitled to manage the lands attached, and to receive all rents and profits accruing therefrom to the exclusion of the superior holder or any of the sharers thereof, until the Collector restores the said superior holder to the management thereof.

Lands of such village to revert free of incumbrances.

Powers of manager.

* The word "are" in section 160 has apparently been omitted by mistake in the authentic copy of the Code.

[a] As to the local modification of section 160, see para. 5 of foot-note [a] on p. 1, *supra*.

N. I. Vide Section 29 of Act VI of 1888 (Talukdari Act).

J. I. The Collector cannot demand more (Local Fund) in addition to the stipulated rent.—The plaintiffs were the tenants of the Thakor of G. The Collector undertook the management of his estate and had under Section 144 attached the village G. *Held*, that the plaintiffs as tenants of The Thakor were liable to pay to the Collector the stipulated rent only and that Section 160 did not entitle him to demand more. (Printed Judgments 323, the Collector of Ahmedabad *v.* Mosan, '92).

161. All surplus profits of the lands attached, beyond the cost of such attachment and management, including the payment of the current revenue, and the cost of the introduction

Application of surplus profits.

of a revenue survey, if the same be introduced under the provisions of section 111 [a] shall be applied in defraying the said arrear.

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

Restora-
tion of
village so
attached.

[a] **162.** 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 twelve years from the first of August next after the attachment:

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.

Disposal
of surplus
receipts.

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.

[a] As to the local modification of section 162 see paras. 4 and 5 of foot-note [a] on p. I, *supra*.

G. I. Payment of surplus receipts.—The following questions and answers to them are given for the guidance of revenue officers:—

(1) Whether the payment of surplus receipts can be ordered from the year 1910-11 as requested by the 2 Inamdars, as one of them applied in that year, or whether they are entitled to the surplus of 1911-12 in which year both of them applied.

It is equitable to repay the surplus from the year 1910-11.

(2) Whether the surplus is to be paid only to the two Khatedars on their joint receipts or to the two Khatedars and their sub-sharers according to their shares in the village.

The last paragraph of sec. 162 of the Bombay Land Revenue Code, about the disposal of surplus receipts, is subject to the provisions of the Code of Civil Procedure, 1908. In the execution of a decree the Civil Court is empowered to attach money in the hands of a Collector that may be due to a sub-sharer, even though that money is payable in the first instance by the Collector to a Superior holder. Please see order XXI, Rule 46 of the Civil Procedure Code.

If there is no doubt and no dispute as to the shares of the sub-sharers against whom decrees have been obtained, then these amounts may be deducted and paid into Court, the rest being handed over to the Superior holders. If, however, there is any such doubt or dispute, the Collector may make a reference to the Civil Court, and, until the Court passes orders thereon, may postpone the payment of money to the Superior holders.

(G.R. No. 10067 dated 7th November 1913.)

J. I. The position of a Khot, in the villages to which the Bombay Khoti Act I of 1880 has been extended, is that of a superior holder, and in the event of attachment of his village his rights in respect of Khoti profits on his resuming the management of the village would be regulated by Section 162 (1) of the Revenue Code.

Under Section 162 the village or share of a 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 twelve years from first of 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 (I of 1880) has not been extended, unless the Khots therein are Sanadi or Vatandar Khots. (Bhikaji Ramchandra Oke *vs* Nizam Ali Khan, 1884,—I. L. R. VIII. Bombay, 525.)

Village, etc.,
to vest in
Government,
if not re-
deemed with-
in twelve
years.

[^a] **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 anywise subsisting as against such superior holder or any of the sharers, but without prejudice to the rights of the [^b] persons in actual possession of the land [^b].

[a] As to the local repeal of section 163, see para. 5 of footnote [a] on p. I, *supra*.

[b—b] These words were substituted for the original words "actual occupants of the soil" by Bom. IV of 1913, s. 70.

But all
processes to
be stayed on
security
being given;

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.

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.

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 moveable property; if the sale be of immoveable 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.

N. I. For form of proclamation and written notice of sale under Sections 165 and 166, see Appendix D to the rules issued under the Code.

Notification
of sales.

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 Mámíatdár or Mahálkari of the táluka or mahál in which the immoveable property is situate, the chávdi 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 Mámíatdár's or Mahálkari's office, and in the chávdi 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.

Sale by
whom to
be made

167. Sales shall be made by auction by such persons as the Collector may direct.

Time when
sale may be
made,

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.

Sale of
perishable
articles.

168. Nothing in the last three sections applies to the sale of perishable articles. Such

articles shall be sold by auction with the 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. When sale may be stayed.

G. 1. Giving of security not to affect forfeiture.—Although proceedings could be stayed under sections 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. No. 4891, dated 16th September 1880.)

G. 2. Date up to which defaulters may pay arrears.—Under Section 169 of the Land Revenue Code a defaulter is only 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. The arrears paid after the day fixed for the sale should be refunded to the defaulter. (G. R. No. 6130, dated 20th November 1880).

G. 3. Expenses when a sale is not completed:—The rates sanctioned by G. R. No. 2459, dated 26th March 1883, for expenses of completed sales should be extended to sales which have not been completed owing to the arrears due having been paid up on the day fixed for the sale. (G. R. No. 9482, dated 3rd December 1892).

G. 4. If Resolution No. 9482, dated 3rd December 1892, is read with No. 2459, dated 26th March 1883, the alternative rate of $\frac{1}{4}$ would seem inapplicable when no sale has taken place. Therefore, when sales are stopped due to the arrears being paid up on the day fixed for the sale $\frac{1}{4}$ is to be calculated on the arrears realized. The intention of the orders was to apply, on the authority of Section 148, a scale of charges corresponding to those laid down by rule under Section 183. (G. R. No. 5304, dated 21st June 1894.)

Sales of moveable property when liable to confirmation.

170. Sales of perishable articles shall be at once finally concluded by the officers 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 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. 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 shall become absolute as against all persons whomsoever.

G. I. Purchaser shall deposit 25 per centum on purchase money.—The orders contained in G. R. No. 793, dated 16th February 1871, which forbade the receiving of deposit of 25 per centum on the amount of auction bid of Rs. 5 and under, are to be considered to have been superseded by the provisions of Sections 172 & 173 of the Land Revenue Code. These provisions leave no option but require that the purchaser should deposit 25 per centum on the amount of his bid, whatever that amount may be. (G. R. No. 369, dated 19th January 1882.)

J. I. The effect of a sale without a forfeiture.—Section 72 applies to sales of moveable property only.

It cannot be assumed that the Collector has declared under Section 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, nor does it create an absolute title in the purchaser under section 172. (Printed Judgment 70, Govind Vithal Topkhane v. Bhiva Maruti Vani, '95.)

Deposit by purchaser in case of sale of immoveable property.

173. In all cases of sale of immoveable 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.

Purchase-money when to be paid.

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.

G. I. How to calculate the fifteen days; when is the deposit to be paid.—The period of 15 days for the payment of the balance of purchase-money should count from the date of the conclusion of the sale by the Mámlatdar. The payment of a deposit of twenty-five per cent. to the karkun before the conclusion of the sale is an irregularity. (G. R. No. 809, dated 4th February 1898).

Effect of default.

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.

G. I. This section does not override the provisions of the New Code of Civil Procedure in the

matter of conducting sales by the Revenue Department in the execution of Civil Court decrees. So far as the conduct of other sales by the Revenue Department is concerned there does not appear any necessity to amend this section. (G. R. No. 7538, dated 22nd August 1910.)

176. If the proceeds of the sale, which is Liability of purchaser for loss by re-sale. 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.

N. I. The meaning of the word "eventually" in this section will be made clear by the following question and answer:—

At a sale of immovable property, A bids Rs. 76 but makes default in payment of $\frac{2}{3}$ of the purchase-money under s. 174, B, at a second sale, bids Rs. 56 and makes default in payment of $\frac{2}{3}$ of the purchase-money under s. 174. At a third sale, C, bids Rs. 25 and pays it. What difference should be recovered from A and B?

A sale held and concluded after another is *eventually* made for the purpose of s. 176 of the Land Revenue Code. Accordingly Rs. 20, (76—56) should be recovered from A and Rs. 31, (56—25) from B.

G. I. Liability of defaulting purchasers in auction sales of the occupancy right of Government land.—The memorandum of the conditions of sale printed as Appendix III. is practically a reproduction of the provisions of the Code, and clause 5, which corresponds to Section 176 should come after clause 7, which corresponds to Section 175. The arrangements of the clauses should be altered accordingly,

The view that section 176 relates only to a purchaser who makes default under Section 174 is clearly correct. There is no legal authority for the practice of applying Section 176 to the case of bidders who fail to deposit twenty-five per cent. of the amount of the bid. Under Section 173 a bid in such a case is null and void, and no penalty is provided by the Land Revenue Code for such a bid, nor is any needed, seeing that the only result is the delay of a few minutes in the completion of a sale. A person who deliberately causes inconvenience by making a bid without intending to fulfil the conditions is liable to punishment under Section 185 of the Indian Penal Code. (G. R. No. 6334, dated 20th August 1895).

Notification
before re-
sale.

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.

G. I. Forfeiture of deposit and re-sale of property.—Certain land was put up to auction by the Collector in execution of a Civil Courts decree. It fetched a bid of Rs. 26, but the purchaser failed to make full payment. The deposit was forfeited to Government and the property again put up to sale, but no bidder appeared. The whole of the price bid at the former sale was recovered from the defaulting purchaser, and the deposit (being one-fourth of the bid) was credited to Government under Section 174 of the Land Revenue Code. In this case the question raised was what was to be done with remaining three-fourths. With reference to this it was decided that as there was no bidder at the second auction, no sale of property was effected and Section 176 of the Land Revenue Code was inapplicable. The Collector was not authorized to recover the balance (three-fourths of the former bid)

from the defaulting purchaser inasmuch as no second sale was made; the sum so recovered was therefore ordered to be refunded. (G. R. No. 4779, dated 5th July 1886.)

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;

Application to set aside sale.

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.

Order confirming or setting aside sale.

J. I. A Commissioner or any Revenue Authority has no power to review his order annulling a sale held for arrears of Government revenue. (Baijnath Ram Goenka vs. Nand Kumar Sing (1907) I. L. R. XXXIV. Calcutta, 677.)

Refund of deposit or purchase-money when sale set aside.

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.

On confirmation of sale purchaser to be put in possession.

Certificate of purchase.

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.

[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.

SUMMARY (s. 181)

Section 181 powers under—delegated to

Mamlatdars	...	G	4
Alienated land how disposed of	...	N	1
Certificate of sale	(1) copy sent to registering officer	N	2
	(2) form of	...	G 2
	(3) in execution of a Civil Court's decree	...	...
	(4) Stamp duty on	G	1, 3

N. I. Under rule 65 (d) of the Rules forfeited alienated land is to be disposed of as unoccupied unalienated land.

N. 2. Every Revenue Officer granting a certificate of sale to the purchaser of immoveable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situate, and such officer shall file the copy in his Book No. 1. Section 89 (4) of the Indian Registration Act XVI of 1908.)

N. 3. In the execution of Civil Court's decrees, the auction purchaser cannot be deprived of his right to obtain a certificate of sale even if he applies after 10 years from the date on which the sale becomes absolute. (vide rules 92 & 94 of order XXI. Schedule I. to Act V of 1908).

In the certificate, the date on which the sale becomes absolute should be entered, as in such a case three years would already elapse from the date on which the sale becomes absolute, and the purchaser's application for possession can be rejected as time-barred under article 180 of the Schedule I of the Limitation Act IX of 1908. Rule 14 of the rules published at page 1010 of Vol. I of Local Rules and Orders must be taken to be governed by the Limitation Act.

G. 1. Certificate of sale.—Certificates of sale granted by the Civil Courts as well as those granted by the Revenue Officers are liable to stamp duty under article 16, Schedule I of the Stamp Act. (G. R. No. 3009, dated 15th June 1880.)

G. 2. Form of.—Government Resolution No. 6905, dated 4th October 1882, directing the use of printed forms for certificates of sale granted under Section 181, of the Land Revenue Code is cancelled. The certificates should be engrossed on impressed stamp papers. (G. R. No. 6023, dated 15th August 1883.)

G. 3. Collector's obligation to grant.—*Lex non cogit ad impossibilia.* The Collector can only fulfil the obligation imposed upon him by Section 181,

of granting a certificate of sale when the purchaser produces a stamped paper of such value as the Stamp Act requires that the certificate shall be engrossed upon.

The Collector should tell the purchaser that he would grant the certificate only after the proper stamp was produced and not otherwise. (G. R. No. 1266, dated 11th February 1185.)

G. 4. Powers under this section are delegated to Mamlatdars. (G. R. No. 5295 dated 1st June 1911.)

Bar of suit
against
certified
purchaser.

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.

J. I. The provisions of Section 182 Land Revenue Code [and Section 317 (now section 66 of V of 1908) of Civil Procedure Code] are to be construed strictly and they do not bar a suit where the plaintiff, although originally a benamidar came honestly into possession. (Vishnu vs. Raghu—Bombay Law Reporter V, 329.)

Application
of proceeds
of sale.

183. When any sale of moveable property under this chapter has become absolute, and when 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.

Expenses of
sale how
calculated.

SUMMARY (s. 183)

Section 183 rules under	...	...	N	1
Expenses of sale—remission or reduction	...	...	G	3
Land on restricted tenure	...	...	G	4
Surplus— (1) when payable to defaulter	...	...	G	1,2
(2) When not so payable			N	2

N. 1. As to scale of expenses of sale, see rules printed under Section 152.

N. 2. This section applies in cases in which the land is forfeited and its disposal is by way of immediate sale. It does not apply to cases in which the Collector forfeits the land and disposes of it by entering it as Government waste under s. 56. He then closes the account of the defaulter by remitting the arrears payable by the defaulter. If the land is subsequently sold after Government becomes absolute owner in this way then all the sale proceeds will belong to Government.

G. 1. Disposal of excess.—As no express provision has been inserted in Section 153 of the Land Revenue Code as to the disposal of the excess, if there should be any, and the second paragraph of Section 183 is also applicable to *all* cases of sales in realizations of arrears, the excess must be treated as a sum to the defaulter's credit, and claimable by his creditors. (G. R. No. 5730, dated 27th October 1879.)

G. 2. Collector not bound to sell forfeited occupancy.—Under the Land Revenue Code, Section 153, if the Collector sells the forfeited occupancy,

he must credit the proceeds to the defaulter's account, and, under Section 183, the surplus proceeds, if any, must be paid to the defaulter, but the Collector is not bound to sell the occupancy.

This liberal practice under the Land Revenue Code should be generally followed in cases of default in payment of land revenue, and it should be extended to Thar and Parkar and Upper Sind Frontier. Care should, however, be taken in every case to avoid selling more of a defaulter's property than is sufficient to realize the arrears due. (G. R. No. 7285, dated 2nd December 1881.)

G. 3. Remission or reduction of expenses.—Collectors are authorized to remit or reduce the amount of expenses of sale under Section 183. (G. R. No. 6575, dated 19th October 1900 and 5295 dated 1st June 1911)

G. 4. Land 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. No. 5964, dated 23rd June 1911.)

Surplus not to be paid to creditors, except under order of Court.

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.

G. 7. Claims of Creditors.—After the arrears have been recovered from the sale proceeds under Section 183, the excess, if any, must be treated as a sum to the defaulter's credit and is claimable by his creditors. (G. R. No. 5730, dated 27th October 1879.)

Certified purchaser liable only for land-revenue subsequently due.

[^a] **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.

G. 1. Distribution of sale proceeds of forfeited occupancies.—The purchaser of forfeited occupancies sold at once should not be required to pay one anna in each rupee of the price realized to local funds, nor should one anna in the rupee of the wholesale proceeds be credited to local cess. But as the one anna cess is chargeable on arrears of assessment and recoverable as land-revenue the sale proceeds of such lands should be credited in accordance with Section 183 of the Code.

(a) to expenses of sale

(b) to arrears of

(1) land revenue

(2) one anna cess

the surplus if any being paid to the defaulter. (G. R. No. 2002, dated 10th March 1883.)

G. 2. Purchaser of forfeited occupancy must enter into an agreement.—In the case of a sale of an occupancy for arrears of revenue, the purchaser of a forfeited occupancy does not succeed either to the rights or liabilities of the previous occupant and in order to bind him he must enter into responsibility on his own account and for this he must enter into an agreement in the form of Appendix D (now B) to the rules. (G. R. No. 2600, dated 31st March 1883.)

G. 3. Sale proceeds of land originally granted free of occupancy price.—Persons to whom Government have granted lands for cultivation free of occupancy price on condition that if they did not desire to retain the lands they should resign them to Government but not transfer 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. No. 6806, dated 6th October 1887.)

J. I. 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 Bishun Singh vs. Mahomed Jan*, 1904. L. L. R. XXXIII, Calcutta, 1193.)

Claims to attached moveable property how to be disposed of.

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. 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.

G. I. Delegation of powers to Mamlatdars and Mahalkaris.—The Collectors are authorized to delegate the powers exercised by them under Section 186 of the Land Revenue Code to Mamlatdars and Mahalkaris when the adoption of such a course may appear to them desirable. (G. R. No. 8785, dated 19th November 1889.)

What moneys leviable under the provisions of this chapter.

187. All sums due on account of land revenue, all quit-rents, nazránas, succession duties, transfer duties and forfeitures, and all cesses, profits from land, emoluments, fees, charges,

penalties, fines, and costs payable or leviable 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;

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 leviable as an assessment, or as a revenue demand, or as an arrear of land revenue;

shall be levied under the foregoing provisions of this chapter [b] and all the foregoing provisions of this chapter shall, so far as may be, be applicable thereto [b].

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 [c].

And in the event of the resumption of any such farm as is aforesaid, no person shall be entitled to

Sureties
liable as
revenue-
defaulters.

On resump-
tion of a
farm, no pay-

ments made to contractor in advance to be admitted. credit for any payments which he may have made to the contractor in anticipation.

The recovery of free grants as arrears of revenue in case of misuse. [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—a] These words were inserted by Bom. IV of 1905, 1st Sch.

[b—b] These words were added by Bom. IV of 1913, s. 73 (1).

[c—c] 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).

