

**THE  
BOMBAY LAND REVENUE CODE**  

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**AND**  
**THE REVENUE MANUAL**

CONTAINING  
**THE BOMBAY LAND REVENUE CODE & OTHER ACTS  
RELATING TO REVENUE MATTERS**

WITH  
*Amendments, Explanatory Notes, Government Resolutions and  
Exhaustive Commentary up to date*



BY  
**D. G. KHANDEKAR,**  
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## PREFACE

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The Bombay Land Revenue Rules (1921) revised and exhaustively commented upon by the very well-known and able Government Official (retired) Mr. F. G. H. ANDERSON, M.A. (Oxon.), I.C.S., Settlement Commissioner and Director of Land Records, Poona, having been very recently published (July 1930) and the 1st volume of our own Century Manual of Bombay Acts and Regulations (containing the Bombay Land Revenue Code) as well as the Land Revenue Code, edited by the late RAO BABADUR JOGLEKAR, having gone out of print, we feel ourselves called upon to bring out a new and revised edition of the Land Revenue Code for the use of the public. And we trust that the present work, along with Mr. ANDERSON'S Bombay Land Revenue Rules, will serve as a complete and reliable guide to the elucidation of all Revenue matters.

Though the Land Revenue Code applies to the whole of the Bombay Presidency except the City of Bombay and Aden, a good many sections therein have been locally modified or repealed by other special Acts, e.g., the Khoti Settlement Act, the Bhagdari and Narwadari Act, the Gujarat Talukdars' Act, &c. In order, therefore, that this publication should be a complete book of reference throughout the Presidency, these special Acts as well as other Acts relating to Revenue matters are given at the end as appendices, fully annotated and amended upto date. The book is accordingly styled "The Bombay Land Revenue Code and The Revenue Manual".

In the Land Revenue Code all the cases from the official and non-official Reports and those from the Chief Court of Sind as well as Notifications issued from time to time are fully given under appropriate sections. To enhance the usefulness of the publication important Government Resolutions, explaining the particular words or expressions, are also reproduced *in extenso*.

Thus it will be seen that no pains have been spared to make the work a thorough and complete book of reference.

If it is found that this book serves the purpose and meets with the requirements of the Revenue Officers and the legal public, a Watan Manual will also be published on the same lines.

Any suggestions as to further improvement of the book will be thankfully received.

POONA,  
LAW PRINTING PRESS. }  
15th September 1930

D. G. KHANDEKAR.

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LAND REVENUE CODE, 1879

HISTORICAL RECORD

Year.	No. of Regs. and Acts	Name of Regulations and Acts.	How affected.
<i>Bombay Regulations.</i>			
1827	IV	Civil Courts (Law to be observed).	Rep. in part (locally), Bom. Act V of 1879.
1827	XVI	Collectors of Land Revenue.	Residue rep. (locally), do.
1827	XVII	Land revenue.	do. do.
1830	V	Revenue Commissioner ...	do. do.
1831	XV	Falsification of Records ...	do. do.
1832	II	Farmers o. Land Revenue...	do. do.
1833	V	Hereditary Officers ...	do. do.
<i>Imperial Acts.</i>			
1838	XVIII	Sureties, Bombay ...	Rep. (locally), Bom. Act V of 1879.
1842	XIII	Revenue, Bombay ...	Residue rep. (locally), do.
1842	XVII	Revenue Commissioners, Bombay.	do. do.
1846	III	Boundary marks, Bombay ...	do. do.
1850	XII	Public Accountants' Defaults	Rep. in part (locally in Bombay), Bom. Act V of 1879.
1852	XI	Titles to Rent-free Estates, Bombay.	Application declared, Bom. Act V of 1879, S. 127.
1852	XXI	Deputy Collectors, Bombay...	Residue rep (locally), Bom. Act V of 1879.
<i>Bombay Acts.</i>			
1861	II	Exemptions from Land Revenue in territories subject to Act XI of 1852.	Application declared, Bom. Act V of 1879, S. 127.

THE BOMBAY LAND REVENUE CODE  
HISTORICAL RECORD—(Concluded)

Year.	No. of Regs. and Acts.	Name of Regulations and Acts.	How affected.
1863	VII	Exemptions from Land Revenue in territories not subject to Act XI of 1852.	Application declared, Bom. Act V of 1879, S. 127.
1865	I	Bombay Survey and Settlement Act.	Rep. locally (except Ss. 37, 38), Bom. Act V of 1879.
1868	I	Deputy and Assistant Collectors.	Residue rep. (locally), Bom. Act V of 1879.
1868	IV	The Act for City Surveys and amendment of Bombay Survey and Settlement Act.	do.                      do.
1875	I	Survey and Settlement (amending Bom. Act I of 1865).	Rep. (locally), Bom. Act V of 1879.
1879	V	Bombay Land Revenue Code...	Rep. in part, Bom. Act III of 1886. "    "    and Am., Act XVI of 1895. "    "    Bom. Act VI of 1901. "    "    (locally), Bom. Act I of 1880, S. 89. "    "    Bom. Act VI of 1888, Ss. 3 and 38 as Am., Bom. Act II of 1905. Am., Bom. Act VII of 1879, S. 2. "    "    IV of 1886. "    "    I of 1910. "    "    IV of 1918. Ss. 3 (1), 38, 43, 52, 80, 137, 214, heading above S. 40 Sch. B, Am., S. 144 rep. in part, Bom. Act IV of 1905. Rep. (in Coorg), Reg. I of 1899. S. 85 and part of S. 58 declared not to be in force in the Panch Mahals, Act VII of 1885. Am., Bom. Act XI of 1913. "    "    VII of 1914. "    "    II of 1919. "    "    I of 1920. "    "    III of 1921. "    "    V of 1930.

# THE Bombay Land Revenue Code, 1879

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BOMBAY ACT No. V OF 1879 [a]

17th July 1879

(AS AMENDED AND MODIFIED UP TO 1ST SEPTEMBER 1930).

*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 :—

## CHAPTER I

### PRELIMINARY

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

Short title.

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[a] Sec. 85 and the last 15 words of s. 59 are not in force in the Panch Mahals (see Act VII of 1885, s. 2).

Ss. 68, 72, 73, 74, 99 cl. (b), 104, para. 2, 109, 110, 112, 150, cl. (b), and 153 of Bom. Act V of 1879 do not apply to any village in the district of Ratnagiri or the district of Kolaba to which the Khoti Settlement Act, 1880, extends ; and ss. 103, 118, 119, 123, 136, 150 cl. (f), and 162 of the Act are subject to modification when applied to any such village (see Bom. Act I of 1880, ss. 1 and 39).

Ss. 38 to 40, 44, 60 to 67, 76, 83, 85, 109, 110, 116, 127 to 136, 163, 216 and 217 (all inclusive) of Bom. Act V of 1879 do not apply to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends ; and ss. 3 cl. (1), 46, 54, 79A cl. (a), 88, 89, 94, 111, 113, 147, 150 cl. (f), 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. Act VI of 1888, ss. 1 and 33).