SUMMARY (s. 187)

- Section 187—(1) object of new section N 1
- (2) applicable to
- (a) amounts payable by Inamdars to Watandars G 1,3
- (b) boundary mark charges ... J 1
- (3) not applicable to
- (a) fine imposed by Forest officer for breach of contract G 7
- (b) illegal local cess on Irrigation miscellaneous receipts G 4

	(c) penalty alluded to in Irrigation security bonds	G 5
	(d) penalty for neglecting to remove trees in time by a contractor ...	G 6
Moneys recovered by Revenue Department for other Departments how distributed	(1) notice free etc. to Land Revenue ...	G 2
	(2) Penalty under s. 148 to Department concerned	G 2

N. I. This new section gives effect to the intention of the framers of the Code that all the processes set forth in chapter XI of the Code should be available for the collection of the dues specified in it.

For instance only moneys due by a contractor for the farm of customs duties could formerly be levied under this chapter; but in levying the amount there was no authority to impose $\frac{1}{4}$ fine under section 148. This defect is now removed by the insertion of the following words:—

“ All the provisions of this chapter shall, So far as may be, be applicable thereto. ”

Similarly $\frac{1}{4}$ fine can now be recovered for not paying Tagai instalment on the due date.

G. I. Recoveries of amounts payable as remuneration.—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 Section 187 of the Land Revenue Code, (G. R. No. 3378, dated 2nd May 1883.)

G. 2. Distribution of moneys belonging to other Departments recovered by Revenue Department.—In cases in which the recoveries of revenue or moneys due to other Departments are made by the officers of the Revenue Department under Section 187 of the Land Revenue Code, the notice fee, cost of arrest and expenses of sale leviable under Sections 152, 158 and 183 respectively, should be credited to "Land Revenue", and the penalty or interest leviable under Section 148 should be credited to the Department for which the recovery is made. (G. R. No. 9587, dated 4th December 1884.)

G. 3. Sections 17 and 28 of the Hereditary Officer's Act read together with Section 187 of the Land Revenue Code justify the ruling in G. R. No. 3378, dated 2nd May 1883 (order No. 1 above). (G. R. No. 1166, dated 13th February 1886.)

G. 4. Local fund which cannot be recovered as land revenue.—Irrigation miscellaneous receipts are not to be regarded as ordinary land-revenue. Local fund cess cannot therefore be levied on them. (G. R. No. 6959, dated 2nd October 1890.)

G. 5. There is nothing in the Irrigation Act (Bombay 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. No. 22 W. I.—105 and 23 W. I.—106, P. W. D., dated 19th January 1892, and G. R. No. 8882, dated 11th November 1892.)

G. 6. A penalty for neglecting to remove trees by a specified date is not recoverable under this section, as the contractor was not a contractor for the farm of any item of revenue. A deposit of substantial security should therefore be taken for the fulfilment of contracts of this kind. (G. R. No. 4064, dated 7th May 1894.)

G. 7. The balance of the fine imposed by the Divisional Forest Officer upon contractors for the breach of his contracts is not recoverable as an arrear of land revenue. (G. R. No. 6934, dated 18th August 1894).

J. I. Boundary mark charge recoverable as arrears of land revenue.—The effect of Section 187 of the Bombay Land Revenue Code (Act V. of 1879) is to make the provisions of Sections 153 and 56 and also those of Section 155, applicable to sales for the recovery of charges assessed under Section 122 in connection with boundary marks.

Such charges may be recovered either by forfeiture of the occupancy in respect of which the arrear is due, or by sale of the defaulter's immovable 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 Ramkrishna vs. Mhal Pai Bin Naru Pai*,—I. L. R. Bombay, Volume XV., page 67, 1891.)

CHAPTER XII.

PROCEDURE OF REVENUE OFFICERS.

188. In all official acts and proceedings a revenue officer shall, in the absence of any express provision of law to the contrary, be subject as to the place, time, and manner of performing his duties to the direction and control of the officer to whom he is subordinate, <sup>Subordina-
tion of
revenue
officers.</sup>

Power to
summon
persons to
give evidence
and produce
documents.

189. Every revenue officer not lower in rank than a Mámlatdár's first kárkun, 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.

v of 1908.

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 [a] sections 132 and 133 of the Code of Civil Procedure, 1908, [a] 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.

[a—a] 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.

N. I. The exemptions under sections 132 and 133 of Act 5 of 1909 apply to (1) women who according to the customs and manners of the country, ought not to be compelled to appear in public, and to (2) persons whom the local Government, by notification

in the Official Gazette, exempt from personal appearance in Court.

N. 2. If a Mahalkari is on tour, his first karkun has no power to issue a summons under this section.

*G. I. Powers of District Inspectors :—*District Agricultural Inspectors can exercise all the powers under this section. (G. R. No. 1327, dated 25th February 1902).

*J. I. Mamlatdar cannot summon a person to appear before a Deputy Collector.—*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. (Criminal Reports, 52—22nd August 1889—Imperial *vs.* Vidiadhar Gangadhar Lele).

190. Every summons shall be in writing, ^{Summons to be in writing, signed, and sealed.} 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,

and shall be served by tendering or delivering ^{How to be served.} 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.

If his usual residence be in another district, ^{Service in district other than that of issuer.} 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.

G. I. Summonses or notices may be sent for service by a Mamlatdar to another Mamlatdar direct. (G. R. No. 5295 dated 1st June 1911.)

Mode of
serving
notices.

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.

Notice not
void for
error.

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.

N. I. Vide G. I under section 190.

Procedure
for procuring
attendance of
witnesses.

V of 1908.

192. In any formal or summary inquiry if any party desires the attendance of witnesses, he shall follow the procedure prescribed by the [a] Code of Civil Procedure 1908, for parties applying for summonses for witnesses. [a]

[a—] These words were substituted for the original words "Code of Civil Procedure, section 160" by Bom. IV of 1913, s. 7.

SUMMARY (s. 192)

1	Section 192 to be read with a			
	Government order	...	...	N 1
2	Formal inquiry	...	...	G 1
3	Processes	...	...	N 2
				G 3
4	Subsistence allowance and travel-			
	ling expenses	...	...	G 4
5	Summary inquiry	...	...	G 1,2

N. I. See G. R. No. 6737, dated 11th November 1881 printed under Section 125.

N. 2. Vide—Rule 2, Order XVI of 1st Schedule of Act V. of 1908, which is as follows ;—

(1) The party applying for a summons shall, before the summons is granted, and within a period to be fixed, pay into the court such a sum of money as appears to the court to be sufficient to defray the travelling and other expenses of the person summoned, in passing to and from the court in which he is required to attend and for one day's attendance. If the Court be subordinate to a High Court, regard shall be had in fixing the scale of such expenses to any rules made in that behalf.

(2) In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

G. (1). Formal summary and other enquiries under the Code.—Revenue officers are generally empowered under Chapter XII. of the Code, Section 189, to summon any person whose attendance may be considered necessary in any enquiry which such officers are legally empowered to make.

2. 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.

3. A formal or summary enquiry is, under Section 196, deemed to be a "judicial proceeding" and the officer holding it is deemed a Civil Court for the purposes of such enquiry. Section 192 provides that in any formal enquiry or summary enquiry if any party desires the attendance of witnesses he shall pay the necessary expenses of witnesses into Court.

4. As regards formal and summary enquiries, the officers holding them can be deemed to be Revenue Courts † and the process fees* sanctioned

* For every notice or summons... 3 annas.

† For every warrant of arrest issued on application of parties... 6 annas.

in the notification of Government at page 687 of the *Bombay Government Gazette*, Part I., of 8th July 1875 are applicable to such Courts.

‡ Any Revenue Authority in making such enquiries can be said to be holding as such a judicial proceeding. (G. R. J. D. 5855, dated 15th September, 1885.)

5. 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 Section 197. In such enquiries no process fees are chargeable. (G. R. No. 3007, dated 27th May 1881.)

G. 2. Officer holding summary enquiry to be deemed a Civil Court—The officer or any authority holding a summary enquiry under the provisions of this Code is a Civil Court for the purposes of such enquiry, and such court may 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 the provisions of Chapter XI of this Code. (G. R. No. 4468, dated 10th July 1882.)

G. 3. Serving of processes in formal and summary enquiries.—The processes in summary and formal enquiries under the Land Revenue Code, 1879, 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. No. 7350, dated 21st October 1882.)

G. 4. Rules regarding subsistence allowance and travelling expenses to be paid to witnesses.—The following are the rules laid down by the High Court, under Section 160 (now rule 2 of Order XVI of first Schedule of Act V of 1908) of the Code of Civil Procedure, regarding the amount of subsis-

tence allowance and travelling expenses to be paid to witnesses summoned to attend in Courts subordinate to the High Court.

(a) European and East Indian witnesses are to be allowed their actual expenses for carriage when the same are not in excess of six annas a mile. They are also to be allowed a sum not exceeding Rs. 2-8 a day for subsistence allowance for the time of their attendance at and journey to and from the Court, if they demand the same.

(b) Native witnesses of the better class as Patels, Pandharpeshas, Merchants, Vakils and persons of corresponding rank, are to be allowed from 8 annas to 1 rupee a day, and artizans and persons of similar rank 6 annas a day, as subsistence allowance.

(c) Native witnesses of the class of cultivators and menials, who would not, under ordinary circumstances voluntarily incur any expense on account of special lodging when away from home, are to be allowed subsistence money at the rate of 4 annas per day.

(d) The persons mentioned in clauses (b) and (c) are also to receive railway and other travelling expenses actually incurred by them, provided the same be reasonable. 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 per day should be reckoned as a day's journey and subsistence allowance should be paid accordingly.

(e) Peculiar cases not provided for in the above rules are to be dealt with according to their own merits, and at discretion of the Court from which subsistence money or travelling allowance is demanded. (High Court's Civil Circular orders, pages 11 and 12 of the edition of 1903).

Mode of taking evidence in formal inquiries.

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.

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.

Taking evidence given in English. Translation to be on record.

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.

Writing and explanation of decisions.

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.

Summary inquiries how to be conducted.

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 :

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.

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.

N. 1.—Vide G. R. No. 4932, dated 8th August 1900, under section 86.

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 Ordinary inquiries how to be conducted.

* In the authentic copy of the Code the word "parties" occurs here and is obviously a misprint for "parts."

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.

N. I. The Code requires that inquiries to be held under Section 118 (Rule 2), should be "formal," while those to be held under Sections 85, 87, 91, 93, 125, 129, 142, 186, and 202 to be "summary"; but under Section 195, clause 2, 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."

Copies and translations etc. how to be obtained.

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.

G. I. Application for return of documents filed, exempt from court fees.—In supersession of notification No. 4347, dated the 26th November 1886, and in exercise of the powers conferred by Section 35 of the Court Fees Act, 1870, the Governor General in Council is pleased to remit the fee payable under the said Act on an application presented by any person for the return of a document filed by him in any Court or public office. (G. of L. N. No. 2111, dated 22nd April 1887, published in the B. G. G. Part, I, page 368, 1887).

G. 2. Return of documents produced:—In all cases under the Land Revenue 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. It is unnecessary to retain copies of such documents except when the application for the return of the documents is made before the time for appeal has expired or before the disposal of the appeal already preferred, in which case certified copies of such documents should be kept at the expense of the applicants. (G. R. No. 4492, dated 9th July 1898.)

G. 3. Return of documents in a case before a Collector decided several years ago was refused on the ground that the case related to a cash allowance and was not governed by the orders of 1898. Such an unduly restrictive intention was not meant and the orders of 1898 should be generally followed in all cases coming before Revenue Officers which are not governed by any other special* ruling. (G. R. No. 2071, dated 26th February 1908).

* G. R. J. D. No. 3394, dated 31st May 1881, and G. R. R. D. No. 148, dated 11th January 1886.

G. 4. Copying fees, scale of—in respect of the village forms of which the village accountants have been authorised to give copies.

Statement showing the proposed rates 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 re-coveries.	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.	One anna per entry.
XIV.	Cattle census.	One anna per entry.

Order—The proposed levy by village accountants of copying fees at a uniform rate of one anna per entry or khata in respect of the village forms mentioned in the above statement is sanctioned. (G. R. 10809 dated 6th September 1917.)

Arrest of a defaulter to be made upon a warrant

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.

Power of revenue officer to enter upon any lands or premises for purposes of measurement, etc.

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: 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.

Governor in Council to determine the language of a district.

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.

202. Whenever it is provided by this, or Collector how to proceed in order to evict any person wrongfully in possession of land. 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 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 Mámíatdár or Mahálkari, 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.

G. 1. Appropriation leads to eviction.—The appropriation of land for unlawful purposes as stated in Sections 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 landlord the power of re-entry on breach of the particular condition 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.

The principle has been recognized by the Legislature in the above two Sections and the holder of such land may be treated as wrongfully in possession and be summarily evicted in the manner provided in Section 202. (G. R. No. 5211, dated 9th September 1881.)

G. 2. Mamlatdars and Mahalkaris should sign notices of eviction when Prant officers have ordered eviction. (G. R. No. 5295, dated 1st June 1911 tem 85.)

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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 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

Appeal to lie from any order passed by a revenue officer to his superior.

itself have been passed on appeal from a subordinate officer's decision or order or not.

G. 1. Pleader may not be allowed.—A pleader cannot claim to appear in proceedings under this section. (G. R. No. 8915, dated 8th December 1897.)

G. 2. Commissioner's powers:—Sections 203 and 211 empower a Commissioner to take action in appeal or revision as regards any orders passed by Collector, who under section 8 performs all his duties in subordination to the Commissioner of the Division. (G. R. P. W. D. 83 W. L.—934, dated 20th June 1897.)

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.

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.

N. 1. Vide Section 43 of Bombay Act I of 1905 (Court of Wards Act.)

Admission of appeal after period of limitation.

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.

No appeal shall lie against an order passed under this section admitting an appeal.

Provision where last day for appeal falls on a Sunday or a holiday.

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.

Copy of order to accompany petition of appeal.

208. Every petition of appeal shall be accompanied by the decision or order appealed against or by an authenticated copy of the same.

Powers of appellate authority.

209. The appellate authority may 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 further investigation or to take such additional evidence as he may think necessary, or he may himself take such additional evidence.

J. I. The accused was convicted under Section 60 of the Abkari Act. In appeal the first class Magistrate enhanced the sentence under section 209, Land Revenue Code.

The sentence passed by first class Magistrate in appeal was reversed.

(Queen Empress *vs.* Miya Saheb—High Court Criminal Rulings 14 of 15th February 1886.)

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.

Power to suspend execution of order of subordinate officer.

211. The Governor in Council and any revenue officer, not inferior in rank to [a] an Assistant or Deputy Collector [a] 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.

Power of the Governor in Council and of certain revenue officers to call for and examine records and proceedings of subordinate officers;

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—[b] a Mámldár, a Mahálkari, an [c] Assistant Superintendent of Survey, and an Assistant Settlement Officer.

If, in any case, it shall appear to the Governor in Council, or to such officer aforesaid, that any decision or order or proceedings so called for should be modified, annulled or reversed, he may pass such order thereon as he deems fit.

and to pass orders there upon.

[d] 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.

[a—a] These words were substituted for the original word "Collector" by Bom. IV of 1913, s. 76 (a).

[b] Words repealed by Bom. IV of 1913, s. 76 (b), are omitted.

[c] "An" was substituted for "and" by Act XVI of 1895.

[d] This proviso was added by Bom. IV of 1913, s. 76 (c).

J. I. Commissioners have power to revise Kabulayats under sections 60 or 62. Orders for the sale of unoccupied land and permission to occupy that land under sections 62 and 60 of Act V of 1879 come within the scope of Section 211 and which the Commissioner has jurisdiction to call for and revise and pass such orders thereon as he deems fit and that there is no cause of action against Government on account of that officer having exercised his lawful powers under that section.

Parapa Virupakshapa Hundekar

v.

The Secretary of State for India
in Council.

P. J. for 1891, p. 230.

Rules as to
decisions
or orders
expressly
made final.

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.

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.

CHAPTER XIV.

MISCELLANEOUS.

Maps and
land records
open to
inspection

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] and records [a] shall be open to the inspection of the public at reasonable hours, and certified extracts from [b] the same [b] or certified copies thereof shall be given to all persons applying for the same. ^{Extracts and copies shall be given.}

[a—a] These words were substituted for the original words "survey records and all village accounts and land 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.

G. I. By "survey records" is meant completed documents prepared under Section 108 and referred to in Sections 3 (6), 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. From the position of the word "registers" after maps and before accounts it seems clear that it is intended to relate back to "survey records," and that the expression "survey records," used in this Section therefore 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 Taktas, etc.). The inspection, extracts or copies of such preliminary records cannot therefore be claimed as a matter of right. (G. R. No. 5138, dated 14th July 1893.)

[a] **214.** (1) The Governor in Council may, ^{Rules.} 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 ;
- (b) regulating the assessment 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

103 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.

[a] This section was substituted for the original section by Bom. IV of 1913, s. 78.

Penalty
for breach
of rules.

[^a] **215.** It shall be lawful for the Govern-
or in Council, in making any rule under
section 214, to prescribe that any person com-
mitting 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.

[a] This section was substituted for the original section by
Bom. IV of 1913, s. 78.

Chapters
VIII to X
how far
applicable
to alienat-
ed villages.

[^a] **216.** Save as is otherwise provided in
section 111 and hereinafter in this section, the
provisions of Chapters VIII to X [^b] 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 chapter
shall be applicable to

- (a) all unalienated lands situated within the
limits of an alienated village,
- (b) villages of which a definite share is alie-
nated, 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 Govern-
ment.

But it shall be lawful for the [^c] Commis-
sioner, 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.

[a] As to the local repeal of sections 216 and 217, see para 5 footnote [a] on p. I, *supra*.

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

[c] This word was substituted for the original words "Governor in Council" by Bom. IV of 1913, s. 79.

[^a] **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 [^b] holders of land [^b] in unalienated villages have, or are affected by, under the provisions of this Act, and all the provisions of this Act relating to [^b] holders of land in unalienated villages [^b] [^c] shall be applicable, so far as may be, to them.

[a] Vide [a] Under section 216.