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

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

[a] (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 Mehwasli Chiefs villages as defined in the Scheduled Districts Act, 1874.

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

[b] (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.

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

**Notes**—There is nothing in this Code which entitles a person, who gets a sanad at the city survey on his *ex parte* application, to turn out a person in possession of the land, unless he shows that he has a better title (*Trimbak v. Damu*, 27 Bom. L. R. 656.)

**Extension of the Code.**—The provisions of this Code have been made applicable to the Akalkot and Jat States (D. G. G., 1879, Pt. I., p. 966) and to the Districts in Sind (G. R. R. D. No. 4950—B, dated 30th June 1904.)

**Construction of Statute.**—This Code is a taxing enactment, and must be construed strictly in favour of the subject (*Secretary of State v. Laldas*, 12 Bom. L. R. 16, s. c. 34 Bom. 239).

**'Scheduled Districts.'**—The following are the Scheduled Districts in the Bombay Presidency:—

1. The Province of Sind.
2. Aden.
3. The villages belonging to the following Mewasi Chiefs:—
 

1. The Parvi of Kathi	4. Walvi of Gaohalli.
2. The Parvi of Nal	5. Wassawa of Chikhli.
3. The Parvi of Singpur	6. The Parvi of Nawalpur.

**The proceeds of all fees levied under this Act for permission to remove sand or to quarry are to be credited to the Local Fund constituted by the Bombay Local Boards Act, 1923 (Bom. Act VI of 1923) s. 75.**

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

\* 3. In this Act, unless there be something repugnant in interpretation clause, the subject or context:

(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 "revenue office;"

\* NOTE.—The clauses in section 3 of the Act were renumbered consecutively by Bom. Act IV of 1913, s. 6 (4).

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 the Matadars Act, 1887 [b];

[b-b] These words were added by Bom. Act IV of 1905, 1st Sch

**Note.**—This section is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act extends (*Vide* Bom Act VI of 1888, ss. 1 and 33).

**Watanदार village officers are not Revenue officers** under subsection (1) of this section. If a watan *lapses*, then Government succeed to the watan and the officer appointed by them would be a watanदार for the purpose of ss. 83 and 94 A. But when a watan is commuted, it has not yet been decided that the analogy holds. Talatis are executive and not ministerial officers for the purpose of O. S. R. 459 (a) (G. R. No. 7268 of 1918.)

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

“survey officer;”

(2) “survey officer” means an officer appointed under, or in the manner provided

by, section 18 [a];

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

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

(4) “land” includes benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth, and also

“land;”

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 interests vested in a person or aggregate of persons capable of holding the same;

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

“survey number;”

records [b] [c];

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

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

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

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

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

this sub-clause, and the defendants who were entered in the settlement register as khatadars and who cultivated the lauds and paid to the plaintiff only a sum equivalent to the annual assessment, were entitled to the rights of occupants in unallotted villages by virtue of s. 217 *post* (*Dadoo v. Dinkar*, 43 Bom. 77).

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

purposes of this Act;

[a] This definition was added by Bom. Act 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, "boundary-mark;" [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. Act VI of 1901, s. 2.

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

"Holder."—The term "holder" as defined in this clause, is wide enough to include even a tenant who has entered into possession under an occupant. Mere user by rice lands tenants of adjoining waste land with the leave and permission of Inamdar does not make them holders of warkas lands (*Nanabhai v. Collector of Kaira*, 34 Bom. 686).

The rights of tenants of rice lands over adjoining waste land of their superior holder are, by custom in the Thana District, confined to the use of portions of the waste for obtaining the manure without which the rice lands could not be cultivated or the assessment on the rice land earned and paid (*Vasudro v. Govind*, 36 Bom. 315).

Before a person can claim the benefit of s. 217 *post*, he must be shown to be a "holder" within the meaning of this sub clause (*Ibid*).

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

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

[a] (13) "superior holder" means a landholder entitled to receive rent or land revenue from other landholders "superior holder;" (hereinafter called "inferior holders"), whether he is accountable or not for such rent or land-revenue, or any part

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

thereof, to Government : provided that where land has been granted free of rent or land revenue, subject to the right of resumption in certain specified contingencies, by a Jagirdar, Inamdar or other such holder of alienated land whose name is authorizedly entered as such in the land records, such Jagirdar, Inamdar or holder shall, with reference to the grantee, be deemed to be the superior holder of land so granted by him and the grantee shall, with reference to the grantor, be deemed to be the inferior holder of such land and for the purposes of section 8 of the Bombay Local Funds Act, 1869, shall, notwithstanding anything hereinafter contained in the definition of the word "tenant," be deemed to be the tenant of such grantor.

"Superior holder".—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 v. Darbar Shri Surajmalji*, 26 Bom. 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 (*Report of the Select Committee*).

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

Where it appeared that defendants were liable to pay the assessment and local fund to the plaintiff, who held a sanad under the Summary Settlement Act, 1863, the lower Court came to the conclusion that the relationship of landlord and tenant was not created between the parties, it was held that the plaintiff was a superior holder within the meaning of this sub clause and that the defendants were in law the tenants of the plaintiff, whatever the nature of their holding might have been (*Surshangi Naras*, 2 Bom. L. R. 855).

Note.—*Cf.* section 98 of the Bom. Local Boards Act (Bom. Act VI of 1923).

"Superior holder" and "inferior holder"—"Landlord and tenant".—The expression "*superior holder*" is wider including the expression *landlord*. The terms *superior holder* and *inferior holder* have reference only to payment of rent or land revenue, whereas the terms *landlord* and *tenant* have reference only to the origin of the right to hold. A tenant has to pay to his landlord and is thus an inferior holder. In addition to this fact he derives his right to hold from the man whom he pays or from his predecessor. Every tenant is an inferior holder,

but every inferior holder is not necessarily a tenant (*Dandekar's Law of Land Tenures*, Vol. I. p. 43).

[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;

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

[a] These definitions were substituted for the original definitions by Bom. Act IV of 1913, s. 6 (f) and (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;

**Difference between 'holder' and 'occupant'.**—'Holder' signifies a person holding any land alienated or unalienated, whereas 'occupant' means a holder of unalienated land

**Holder of land.**—A person holding lands in an alienated village as a permanent tenant under s. 83 of the Code becomes, on the introduction of the survey settlement into the village, entitled to the rights and affected with the responsibilities of a holder in an alienated village, by virtue of s. 27 *post*. He remains, what he ever was, a tenant, and does not become an occupant. He is liable, therefore, to pay enhanced rent to his landlord (*Kondi Ramji v. Vithalrao*; 50 Bom. 155).

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

**Occupancy.**—The term "occupancy" is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach and Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (See Bom. Act VI of 1888, ss. 1 and 83).

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

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

(19) "occupation" means possession;

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

**"Alienated."**—Though the grant of a land to an inamdar was of the entire property in the soil, still the lands were 'alienated' within the meaning of



this sub-clause, and the defendants were entered in the settlement register as khatadars and who cultivated the lands and paid to the plaintiff only a sum equivalent to the annual assessment, were entitled to the rights of occupants in unalienated villages by virtue of s. 217 *post* (*Dadoo v. Dinkar*, 43 Bom. 77).

“village”; (21) “village” includes a town or city and all the land belonging to a village, town or city;

(22) the words “revenue year” or “revenue year,” “year”; “year” mean the period from, and exclusive of, the thirty-first July of one calendar year until, and inclusive of, the thirty-first July in the next calendar year;

(23) [Definition of “section.”]—*Repealed by Bom. Act III of 1886, Sch. B.*

(24) [Definition of “this chapter.”]—*Repealed by Bom. Act III of 1886, Sch. B.*

[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;

**Occupants.**—*Vide note under s. 3 (17) supra.*

“land records”; [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

“Certified copy”;

Evidence Act, 1872;

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

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

#### CHAPTER II.

#### CONSTITUTION AND POWERS OF REVENUE OFFICERS.

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

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

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

Extent of territories under the Commissioners.  
The territories under 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 Dom. Act IV of 1913, s. 7.

"Whether generally or for any specific purpose."—These words were inserted with the object of enabling one Revenue Commissioner to undertake certain special duties within the territorial limits of another (*Report of the Select Committee*).

**Commissioners.**—There are three Divisional Commissioners, at present besides the Commissioner in Sind, each in charge of a division, there being three divisions in the Presidency proper. These divisions are—(1) the Northern Division, (2) The Central Division, and (3) The Southern Division. These divisions comprise the districts as under :—

N. D.	O. D.	S. D.
Ahmedabad	Ahmednagar	Belgaon.
Brosch	East Khandesh	Bijapur.
Kaira	West Khandesh	Dharwar.
Panch Mahals	Nasik	Kanara.
Surat	Poona	Kolaba.
Thana	Satara	Ratnagiri.
	Sholapur.	

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

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

Assistants to Commissioners.

Commissioners, to whom they are respectively subordinate, may from time to time direct.

Assistants to Commissioners.—There are two Assistants to each Divisional Commissioner—one in charge of the English branch and the other in charge of the Vernacular branch of the office.

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

Division to be divided into districts.

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

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

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

The number of Mahals.—The Mahals in each Division are as follows:—

N. D.		O. D.		S. D.	
Modasa	Ahmedabad	Bhadgaon	East	Ohandgaon	Belgaum
Gogha	bad	Edlabad	Khandesh	Murgod	
Hadol	Panch	Parola		Bilgi	Bijapur
Jhalod	Mahals	Navapur	West	Mandargi	Dharwar
Hausot	Broach		Khandesh	Nargund	
Yalod	Surat	Mulsi		Bhatkal	
Mokhada		Ambegaon	Poona	Supa	Kanara
Umbargaon	Thana	Dhond		Mandgod	
		Khandala		Uran	
		Malcompeth	Satara	Khalapur	Kolaba
		Shirala		Nagothana	
				Guhagar	
				Mandangad	Ratnagiri

Vide Sathé's L. R. Code, 4th ed., p 18

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.

[a] Words repealed 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, &c., as may be expressed in the order of their appointment.

Assistant and Deputy Collectors.

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

**Personal Assistants.**—The Collectors of Poona, Satara and Thana are each given a personal Assistant (G. R. No. 7018, dated 3rd October 1903, R. D. quoted in Sathé's Land Revenue Code, 4th ed., p. 14).

**Superintendent, Mahabeshwar, to be Deputy Collector :—**The Superintendent of Mahabeshwar, in the Satara Collectorate, is appointed a Deputy Collector under the provisions of Act XX of 1852 and invested with the powers exercised by a Mamlatdar under Bombay Act V of 1864 (now Act II of 1906) (*B. G. G., 1871, Pt. I, p. 424*).

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

Any Assistant or Deputy Collector thus placed in charge shall, subject to the provisions of Chapter XIII [a], perform all the duties and exercise all the powers conferred upon a Collector [b] by this Act or any other law at the 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. Act III of 1886 are omitted.

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

**"Any other law at the time being in force.**—These words are not limited to laws relating to land revenue, but include all acts of the Government of Bombay in which a contrary intention does not appear (Entry No. 15 of G. R. No. 5941, dated 26th August 1902, quoted in Sathé's Land Revenue Code, 4th ed. p. 14). The language of a section in an enactment, if plain and unambiguous, must be construed in its natural sense. The words "or any other law at the time being in force" in this section should not be restricted to laws or acts *ejusdem generis* to the Code but include in it the Mamlatdars Courts Act (*Kashae v. Jayram*, 36 Bom. 123.)

**Assistant Collector.**—An Assistant or Deputy Collector may exercise revisionary powers, conferred on Collector under s 23 of the Mamlatdars Courts Act, 1906 (*Ibid*). But the Collector may always reserve any power he thinks fit. The power of arrest is to be exercised only when specially delegated. The Collector will delegate by name the power to write off irrecoverable revenue upto Rs. 25 (*Vide* G. R. No. 1457, dated 26th May 1921).

**Powers of Collector.**—The powers conferred upon the Collector under the Bom. Irrigation Act are to be exercised by an Assistant Collector according to this section (*Nawazali Shah Pir Ali Gohar Shah v. Rustomali Shah*, 14 S. L. R. 58).

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

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

**Notes.**—In Sind the Collector temporarily succeeded is called a Muktyarkar.

The powers and duties of a Collector may not be conferred by a Collector on any Assistant or Deputy Collector who has not passed the Departmental Examination according to the higher standard. This order does not refer to Deputy Collectors appointed before the issue of the Government order of the 10th April 1866 directing Deputy Collectors to undergo Departmental Examinations (B. G. G. 1866, Pt. I, p. 1196).

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

His duties and powers. 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 [a].

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

**Delegation of powers by Collector to Mamlatdar.**—A Collector can delegate certain powers to a Mamlatdar only for his own district and such powers can be exercised only in the Talukas of that District (*Gangaram v. Dinkar*, 37 Bom. 543).