[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

SUMMARY (sections 216 and 217)

Sections 216 and 217	} (1) meaning of section	216	J	1
		(2) should be read with		
	(a) orders under sections 74 and 76	N		1
	(b) sections 131 to 137 of the Alienation manual...	N		3

Survey, Inam village

- (1) Agreement to be passed by
Inamdar ... G 12, 24, 25, 28
 - (2) application for—by ...
 - (a) court of wards ... G 29
 - (b) Inamdars G 11, 14, 15, J 3
 - (c) sharers' consent when
necessary ... J 2, G 21
 - (d) ditto when not neces-
sary ... G 26, J 3
 - (3) cost of ... G 2, 3, 5
 - (4) effect of—
 - (a) before 21-1-65 ... G 27, 30
 - (b) between 21-1-65 and
17-7-79 ... G 9, 27, 30
 - (c) on or after 17-7-79
G 13, 19, 23, 31 J 5
 - (5) increased rates ... G 16
 - (6) kadim and khalsa lands N 4, 5, 6
 - (7) Mamul rates when to be
reverted to ... G 30
 - (8) proposals for—to be sub-
mitted to Government G 6, 7, 32
 - (9) questions and answers for
easy understanding ... N 2
 - (10) rights of occupants see
'effect of' at (4) above.
 - (11) rough—for summary settle-
ment ... G 20
 - (12) rules, relating to ... G 1
 - (13) Sharakati village ... G 17
- Survey—Native States ... G 4, 18, 22

N. (1). See orders printed under Sections 74 and 76.

N. (2) The following questions and answers will be useful in disposing of an application for the introduction of survey in an inam village.

(a) Is the Inam village not a sharkati one? }
(Sec. 216 L.R.C.) and G. R. No. 1243, dated } No.
the 26th February 1887. }

(b) Has the Inamdar made an application }
on plain paper to the address of the Commis- } Yes.
sioner through the Collector, for the introduc- }
tion of Chapters VIII and IX into the village? }

(c) Whether the consent of registered sub- }
sharers only has been obtained? (G. R. No. } Yes.
664, dated 22nd January 1907). }

(d) Whether the Inamdar is willing to bear }
costs in case the village is held on political } Yes.
tenure? (G. R. No. 373, dated 21st January }
1875). }

(e) Whether the Inamdar has passed an }
agreement on an 8 anna stamped paper in } Yes.
the form of appendix 27? }

ADDITIONAL INFORMATION.

(i) Inamdar's consent is not necessary in a sharkati village.

(ii) If the original survey was introduced after the L. R. Code, no fresh application is necessary but the Settlement Commissioner is written to for the survey. (G. R. No. 12988, dated 21st December 1908).

N. 3. Vide sections 131 to 137 of my Alienation Manual for further information about survey in an inam village.

N. 4. Kadim inam and Khalsa lands in an unsurveyed inam village.

The question is whether an original or revision settlement of Government villages in a taluka can be extended to

(a) kadim inam lands

and

(b) khalsa lands.

As regards (a) Chapters VIII & IX of the L. R. Code do not apply to kadim inam lands situated in an unsurveyed inam village.

As regards (b) khalsa lands in an unsurveyed inam village are not mentioned in the notice about original or revision survey settlement of Government villages in a taluka and therefore the survey of these khalsa lands is not made. Moreover it is very inconvenient to have a separate Akarband and a separate map of such khalsa lands only.

It, therefore, appears that until an inamdar applies for the introduction of survey settlement in his inam village under s. 216 of the L. R. Code the lands in (a) and (b) are left unsurveyed.

N. 5. It may be mentioned here that survey officers are empowered to fix an assessment on kadim Jat Inam and Devasthan lands only for the purpose of calculating quit-rent under Bombay Acts II and VII of 1863. But Chapters VIII & IX of the L. R. C. do not apply to any such assessment on Jat Inam and Devasthan lands.

N. 6. See G. R. No. 6392, dated 10th June 1918, under section 95.

G. I. Rules relating to the Survey of alienated villages :—

- I. The boundaries of all alienated villages 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, 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 expense of the operations

to be borne by Government, in the event of his not doing so, by 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 of 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, (G. R. No. 1223 dated 10th February 1851, No. 3479, dated 29th December 1855, and No. 3613, dated 28th September 1868).

*G. 2. Cost of survey in Inam villages :—*Inamdars who desire it may be allowed to pay the survey expenses in two equal instalments. (G. R. No. 543, dated 12th February 1852).

G. 3. Inamdars who accept the summary settlement should, as regards payment of the expenses of the survey of their villages, be treated in all respects as Judi Inamdars, to whom, as they invariably make the annual settlement of their villages themselves, the provisions of rules 2 and 3 of those relating to the Survey of Inam villages prescribed in paragraph 3 of Government letter No. 1223, dated 10th February 1851, would apply. (G. R. No. 543, dated 12th February 1862).

G. 4. No. Survey should be commenced in any Native State without the special sanction of Gov-

ernment, unless the State undertakes to defray the entire cost. (G. R. No. 2579, dated 6th July 1868).

G. 5. It was not the intention of Government to rescind the rules of the 13th March 1851, whereby the cost of surveying alienated villages is undertaken by Government on the condition that the alienee accepts and adheres to the terms of the settlement. 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.

As regards Jaghirs or Estates held on political tenure, Government can no longer consent to bear the cost. (G. R. No. 373, dated 21st January 1875).

G. 6. In future, proposals for the introduction of the survey assessment in Inam villages should always be submitted for the sanction of Government either specially or with those for the remainder of the Taluka in which they may be comprised. (G. R. No. 3504, dated 15th June 1876.)

G. 7. It is the wish of Government that full details be given when proposals for assessing alienated villages are submitted. (G. R. No. 7390, dated 15th December 1876.)

G. 8. The suggestion of the Survey Commissioner that the special report for Inam villages in Talukas already settled, to be made under G. R. No. 3504, dated 15th June 1876, may be dispensed with, and that rates sanctioned for adjacent Government villages previously settled may be held applicable to Inam villages coming under settlement at any time after the settlements of the Taluka is approved. (G. R. No. 5921, dated 16th November 1878.)

NOTE—This is superseded by G. 32 below.

G. 9. Extension of the provisions of the Code to Inam villges settled under Act I. of 1865.—Government concur in the views expressed by the Commissioner, C. D., and the Legal Remembrancer

that Section 217 of the Code applies at once to alienated lands which have been settled by the Survey Department under Act I of 1865, and that no application from the alienee under Section 216 is requisite. The application by the Inamdar contemplated by the last paragraph of Section 216 is required only for future extension of the survey to an Inam village. (G. R. No. 6709, dated 16th December 1879.)

G. 10. Separate sanction to survey rates in Inam villages unnecessary.—The general sanction granted by G. R. No. 5921, dated 16th November 1878, in respect to Inam villages, should be deemed to be the sanction required by Section 102 and 103 of the Land Revenue Code, 1879. (G. R. No. 6386, dated 6th December 1880.)

NOTE.—This is superseded by G. 32 below.

G. 11. Section 2 of the Code provides that all orders issued and notifications published under any of the enactments repealed by the Code (including Bombay Act I. of 1865) shall be deemed to have been issued and published under the Code. Section 49 of Bombay Act I, of 1865 provided that the Governor in Council had power to extend by notification in the *Government Gazette* all or any of the provisions of the Act to any alienated village on application made in writing by the holder thereof. It seems quite clear from this that existing surveys which have been thus notified or authorized by the Governor in Council are in force just as if they had been notified or authorized under the Code. Yet from the Section 216 of the Code it would seem that the purposeless formality of a written application must be complied with by an Inamdar before Section 112 can be extended to his village. (G. R. No. 6925, dated 19th November 1881.)

G. 12. Inamdars to pass agreements to pay remuneration to village officers.—Before the survey rates are introduced in an alienated village an agreement on a stamped paper of the value of

8 annas 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. R. No. 6401, dated 6th December 1880, and No. 7322, dated 3rd December 1881 and No. 7229, dated 23rd July 1907).

As to form of agreement, see Appendix 27.

G. 13. Rights of occupants in Inam villages surveyed and settled before the passing of the Code.—Section 217 was inserted in the Code for the express purpose of giving the rayats in alienated villages to which a survey settlement might be extended, the same occupancy rights which are enjoyed by holders of land in unalienated villages into which a survey settlement has been introduced. But this section cannot, of course, be construed retrospectively. (G. R. No. 3045, dated 14th April 1884.)

G. 14. Inamdar's † consent necessary for surveying his village.—If the survey operations are conducted in an alienated village with the Inamdar's consent merely they will have no legal value, and the officers conducting them will not be able to exercise any legal authority in connection with them, unless the appropriate provisions of Chapter VIII. of the Code have, in the first instance, been extended to the village upon the Inamdar's written application under Section 216. No survey operations will therefore be commenced in an alienated village until action has been taken by the Inamdar and the Commissioner under the last clause of Section 216. (G. R. No. 6225, dated 2nd August 1884.)

† *Vide* G. R. No. 1388, dated 8th March 1881, printed under Section 88.

G. 15. Chapters to be extended to Inam villages.—In the 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. (G. R. No. 9819, dated 12th December 1884.)

G. 16. Fixing of survey rates for Inam Villages.
—Under Section 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 Section 216 of the Code, but His Excellency in Council does not consider this to be a sufficient reason for the adoption in the case of Inam villages of a principle different from that followed in the case of Government 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, but should not increase those rates without the special sanction of Government under Section 102 of the Land Revenue Code. When the maximum dry-crop and garden rates to be imposed in any alienated village are determined according to the usual method of the Survey Department, 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. (G. R. No. 3436, dated 12th May 1886.)

G. 17. Inamdar's consent not necessary in the case of a Sharakati village.—Where a Survey

Settlement was introduced into a village of which half is held in Inam without the consent of the Inamdar, it was decided that the survey was quite lawful, and that the Inamdar was bound by the assessment placed by the Survey Department on his holding. (G. R. No. 1243, dated 26th February 1887.)

G. 18. Native States.—It is the desire of Government that 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 British territory. The important matter in the case of Native States is not so much low rates as equality of rating. For higher rates than those prevailing in British territory, Government must not assume any responsibility and this should be made clear in cases where the technical operations are carried out by British Officers. (G. R. No. 4280, dated 9th July 1887.)

*G. 19. Effect of extension of Chapters VIII and IX :—*When the provisions of Chapters VIII and 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. No. 623, dated 28th January 1888.)

G. 20. Inamdar's consent not necessary for a rough survey for the purposes of summary settlement.—The question whether the estate of Inamdars who have not voluntarily applied for a survey can be roughly surveyed for the purpose of fixing the Judi has been disposed of by the following opinion of the Remembrancer of Legal Affairs concurred in by Government :—

“2. I am of opinion that Section 216 of the Land Revenue Code does not in any way affect the provisions of Bombay II. of 1863 or Bombay VII. of 1863.

“3. The original draft of the Land Revenue Code incorporated the provisions of these two Acts

(Bombay II. and VII. of 1863), which it was then proposed to repeal in Schedule A appended to that bill.

“4. Chapter VII. of the original draft corresponded almost *verbatim* with these Acts and Section 156 of the original draft, which corresponded with Section 216 of the Land Revenue Code provided, as Section 49 of Bombay I. of 1865 provided, that the procedure applicable to unalienated lands should not apply except on the application of the holder to alienated villages or estates.

“5. It therefore appears that Section 216 was not intended to interfere with the provisions of Bombay II. and VII. of 1863, as a section to the same effect as Section 216, was incorporated in an Act retaining practically the same provision as Bombay II. and VII of 1863.

“6. Although Chapters VIII. to X of the Land Revenue Code cannot apply to wholly alienated villages, except subject to the provisions in Section 216, the provisions of Section 2, rule 1, of Bombay II. of 1863 and Section 6, rule 1, of Bombay VII. of 1863, are unaffected.

“7. Both the last mentioned sections provide for three classes of cases—

- (a) those in which the assessment had already been fixed by the Survey;
- (b) those in which it was agreed on between the Collector and holder;
- (c) All other cases.

“8. In respect of classes (a) and (b) the assessment so fixed was evidently not liable to revision.

“9. In respect of class (c) it is evident from the proviso that an attempt to obtain an amicable settlement of the assessment was to be deemed a condition precedent to the exercise of the power given to survey officers to enter upon and fix the assessment.

‘But if no such arrangement can be otherwise arrived at by the Collector and the owner or holder, then whether the owner or holder assent or no, the survey officers are empowered to enter upon the lands and fix and make an assessment.’

“10. The only effect of Section 216 of the Bombay Land Revenue Code is Chapters VIII. to X. of that Code do not apply to any such assessment.

“11. I think therefore that 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 has an amicable arrangement has been made and failed. (G. R. No. 7363, dated 6th November 1888.)”

G. 21. Consent of all the sharers necessary for the introduction of survey settlement.—The view, that the assent of a co-sharer in an Inam village is not necessary to the introduction of survey rates into that village, is not correct. Under Section 217 the holders of all lands in a village into which a Survey settlement has been introduced, acquire thereby the same rights, and are affected by the same responsibilities as occupants in unalienated villages have or are affected by. Among other results the introduction of the survey settlement would bar the right of the Inamdars to enhance the rayat's rents above the survey assessment.

It does not appear that the sub-sharer's rights in this and other respects could be limited without his assent.

Section 216, Bombay Land Revenue Code, requires as the conditions on which Chapters VIII to X can be extended to alienated villages that there should be an application in writing, made by the holder of the village.

"Holder"—is defined in Section 3 (11) of the Bombay Land Revenue Code, as 'the person in whom a right to hold land is vested whether solely on his own account, or wholly or partially in trust for another person, or for a class of persons, or for the public.'

"Village"—Under Section 3 (20) includes all lands belonging to the village.

It does not appear that one of two or more sharers can be said to be vested with a right to hold all the lands in his village either solely on his own account, or wholly or partially in trust for the other sharers.

Until therefore the assent of all those in whom such right is vested has been obtained no extension of Chapters VIII to X of the Bombay Land Revenue Code can, it appears, be legally authorized under Section 216. (G. R. No. 3346, dated 7th May 1889.)

G. 22. 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. No. 9086, dated 30th November 1889.)

G. 23. After the passing of the Code.—When on the application of the holder of an alienated village made in accordance with the last clause of Section 216, the Governor in Council has sanctioned the extension of the provisions of Chapters VIII to X of the Code to that village, 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.

A case in point recently occurred in which, on the expiration of the original settlement introduced into an alienated village, the holder thereof made an application under Section 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. In this case the following questions were referred for the orders of Government:—

- (1) Whether on the expiration of the original settlement the relations between the holder of the village and his rayats did not revert to the *status quo ante* (as held in G. R. No. 3045, dated 14th April 1884); and if so,
- (2) Whether it was lawful for the holder of the village to levy assessment at the Mamul rates; and
- (3) Whether in that case the local fund cess should be levied.
 - (a) on the assessment at Mamul rates; or
 - (b) on the assessment at rates of the original settlement lately expired; or
 - (c) on the assessment at the revised survey rates fixed by the Survey Department and not accepted by the holder of the village.

These questions were disposed of by the following opinion of the Remembrancer of Legal Affairs, concurred in by Government:—

“In order to ascertain how matters now stand it seems desirable to recapitulate the material facts regarding the Inam village in question.

“2. An original survey settlement was introduced into the village under Bombay Act I. of 1865

in the year 1875-76, on the application of the Inamdar. That settlement expired in 1881-82.

"3. On the 2nd October 1884 the Inamdar applied to Government that the provisions of Chapters VIII. to X. of the Land Revenue Code be extended to the village in order that revision survey operations might be introduced into it. This application was allowed by His Excellency and a notification extending the said provisions to the village was published in the *Bombay Government Gazette*.

"4. On the authority of the above notification revision survey rates were sanctioned by the Survey Commissioner for the village, but the rates have not been formally introduced into the village because the Inamdar refused to accept them.

"5. The Commissioner, Central Division, and the Survey Commissioner were asked by Government to report through this office the circumstances under which it had been thought that the Inamdar was at liberty to accept or reject the revised rates and they replied that paragraph 2 of the agreement into which the Inamdar entered before Chapters VIII. and IX. were extended to his village implied that he was at liberty to accept or reject the rates.

"6. The following is a rough translation of the agreement referred to :—

To Government

Kabulayat executed by the Inamdar of the village of *** Taluka of *** To wit. In 1875-76 the Survey Settlement was extended to the said village and in accordance therewith the revenue is being recovered. Now revision settlement is to be effected in the said Taluka. In accordance therewith I am willing to have revision settlement extended to my village and to keep records according to the forms applicable to Government villages as follows :—

2. The work of measurement and classification, &c., be carried out at the expense of Govern-

ment and after the rates having been settled in conformity with the system in Khalsa villages, if I refuse to accept the amount which may be according to the sanctioned rates, then I will pay to Government in cash all expenses of measurement, classification and of the records connected therewith and of the boundary marks. If I agree to accept the amount according to the sanctioned rates and make wahiwat as stated in paragraph 1 the said expenses should not be recovered from me ***

“7. These being the circumstances connected with the village, I think it is quite clear that since Chapters VIII and IX of the Land Revenue Code have been lawfully extended to that village any revised survey rates which are duly fixed for the lands therein by the survey authorities and sanctioned by Government under Section 102 and introduced in the manner provided in Section 103 of the Code, must be levied by the Inamdar for the period of the guarantee, or, at least, the Inamdar must not levy rates in excess of those so fixed.

“8. The form of the agreement taken from the Inamdar apparently dates from a time anterior to the passing of the Land Revenue Code, and it should, I think, have been reconsidered before being used for villages to which the provisions of Chapters VIII and IX of that Code have been, or are to be applied.

“9. I do not feel able to advise that the extension of the provisions of Chapters VIII. and IX. of the Code to the village annulled that agreement, for there is no authority of law for such advice, and moreover when applying to Government for the extension of the above provisions to his village, the Inamdar in his written application expressly stated that he had 'duly entered into necessary agreements in order that the revision survey and survey operations should be introduced into his village,' from which it seems (as it is no doubt the case)

that the local revenue authorities required the agreement from him.

" 10. I think, therefore, that Government must abide by the agreement and bear the cost of the revision survey of the Inamdar's village unless the rates which are finally sanctioned are acceptable to him; but the survey rates must prevail and be enforced whether the rates are acceptable to the Inamdar or not.

" 11. With reference to the question of Local fund cess I would observe that my report on which G. R. No. 3045, dated 14th April 1884 was based, applied solely to the case of an Inamdar whose village was surveyed and settled before even Bombay Act I. of 1865 became law, and who on the expiry of the term of the settlement applied neither for a revision settlement nor for the application to his village of any of the provisions of the Land Revenue Code. In the present case the Inamdar entered into an agreement for a revised survey very soon after the term of the old settlement had expired and subsequently obtained the extension of the provisions of Chapters VIII and IX of the Code to his village. In his case, I am of opinion, that Local fund cess should be calculated on the old survey rates until the revised settlement is introduced and thereafter on the new rates." (G. R. No. 3600, dated 26th May 1891).