THE POWERS WHICH MAY BE DELEGATED ARE THESE :—

Section.	Extent of power.	Authority.
25, 26 ...	All ...	R. 5295 (9)-11
32 and Watan Act	To fine hereditary or stipendiary village revenue officers.	R. 2116 and 4100-83, 1953-93, 5891-03, 5595-08.
42, 43, 70 ...	All ...	R. 4347 (17)-02
48 (4), 61 (6), 79A and 202.	To sign eviction notices approved by the Assistant or Deputy.	R. 5295 (85)-11
80, 86 ...	All [Mukhtyarkars in Sind included R. 8048 (1)-08].	R. 2568 and 6024-83, 9901-06.
90 ...	To Sanction sale of movables in alienated villages.	R. 5295 (47)-11
91 ...	To accept security from defaulting inferior holders.	<i>Under this order</i>
117B ...	All ...	<i>Under this order</i>
136F ...	Upto a limit of Rs. 15 ...	R. 7623-9-4-24 and 13-4-24.
135H (3) ...	All ...	<i>Under this order</i>
141-143, 145 ...	All ...	R. 8046-08, 7773-13
148 ...	All ...	R. 7176-12 ...
149 ...	To issue certificates direct to other Mamlatdars (apparently in the same or other districts of the Presidency)	R. 5295 (71)-11
152 ..	To issue notices and remit notice fees levied by mistake.	R. 5295 (73)-11

Section.	Extent of power.	Authority.
153, proviso (a) ..	To issue notices threatening forfeiture.	R. 5295 (74)-11
154 ...	To distrain and sell moveables in unalienated villages.	R. 5954-91
156 ...	To determine what property is exempt.	R. 4347 (17)-02
165, 166 (3) ..	All, in respect of such sales as he has himself power to make	R. 5295 (78-9)-11
181 ...	To put in possession and give certificate.	R. 5295 (80)-11
186 ...	All	R. 8785-89
190 (3) ...	All	R. 5295 (83-84)-11
<i>L. R. Rules—</i> Rule 41 (and s. 68)	All (oksali sales)	R. 5295 (36)-11
Rule 58 ..	Permit tree cutting in watan land	R. 5295 (22)-11
80 (and s. 65) ...	To specially selected Mamlatdars	R. 3459-08, 5295-(32)-11
37, 42, 64, 65, 66 (and s. 170).	To confirm sale at any auction when the Collector has previously fixed (Rule 128) an upset price which is realised. For powers as to auctions see Chapter XVIII.	R. 3520-12

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

- (1) To enter the heirs of Summary Settlement (Class II unstarred) Inams;
- (2) to appoint, give leave, and determine heirs of inferior village servants (R. 595-07);
- (3) to permit cutting of trees in uncommuted service lands [R. 5295 (22)-11]

Vide *Anderson's Bombay Land Revenue Rules (1921)*, 1st ed. of 1930, pp. 6-7.

Chitnises to Collectors and Head clerks to Collectors are graded with Mamlatdars (G. R. No. 8881, dated 23rd December 1891, B. D., and G. R. No. 249, F. D., dated 26th March 1929). See also *Joglekar's supplement to his Land Revenue Code*, pp. 10-11.

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

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

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

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

[d-d] These words were added by Bom. Act IV of 1913, s. 9 (1).

**Mahalkari.**—A Mahalkari may perform the clerical work of preparing the Irrigation Record of Rights, but cannot be appointed a Canal Officer under s. 76 (1) of the Irrigation Act (Bom. Act VI of 1879) (*Vide* G. R. No. 7418 of 1918).

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

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

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



**Head Karkun taking temporary charge of office of Mamlatdar.**—A Karkun taking temporary charge of the office during the absence of the Mamlatdar on casual leave is not a revenue officer ordinarily exercising the powers of a Mamlatdar. He is an officer exercising on an extraordinary occasion some such powers under this section (*Ningapu v. Dodaya*, 21 Bom. 558).

**Substitute designated under this section not competent to exercise powers of Mamlatdar.**—A substitute designated under this section can now exercise the powers conferred by the Mamlatdars Act, 1876, as amended by Bom. Act II of 1906, on a Mamlatdar to whose office he has temporarily succeeded (*Deorao v. Narayandas*, 25 Bom. 318, F. B.). See also 36 Bom 277.

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

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

Saving the rights of holders of alienated villages.

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].

Village Accountant to keep records as he may be required to keep by the Collector ;

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

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.

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

[a] Words repealed by Bom. Act III of 1888 are omitted.

“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.

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.

**Note**—The Mamlatdar of Poona City is authorised to exercise the powers of a Mamlatdar in the Haveli Taluka of the Poona District for the purposes of ss. 86 and 87 of the Code (B. G. 1898, Pt. I, p. 1058).

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

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. Act IV of 1913, s. 10, are omitted.

**Note.**—From 1907 the functions of the Survey Department have been entrusted to the Settlement Commissioner who is also the Director of Land Records. The Land Records Staff of the Director consists of three Superintendents, one for each Division, a District Inspector or Survey Mamlatdar for each District and a staff of Circle Inspectors (*vide* para. 12 of Government Selection No. OO XXVII new series) (*Sathe's Land Revenue Code*, 4th ed., p. 20).

22. The Governor in Council shall from 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.

SEALS TO BE USED BY REVENUE OFFICERS

- (1) The officers mentioned below shall have and use seals, *viz.* :—
  - (1) Commissioners of Divisions, and the Commissioner in Sind ;
  - (2) Deputy Commissioners in Sind ;
  - (3) Collectors ;
  - (4) Assistant Collectors ;
  - (5) Deputy Collectors (including Treasury Officers of the Deputy Collectors Grade), and Superintendents of Land Records and Agriculture ;
  - (6) Mamlatdars ;
  - (7) Mahalkaris ;
  - (8) Mukhtyarkars (Sind) ;
  - (9) Huzur Treasurers (Central Division), (S. D) and (N. D.) ;
  - (10) City Survey Officers (N. D) ;
  - (11) Magistrate of Bandra invested with powers under Act III of 1876 (now Act II of 1906) ;
  - (12) District Inspectors of Land Records and Agriculture in the Northern, Central and Southern Divisions ;
  - (13) Assistants in charge, Head Quarters Offices, Agricultural Department, Dharwar and Poona, and in the Northern Division when appointed ;
- (2) that the seals shall be circular and of the following dimensions and material :—
  - (a) Silver seals of which the diameter should be 1½ 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 1½ inches for the officers named at serial numbers (4) and (5) hereinbefore mentioned ;
  - (c) Seals of brass, copper or gunmetal (whichever may be the most durable material) of which the diameter should be one inch only for the officers named at serial numbers (6) to (13) hereinbefore mentioned ;
- (3) that 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 (B. G. G., 1896, Pt. I, pp. 1161, 1340 ; *Ibid.*, 1897, p. 829).

**Metal seals.**—A suggestion was made that for the purposes of s. 22, metal seals may be used for merely sealing purposes, *i. e.*, when wax is to be impressed, and for all other purposes rubber seals may be used. The present practice of using metal seals for all purposes should continue (G. R. No. 4764-24, dated 23-12-1925 quoted in *Joglekar's Supplement No. 2 to his Land Revenue Code*, p. 2).