G. 24. Standard form of agreement to be passed by Inamdars.—The form of agreement which it was usual to take from the Inamdars before the introduction of the survey rates into their villages having been declared inconsistent with the provisions of the Code (*vide* G. R. No. 3600, dated 26th May 1891), it was suggested that a standard form of agreement to be taken from the Inamdars should be authoritatively laid down for future use. In accordance with this suggestion the form of agreement printed as Appendix 27 has been

sanctioned by Government. (G. R. No. 4011, dated 9th May 1892.)

G. 25. Should not be departed from.—In a case in which the holder of an alienated village objected to pass an agreement in the form prescribed by G. R. No. 4011, dated 9th May 1892, a suggestion was made to make certain modifications in that form. This suggestion has been negatived by Government by whom it has further been directed that the form above referred to having been approved after a full consideration, should not be departed from. (G. R. No. 9381, dated 29th November 1892.)

G. 26. When settlement is once introduced no consent of new coming shareholders necessary.—When the provisions of Chapters 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 Section 216, it is not necessary to again extend those provisions to the village in case the number of co-sharers 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 Section 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 Section 106 in Chapter IX. 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 Section 216 into an alienated village, all the provisions of the Act relating to occupants and registered occupants become applicable to the holders

of all lands therein and the subsequent dissent on their part or on the part of their successors cannot annul the operation of the law. Section 217 has barred the right of Inamdars to enhance their rayat's rents beyond the Survey Assessment. (G. R. No. 693, dated 26th January 1893.)

G. 27. 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. No. 5735, dated 29th July 1895.)

G. 28. The form of agreement 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 Land Revenue 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 the alienated village agrees to pay village officers according to scale. An agreement should be taken in accordance with the actual facts containing all stipulations to be made by alience according to the form above referred to but containing no undertaking on the part of Government to bear the cost of Survey and Settlement. (G. R. No. 6630, dated 30th August 1895.)

G. 29. 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 Chapters VIII and IX are applied, at the request of the inamdar.

(G. R. No. 7698 dated 7th August 1909).

G. 30. Expiry of the period of guarantee.—In cases in which the survey rates are lower than

Mámul assessment the inamdars try to revert to the Mámul rates on the expiration of a survey guarantee. But the general rule is that survey rates introduced after the passing of Act I of 1865 remain in force forever pending the introduction of a Revision Survey. The inamdar is able to revert to Mámul 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. No. 1327, dated 7th February 1912).

G. 31. Bombay Act IV of 1913 substituted the words "holders of land" in place of the word "occupants" in section 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, will remain tenants and will not become occupants (which word does not include a tenant).

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. No. 5527, dated 12th June 1913).

G. 32. Submission to Govt. of Proposals for the settlement of Inam villages. In supersession of orders contained in paragraph 2 of Govt. resolution No. 3961, dated 31st May 1902, the Governor in Council is pleased to direct that in future, proposals for the settlement of Inam villages should be submitted to Government for further action under section 102 of the Land Revenue Code.

(G. R. No. 5248, dated 27th April 1917).

J. 1. It was plain that in cases falling under clauses (a) and (c) the Inamdar's interests would not be affected by the application of Chapters VIII and IX. He would still get the assessment in alienated lands in the village in the former case and the same amount of assessment in the latter and the same must have been the intention in cases

contemplated by clause (b). The "holder of the village" in the concluding paragraph of Section 216 must be read as meaning the "holder of the assessment or any part thereof of an alienated village." (L. L. R. XVIII Bombay. 525,—Gangadhar Hari Karkare vs. Morbhat Purohit.)

J. 2. It is sufficient if one of the co-sharers applies.—Under Section 216 it is competent to one out of several co-sharers of an alienated village to apply on behalf of, and with the consent of, all the other co-sharers for the introduction of survey into the village; and it is not open to the cultivators of lands in the village to question the action of Government in introducing the survey on such application. The section does not require that the application should be made or signed by all the sharers. (L. L. R. XXIV, Bombay, 539,—Gopikabai vs. Lukshman.)

J. 3. An application under Section 216 for the extension of revenue settlement to an alienated village can be made by a holder who is entrusted with the full powers of the management of the same, even though he does not possess the whole of the lands belonging to the village. (Gopikabai vs. Laxman B. L. R. Vol. II 235.)

J. 4. Section 217 not applicable to an Inamdar, to whom Government has granted all its rights in the soil in a village where a survey settlement has been introduced:—

An alienee of the soil is not controlled by any of the provisions of the Land Revenue Code and has a right to raise the rents of permanent tenants even where such permanent tenancies had commenced before the alienation. This ruling is cancelled by J. 5 below. (Pandur vs. Ramchandra 20 Bombay Law Reporter 16 L. L. R. 42 Bombay 112.)

J. 5. The ruling in J. 4 above by a single Judge was overruled by the decision of two Judges in the following case:—

' Dinkar, who was an Inamdar of a village, claim-
' ed to have Mirasi rights over certain lands in the
' village alleging that the defendant Dadoo, among
' others, was his annual tenant. The grant to
' Dinkar was not merely of the Government's right
' to receive the land revenue, but of the entire
' property in the soil. At the introduction of survey
' settlement into the village in 1880, Dadoo was
' entered in the Settlement Register as a Khatedar;
' and since 1880 he cultivated the land and paid to
' Dinkar only a sum equivalent to the annual assess-
' ment. He contended that he had the same
' rights in respect of the land as an occupant in an
' unalienated village under sec. 217.

' The definition of ' alienated ' in sec. 3 (20) runs
' in these words. " 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."

' In this case, the *transfer* satisfies the *minimum*
' requirement in so far as the rights of Govern-
' ment to payment of the rent or land revenue
' are concerned. The transfer also covers rights in
' the soil *over and above* the minimum requirement.
' The village is still an ' alienated ' village within
' the definition, and sec. 217 applies to the case,
' and Dadoo is entitled to the rights of an occupant
' in an unalienated village.'

(20 Bombay Law Reporter, pages 887 to 895.)

(Or L. L. R. 43 Bombay page 77).

Construction
of this Act.

218. Nothing in this Act, which applies
in terms to unalienated land or to the holders
of unalienated 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.

SCHEDULE A.

REPEALED BY BOM. IV OF 1913, S. 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 Bom-
bay 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.

[^a] 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)

[^a] This proviso was added by Bom. IV of 1905, 1st Sch.

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 [^a] the sum of _____ rupees; in which the abovesaid _____ has bound himself, or such smaller [^a] 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.)

[a] These words were substituted for the original word "such" by Bom. IV of 1905, 1st Sch.

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 19 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 obeys the said order or until he obtains 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
execution according to law.

Dated this day of 19 .
(Signature of Collector.)

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 above-
 said
 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.

(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 19 .

(Signed) *C. D.*

Dated this _____ day of 19 .

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 19 , the land (*here give the description*) which I hold from you.

(Signed) *A. B.*

Dated this _____ day of 19 .

SCHEDULE F.

FORM OF COMMISSION TO BE ISSUED TO A
HOLDER OF ALIENATED LANDS OR VILLAGES
OR HIS AGENT, UNDER SECTION 89.



The [a] Commissioner, by virtue of the powers vested in him by the Bombay Land Revenue Code, is pleased to confer on you (*Jágir-dár, 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)

[a] This word was substituted for the original words "Governor in Council of Bombay" by Bom. IV of 1913, s. 82.

SCHEDULE H [a]

(*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 settle-

ment 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—

There is a certain plot of ground occupied by you in the division of the

No. of register
sheet No. in the map marked
towards the and facing
leading from the road
to

, containing about square yards, and of the following shape and about the following dimensions:—

You are hereby confirmed in [b] the said occupancy [b] 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 whosoever 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 forfeiture 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 nine hundred and _____

A.D.

(Signed)

[a] There is no Schedule G.

[b-b] These words were substituted for the original words "the occupancy of the above described ground" by Bom. IV of 1913, s. 83.

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 _____ 19 _____
(Signature of Collector.)

APPENDIX I.

(Referred to in s. 31, g 1.)

(The Government servants' conduct rules corrected upto July 1915.)

CONTENTS.

—:0:—

RULES.

1. Interpretation.
2. Gifts.
3. Public demonstrations in honour of Government servants.
4. Presentation of trowels, etc., at ceremonial functions.
5. Application of rules 2 and 3 to medical officers.
6. Subscriptions.
7. Purchase of resignation.
8. Lending and borrowing money.
9. Buying and selling houses and other valuable property.
10. Holding or acquiring immovable property.
11. Control over immovable property held or acquired by Government servants.
12. Investments other than those in immovable property.
13. Speculation.
14. Promotion and management of Companies.
15. Private trade and employment.
16. Insolvency and habitual indebtedness.
17. Communication of official documents or information.
18. and 19. Connection with Press.
20. Criticism of Government and publication of information or opinion upon matters relating to foreign countries.
21. Political agitations and meetings.
22. Vindication of acts and character of Government servant as such.

— 0 —

APPENDIX I

(The Government servants' conduct rules corrected up to July 1915.)

1. In these rules,—

- (a) "Government servant" includes every person holding or exercising any civil office, other than a menial office, under the Government;
- (b) "Native of India" means a person of unmixed (Asiatic descent permanently) resident in India.

2. A Government servant may not, without the previous sanction of the Government of India, directly or indirectly accept, either on his own behalf or in behalf of any other person, any gift, gratuity or reward, or any promise of a gift, gratuity or reward, from any Native of India, [13 Geo. III, Chap. 63, section 24; Foreign Department Circular no. 1299. G., dated the 20th June 1876.]

The Head of a Government or Administration or a Political Officer may accept from any Native Prince or Chief a ceremonial gift which is deposited in the Government Toshakhana and for which a return present is made at the Government expense. Any Government servant may accept a complimentary present of flowers or fruits or similar articles of trifling value. The practice of giving such presents should however be discouraged.

When a gift of substantial value cannot be refused without giving offence, it should, unless the Government of India by special order otherwise direct, be delivered up to the Government.

3. A Government servant may not, without the previous sanction of the local Government, receive any complimentary or valedictory address, accept any testimonial presented to him, or attend any public meeting or entertainment held in his honour; nor may he take part in any similar action of the services of any other Government servant, or of any person who has recently quitted the service of Government. [Home Department (Public) Resolution no. 29—1629-45, dated the 22nd July 1887; Home Department Resolution no. 729—753 (Public), dated the 6th May 1898; Home Department Circular no. 4566—75, dated the 8th August 1910.]

The rule admits of the following exceptions:—

- (a) The Head of any Government or Administration may receive an address.

- (b) At the request of any public body a Government servant may sit for a portrait, bust or statue not intended for presentation to him.
- (c) A Government servant may take part in the raising of funds to be expended, in recognition of the services of another Government servant, on the foundation of a scholarship or other public or charitable object, or on the execution of any portrait, bust or statue not intended for presentation to such other Government servant. He may not, however, solicit subscriptions for the purpose.
- (d) A Government servant may take part in a private farewell entertainment, attended only by personal friends, as a mark of regard to himself when retiring from the service or quitting a district or station, or to another Government servant in similar circumstances.

[Home Department Circular nos. 4566—75, dated the 8th August 1910.]

4. A Government servant may not, without the previous sanction of the local Government, receive any trowel, key or other similar article, offered to him at a ceremonial function, such as the laying of a foundation stone or the opening of a public building.

[Home Department Circular nos. 1173—1184, dated the 18th June 1913.]

A local Government may delegate its power of sanction under this rule to Commissioners of Divisions, or, in the Madras Presidency, to the Board of Revenue.

[Home Department Circular nos. 718—721, dated the 13th May 1915.]

This rule shall not apply to the Head of any local Government or Administration or to any Member of the Imperial or Provincial Executive Council, or to the Commissioner in Sind.

5. Subject to the departmental rules governing the question, a medical officer may accept any gift, gratuity or reward offered in good faith by any person or body of persons in recognition of his professional services.

Application of rules 2 and 3 to medical officers.

6. A Government servant may not, without the previous sanction of the local Government, ask for or accept from any Native Prince or Chief, or the agent of any Native Prince or Chief, any subscription or other pecuniary assistance in pursuance of any object whatsoever.

[Home Department (Public) Resolution no. 31—1217-42, dated the 11th July 1885; Home Department (Public) Resolution no. 25—1437-60, dated the 14th August 1889.]

7. Government servants may not enter into any pecuniary arrangement for the resignation by one of them of any office under the Government for the benefit of the others. Should this rule be infringed, any nomination or appointment consequent upon such resignation will be cancelled and such parties to the arrangement as are still in the service will be suspended, pending the orders of the Secretary of State or of the Government, as the case may be.

[General Notification no. 216, dated the 9th September 1842; Home Department Circular no. 55—1864-73 (Public), dated the 29th December 1883.]

8. (1) A gazetted officer may not lend money to any person possessing land within the local limits of his authority, nor may he, except in the ordinary course of business with a Joint Stock Bank or a firm of standing, borrow money from, or otherwise place himself under a pecuniary obligation to, any person subject to his official authority, or residing, possessing land or carrying on business within the local limits of such authority.

[Home Department (Public) Resolution no. 2-R.—87-103, dated the 16th January 1890; letter to Government of Madras, no. 2407, dated the 6th December 1890; Home Department Circular letter nos. 560—569, dated the 28th February 1907.]

(2) When a gazetted officer is appointed or transferred to a post of such a nature that a person from whom he has borrowed money or to whom he has otherwise placed himself under a pecuniary obligation will be subject to his official authority, or will reside, possess immovable property or carry on business within the local limits of such authority, he must forthwith declare the circumstances to the Government through the usual channel.

[Home Department (Public) Resolution no. 22—637-653, dated the 16th March 1888; Home Department (Public) Resolution no. 1032—1049, dated the 9th June 1897.]

[Home Department Circular no 4952-60 (Public), dated the 28th October 1869; Home Department letter no. 1899 (Public), dated the 25th April 1872; Home Department letter no. 1556 (Public), dated the 31st May 1892.]

(3) The orders contained in this paragraph apply also to non-gazetted officers, but in the case of the latter they may be relaxed in exceptional cases at the discretion of the head of their office. Non-gazetted officers should make the report referred to in sub-paragraph (2) to the head of their office.

[Home Department Notification no. 1437 (Public), dated the 23rd September 1881; Home Department Notification no. 53 (Public), dated the 20th January 1882; Home Department Circular no. 387-96, dated the 20th February 1911.]

9. When a Government servant, other than a Native of India, wishes to buy from or sell to any Native of India residing, possessing immovable property, or carrying on business within the station, district or other local limits for which he is appointed, any house, elephant, horse, conveyance or other valuable thing, he must declare his intention, with a full statement of the circumstances and the price offered or demanded, as the case may be, to the Commissioner or to such other authority as the local Government may direct. When such a declaration has been made, the Commissioner, or other officer authorised by the local Government in this behalf, may pass such orders upon the proposal as he may think fit. These orders do not apply to any transaction conducted in good faith with a regular dealer.

A Government servant, who is about to quit the station, district or other local limits for which he has been appointed, may, without reference to any authority, dispose of his furniture, household goods, live-stock and the like, either by circulating lists thereof among the community generally or by causing them to be sold by public auction.

NOTE.—It will be understood that the Commissioner or other officer authorised to dispose of such applications is at liberty to refer any application to Government for advice or orders if he considers such a course desirable. In cases where the Commissioner or other officer authorised in this behalf is himself interested in the proposed transaction, he should refer the matter to Government for orders.

10. A Government servant who is a member of the Indian Civil Service, or a military officer, may not hold or acquire any immovable property within the territories of any Native Prince or Chief.

[Home Department Circular no. 21—797-806 (Public), dated the 13th May 1885; Home Department Circular no. 19—1161-1170 (Public), dated the 14th June 1890; Home Department Circular nos. 2224—32, dated the 13th May 1909.]

A Government servant, who, not being a Native of India, is a member of the Indian Civil Service, or a military officer, or holds any office ordinarily held by members of the Indian Civil Service or by military officers, may not, directly or indirectly, hold or acquire any immovable property within the Province in which he is employed or within any Province with the administration of which he is concerned, whether such employment or concern is permanent or temporary.

A Native of India who is a member of the Indian Civil Service, or holds any office ordinarily reserved for members of the Indian Civil Service, and any Government servant belonging to the Provincial or Subordinate Civil Services, may continue to hold any immovable property actually held by him at the time of his entry into Government service, and may thereafter acquire any immovable property by succession, inheritance, or, bequest, or, with the previous sanction of the local Government or such heads of Departments as may be specially empowered by the local Government in this behalf, by purchase or gift.

He will, however, be liable to be debarred from employment within the district or other local limits within which such immovable property is situated.

Any Government servant may hold or acquire immovable property in good faith for the purpose of residence.

11. Every government servant or candidate for Government service must make to the Government, through the usual channel, a declaration of all immovable property which may from time to time be held or acquired by him or by his wife or by any member of his family living with him, or in any way dependent upon, him.

[Home Department Circular no. 21—707-806 (Public), dated the 13th May 1885; Home Department Circular no. 33—2405—14 (Public), dated the 11th September 1888.]

Such declaration should state the district within which or the Native Prince or Chief within whose territories the property is situated and should give such further information as the Government may by general or special order require.

[Home Department Circular nos. 718-721, dated thr 13th May 1915,] This rule shall not apply to any Member of the Imperial or a Provincial Executive Council who is a Government servant only in that capacity and not otherwise.

12. A Government servant may not make any investment, other than an investment in immovable property permitted by rule 10, which gives him such private interest in matters with which his public duties are connected as would be likely in the opinion of the local Government to embarrass or influence him in the discharge of his duties.

Subject to this condition he may hold or acquire shares in any Company, including a mining or agricultural Company, which has for its object the development of the resources of the country; but he will not be employed in any district in which the operations of any such Company are conducted :

Provided that this rule, in so far as it relates to the making of investments or placing of deposits by Government servants in co-operative societies registered under Act

II of 1912, shall, subject to any general or special restrictions or relaxations made or permitted by the local Government, be read with the following limitations :—

- (a) Government servants of the class referred to in the second paragraph of rule 10 shall not make such investments or place such deposits within the Province in which they are employed.
- (b) Government servants of the class referred to in the third paragraph of rule 10 shall not make such investments or place such deposits except in cases in which they are allowed to retain or acquire immoveable property.
- (c) All other classes of Government servants shall be at liberty to make such investments or place such deposits.