### CHAPTER III

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

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

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

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

**Security**—The revenue officers hereinbelow mentioned shall, previously to entering upon their office, furnish security, according to this section, to the following amounts :—

	Rs
1. Head Accountants ... ..	5,000
2. Mamlatdars ... ..	5,000
3. First Karkuns to Mamlatdars ... ..	3,000
4. Special Head Karkuns for payment of Military pensions ...	1,000
5. Treasury Nagdi Karkuns (to Mamlatdars and Mahalkaris)	500
6. Mahalkari with Treasury ... ..	3,000
7. First Karkun to Mahalkari with treasury ... ..	1,000
8. Shroff Karkuns to Mahalkari of Kohistan and Koti Bandar	1,000
9. Mahalkari without treasury ... ..	500
10. Treasurer at Poona ... ..	80,000
11. Treasurer at Kanara, Kolaba and Ratnagiri ... ..	20,000
12. All other Treasurers ... ..	40,000
13. First Karkuns to Treasurers of Kanara, Kolaba and Ratnagiri ... ..	1,000
14. All other First Karkuns to Treasurers ... ..	2,000
15. Second Karkun to Poona Treasurer ... ..	2,000
16. Karkuns other than any of the foregoing employed in Husar Mamlatdars' or Mahalkaris' offices on shroffs work ...	1,000
17. Karkuns for payment of Military pensions ... ..	500
18. Supervising Tapedars in Sind ... ..	1,000
19. Tapedars in Sind ... ..	1,000

20.	Stipendiary Patels or Village Accountants appointed under sec. 16, and Japtidars appointed by the Collector to manage attached Khoti villages...	Rs. 200
21.	Karkuns or Clerks who write the registers of copying, comparing, search and inspection fees and of bhatta and permanent advances and take charge of moneys deposited for those purposes in Revenue Courts	200
22.	Head-quarter Assistants in Survey Offices	200
23.	Accountant in the office of the Commissioner in Sind	1,000
24.	City Maintenance Surveyors	200

*Provided* that in the case of the officers specified in Nos 3 and 16 the amount of security to be furnished may be raised by the Commissioner to such amount not exceeding five thousand rupees as he thinks fit: and in No. 20, he may exempt in special cases, e. g., Khoti villages.

After the issue of Resolution No. 4118 of 1916 all powers of Government under sec. 23 are delegated to the Commissioner in Sind under Act V of 1868.

*Security to be furnished before entering on appointment.*—When any person is appointed to any office specified in the Order, whatever may be the probable duration of his tenure thereof, he shall, before entering thereon, furnish security to the amount specified or to such smaller amount as the Collector may, in the particular case, deem reasonable and sufficient.

*Number of sureties.*—Where he executes a bond, the number of sureties shall be one or more, at his option, if the amount of security does not exceed one thousand rupees; and otherwise shall be not less than two.

*Duties of heads of offices in respect of securities.*—(1) Heads of offices in which any officer required to furnish security is serving will be held responsible for seeing that the necessary security is duly furnished, and that it is good and sufficient both at the time it is first furnished and thereafter, until it is no longer required.

(2) For this purpose heads of offices shall carefully scrutinize the security and satisfy themselves as to its sufficiency both when it is first offered and also once a year after it has been accepted, and if they deem it insufficient, shall require the officer concerned to furnish additional or fresh security.

(3) Care must be taken that no one person is accepted as surety on behalf of a disproportionately large number of officers, whether such officers belong to the same office or department or not.

(4) No Karkun should ordinarily have in his custody more than the amount for which he has given security; surplus should be placed in the treasury.

*A register of securities to be kept by Collector.*—(1) The Collector shall keep a register of all securities furnished by each officer in his district in accordance with Order 13 for scrutiny by the Commissioner during his tour, and shall submit annually to the Commissioner, on 1st October, a certificate that all such securities are good and sufficient.

(2) This register shall contain such particulars as the Commissioner may from time to time direct. A column must be added in all cases in which to record immediately on receipt of notices of withdrawal (sec. 39) of a surety.

(3) For the purposes of sec. 31 (2) an annual declaration of all landed property is required from all officers—*Anderson's L. R. Code Rules, 1921* (1st ed. of 1930, pp. 8-11).

24. The Collector or the Superintendent of Survey may, at any time after security has been given by a revenue officer subordinate to him, if it appear 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.

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 on such date and at such place as the writing may specify.

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

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

Limit to confinement.

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

**Revenue officers.**—For the purposes of ss. 25 and 26 only village officers are revenue officers.—*Vide* sec. 3 (1).

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 moneys may also be recovered as arrears of revenue;

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

public papers or other property appertaining to Government, may issue a search warrant and exercise all such powers with respect thereto as may be lawfully exercised by a Magistrate under the provisions of Chapter

VII of the Code of Criminal Procedure, 1872.\*

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

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

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

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:

Surety liable in the same manner as principal.

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.

Extent of liability.

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.

Sureties not liable to imprisonment, if penalty paid.

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.

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

See new Act V of 1898.

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

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

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

Liability of heirs of deceased officer.

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

How surety may withdraw from further liability.

#### CHAPTER IV.

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

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

- Prohibited acts.
- (1) engage in trade, or be in any way concerned, directly or indirectly, either as principal or agent, in any commercial transaction whatever ;
  - (2) purchase or bid, either in person or by agent, or in his own name or in the name of another, or jointly or in shares with others, for any property which may, under the provisions of this Act or of any other law for the time being in force, be sold by order of any revenue or judicial authority in the district in which such officer is at the time employed ;
  - (3) hold directly or indirectly any farm or be in any way concerned on his private account in the collection or payment of revenue of any kind in the district in which he is at the time employed ;

not to purchase at public sale.

not to trade ;

not to be concerned in revenue ;



and no revenue officer shall—

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

not to make private use of public money or property;

(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.

**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).

**Stipendiary village accountants not to hold land other than hereditary.**—Clauses (1) and (2) of this section 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. This 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 village, 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).

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 dismissing in whom to vest.

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

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.

**Mamlatdars empowered to fine village officers.**—The Collector may, under this section, 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. There is 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 18th March 1883, and G. R. No. 4100, dated 30th May 1883). This last G. R. 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).

**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 the order (G. R. No. 5891, dated 23rd August, quoted in Sathé's Land Revenue Code, 4th Ed., p. 81).

**Maximum period of suspension from office for misconduct.**—The maximum period for which suspension from office should be awardable as a specific punishment under this section should be fixed at six months (G. B. No. 9881, dated 19th December 1884).

**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.

**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.**

Fine not to exceed two months' pay;

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

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

Appeals.

if any authority superior to the Collector or Superintendent of Survey pass any such order against a revenue-officer whose monthly salary does not exceed ninty-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.

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

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

Any officer 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.

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 has been found guilty or not.

## CHAPTER V.

### OF LAND AND LAND-REVENUE.

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

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

(2) Where any property or any right in or over any property is claimed by or on behalf of Government or by any person as against Government, it shall be lawful for the Collector or

a survey officer, after formal enquiry of which due notice has been given, to pass an order deciding the claim. [a]

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

[a] (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.

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

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

[b] Words repealed by Bom. Act II of 1919, second Schedule, are omitted.

**Scope of this section.**—The Collector can only dispose of lands which are not the property of individuals. This section cannot be construed as conferring upon the Collector the power to determine whether the land is the property of Government or not (*Fakir v. Secretary of State*, 6 S L. R. 210).