Home Department Circular no. 21 — 797 — 806 (Public) dated the 13th May 1885.]

Speculation. 13. A Government servant may not speculate in investments.

In applying this general rule, the purchase of a grant of land supposed to contain minerals with the object of disposing of it to Companies, and the habitual purchase and sale of securities of notoriously fluctuating value, will be treated as speculation in investments.

14. A gazetted officer, whether on leave or in active service, may not, without the special sanction of the Secretary of State, take part in the promotion, registration or management of any Bank or other Company.

This rule does not apply to any Government servant who, with the sanction of the Government of India, enters into the service of a Railway Company working a concession granted by the Government or to the management of a Government servant of any association established and conducted in good faith for the purpose of mutual supply and not for profit, when such management does not interfere with his public duties, or (subject to the same condition) to any Government servant who, under the general or special sanction of the local Government, takes part in the management of a co-operative society registered under Act II of 1912.

Solicitors to the Government at Calcutta, Madras or Bombay, Government pleaders, Crown Prosecutors, Diocesan Registrars and Coroners may serve as Directors of a Bank or other Company if such service does not interfere with their public duties and the interests of the Bank or Company are not opposed to those of the Government.

15. A Government servant may not, without the previous sanction of the local Government, engage in any trade or employment, or undertake any employment, other than his public duties.

A Government servant may undertake occasional work of a literary or artistic character, provided that his public duties do not suffer thereby; but the Government may, in its discretion, at any time forbid him to undertake or require him to abandon any employment which in its opinion is undesirable.

Note.—The Secretaryship of a club does not constitute employment in the sense of this rule, provided that it does not occupy so much of an officer's time as to interfere with his public duties and that it is an honorary office, that is to say, that it is not remunerated by any payment in cash, or any equivalent thereof other than the customary concessions of free quarters and personal exemption from messing charges only. Any officer proposing to become the Honorary Secretary of a club, should inform his immediate departmental superior who will decide, with reference to this rule and note, whether the matter should be reported for the orders of Government.

Home Department Circular no. 21—797-806 (Public), dated the 13th May 1886; Secretary of State's Despatches no. 73 (Public), dated the 19th July 1883; no. 25 (Financial), dated the 7th February 1889; and no. 53 (Public), dated the 14th May 1891 Home Department Circular nos. 2139 — 48, dated the 25th September 1908; Home Department Circular nos. 79—90, dated the 23rd January 1913. [Home Department Circular no. 21—797-806 (Public), dated the 13th May 1886.]

[Home Department Circular nos. 928—937B, dated the 9th June 1914.]

[Home Department Notification no. 181, dated the 26th January 1855; Circular Memorandum no. 67-2816-2821, dated the 19th November 1874; Resolutions no. 100 (Public), dated the 12th January 1856, No. 2-77-102 (public) dated the 19th January 1884, and no. 29-1770-92, dated the 8th October 1889.]

16. (1) When a Government servant is adjudged or declared an insolvent, or when one moiety of the salary of such Government servant is constantly being attached, has been continuously under attachment for a period exceeding two years, or is attached for a sum which, in ordinary circumstances, cannot be repaid within a period of two years, he will be considered liable to dismissal.

(2) When such Government servant is not liable to dismissal otherwise than by or with the sanction of the Secretary of State, the matter must, if he is declared insolvent, and may, if a moiety of his salary is attached, be reported to the Secretary of State, pending the receipt of whose orders he will be suspended from the service.

(3) In the case of any other Government servant, the matter should be reported to the local Government or to such authority subordinate to the Government as may, by general or special order, be directed.

(4) When a moiety of an officer's salary is attached, the report should show what is the proportion of the debts to the salary; how far they detract from the debtor's efficiency as a Government servant; whether the debtor's position is irretrievable; and whether, in the circumstances of the case, it is desirable to retain him in the post occupied by him when the matter was brought to notice, or in any post under the Government.

(5) In every case under this rule, the burden of proving that the insolvency or indebtedness is the result of circumstances which, with the exercise of ordinary diligence, the debtor could not have foreseen or over which he had no control, and has not proceeded from extravagant or dissipated habits, will be upon the debtor.

[Home Department Circular no. 30-1267-76 (Public), dated the 16th August 1884; Home Department Resolution no. 22-A (Public), dated the 3rd June 1885.]

17. A Government servant may not, unless generally or specially empowered by the local Government in this behalf, communicate directly or indirectly to Government servants belonging to other Departments, or to non-official persons, or to the Press, any document or information which has come into his possession in the course of his public duties, or has been prepared or collected by him in the course of those duties, whether from official sources or otherwise.

18. A Government servant may not, without the [Home Department Resolution no. 19—1134 (Public), dated the 8th July 1875.] previous sanction of the local Government, become the proprietor in whole or in part, or conduct or participate in the editing or management of any newspaper or other periodical publication.

Such sanction will be given only in the case of a newspaper or publication mainly devoted to matters not of a political character, and may at any time, in the discretion of the local Government, be withdrawn.

19. Subject to the provisions of rule 17, a Government servant may contribute anonymously to the Press, but must confine himself within the limits of temperate and reasonable discussion; and, if his connection with the Press is contrary to the public interest, the local Government may withdraw his liberty to contribute. When there is room for doubt whether the connection of any Government servant with the Press is or is not contrary to the public interests, the matter should be referred to the Governor-General in Council for orders.

Nothing in this rule will limit or otherwise affect the operation of any Army Regulations for the time being in force relating to the same subject.

20. A Government servant may not publish in his own name. [Secretary of State's despatch, no. 182 (Public), dated the 27th September 1912; Home Department Circular no. 2660—2671, dated the 15th November 1912.]

(a) any statement of fact or opinion which may embarrass the relations between Government and the people of India or any sections of the people;

(b) any statement of fact or opinion concerning the policy or affairs of, or negotiations with, a foreign country which may embarrass the relations between such country and the British or Indian Government.

A Government servant who intends to publish a statement which may be considered to fall within this rule shall submit a proof thereof and shall obtain the permission of Government before publication.

[Home Department Circular no. 11—679-88 (Public), dated the 18th March 1890; Home Department Circular no. 4015-24 (Public), dated the 16th December 1905.]

21. A Government servant may not take part in, or subscribe in aid of, any political movement in India or relating to Indian affairs. Nor may he attend any political meeting his presence at which is likely to be misconstrued or to impair his public usefulness. When there is room for doubt whether any action which a Government servant proposes to take will contravene the provisions of this rule, he should refer the matter for orders to the local Government to which, or the Government servant to whom he is immediately subordinate.

[Home Department Circular no. 30—1676-85 (Public), dated the 5th September 1890; as such, Home Department Circular no. 1365—74, dated the 29th May 1900.]

22. A Government servant may not, without the previous sanction of the local Government, have recourse to any Court or to the Press for the vindication of his public acts or character from defamatory attacks. In granting sanction to the local Government will in each case decide whether it will itself bear the costs of the proceedings, or whether the Government servant shall institute the proceedings at his own expense, and, if so, whether, in the event of a decision in his favour, the Government shall reimburse him to the extent of the whole or any part of the costs.

Nothing in this rule will limit or otherwise affect the right of any Government servant to vindicate his private acts or character.

1. Government servants, on certain conditions, may become members of Anglo Indian Empire League (G. R. 7855 dated 9th October 1915.)
2. Government servants should decide whether they should attend a political meeting without orders of higher authority (G. R. 2647 dated 12-4-16.)

APPENDIX II.

(Referred to in S. 31, G 6)

FORM A.

Register of landed property held by public servants—prescribed by G. R. No. 3000, dated 10th June 1903.

District.	Name of officer or candidate for office.	Appointment held or sought.	Landed property including buildings in possession.						REMARKS.
			Nature of property.	The approximate value of the property.	Where situated.	How acquired.	When acquired.	Extent in Acres.		Assessment.

NOTE.—Property held or managed by or on behalf of an officer's wife or other member of his family joint with or living with or in any way dependent on him is, for the purposes of this register, considered to be held or managed by the officer himself.

FORM B.

I hereby declare that no change in the landed property (including buildings) held by me has occurred in the financial year ending 31st March.

_____ Name

_____ Designation as Government Officer.

_____ District in which serving.

APPENDIX III.

(Referred to in s 41, & 11)

(Form of Sanad for the planting of trees in open places in villages sanctioned by G. R. No. 8966, dated 27th December 1901.)

Whereas _____ resident of Mouze
Taluka _____ in the District of _____
has applied to plant and rear (here enter the description of trees) trees in Government land _____ and whereas the aforesaid application has been duly sanctioned under the authority of G. R. No. 4118, dated 14th June 1901.

Now the Sanad is hereby granted to the said _____ authorizing him, his heirs and ancestors to plant and rear _____ (Here enter the description of trees) trees in the marginally noted Government land of the village of _____ Taluka _____ in the district of _____

and to enjoy the produce thereof without any question on the part of Government and without paying to Government 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 the trees, subject to the below-mentioned conditions, namely :—

1. No right of ownership in or over the soil of the land in which the trees are planted shall thereby be acquired.
2. The said land shall be kept open and no fence or other obstruction shall be placed thereon, other than a separate fence round each tree such as may be necessary for its proper protection.
3. The wood of the trees shall be the property of Government.
4. The trees shall be given up without compensation if the land be required by Government or the Local Board for any public purpose.
5. No compensation shall be claimed or given for any damage done to the trees by any excavation or work done connected with an adjoining tank.
6. Trees growing on land forming part of the village site may be lopped by the orders of the Collector, if necessary, without giving any compensation.

This Sanad is executed on behalf of the Secretary of State in Council by order of the Governor-in-Council of Bombay, by and under the hand and seal of _____ Esquire, Assistant Collector of _____ this _____ day _____

When any unalienated land assessed or held for purposes of agriculture only is used for any purpose unconnected with agriculture by the occupant of the land.

Any person who shall unauthorisedly occupy any land set apart for any special purpose or any unoccupied land which has not been alienated shall

With permission.		Without permission.			If he have used it for any non-agricultural purpose.		Fine leviable under Section 61. If he have taken up the land for purpose of cultivation.	
Section. 65.		Fine leviable under Section 66 of the Code.						
No fine (Rule 71).	Classes into which villages, towns and cities in their respective division, are divided by the Commissioners under rule 72 for the purpose of determining the amount of fine.	Under the provisions of para. 2. Section 48, the assessment of the land so appropriated shall be altered in accordance with the rates fixed in rule 56 (1) viz. whichever be the greater of the following.		Shall be fixed by the Collector at his discretion, but shall not exceed the following sums (<i>vide</i> rule 73).	When land is appropriated to building site or brickmaking without permission the Collector may require the payment of a fine not exceeding the rate fixed for the 1st class (Rule 74).	Be liable to pay a fine equal to double the amount that would be leviable under Section 66 of the Code, viz., double the amount shown in column 4 (<i>vide</i> rule 70).	Be liable to pay the assessment of the entire No. for the whole period of his occupation if the land forms part of an assessed survey No. or	Be liable to pay such amount of assessment as would be leviable for the said period in the same village on the same extent of similar land appropriated to the same purpose, if the land has not been assessed.
		At Rs.— per acre.	No. of times the assessment for agricultural purposes.						6	7
I	10-0-0 or Ten times.	Rs.	1,250		Rs.	2,500	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.	
II	5-0-0 ,, Five times.		750		1,500			
III	2-0-0 ,, Three times.		500		1,000			
IV	1-0-0 ,, Double.		250		500			
V	No alteration in the assessment shall ordinarily be made.		100		200			

The subjoined table shows how the altered assessment and fine leviable under Sections 48, 61, and 66 and the rules framed thereunder, on account of unauthorised occupation and appropriation of unalienated land.

(Referred to in S. 48, N 14)

APPENDIX IV.

APPENDIX V S. 62 (N1)

The following Memo. of conditions imposed in respect of sale by auction of the occupancy-right of Government lands is in accordance with Government Resolutions Nos. 1189, dated 13th February 1886, and 9915, dated 19th October 1906.

Memo. of the conditions of sale of the occupancy-right of the following unoccupied land to be held at

on the _____ day of _____ 19 ____
vis. :— Survey No. _____
 _____, area about _____ Acres,
 Gunthas, Assessment Rs. _____ in the
 village of _____ Taluka
 and bounded
 on the North by _____
 on the South by _____
 on the East by _____ and
 on the West by _____

1. The sale shall be subject to confirmation by the Collector, or by some other revenue officer duly authorized to confirm the same.

2. It shall be in the discretion of the Collector or other officer aforesaid, to accept or not to accept, the highest bid.

3. The highest bidder shall have no ground for complaint if the sale be not confirmed, or if there be delay in the confirmation of the sale.

4. The party who is declared, subject to confirmation of the sale, as aforesaid, to be the purchaser shall be required to deposit immediately 25 per centum on the amount of his bid, and, in default of such deposit, the occupancy-right shall forthwith again be put up and sold.

5. The full amount of the purchase-money shall be paid by the purchaser before sunset of the fifteenth day from that on which the auction takes 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.

6.* In default of payment within the said period of the full amount of the purchase-money, the deposit, after defraying thereout the expenses of the sale, shall be forfeited to Government and occupancy-right shall be resold, and the defaulting purchaser shall forfeit all claim to the occupancy-right, or to any part of the sum for which it may be subsequently sold.

7.* 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.

(*The arrangement of these clauses has been altered in compliance with G. R. No. 6334, dated 20th August 1895.)

8. If the sale is not confirmed, the purchaser shall be entitled to receive back his deposit or his purchase-money, as the case may be.

9. The purchaser shall, previously to entering upon occupation of the land, obtain the permission in writing of the Mamlatdar or Mahalkari under Section 60 of the Land Revenue Code. Such permission will only be accorded on the purchaser's paying local fund cess at the rate of one anna in the Rupee on the amount of the purchase-money, and on his executing an agreement (which should be executed within thirty days of the receipt of intimation by him of the confirmation of the sale) in the form of Appendix B to the rules framed under the Land Revenue Code. If the land is occupied without such permission being first obtained, the occupation will be liable to be treated as unauthorised under Section 61 of the Land Revenue Code.

10. The purchaser will have to pay the assessment of the land and local fund cess thereon commencing with the year.

Provided that, if without his own fault, he does not obtain possession of the land in due time to make use of it that year, he shall not be chargeable with the assessment and local fund cess thereof till the next following year.

11. The sale is subject to the right of Government to the following trees standing in the land which have been specially reserved (namely):—

(Here enter the number and description of trees, to be reserved)

The trees, other than the reserved ones, are sold along with the occupancy-right.

(Where there are toddy and other juice producing trees the following condition should be inserted.)

12. Government reserves to itself the right of prohibiting the extraction of the juice of all cocoanut, toddy, bherlimad, shindi, or other trees growing in the land, and of permitting any person to extract it on certain conditions. The purchaser must afford all reasonable facilities and conveniences to

any person licensed by, or under the authority of Government to extract the juice from any such tree.

13. The purchaser, his heirs, executors, administrators and approved assigns, may not at any time lease, mortgage, sale or otherwise however encumber the said occupancy or any portion thereof without the previous sanction in writing of the Collector and subject also to the provisions of the Bombay Land Revenue Code. 1879, and of the rules in force thereunder.

(Signed)

Collector (or Mamlatdar or Mahalkari, as the case may be.)

N. B.—1. Clause 13 should be scored out when the occupancy of land is sold on full tenure.

2. When the occupancy is sold on restricted tenure in Thana, the reservation of trees will be in accordance with the rules promulgated with G. R. No. 5033, dated 22nd July 1902.

APPENDIX VI.

Section 62 (N. 2).

NOTIFICATION.

No. 2154, dated 1st March, 1909.

In exercise of the powers conferred by section 62 of the Bombay Land Revenue Code, 1879, the Governor in Council is pleased to direct that in the Thana and Kolaba districts and in any other district to which Government may hereafter by notification extend these orders, the following conditions, regulating the cutting of trees for tahal, shall be annexed to the occupancy before permission to occupy is granted under section 60 of the said Code, namely :—

Conditions.

1. Save as provided in conditions 2 and 3 no occupant shall in the land occupied cut down, pollard, or lop any tree whatever.

2. An occupant may in the land occupied cut down, lop or pollard for his own use injaili trees that are not fruit trees in accordance with the following rules but not otherwise :—

(a) in the case of injaili trees 10 feet high or higher—

(i) the leading shoot must be permanently preserved along with all shoots from the topmost third of the main stem ;

(ii) shoots that have taken less than 2 years to grow may not be touched : only shoots that have taken 2 years or more to grow may be lopped off ;

(b) in the case of injaili trees less than 10 feet high—

(i) where several stems spring from the same root or stump the best of such stems with all shoots from it shall be left untouched till the stem is 10 feet high, but all other shoots from the root or stump or from the ground within a yard of the untouched stem may be cut down to the ground ;

(ii) no stem growing singly may be cut or its side shoots lopped, unless it has an untouched stem growing within a yard of it.

Provided that, with the previous permission of a revenue-officer not lower in rank than a Mamlatdar, such occupant may cut down for his own use—

(a) any injaili tree not useful for tahal or fruit, and

(b) any fruit tree and any leading shoot or best stem preserved under clause (a) (i) or (b) (i) of this rule when in the opinion of such officer such tree, shoot or stem is no longer useful for fruit or tahal.

3. With the previous permission of a revenue-officer not inferior in rank to an Assistant or Deputy Collector, an occupant may in the land occupied cut down for his own use any tree other than an injalli tree.

Explanation.—The Collector or Prant Officer may, by written order delivered to the patel, authorize the occupants of a village to cut down the after-growth of teak, blackwood and tivas, subject to the condition that two leading shoots from each stump with all their branches are left permanently untouched and may at any time modify such order by withdrawing such authority either from particular occupants or from all the occupants or in respect of particular areas, and such order as so modified shall be a saving order under condition 3.

Note.

1. In these conditions—

- (a) the word "tree" includes all ground shoots which grow into trees, such as Kuda, Kudi, Pethari and Chera, but does not include bushes; and the word "bush" shall be deemed to include all ground shoots which do not grow into trees such as Karand, Ukshi, Phangli, Dhaiti and Nirgudi ;
- (b) the word "occupant" includes—
 - (i) all persons who personally cultivate the soil, whether as tenants or in their own right ;
 - (ii) all landlord residents in a village and holding land therein, whether they cultivate the soil personally or through tenants ;— but does not include non-resident landlords.

APPENDIX VII.

Section 62 (G6).

Accompaniments to Government order, Revenue department. No. 12176, dated 11th December 1916.

I FORM OF LEASE.

The land comprised in survey No. area acres gunthas
assessment Rs. As. Ps. in the village of in the
taluka of the is hereby granted on lease to—

(1)

(2)

inhabitant (s) of in the taluka of the
district hereinafter called "the lessee(s)" on payment of an occupancy
price of rupees in perpetuity (x)
from the day of 191 , 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 Asst. 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.

(3) that if within twenty years of the date of the grant of this lease
the lessees or their heirs or any of the male issues 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 Asst. 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 191 .

Seal of the Collector of
Collector,

In the presence of.....

This grant is hereby accepted, on the terms and conditions therein mentioned, by—

Y.....

Y.....

Y.....

in the presence of

Z.....

Z.....

x. (or if the grant is not in perpetuity but merely for a term, delete the words "in perpetuity" and insert here "to the day of 191";)

z Signatures of witnesses.

y Signatures of the lessees.

2 Form of lease 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 to—

(1)

(2)

inhabitant (s) of _____ in the village of _____ in the taluka of _____ in the _____ District (hereinafter called "the lessees") for the purpose of building a house or hut thereon, for a term of _____ years commencing from the day of _____ and ending on the day of _____ 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 lessees, their heirs and assigns shall pay _____ rupees per year as the rent of the said site in addition to such other rent or Land revenue (if any) as may be demanded of them under the Bombay Land Revenue Code, 1879, or the rules thereunder.

(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 lessees, 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 twenty 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 an 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, 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 of _____ 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 _____ 191.

Seal of the _____ Collector of _____
Collector.
in the presence of—

x.....

x.....

This grant is hereby accepted, on the terms and conditions therein mentioned, by.....

y.....

y.....

In the presence of—

x.....

x.....

x Signatures of witnesses.

y Signatures of the lessees.

APPENDIX VIII

(Section 67, G 2)

(These forms were sanctioned by G, R, No. 1188,
dated 13th February 1904.)

FORM A.

(To be used where applicant applies for permission to appropriate to building purposes land hitherto used for agricultural purposes.)

(Royal Arms)

N. B.—Under the provisions of Section 67 of the Bombay Land Revenue Code, 1879, the applicant should be the registered occupant before an Agreement under that section is entered into with him. If necessary, the land appropriated under the Agreement should be demarcated as a separate number under section 116 of the Land Revenue Code, and the applicant entered as the registered occupant thereof.

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 registered occupant of _____ Taluka _____ district _____ has applied to the Collector of _____ (hereinafter referred to as "the Collector") under Section 65 of the Bombay Land Revenue Code, 1879 (hereinafter referred to as "the said Code"), for permission to appropriate to 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,

* Care must be taken that this is duly annexed.

NOW IT IS HEREBY AGREED between the Secretary of State and the applicant that permission to appropriate to 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 :—
- (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
- * Here insert the particular purpose for which the building is to be erected, such as "a residential bungalow and attached out-houses other than a stable or privy."
- † Here insert the particular purpose for which the building is to be erected, such as "a shop" or "a privy."
- N. B.—Omit this clause in cases where no such surrender is made.

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 :

- (3) The applicant is hereby prohibited under the last paragraph of Section 48 of the said Code from appropriating, without the previous permission in writing of the Collector, any part of the said plot of land to any purpose other than that for which permission to appropriate it is hereinbefore granted to the applicant :

Provided that :—
 * Here insert any special exception or reservation that may be necessary, such as, save on the sides indicated by the lines O D, E F, on the said site plan, where the existing margin as shown therein is allowed to remain."

- (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.*, appropriated 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 shop-boards ;

(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 appropriating, without such previous permission, to any non-agricultural purpose, other than that of a shop, a stable or a privy, to an extent not exceeding in total admeasurement yards, any part of such portion (C) that does not lie within the aforesaid margin ;
 and

†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 concession.

- (ii) where any such prohibited appropriation is permitted by the Collector the applicant shall, *except in the case of an appropriation of any part of the land measuring square yards and specified in sub-clause (c) of proviso (i) above,* be liable to pay from the date of the appropriation in respect of the land so appropriated such enhanced assessment not exceeding $\frac{1}{2}$ 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 subclause (b) of proviso (i) to clause (3) of this Agreement 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 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 (Rs.) per hundred (100) square yards :
- † 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) § 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 :
- ‡ Omit the words in italics if sub-clause (c) has been omitted.
- § Enter the amount calculated at five times the rate of assessment on the land permitted to be built over under the Agreement (see paragraph 4 of G. R. D. No. 6411 of the 16th September 1903.
- * Enter the amount calculated in accordance with paragraph 1 of G. R. D. No. 1188, of the 13th February 1904.
- † This proviso was added by G. R. No. 5088, dated 4th July 1904.
- § As to retention or omission of this clause, wide G.R. No. 7496 dated 6th August 1906, printed under section 67.
- ‡ Here insert description of the buildings, such as "a residential bungalow and outhouses."

- (5a) The applicant shall not, without special permission, erect on the said plot of land any structure having more than upper $\frac{\text{floor}^*}{\text{floors}}$ in addition to the ground floor

* here insert the maximum number of upper floors to be allowed.

N. B. Omit this clause in cases where it is not considered necessary to impose any restriction as to the height of the building.

(G. R. R. D. No 5124, dated 26th April 1918)

N. B.—Omit this clause in cases where there are no existing buildings to be removed.

- (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 the 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 ;*

* Omit the words in italics in cases where clause (6) is omitted.

- (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 States his successors and assigns, and the word, "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, directs 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 of these presents.

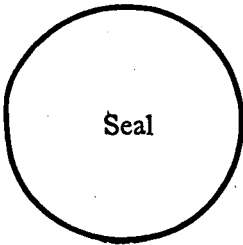
IN WITNESS WHEREOF the Collector of

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 first above written.

N. B.—Two copies should be executed, one to be kept by the Collector, and the other to be handed to the applicant.

Signed by (Applicant's signature.)

in the presence of
Signed by
Collector of
in the presence of



Seal

(Collector's signature.)

FORM B. (Appendix 8)

(To be used where applicant has already appropriated Land to building purpose without permission and applies for permission to continue so to appropriate it.)

(Royal Arms.)

N. B.—Under the provisions of Section 67 of the Bombay Land Revenue Code, 1879, the applicant should be registered before an Agreement under that section is entered into with him. If necessary the land appropriated under the Agreement should be demarcated as a separate number under Section 116 of the Land Revenue Code, and the applicant entered as the registered occupant thereof.

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 registered occupant of _____ of _____ Taluka _____ District has appropriated to 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 little 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 appropriate the above said plot of land to building purposes,

* Care must be taken that this is duly annexed.

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 appropriate to 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 * Here insert
 open compound only : the particular
 purpose for
- (B) an area of square yards indicat which the
 ed by a colour and the letters for be erected,
 the purpose of † or for the purpose such as "a
 of an open compound only : residential bun-
 galow and
 attached out-
 houses other
- (C) an area of square yards indicated by than a stable
 the uncoloured portion of the said plot for the
 purpose of an open compound only : or privy."
 † Here in-
 shall be and is hereby granted subject to the provisions of sert the parti-
 the said Code, and rules and orders thereunder, and on the cular purpose
 following special terms and conditions, namely : for which the
 building is to
 be erected,
 such as "a
 shop" or "a
 privy."
- (1) The applicant in lieu of the present assessment levi- such as "a
 able in respect of the said plot of land shall pay shop" or "a
 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 revis-
 ed 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 relin- N. B.-Omit
 quishes to Government without claiming any this clause in
 compensation therefor all interest in, and the cases where
 Collector on behalf of Government is hereby no such sur-
 permitted without further notice to the applicant ren der is
 made.
 to enter upon and take possession of, the follow-
 ing pieces of land, that is to say :—
- (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 ;
- (3) The applicant is hereby prohibited under the last paragraph of Section 48 of the said Code from appropriating, without the previous permission in writing of the Collector, any part of the said plot of land to any purpose other than that for which permission to appropriate 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.*, appropriated 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 appropriating, without such previous permission, to 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 ;

* Here insert any special exception or reservation that may be necessary, such as "save on the sides indicated by the line C. D. E. F. on the said siteplan, 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 concession.

and

- (ii) where any such prohibited appropriation is permitted by the Collector, the applicant shall, *† except in the case of an appropriation of any part of the land measuring square yards and specified in sub-clause (c) of proviso (i) above,* be liable to pay from the date of the appropriation in respect of the land so appropriated such enhanced assessment not exceeding \dagger 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 : \ddagger Enter the amount calculated at five times the rate of assessment on the land permitted to be built over under the
- (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 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 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 : \S Enter the amount calculated in accordance with paragraph 1 of G. R. R. D. No. 1188 of the 13th February 1904.
- ¶ Provided that, where the materials of any gate, wall, pavement or other such authorised 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 think fit : * Here insert description of the buildings, such as "a residential bungalow and outhouses."
- (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."

¶ This proviso was added by G. R. No. 5088, dated 4th July 1904.

† As to retention or omission of this clause *Vide* G. R. No. 7496, dated 6th August 1906, printed under section 67.

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.

- (5a) The applicant shall not, without special permission, erect on the said plot of land any structure having more than upper $\frac{\text{floor}^*}{\text{floors}}$ in addition to the ground floor.

* here insert the maximum number of upper floors to be allowed.

N. B. Omit this clause in cases where it is not considered necessary to impose any restriction as to the height of the building.

(G. R. R. D. No. 5125, dated 26th April 1918).

N. B.—Omit this clause in cases where there are no existing buildings to be removed.

- (5) The applicant shall remove the existing indicated on the site-plan hereto annexed by a colour and the letters within a period of from the 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), *for 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 :

† Omit the words in italics in cases where clause (6) is omitted.

† For Schedule of Building regulations, see below form C.

(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, directs 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 of these presents.

IN WITNESS WHEREOF the Collector of _____ has _____ N. B.—Two
 by order of the Governor of Bombay in Council hereunto set _____ copies should
 his hand and the seal of his office, on behalf of the Secretary _____ be executed,
 of State for India in Council, and the applicant has also _____ one to be kept
 hereunto set his hand the day and year first above written. _____ by the Col-
 _____ lector, and
 _____ the other to
 _____ be handed to
 _____ the applicant,

Signed by	(Applicant's signature.)
in the presence of	
Signed by	
Collector of	
in the presence of	(Collector's signature.)



FORM C. (Appendix 8).

(To be used where applicant has appropriated Land to building purposes with permission, but is willing to comply with the terms of this agreement in order to gain the benefits thereof.)

(Royal Arms.)

N. B.—Under the provisions of Section 67 of the Bombay Land Revenue Code, 1879, after referred to as "the Secretary of State") on the one the applicant part and should be the registered occupant before part.

THIS AGREEMENT made this day of one thousand nine hundred and between the SECRETARY OF STATE FOR INDIA IN COUNCIL (herein- after referred to as "the Secretary of State") on the one inhabitant of (hereinafter referred to as "the applicant") on the other

an Agreement under that Section is entered into with him.

WHEREAS the applicant being the registered occupant of Taluka

If necessary, District has appropriated to building the land ap- purposes with the permission of the Collector of propriated under, the (hereinafter referred to as "the Collector") granted under Agreement Section 65 of the Bombay Land Revenue Code, 1879. (here- should be demarcated as inafter referred to as "the said Code"), the plot of land a separate indicated by the letters on the site-plan number under hereto annexed,* forming part of the said and Section 116 of the Land Re-measuring square yards, be the same a little more venue Code, or less :

and the appli- AND WHEREAS the applicant has applied, in lieu of the as the regis- said permission of the Collector, for permission to appropri- tered occup- ate the aforesaid plot of land to building purposes on certain ant thereof, special terms and conditions;

*Care must be taken that this is duly annexed.

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 appropriate to 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, § Here insert the particular purpose for which the building is to be erected, such as "a residential bungalow and attached out-houses other than a stable or privy."
- (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 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 thereof 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 rule 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 :—
- (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 for the purpose of being used as a
- (b) sweeper's passage (and not as a public thoroughfare) a strip of land situate along and within the
- † Here insert the particular purpose for which the building is to be erected, such as "a residential bungalow and attached out-houses other than a stable or privy."
- N. B.—Omit this clause in cases where no such surrender is made.

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 :

- (3) The applicant is hereby prohibited under the last paragraph of Section 48 of the said Code from appropriating, without the previous permission in writing of the Collector, any part of the said plot of land to any purpose other than that for which permission to appropriate it is hereinbefore granted to the applicant :—

Provided that :—

- (i) nothing in the above shall be deemed to prohibit the applicant—

* Here insert any special exception or reservation that may be necessary, such as "save on the sides indicated by the lines CD, EF, on the said site-plan, where the existing margin as shown therein is allowed to remain."

- (a) from erecting or constructing, without such previous permission, in the portion (C) (*i. e.*, appropriated 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 shop-boards ;
- (b) from constructing, without such previous permission, wells or tanks in any part on 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*

† 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 of this concession.

- (c) † from appropriating, without such previous permission, to 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

‡ Omit the words in italics if sub-clause (c) has been omitted.

- (ii) where any such prohibited appropriation is permitted by the Collector, the applicant shall, ‡ *except in the case of an appropriation of any part of the land measuring square yards and specified in sub-clause (c) of proviso (i) above,* be liable to pay from the date of the appropriation

n respect of the land so appropriated such enhanced assessment not exceeding § Rupees (Rs.) amount calculated at five times the rate of assessment on the land permitted to be built over under the 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 the 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 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.) amount calculated in accordance with paragraph 1 of G. R. D., No. 1188 of the 13th February 1904.

per hundred (100) square yards :

¶ 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 think fit :

- (5)† The applicant shall within the 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 :

* This proviso was added by G. R. No. 5088, dated 4th July 1904.

† As to retention or omission of this clause *Vide* G. R. No. 7496, dated 6th August 1906, printed under Section 67 at page 108.

* For Schedule see pages 341 to 343.

† Here insert description of the buildings, such as "a residential bungalow and outhouses."

- (5a) The applicant shall not, without special permission, erect on the said plot of land any structure having more than upper $\frac{\text{floor}^*}{\text{floors}}$ in addition to the ground floor

* here insert the maximum number of upper floors to be allowed.

N. B. Omit this clause in cases where it is not considered necessary to impose any restriction as to the height of the building.

(G. R. R. D. No. 5124, dated 26th April 1918).

N. B.—Omit this clause in cases where there are no existing buildings to be removed.

- (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 the 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 :

* Omit the words in italics in cases where clause (6) is omitted

- (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, directs 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 of 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.

N. B.—Two copies should be executed, one to be kept by the Collector, and the other to be handed to the applicant

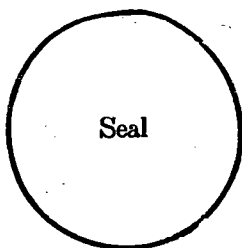
Signed by (Applicant's signature)

in the presence of

Signed by

Collector of (Collector's signature)

in the presence of



***SCHEDULE OF BUILDING REGULATIONS.**

1. In these rules—

Definitions.

(i) "dwelling" means any building or part of a building used or intended for use as a dwelling for human beings, horse, or cattle;

* (1) These regulations are common to the three (A.B.C.) forms given above.

(2) For cases in which this schedule is to be substituted by model regulations (Vide Appendix IX) See G. R. No. 7496, dated 6th August 1906, printed under section 67.

(ii) "window" includes an open space running right through a wall so as to admit of the entry of air.

Plinth. 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 two feet above ground level.

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.

Privies. 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 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 moveable 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 ablution-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 topholes 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, brickwood 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 ablution-water as is not actually used for ablution can be disposed of without entering the receptacle for night-soil.

5. (i) No cess-pool shall be built within twenty feet of a dwelling or kitchen, or within thirty feet of a well or other source of water supply.

Cess-pools.

(ii) Every cess-pool 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 cess-pool shall be at a level not lower than one foot below ground level.

(iv) The sides of every cess-pool shall project above ground sufficiently to prevent the inflow of surface drainage.

(v) Every cess-pool 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.

Urine, sullage water etc.

(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 removeable 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 cess-pools satisfying rule 5.

Prevention of stagnation.

APPENDIX IX.

Vide footnote 2 under schedule of building regulations at the end of Form C in Appendix VIII.

Model Regulations for notified areas.

(Published under G. R. G. D. No. 3543, dated 15th June 1906.)

Nothing in these rules shall affect the validity of any stipulations attached to the agreements taken from persons permitted to build on Government lands under Land Revenue Code, section 67.

1. (1) No person shall erect a building in an area in which alignment of streets likely to be required in the future has not yet been determined, unless the site proposed for such buildings is, in the opinion of the committee, such as will admit of the satisfactory construction of such streets; provided that any person desiring to erect a building in such an area may, by written notice to the Committee, require that the positions and descriptions of the streets in the vicinity of his intended building be forthwith laid down and determined, and, if such requisition be not complied with, within six months from the date thereof, may, subject to all other regulations applicable thereto, proceed with the erection of his building.

(2) No person shall erect a building which will abut on a street to a greater height, measured from the ground level to half the height of the roof, than twice the width between the point at which the plinth approaches nearest to the street and the centre line of such street.

(3) Every person who shall erect a new building shall so construct it that no part of the plinth shall be within three feet of any existing or proposed street.

2. No site shall be built on until passed as fit for the purpose by the Committee,

3. All new buildings shall be constructed subject to the following conditions :—

Dwelling rooms, bath rooms and privies shall have a 2 feet plinth.

Cow houses shall have a plinth of at least one foot.

4. One side of every dwelling rooms shall either be an external wall, or shall abut on an interior open space having an area equal to not less than one-fourth the aggregate floor area of all the rooms and verandahs abutting thereon, and such interior open space shall not be less than ten feet across in any direction.