**Public highway.**—This section does not authorize the Government to obstruct or divert a public highway (*Ardeshir v. Aimat*, 53 Bom. 187).

**Streets.**—Under s. 50 (2) of the Bombay District Municipal Act, 1901, streets vest in municipalities, *i. e.*, the ownership of the soil does not so vest, but the surface and so much of the sub-soil as may be necessary for the purpose of the street does vest, the municipality being in the position of a trustee (G. R. No. 2640, dated 7th March 1924).

**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 (G. R. No. 1004, dated 10-3-1877 quoted in Joglekar's Land Revenue Code, p. 57).

**Village sites (Gavhan).**—According to the custom of the country the proprietary right in all village sites vests in Government unless it has been unmistakably published (G. Rs Nos. 4230, dated 24th July 1873 and 5202, dated 22nd September 1873 quoted in Joglekar's Land Revenue Code, p. 57).

**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. No. 2493, dated 4-5-1881, quoted in Joglekar's Land Revenue Code, p. 58).

**Suit to recover possession of land—Limitation.**—Lands forming part of a river-bed were leased by the Collector for cultivation to defendant No. 2.

The plaintiff who owned lands on the bank of the river laid claim to the lands in dispute, but his claim was negated by the Collector under this section on July 16, 1912. The plaintiff appealed against the Collector's order, the last appeal having been decided on July 16, 1913. The plaintiff sued, on April 6, 1914, to recover possession of the lands. *Held*, that the suit was barred under Art. 14 of the Limitation Act, 1908, inasmuch as the Collector's order having been passed before this section was amended by Act XI of 1912, time began to run from the date of the order and not from the final order in appeal (*Chhotubhai v. Secretary of State*, 22 Bom. L. R. 146).

**Khots have right to cultivate land left dry in a river adjoining their land.**—Where the Khots of a village claimed a right to occupy and cultivate land left dry in the river bed, as far as the middle of the bed opposite their Khoti village it was *held* that they were entitled to this right, and this section was not a bar to such a right (*Secretary of State v. Wasudo*, 31 Bom. 456).

**Collector's action.**—Where the Collector, acting under the provisions of this section, purports to deal with land which is *prima facie* the property of an individual who has been in peaceable occupation thereof and not of Government, and passes an order with reference thereto, he is not dealing with that land in his official capacity, but is acting *ultra vires* (*Malkajappa v. Secretary of State*, 36 Bom 325).

**Collector's powers.**—The Collector acts *ultra vires* if he interferes with private land; his powers extend only to ownerless land (*Secretary of State v. Mush-tak Singh*, 7 B. L. R. 109)

**Title of Government.**—This section does not confer title on Government and there is no presumption of title in favour of Government even as to village sites (*Sultan Muhammad v. Secretary of State*, 8 S. L. R. 331).

**Government ownership of road ways.**—Government is the owner of the land forming roadways through the village site of a bhagdari village. All the land of the village site of a bhagdari is not the property of the bhagdars. The bhagdari tenure is a particular system of collecting the Government revenue. A bhagdar can have only those village fields and the portion of the village site as are assigned to him by the Government. He cannot claim the proprietorship of such lands as he is liable to pay rent or assessment to the Government for these lands (*Umar Anwaji Miyaji v. Secretary of State for India*, 37 Bom. 87).

**Sub-sections (2) and (3).**—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-sec (2). In the new sub-section (3) the provisions of s. 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 Art. 14 of the first Schedule of the Limitation Act applies to cases not covered by the original section 135 (*Statement of Objects and Reasons*).

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

Lands may be assigned for special purposes, and

and not in the lawful

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

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

[b] "Collector" was substituted for "Commissioner" by Bom. Act IV of 1905, First Schedule.

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

**Notes.**—This section gives the Collector the power of setting apart lands for public purposes; but the arrangements by which that power is to be exercised by Survey Officers, while survey operations are proceeding, is not thereby disturbed (*Select Committee's Report*).

Secs. 38 to 40 (both inclusive) do not apply to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (*See Bom. Act VI of 1888, ss. 1 and 33*).

"Land set apart for any purpose" is not confined to land set apart under this section. Land which has from time immemorial been used as a public road, is none the less set apart for that purpose, though this may have taken place years before survey operations took place under Chapter VII of the Code (*Prandla v. Secretary of State, P. J. 1897, p. 366*).

Municipalities can permit lands assigned as air spaces to be used for temporary purposes with the approval of the Collector or the local revenue officer in charge of the city survey. Half the proceeds derived from such use should be paid to Government (G. R. No. 125/24, dated 7-2-1925, quoted in *Joglekar's Supplement No. 2 to his Land Revenue Code, p. 6*).

39. The right of grazing on free pasturage lands shall extend only to the cattle of the village or villages to which such lands belong or have been assigned, and shall be regulated by rules to be from time to time, either generally or in any particular instance prescribed by the Collector with the sanction of the Commissioner. The Collector's decision in any case of dispute as to the said right of grazing shall be conclusive.

"Village cattle."—The phrase "village cattle" does not include the cattle of any roving grazer who may choose to squat for a few months on the public ground of a village (*Collector of Thana v. Bal Patel, 2 Bom. 110*).

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 completed before the passing of Bombay Act I of 1865<sup>[a]</sup> this provision shall not apply to teak, black-wood or sandal-wood trees. The right of Government to such trees shall not be deemed to have been conceded, except by clear and express words to that effect.

[a] Bom. Act I of 1865 (except sections 37 and 38) is repealed by s. 2 of this Act, which has been repealed by Bom. Act IV of 1913, s. 5.

In the case of villages or portions of villages of which the original survey settlement shall be completed after the passing of this Act, the right of Government to all trees in unalienated land shall be deemed to be conceded to the occupant of such land, except in so far as any such rights may be reserved by Government, or by any survey officer on behalf of Government, either expressly at or about the time of such settlement, or generally by notification made and published at any time previous to the completion of the survey settlement of the district in which such village or portion of a village is situate.

When permission to occupy land has been, or shall hereafter be, granted after the completion of the survey settlement of the village or portion of a village in which such land is situate, the said permission shall be deemed to include the concession of the right of Government to all trees growing on that land, which may not have been, or which shall not hereafter be, expressly reserved at the 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.

**" Trees reserved. "—**

The accused were occupants of a Survey Number in a village in which the first survey settlement was introduced in 1865, and the revised settlement in 1889. Considerable time after the settlements, sandal-wood trees grew on the land. Those trees having been cut and removed by the accused, without the permission of Gov-

ernment, the accused were convicted of a breach of Rule 2 framed by Bombay Government under s. 75 cl. (c) of the Forest Act and punished under s. 76 of the Act. *Held*, reversing the convictions and sentences, that under this section the right of Government was confined to reserved trees existing at the date of the settlement and that all subsequent growth belongs to the occupant (*Emperor v. Yellappa*, 45 Bom. 110).