5. (1) Every dwelling house shall have at the rear thereof an open space, exclusively belonging thereto, and free from any erection thereon except a well, privy or bath room. Such open space shall extend laterally throughout the width of such building, and the distance across

such building, and the distance across such open space, measured from, and at right angles to, the back of such building to the boundary of any lands or premises immediately opposite or adjoining the site of such building, shall average not less than the height of the building (measured from the ground level to half the height of the roof) and also not less than twenty-five feet.

(2) Provided that this condition shall not apply so as to require any open space to the rear of any kitchen or out-house appurtenant to a dwelling when the open space provided in the rear of such dwelling is sufficient to comply with the provision of this rule.

6. Every dwelling room shall average at least eight feet in height, unless it is an attic, in which case the height may average seven feet.

7. (1) Every dwelling room shall have a window or windows or other aperture for the admission of light and air opening directly into the external air or into an open verandah; the area of such window or windows exclusive of the frames shall aggregate not less than one-tenth of the floor area and every such window shall be so constructed that at least half the area thereof is open or can be opened.

(2) If the cubic contents of any dwelling room are less than 300 cubic feet for each person likely to be accommodated therein, it shall be provided with an opening or openings, near the ceiling thereof, and having direct communication with the external air. Such opening or openings shall have an area aggregating at least 64 square inches for each such person.

8. No person shall construct a privy without the special sanction of the Committee except in accordance with the following rules :—

(1) No privy shall be constructed within three feet of any dwelling, or within ten feet of any existing or proposed street or other place of public resort or within twenty feet of any well or other source of water, supply except water service pipes and taps.

(2) There shall be at least one privy seat for every twelve persons or part thereof, that a house is intended to accommodate.

(3) For each privy seat there shall be provided a removable water, tight receptacle for night-soil, having a capacity of not more than two cubic feet.

(4) Every privy shall be so constructed that the bottom of the receptacle for night-soil, urine and ablution water shall be at least one foot above ground level.

(5) In every privy there shall be suitable openings for ventilation in the bottom of the door thereof and in the sweeper's door if any. There shall also be openings for ventilation as near the top of such privy as

practicable and these latter openings shall aggregate at least two square feet in area for each privy seat.

(6) The sides and floor of the chamber for the receptacle shall be constructed of hard smooth stone, brick-work plastered with cement, or other non-absorbent material; and the floor of such chamber shall have a slope towards the outlet of not less than half an inch to the foot. The floor of the privy itself and of the sweeper's enclosure shall be properly paved.

(7) The opening of such chamber shall be sufficiently large to admit of the ready inspection and cleansing thereof and shall be completely screened from view.

(8) The chamber shall provide space for the receptacle so that when placed in position the latter shall project laterally at least one inch in very direction beyond the aperture above it.

(9) The owner of every privy shall provide a passage therefrom communicating with the nearest street or conservancy lane, and such passage shall be at least four feet wide and shall not pass through any dwelling.

9. (1) Every outlet in a wall for the passage of urine, sullage or other filthy liquid from any dwelling shall be at a height of at least two feet above ground level.

(2) In every building arrangements shall be made for all urine sullage or other filthy liquids either—

(a) to flow rapidly without touching the walls of the building or the ground, through drains of glazed earthenware, or other hard and impervious material into a cess-pool or to a point at least twenty feet from the nearest point of every dwelling, and, except with the special written permission of the Committee, such urine, sullage or other filthy liquid shall not be allowed to approach within thirty feet of a well.

(b) To fall, without touching the walls of the building, into an open watertight removable receptacle, entirely above ground level.

(3) Every such drain, unless it is an open one, shall be properly trapped.

(4) Storm water shall be excluded from drains ending in a cess-pool.

10. No person shall construct a cess-pool without the special permission of the Committee except in accordance with the following rules :—

(1) Such cess-pool shall not be within five feet of a dwelling or kitchen or within thirty feet of a well or other source of water-supply, except water service pipes and taps.

(2) Every cess-pool shall be constructed of good masonry, or concrete, at least one foot thick, and so plastered as to be perfectly water-tight.

(3) The bottom of every cess-pool shall not be more than two feet below ground level unless special and satisfactory mechanical appliances are provided for its efficient cleansing. The bottom of such cess-pool shall slope in all directions towards the centre, and the side thereof shall project sufficiently above ground level to prevent the inflow of surface drainage.

(4) Every cess-pool shall either be entirely open at the top, or shall have a removable cover with adequate ventilation.

11. All open spaces within three hundred feet of any dwelling and within the curtilage thereof, shall be so cleared and sloped as effectually to prevent the formation of pits or hollows (other than cess-pools satisfying Rule 10) in which water may stagnate.

APPENDIX X. (s. 67 G 5)

(Vide G. R. No. 8823, dated 12th September 1906 R. D. given under Section 67 and G. R. No. 4016, dated 19th April 1907 R. D.)

Form of Agreement under section 67 of the Bombay Land-Revenue Code, 1879 in cases of appropriation of agricultural lands for the manufacture of bricks.

An agreement made this the _____ day of _____ one thousand nine hundred and _____ between the Secretary of State for India in Council (hereinafter referred to as "the Secretary of State" which expression shall include his successors and assigns) of the one part and _____ inhabitant of _____ (hereinafter referred to as "the applicant" which expression shall include his heirs, executors, administrators and assigns) of the other part

2. Whereas the applicant being the registered occupant of survey number _____ situate in deh _____ in the _____ taluka of the _____ district has applied to the Collector of _____ (hereinafter referred to as "the Collector") under section 65 of the Bombay Land-Revenue Code, 1879 (hereinafter referred to as "the said Code") for permission to appropriate to the purpose of the manufacture of bricks the plot of land (hereinafter referred to as "the said land") indicated by the letters _____ on the site plan hereto annexed forming part of the survey number aforesaid and measuring in superficial area _____ square yards be the same a little more or less

3. And whereas the Collector has been authorised by Government to grant under section 67 of 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 appropriate the said land to the purposes of the manufacture of bricks shall be and it is hereby granted to the applicant for a term of _____ years (hereinafter referred to as "the said term") commencing on the _____ day of _____ one thousand nine hundred and _____ and ending on the _____ day of _____ one thousand nine hundred and _____ subject to the provisions of the said Code and the rules and orders thereunder and on the following special terms and conditions, namely:—

- (a) The applicant shall in lieu of the present assessment leviable in respect of the said land pay to Government without deduction on the _____ day of _____ in each and every successive year during the said term an annual assessment of _____ rupees (Rs. _____ only) or

in composition therefor a lump sum of _____ rupees
 (Rs. _____ only) being _____ times the annual assess-
 ment fixed as aforesaid ;

- (b) Earth shall not be excavated to a depth of more than _____ feet below the general level of the said land and the excavation shall be carried out in such manner as not to make the said land unfit for cultivation after the expiry of the said term
- (c) The surface of the said land 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 land 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 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.

And it is also agreed between the Secretary of State and the applicant that the expression "the Collector" wherever it occurs in his agreement shall be deemed to mean the Collector of the

_____ district for the time being or any other officer whom the Governor of Bombay in Council or the Commissioner* or such Collector directs to exercise the powers or to perform the duties of the Collector under this agreement.

In witness whereof

_____ Esquire, Collector

of _____ hath by order of the Governor of Bombay in Council hereunto set his hand and the seal of his office for and on behalf of the Secretary of State and the applicant hath hereunto set his hand the day and year first above written.

Signed, Sealed, and Delivered by the }
 above-named

Esquire, Collector of

In the presence of

Signed and Delivered by the above- }
 named

In the presence of

* in Sind or N. D., C. D. or S. D., as the case may be.

APPENDIX XI S. 87 (N. 2).

The following form of notice to be issued under Section 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 Section 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 in Taluka District.

Whereas the superior holder abovenamed 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 abovenamed, 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 the 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 abovenamed 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.

APPENDIX XII Section 88-89.

In exercise of the powers conferred by section 216 of the Bombay Land Revenue Code, 1879 as amended by section 79 of Bombay Act IV of 1913, the Commissioner, (N. D. C. D. S. D.) hereby authorises the extension of the provisions of Chapters VIII and IX of the said Code to the village of _____ in the _____ Taluka of the _____ District.

APPENDIX XIII. (S. 84A—Nz.)

The following Rules relating to Suspensions and Remissions of Land Revenue and Local Fund Cess in the Presidency proper, excluding Sind, were sanctioned by G. R. No. 650, dated 22nd January 1907, and approved by G. of I, Revenue and Agriculture No. 439-89-2 circulated with Bombay G. R. No. 2702, dated 13th March 1907.

In supersession of all previous orders on the subject the Governor in Council is pleased to lay down the following rules for the grant of suspensions and remissions of land revenue and local fund cess in the Presidency proper. It is to be clearly understood that suspensions and remissions are granted as a measure purely of grace and not of right and only in cases of calamity so severe as to necessitate a relaxation of the settlement contract.

NOTE.—Government do not approve the principle of introducing into the anna valuation of crops a variation based on the departure from the normal of the current price of the produce. (G. R. B. D. No. 11908, dated 4th December 1918).

RULES.

I.—GENERAL CALAMITIES.

A.—*Suspensions of Land Revenue.*

1. 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 revenue 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, agriculturists and non-agriculturists alike, 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.

Note.—A normal crop is represented by 12 annas.

2. Where the area affected is homogeneous, or whole villages are very seriously affected, the suspensions should be announced for such tract or villages without detailed inspection,

3. The Collector should forthwith report his proceedings, stating fully the reasons for his order and the extent of its application with all other particulars, to the Commissioner, who should inform Government at once of the amounts to be suspended.

4. The Collector should cause the occupants whose land revenue is suspended distinctly to understand that such suspension is provisional only, and that it will be decided subsequently whether the revenue suspended shall be ultimately remitted or collected.

5. To Inamdars who themselves cultivate the inam lands suspensions may be granted in accordance with the foregoing orders. To inamdars who do not themselves cultivate the inam lands suspension of the dues payable by them to Government may be granted in accordance with the foregoing orders when it is possible to secure by guarantee given by the inamdar, or otherwise,* to the cultivating occupants or tenants holding under the inamdar a corresponding suspension of the revenue or rent due from them to the inamdar.

B.—Remissions of Land Revenue.

6. Remissions should be granted as explained below to occupants cultivating their own holdings, and except as provided in clause (ii) below, to non-cultivating occupants : there should be no inquiry into the circumstances of individuals :—

(i) The grant of remissions should depend on the †character of the three seasons following that in which the assessment is suspended.—Suspended revenue should be collected to the extent permissible under the table given below. In accordance with the table all suspended arrears which either (a) in Gujrát and the Konkan are in excess of one year's revenue, or in the Deccan are in excess of two years' revenue, or (b) are more than three years old, should ordinarily be remitted by the Collector. 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.

† The following illustrations show the mode in which the instructions relating to the collection of suspended arrears will generally work when remission of suspended revenue is granted by the Collector:—

Suppose A in Gujarat or the Konkan has had—

‡ assessment suspended in 1903-04	(a)
‡ do. do. in 1904-05	(b)

(A)—In the first place suppose the whole assessment

suspended in 1905-06	(c)
----------------------------	-----

* *Vide* Section 84A.

Then in 1906-07 *A*'s suspended arrears are in excess of one year's revenue, and the excess consisting of items (*a*) and (*b*), will have ordinarily, to be remitted under No. 6 (i) (*a*) of the rules relating to the suspension and remission of land revenue published with Government Resolution No. 650, dated 22nd January 1907.

(B)—Next suppose $\frac{1}{2}$ assessment was suspended in 1905-06. (*d*) Then in 1906-07, according to the same rule, item (*a*) will have to be remitted, but (*b*) and (*d*) will be leviable.

But the fact that remissions are due in 1906-07 will have been known in 1905-06 as soon as it has been resolved to collect less than the year's assessment. The remissions might and ought to have been announced and brought to account in 1905-06 as soon as the revenue demand of that year has been settled.

(C)—Again, suppose *A* in Gujarat has had—

Whole assessment suspended in	1904-05	...	...	(<i>e</i>)
Do.	do.	1905-06	..	.. (<i>f</i>)

In accordance with rule 6 (*i*) (*a*) and preceding paragraph item (*c*) should be remitted in 1905-06.

(D)—*A* has had—

Whole assessment suspended in	1904-05	(<i>g</i>)
-------------------------------	---------	-----	-----	----	--------------

Full assessment, but no more, is collected in 1905-06 and 1906-07 and $1\frac{1}{2}$ times assessment in 1907-08. Then in 1907-08 $\frac{1}{2}$ (*g*) will be collected and other $\frac{1}{2}$ should be remitted—because in 1907-08 it will be three years old and *must* be due for remission in 1908-09 under rule 6 (*i*) (*b*).

(E)—*A* has had—

$\frac{1}{2}$ assessment suspended in	1903-04	...	...	..	(<i>h</i>)
$\frac{1}{2}$ do.	do.	in 1904-05	...	..	.. (<i>i</i>)

Collections have been—

Whole assessment in 1905-06.

$1\frac{1}{2}$ times do. in 1906-07.

Then in 1906-07, (*h*) should be collected.

(F)—But supposing that in the same case collections in 1906-07 were only the year's assessment and no more, then item (*h*) should be remitted because under rule 6 (*i*) (*b*) it is due for remission in 1907-08

(G)—*A* has had—

Whole assessment suspended in	1903-04	...	..	..	(<i>k</i>)
$\frac{1}{2}$ do	do	in 1904-05	..	..	.. (<i>l</i>)

Then under rule 6 (*i*) (*a*) in 1904-05 $\frac{1}{2}$ of (*k*) should be remitted and the case becomes identical with cases (*e*) and (*f*).

(H)—Next suppose *A* in the Deccan has had—

Whole assessment suspended in 1903-04 (*m*)
 † do. do. in 1904-05 (*n*)

Collections have been—

Full assessment, but no more, in 1905-06.

1½ times the assessment in 1906-07.

Then in 1907-08, ½ of item (*m*) being more than three years old, will be due for remission under rule 6 (*i*) (*b*). The remission of (*m*) should therefore be announced in 1906-07—when the other half is collected.

2. The general rule resulting from the instances given above is that remissions due under rule 6 (*i*) should be adjusted as soon as it is evident that they must fall due. (G. R. No. 1246, dated 4th February 1907.)

Table.

Anna classification of crops.	Proportion of assessment the collection of which would be justified.
Over 12	2
8 to 12	1½
6 and over, under 8	1
Over 4, under 6	½
4 and under	0

Note.—A normal crop is represented by 12 annas.

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. The Collector should report as early as possible before any instalment falls due the amount which he proposes to recover out of the suspended revenue.

† It should be understood that assessment recovered in accordance with the table in rule 6 should be credited first to the payment of the current year's revenue and then to payment of the arrears of the most remote year which are not so old as to entitle the occupant to remission. (Para 6 of G. R. No. 650, dated 22nd January 1907.)

‡ (*ii*) When the land is cultivated by tenants the grant of remission to the landlord or superior holder in accordance with this rule will depend on whether the tenant receives a corresponding remission or not of his rent. Where this remission has been assured to the tenant either by legislation, or by executive arrangement* with the landlord, the latter will be granted the remission, otherwise not.

‡ Mevasdars, as well as all such land holders fall under No. 6 (ii) of the rules sanctioned in G. R. No. 650, dated 22nd January, 1907.

* (1) The form of notice to be given to Inamdars sanctioned in G. R. No. 2994, dated 24th March 1909 is, given below.

Notice to Inamdars in the district of _____

In any year in which crops in your village are so bad that if the village were a Government village Government would under their general rules grant suspension or remission of the whole or part of the assessment due to them, the Mamlatdar will inform you, at least 15 days before the date of the first instalment, what proportion of assessment Government would under these rules suspend or remit, and if you then send to the Collector through the Mamlatdar a written undertaking to suspend or remit that same proportion of the rent due from your tenant for that year, that same portion of your judi for that year will be suspended or remitted by the Collector. But if you give no such undertaking, you will not be entitled to suspension or remission of your judi. If you give no such undertaking by the date of the first instalment, it will be understood that you are not prepared to give any such undertaking. The full amount of judi will be recovered if you are known (to the Collector) to be putting pressure on your tenants for the recovery of your dues of any year in respect of which you have yourself received any concession from Government.

(2) Instrument executed by an Inamdar in the Bombay Presidency, whereby he undertakes to suspend or remit rent due from a tenant or tenants in consideration of a suspension or remission granted by the Government in respect of his own *judi* or quit rent are exempt from Stamp duty. (Item No. 11 of G. of I. No. 3616 Exc., dated 16th July 1909 F. D., circulated with G. R. No. 8022, dated 17th August 1909, and printed at p. 1384. of B. G. G., Part I.)

†7.—When the assessment includes a separate rate for water advantages, then if the water fails to such an extent that—

(a) no irrigated crop, or an irrigated crop not exceeding 4 annas,

(b) an irrigated crop exceeding 4 annas but not exceeding 6 annas, is grown,

(a) the whole,

(b) one-half,

of the portion of the assessment which represents the water-rate should, in the case of all occupants, be remitted without suspension. When such remissions are of inconsiderable amounts, the Collector should act on his own authority: but when they are extensive, he should first consult the Irrigation Officer of the district, and, in case of a wide difference of opinion, should refer the case to the Commissioner for orders.

†This was substituted for the original by G. R. No. 5324, dated 27th May 1908. The new rule contains the instructions given in Government Resolution No. 5087, dated 18th May 1907, and so much as it is necessary to retain of the instruction, given in paragraphs 3 and 4 of Government Resolution No. 2759, dated 15th March 1907.

8. 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 treated similarly.

9. To inamdars who themselves cultivate the Inam lands remissions may be granted in accordance with the foregoing orders. To inamdars who do not themselves cultivate the inam lands remission of the dues payable by them to Government may be granted in accordance with the foregoing orders when it is possible to secure by guarantee given by the inamdar, or otherwise,* to the cultivating occupants or tenants holding under the inamdar a corresponding remission of the revenue or rent due from them to the inamdar.

C.—Suspensions and Remissions of Local Fund Cess.—

†10. When prior to the date of the first instalment of land revenue, a partial suspension or remission of land revenue is announced, it is to be understood that the order will not carry with it proportionate suspension or remission of the local fund cess. When, however, an instalment of the land revenue of any village is entirely suspended or remitted, the local fund cess should, for the time being, be suspended and be realised with the next instalment actually collected.

†(1) This was substituted for the original by G. R. No. 5269 dated 26th May 1908.

(2) The meaning of the present rule 10 is, (i) that when part of the land revenue is suspended in any year, all the local fund cess is to be collected in that year; (ii) that when the whole of the land revenue is suspended, the local fund cess is to be collected in the next year in which any instalment of land revenue is collected.

With their Resolution No. 9680, dated 10th October 1906, Government, circulated, for information and *guidance*, copies of the Resolution of the Government of India, No. 13—356-10, dated 21st August 1906, containing their final instructions as to the procedure which should be followed in suspending and remitting the local fund cess. No. 10 of the Suspension and Remission Rules sanctioned in Government Resolution No. 650, dated 22nd January 1907, as further revised by Government Resolution No. 5269, dated 26th May 1908, follows these instructions of the Government of India. The views expressed in the letter to the Government of India, No. 1877, dated 1st March 1906, were not intended to be acted upon by the local officers (G. R. No. 11462, dated 11th November 1908).

* i. e., *Vide* n. 84A.

11. Immediate intimation of all suspensions and remissions granted under the foregoing orders should be given by the Commissioners to the Accountant General, who should report to Government how far they are likely to effect the budget estimates of the year.

12. 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 resorted to by the villagers. The village officers should be required at the same time to enter in the ledger and the ryots' receipt books the remissions and suspensions which have been sanctioned. All revenue officers from Circle Inspector to Sub-Divisional Officer and Collector should satisfy themselves by personal observation that the statement has been affixed as directed and has been replaced if torn or defaced, and by direct inquiry that the remissions and suspensions have been read and explained to the villagers. In making the examination of ryots' receipt books particular attention should be paid to examination of the books of those to whom remissions and suspensions have been granted. The Circle Inspectors and other taluka officers should be ordered to examine not less than 25 per cent. of the books of the villages within three months after the remissions and suspensions are declared, and when doing so to call specially for the books of those to whom remissions and suspensions have been granted. To facilitate this an asterisk should be placed against the names of those to whom suspensions and remissions have been granted in the index to Village Form No. 5. The District officers should be desired to pay special attention to ensure that this examination has been properly carried out.

II.—LOCAL CALAMITIES.

1. Relief on the occasion of local calamities should be determined by the investigation of individual cases.
2. Before granting relief the resources of the owner should be taken into account.
3. When the damage amounts to total or nearly total loss of crops, immediate remission is preferable to suspension.

APPENDIX XIV S. 95. G. 3.

Form of Declaration under Section 103 of the Land Revenue Code.*

Whereas Government have sanctioned the assessments fixed by the officer in charge of the _____ 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, within the village of _____

in the _____ taluka of the _____ district; and whereas the assess-
villages hereinbelow mentioned

ments in the case of the said lands so used as aforesaid have been announced as required by Section 103 of the Bombay Land Revenue Code, 1879, in the said village
villages and the Survey Settlement has thereby

been introduced into the said village
villages; Now in exercise of the power

conferred by Section 102 of the said Code the Governor in Council is pleased to declare all the assessments above referred to, *with the modifications hereinafter specified in respect thereof* (omit the words in italics), if there are no such modifications, fixed for a term of _____ years commencing with the revenue year of _____ and ending with the revenue year of _____

(If there is more than one village, here enter the villages referred to above specifying the particular taluka, district, etc., to which they belong.)

By order, etc.,
Secretary to Government.

* This form was approved by G. B. No. 4582 dated 16th June 1904.

APPENDIX XV (Section 103.)

Notification determining the period of Settlement.

The following notification is published for the information of the land holders and village-officers in the taluka of the district :—

1. 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 Section 102 of the said Code may be hereafter pleased to make for the purpose of declaring any of such assessments, with any modifications which he may deem necessary, fixed for a term of _____ years.

2. 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 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 to itself 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.*

3. 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 Funds 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.

4. The Government right 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 the special exceptions recorded in the settlement records.

5. It is also hereby notified that at future revisions of rates there will be no general re-measurement, and that no sub-division of survey-numbers beyond that which has been now effected will be made at the expense of

* Should any other special cess, for the maintenance of irrigation works, such as the pat-fala in Khandesh, be levied, it should be here specified.

† The names of reserved trees are to be specified in the margin.

Government. If any occupant hereafter wishes to have his occupancy sub-divided, he must apply to the Collector, forwarding with his application such fee as may be necessary, according to the rules in force from time to time, to cover the expenses of re-measurement and alteration of the map and records.

NOTE.—This form is used for declaring the terms to the ryots concerned.

APPENDIX XVI (Section 107, G 4.)

It is hereby made known to the occupants and landholders of village of Taluka of Zilla that the classification of the lands is about to be carried out by the Survey Officers, and they are warned that while the classing process is going on, those who are concerned therein should bring to the notice of the Assistant Superintendent of Survey, who is in charge of the party of classers, any improvements or other circumstances bearing on the value of their land which they consider should be taken into account in fixing the values of their fields. If dissatisfied with the manner in which their representation is dealt with by that officer they may appeal to the Superintendent of Survey. Moreover they are hereby advised to make known in writing to the Survey Officers through their revenue patel or "panchayat," while the classing operations are in progress, any facts which they consider entitle their village to special consideration in fixing the standard of the new rates.

Superintendent of Revenue Survey.

APPENDIX XVII (Section 107, G 4.)

It is hereby made known to the people of the undermentioned villages of Taluka _____ of Zilla _____ 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 list.

APPENDIX XX.

(s. 108, N1.)

(a)—Form of Akarband used in the Deccan Survey.

Akarband of Mouje _____ Taluka _____ District _____ showing
Area and Assessment according to Revenue Survey.

No.	Pot. No.	Area A. G.	Deduct uncul- turable Area. A. G.	Details of Remaining Culturable Area.														
				Dry Crop.			Rice.			Garden.			Total Assessment.			Soil Asses- ment.	Water cess.	
				A. G.	Rate.	Assess- ment.	A. G.	Rate.	Assess- ment.	A. G.	Rate.	Assess- ment.	A. G.	Kacha Assess- ment.	Paka Assess- ment.			
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	

NOTE.—It has been decided in G. R. No. 7755, dated 14th August 1909 (printed under section 108) that an additional Column showing the name of the Khatedar be added to this form so that it may be denominated in the Settlement Register in Second Revision Settlements.

APPENDIX XX.—(contd).
 (b)—Form of Akhband used in the Gujarat Survey.
 Akhband of Mouje _____ Taluka _____ District _____ showing Area and Assessment
 according to Revenue Survey.

1	Survey.	Number.		
2	Pot.			
3	Description of Land and Tenure.			
4	Total Area.	Total Area.		
5	Deduct Kharab.			
6	Remaining Culturable.			
7	Distance in Miles between the Numbers and the Village-site.			
8	Area.	Jirayat.		
9	Soil Classification Annas.			
10	Assessment per Acre.			
11	Total Assessment.			
12	Area.	Rice.		
13	Classification Annas.		Soil.	
14	Assessment per Acre.			
15	Total Assessment.			
16	Classification Annas.	Water.		
17	Assessment per Acre.			
18	Total Assessment.			
19	Area.	Land watered by Dhehndas.		
20	Classification Annas.		Soil.	
21	Assessment per Acre.			
22	Total Assessment.			
23	Classification Annas.	Water.		
24	Assessment per Acre.			
25	Total Assessment.			
26	Area.	Alluvial Land.		
27	Classification Annas.			
28	Assessment per Acre.			
29	Total Assessment.			
30	Total of Cola. 11, 15, 18, 22, 25 and 29.			
31	Assessment finally fixed after making Dharsod			
32	Bagnit Kasar.			
33	Total of Columns 31 and 32.			

APPENDIX XXI.

(s. 108, Nr.)

Sud Mouje

Taluka

District

1	Survey No.
2	Name of Field.
3	Government or alienated.
4	Description of Land.
5	Pot No.
6	Phalni No.
7	Total Area.
8	Deduct Unculturable Area.
9	Remaining Culturable Area.
10	Assessment, Rs.
11	Judi.
12	Assesment on Inam land minus Judi.
13	Name of Occupant.

APPENDIX XXII (s. 141, G 2)

(Referred to in footnote on page 239)

The following forms of orders to be issued under Section 141 have been sanctioned by Government in their Resolution No. 674, dated 27th January 1891. :—

(a) Form of order preventing the reaping of the crop—

It is hereby directed under Section 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 .

Mamlatdar.

(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 .

Mamlatdar.

APPENDIX XXIII (S. 145, G 1).

The following is the form of security-bond sanctioned by G. R. No. 674, dated 27th January 1891:—

Whereas A. B. residing at _____ in the Taluka of _____ the District _____ is responsible to Government 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 surety for the said A. B. and do hereby bind myself and all my heirs and executors that the said A. B. shall duly and punctually pay to the _____ the said sums on the dates on which they are respectively hereinbefore 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 to 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

APPENDIX XXIV SECTION 150 G. 5.

(Sanctioned in G. R. No. 4477, Dated 1st July 1902.)
 Register of Compulsory Processes Mouze Taluka Zilla A.D. 190 -190

No.		Name.																														
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31		
																															Item and amount of arrears.	
																															Date of Notice.	
																															Date of service of Notice.	
																															Levied.	
																															Remitted.	
																															Authority for remis- sion.	
																															Date of payment of arrears.	
																															Remarks, if any.	
																															Amount of arrears.	
																															Amount of arrears for which penalty is imposed.	
																															Amount of penalty imposed.	
																															Number and date of the order authorising the levy.	
																															Amount remitted, if any.	
																															Number and date of the order authorising the remission.	
																															Amount of penalty recovered.	
																															REMARKS.	
																															Amount Of arrears for which distraint resorted to.	
Description of property.																																
Estimated value.																																
Number and date of Mamlatdar's order authorising the attachment.																																
Date of Attachment.																																
Date of publication of Notification of sale, Section 166, Land Revenue Code.																																
Arrears on account of which sale was resorted to.																																
Date of sale.																																
Amount of sale-proceeds.																																
Deduct amount of expenses of sale.																																
Balance credited to the defaulter's account.																																
Number and date of order confirming the sale and the officer passing it.																																
Remarks, if any.																																

NOTICE.

PENALTY FOR DEFAULT, SECTION
148, LAND REVENUE CODE.

DISTRRAINT AND SALE OF MOVABLE PROPERTY,
SECTION 164, LAND REVENUE CODE.

Notice
Recs.

ATTACHMENT AND SALE OF IMMOVABLE PROPERTY OTHER THAN LAND ON WHICH THE ARREAR IS DUE, SECTION 165, LAND REVENUE CODE.		FORFEITURE AND SALE OF OCCUPANCY UNDER SECTION 163, LAND REVENUE CODE.	
32	Amount of arrears.		
33	Description of property.		
34	Number and date of order sanctioning the attachment.		
35	Date of attachment.		
36	Date of publication of Notification of sale, Section 166, Land Revenue Code.		
37	Date of sale.		
38	Amount of Sale-proceeds.		
39	Deduct amount of expenses of sale.		
40	Balance credited to the defaulter's account.		
41	Number and date of order confirming the sale.		
42	REMARKS.		
43	Amount of arrears.		
44	Survey number.	Occupancy of Govern-ment Land.	Forfeiture.
45	Tenure, full or restricted		
46	Area.		
47	Assessment.	Alienat-ed hold-ings.	Date or dates of
48	Survey Number.		
49	Area.		
50	Assessment.		
51	Issuing proclamation, Section 165, Land Revenue Code.		
52	Affixing Notices of intended declaration (forfeiture,) Section 166, Land Revenue Code.		
53	Number and date of order declaring the forfeiture.		
54	Survey Number.	Occupancy of land sold to the public.	
55	Tenure full or restricted.		
56	Area.		
57	Assessment.		
58	Sale-proceeds.		

		FOREFEITURE AND SALE OF OCCUPANCY UNDER SECTION 153, LAND REVENUE CODE.				ARREST AND IMPRISONMENT OF DEFAULTERS, SECTION 157, LAND REVENUE CODE.			
	59	Date of Notification of sale, Section 166, Land Revenue Code.		Alienated holding & occupancy of land restored to the defaulter.		Occupancy of land remaining with Government.		REMARKS.	
	60	Date of sale.							
	61	Amount of expenses of sale.							
	62	Balance credited to the defaulter's account, Column 56—Column 59.							
	63	Number and date of order confirming the sale.							
	64	Survey Number.							
	65	Tenure, full or Restricted.							
	66	Area.							
	67	Assessment.							
	68	Number and date of order sanctioning the restoration.							
	69	Survey Number.							
	70	Area.							
	71	Assessment.							
	72								
	73	Amount of arrears.							
	74	Name of person arrested.							
	75	Number and date of Collector's order authorising the arrest.							
	76	Reasons for passing the order.							
	77	Date of arrest.							
	78	Place or places where detained.							
	79	Date of discharge.							
	80	Cost of arrest.							
	81	Remarks.							

APPENDIX XXV (S. 153 N. 3).

Form of proclamation and written notice under Section 153 of the Land Revenue Code.

(Sanctioned by G. R. No. 4236, dated 21st June 1902.)

Whereas _____ residing at _____ has

Year.	Survey. No.	Land Revenue.	Local Fund Cess.	paid a sum of Rs. due by him for Land Revenue and Local Fund Cess on the Survey Nos. as specified in the margin in the village of
Total...				

in the taluka of _____ in the _____ district.

Notice is hereby given that on and after the _____ day of _____ 190____, unless the arrears are sooner paid, the Collector proposes to declare the holding to be forfeited.

Dated _____

Collector.

Form of slip to be—issued along with the above notice.

With reference to the attached Notice Under Section 153 of the Land Revenue Code _____, residing at _____ is informed that the Collector proposes, after declaring his holding forfeited, to regrant it to him subject to the condition that the occupant shall not transfer it in any way to another person without the sanction in writing of the Collector.

Dated _____

Collector.

APPENDIX XXVI.

(Referred to in S. 149 N. 1.)

From

The Collector of

To

The Collector of

Dated the of 19

The sum of Rs. is payable on account of by , son of , resident of , who is believed (to be at) (to have property consisting of at) in your district.

2. Subject to the provisions of the Revenue Recovery Act, 1890, the said sum is recoverable by you as if it were an arrear of land-revenue which had accrued in your own district, and you are hereby desired so to recover it and to remit it to my office at

A. B.

Collector of

APPENDIX XXVII Section 216, 217 (G 24.)

(Referred to in)

Agreement made by A B., inamdar of the village of _____ *in the*
Taluka of the _____ *District.*

Whereas I am making an application to Government that under Section 216 of the Bombay Land Revenue Code, 1879, the provisions of Chapter VII to X of that Code may be extended to my aforesaid village of _____ ; and whereas, in the event of my said application being granted, Government undertakes, on condition of my agreeing to the stipulations hereinafter contained, to bear the costs of the survey and settlement of my said village, as well on the first occasion of the same being effected after the date of this agreement as also hereafter whenever any revision survey or settlement is introduced by order of Government according to law into my said village ; I do hereby for myself, my heirs, executors and administrators agree as follows, *vis.* :—

1. That I will pay the salaries and perquisites of the village officers of the said village according to the scale which may from time to time be in force for the payment of village officers of Government villages in the district ;

2. That I will remunerate the said village officers for the collection of local fund cess from the rayats of the said village according to the scale which may from time to time be in force for the payment of village officers of Government villages in the said district for the collection of the said cess from the rayats of those villages ;

3. That the salaries, perquisites and remuneration of the village officers according to the foregoing clauses 1 and 2 shall be a first charge on my revenue and may from time to time be deducted by the village officers from the said revenue before making payment thereof to me, in accordance with such directions as the Collector of _____ shall from time to time think fit to issue in this behalf ;

4.* That I will from time to time at my own expense, cause to be prepared and to be furnished with punctuality such periodical or other agricultural and vital statistics concerning the said village as may be

* *N. B.*—Condition 4 should be omitted from all future agreements in respect of villages in which the village officers are paid by Government. It will however be advisable to notify to village officers in these cases that they are expected to keep the returns and will be responsible for their maintenance to the Collector and his duly empowered subordinates. The village records should be regularly inspected to see that the various forms and statements are properly kept. In those villages in which owing to village Accountants being stipendiary they are paid by the Inamdar, the condition should be retained in operation, where agreements have already been completed and should be inserted in future agreements. (G. R. No. 7229, dated 23rd July 1907.)

required by the Collector, and that in the event of my failure at any time to discharge this obligation to the satisfaction of the Collector, the Collector may make such arrangements as he deems fit for obtaining such statistics as aforesaid, and the costs which he incurs in so doing shall be a first charge on my revenue recoverable as provided in clause 3 of this agreement.

Executed at
this of

19 .

Signed by A. B.
in the presence of

(Signed)
A. B.

APPENDIX XXVIII S. 31 (G. 10).

(Referred to in G. R. R. D. No. 49, dated 6-1-09, printed under Section 31.)

This Indenture made the _____ day of _____ in the year of Our Lord 19____, between _____ hereinafter called the Covenantor, of the one part, and the Secretary of State for India in Council of the other part.

WHEREAS the Covenantor has been appointed to serve His Majesty

*Here enter the as _____ * in the Presidency of Bombay.
words "a member of the.....Service, if he belongs to a recognised service; otherwise enter the designation of the officer, e. g. "a Mamlatdar."

NOW THIS INDENTURE WITNESSETH, and the said Covenantor doth hereby covenant and agree with and to the said Secretary of State in Council that while he shall be employed in the service of His Majesty as aforesaid or in any other capacity :—

- (1) he will be faithful and bear true allegiance to his Majesty, his heirs and successors according to law;
- (2) he will faithfully, honestly and diligently do all such things as shall be lawfully committed to his charge by or on the part of the said Secretary of State in Council or of the Government in India or any person who shall have lawful authority to command him, or in execution of his duty ;
- (3) he will duly obey all the rules and orders of the Government in India regulating the conduct of public servants as contained in the Government Servants' Conduct Rules, 1904, or such other rules and orders on the subject as may from time to time be in force ; and
- (4) he will not take part in any agitation or meeting of a political or quasi-political character against the Government in India or against any measures or action of such Government.

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In witness whereof, the said Covenantor has hereunto set his hand and
 being a Secretary to the Government of
 Bombay has, by order of the Governor of Bombay in Council, set his
 hand and the seal of his office, hereto, for and on behalf of the Secretary
 of State for India in Council.

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