**Forest rights.**—In Bombay forest rights are discussed in G. R. No. 2493, dated 4th June 1881. Dunlop's (Kolaba and Ratnagiri) and Harri's (Kanara) proclamations are discussed in 8 Bom H. O. 2 and 3 Bom. 728

**Trees.**—Trees belong always to the landlord, not to the tenant. But a *Permanent* tenant, the origin of whose tenancy is lost into antiquity, is entitled to the trees. For tenant's rights to the produce of trees, see 30 All 134 and 38 Bom. 716.

41. The right to all trees specially reserved under the provision of the last preceding section, and to all Government trees and forests, trees, brushwood, 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, brushwood, jungle or other natural product, wherever growing, except in so far as the same may be the property of individuals or of aggregates of individuals capable of holding property, vests in Government; and such trees, brushwood, jungle or other natural product shall be preserved or disposed of in such manner as Government may from time to time direct.

[a] Bom. I of 1865 (except ss. 37 and 38) is repealed by s. 2 of this Act, which has been repealed by Bom. Act IV of 1913, s. 5.

“Or other natural product.”—These words were added with the view of protecting existing rights of Government to such products as lac, honey, gum, resin, catacha, etc. (*Proceedings of the Legislative Council*).

**Trees in Patil Inam.**—No Civil Court can try suits against Government for trees in Patil Inam land (P. J., 1893, p. 186).

**NOTE.**—The provisions in ss. 40 and 41 relating to trees on occupancies are based upon the principle that trees standing or growing on occupancies do not belong to occupants, but belong to Government. The provisions refer to two classes of trees—reserved, and not reserved, and declare that occupants have no manner of right to the trees reserved by Government.

[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

[a-a] This was substituted by Bom. Act IV of 1913, s. 12 (a), for the original paragraph.



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. [a]

[a] Paragraphs 3 and 4, repealed by Bom. Act IV of 1913, s. 12 (b), are omitted.

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. Act IV of 1905, First Schedule.

"Any other natural product."—This expression does not include excavated stones (*Madhavdas v. Secretary of State*, 6 Bom. L. R. 1117).

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.

Notes.—As to the local repeal of this section, see foot-note 3 on p. 1 *supra*.

The offence of unauthorized cutting of trees in Government waste land, and of reserved trees in occupied lands, can be tried under section 78 of the Forest Act. The ruling of *Rajya Naraji* (Or. Rg. 49, dated 6th October 1896) is no bar to such a prosecution (G. R. No. 3394, dated 25th May 1903, quoted in Sath's Land Revenue Code, 4th Ed., p. 47).

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

All land liable to pay revenue unless specially exempted.

the provisions of any special contract with Government or any law for the time being in force.

But nothing in this Act shall be deemed to affect the power of the Legislature to direct the levy of revenue on all lands under whatever title they may be held whenever and so long as the exigencies of the State may render such levy necessary.

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

**Assessment of revenue.**—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 v. The Collector of Bombay*, 9 Bom. 483).

**Non-agricultural land.**—Non-agricultural land whether Sarkari or occupied Kharabo, which has not been assessed and which is excluded from settlement guarantee, is liable to be assessed from the first year, in which the occupation was officially discovered (G. R. No. 7058, dated 26th September 1923 quoted in Joglekar's supplement No. 2, p. 7).

**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

Liability of alluvial lands to land revenue.

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.

**Notes.**—This section is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss 1 and 33).

This section and the following section treat of alluvion and diluvion formed on alienated lands, while those formed on Government land are treated in ss. 63 and 64.

**Alluvion and Diluvion.**—The subject of alluvion is one of the most difficult in the law of land. The references in ss. 36, 46 and 63 to "any law for the time being in force" are vague; since so far as is known, there is no such law in force behind the Land Revenue Code except in the case-law or judge-made law based upon the common law and natural equity, and some special Municipal and Port Trust enactments outside Bombay Island. Alluvion must, according to these rulings, be interpreted to mean strictly gradual, slow, and imperceptible (imperceptible day by day as it occurs but of course perceptible enough in the long run (*Halsbury's Laws of England*, Vol. 28, p. 362) accretion by deposit of fresh soil by water upon existing riparian land. (*Justinian and 3 Beng. L. R.* p. 525, 1870).

Sand blown by the wind or a mass of shingle suddenly flung up after a storm, or new land left bare by a receding sea or a diverted river is not alluvion but derelict land. Nor would the deposits in a river-bed which raise their surfaces above the hot-weather water-level be treated as alluvion in respect of a holding terminating on the upper edge of the steep bank of a river high above the deposit; there is no physical connection between them, to which the term 'accretion' would be applicable (*Narandra v. Achhaibar*, 28 All. 647; see also 27 All. 655).

(This condition of *gradual* change does not attach to diluvion.) The fact that a riparian holder (or even, semble, a third person) by artifice assisted the alluvion to form does not affect the law. The persons to whom an alluvial strip of frontage had been granted were evicted in favour of the riparian hissedars (G. R. N. 12383 of 1919. Nor does the fact that it forms *in situ* of previous diluvion (for which assessment was reduced) affect the title of present riparian holders (G. R. No. 744 of 1919). The existence of a public foot-path along the old estate boundary or anything else which puts a limit to the riparian owner's property would prevent the deposit of fresh soil from being an *accretion*, and so from being alluvial at all (*Anderson's Land Revenue Rules*, 1921, 1st ed. of 1930, pp. 69-70).

The riparian holder is not obliged to accept possession and pay assessment or judi for any accretion, alluvial or not, unless he wishes. If it is unprofitable, he can decline; though he would then run the risk of the land being allotted to some other person. In the case of alluvion there is a limit (in the case of unalienated land) of one acre to his right of *free* enjoyment; and no limit of his right of occupation of alluvion *subject to the payment of revenue*. Conversely this seems to imply *no* title to exemption from revenue when the extension is not alluvial. In the case of an alienated riparian holding, it has first to be decided whether the alluvion or abandoned shore or river bed, or new island, does vest legally in the Inamdar. It has been *held* (7 Bom. L. R. 872) not so to vest unless his original grant had covered the area now reformed or reappeared (since such grants are construed strictly against the grantee). Again G. R. No. 744 of 1919 rejects the view that the alluvion formed in place of old diluvion, on the site of an inam grant, becomes Inam: but no reasons are given and the order has not been confirmed by any legal decision. This section does not confer any proprietary right on the Inamdar, but simply refers us to the general law. New islands not "formed on any bank or shore" and other alluvion not proved to vest in an Inamdar would fall under s. 63. ... .. The Code gives no power to frame rules for alluvion, but only for diluvion, and does not deal with the proprietary right but only with the liability to pay land revenue (or quit rent and salami, if alienated. This section cannot apply to khoti or Talukdari villages, because land held by Khots and Talukdars is not alienated. It might apply to Kadim or Fhat Inam lands in such villages (*Ibid.*).

47. Every holder of land paying revenue in respect thereof shall be entitled, subject to such rules as may be from time to time made in this behalf by the Governor in Council, to a decrease of assessment if any portion thereof, not being less than half an acre in extent, [a] is lost by diluvion.[b]

Assessment of land revenue in cases of diluvion.

[a] Words repealed by Bom. Act IV of 1913, s. 13, are omitted.

[b] The para. repealed by Bom. Act IV of 1913, s. 13 is omitted.

[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—

Manner of assessment and alteration of assessment.

Prohibition of use of land for certain purposes.

- (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. Act IV of 1913, s. 14, for the original section.

**Construction and scope.**—This section provides only for an altered assessment and not an additional assessment. Where, therefore, the riyat's agricultural assessment in virtue of the grant of a village is given to the grantee the altered assessment in respect of the lands converted from agricultural to building site (*i.e.*, the building assessment) also goes to the grantee (*Bomanji v. Secretary of State*, 53 Bom. 230, P. C.).

**"Used."**—The substitution of the word "used" for the word "appropriated" was in accordance with the ruling reported in 34 Bom. 239 (*Secretary of State v. Laldas*).

**"Used for any purpose."**—Under cl (3) of this section where mahars held land rent-free of assessment for maharki service and used it for non-agricultural purposes, it was held that they could not be assessed (G. Rs. Nos. 31012 and 5115 of 1891). Evidently "used for any purpose" is not the same as "assessed for a use." They could still apply the profits to remunerate their service as mahars. But this would not debar action if pot kharab of class (b) in alienated land were diverted from the use for which it was held free. G. R. No. 3908 of 1916.

**Extra assessment.**—Plaintiff converted his land from agricultural to non-agricultural uses by establishing a brick kiln in 1872. He was called upon by the Collector to pay this time the assessment as fine for the conversion under s. 35

of Bombay Act I of 1865. Plaintiff, thereupon, erected some huts on the land. At the revision of survey which took place in 1889 the land was assessed as agricultural. Sometime between 1897 and 1901, plaintiff erected a substantial building on the land. In 1912 the Collector levied building fine from the plaintiff. *Held*, that though the levy of additional assessment under s. 35 of Bombay Act I of 1865 might have protected the plaintiff against its enhancement before the Revision Survey of 1889, still this section rendered him liable to pay extra assessment for the conversion in use which took place after the date of the Revision Survey of 1889 (*Muhammad Bhai v. The Secretary of State for India*, 42 Bom. 126).

**Altered assessment when leviable.**—An occupant is not liable to pay altered assessment for his land so long as it is used for the performance of an operation necessary to put the crop of that land into *any ordinary* marketable form; for anything beyond it, altered assessment is leviable (G. R. No. 5921, dated 14-12-1922, quoted in *Joglekar's Supplement No. 2*, p. 7).

**Co-operative Housing Societies.**—In the case of Co-operative Housing Societies, "general utility" roads, i. e., all thoroughfares in the strict meaning of the term should be exempted from non-agricultural assessment, while roads within private compounds are liable to assessment (*Ibid.*, p. 8).

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,

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,

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 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.

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.

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,

Excess of assessment may be laid on land inadequately assessed 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.

**Veta and chali tenures.**—The tenures in Gujarat are called *veta*; while those in the Karnatic Districts are called *chali*.

[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 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 :

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. Act VI of 1901, s. 4, for the original section.

[b] " And " was substituted for " or " by Bom. Act IV of 1905, 1st Sch.

[c] Words repealed by Bom. Act 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. Act VI of 1901, s. 5.

**Note.**—This section gives authority to the Collector to assess unoccupied and unalienated lands which were within the operation of an order under s. 93, but which were left unassessed at the settlement (*Statement of Objects and Reasons*).

The effect of this section is to give the Collector the discretion to fix the assessment; and the effect of s. 217 of the Code is to render the occupants in alienated 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 v Govind*, 28 Bom. 74, at p. 80).

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 land 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.

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. [a]

Settlement of assessment to be made with the holder directly from Government.

[a] The paragraph repealed by Bom. Act IV of 1918, section 16, is omitted:

Note.—This section is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (See Bom. Act VI of 1888 ss. 1 and 33).

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 landholders and other persons, of water, the right to which vests in Government, [a] and in respect of which no rate is leviable under the Bombay Irrigation Act, 1879. [a] Such 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.

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

Notes.—This is a new law authorising the imposition, and the recovering 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 (*Report of the Select Committee*).

This section does not permit the Collector to levy a penalty, but he can levy the minimum rate sanctioned by Government.

“Such other officer as he deems fit.”—These words were introduced to enable Government to entrust the duty of assessing water to a canal officer or to any other special officer (*Proceedings of the Bombay Legislative Council for 1877*).

**Maximum water rates for Thana, Kolaba, Dharwar and Belgaon.**—Maximum water rates have been sanctioned for the following districts :—

District	Rate per acre.
	Rs.
Thana	5
Kolaba	5
Dharwar	8
Belgaon	{ 12 perennial crops. 8 other crops.

**Notifications.—Sind.**—In exercise of the powers given by this section, the Governor in Council authorizes the Commissioner in Sind to fix rates for the use, by land-holders 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.

2. The amount of such rate shall be subject to the approval of Government, and shall, after sanction, be notified in the office of the Mukhtyarkar of the taluka in which the land, on account of which the rate is levied, is situated.

3. 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 otherwise have been required to pay had he applied for and obtained permission.

4. All persons who now hold or may hereafter apply to take up lands assessed and recorded in the Survey Registers as rice lands shall, as soon as possible after the publication of these Rules or on application to take up such lands, be tendered a list of such rice lands then being or about to be in their occupation, and rice shall not be grown on any number not included in such lists except on payment of the extra rate (B. G. G., 1881, Pt. I, p. 396).

All Collectors in the Presidency, other than Collectors in the Province of Sind, are authorized to fix such rates as he may from time to time deem fit to sanction for the use, by landholders and other persons, of water within the limits of their respective districts, in all cases in which the right to such water vests in Government, and no rate in respect thereof is leviable under the Bombay Irrigation Act, 1879 (B. G. G., 1896, Pt. I, p. 583).

56. Arrears of land revenue due on account of land by any land-holder 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 Collector may levy all sums in arrear by sale of the occupancy or alienated holding, [a] or may otherwise dispose of such occupancy or alienated holding under rules [b] made in this behalf under section 214, [c] 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. [c]

[a] Words repealed by Bom. Act VI of 1901, section 6, are omitted.

[b] Words repealed by Bom. Act IV of 1913, ss. 17 and 18 are omitted.

[c] These words were added by Bom. Act VI of 1901, s. 6.



**Notes.**—This section is so amended as to make it clear that an occupant to whom forfeited land has been restored or transferred otherwise than by sale, will have the same rights as if he had purchased it (*Report of the Select Committee*).

**“Occupant”**—**“Occupancy.”**—The terms ‘occupant’ and ‘occupancy’ are subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars’ Act, 1888, extends (*Vide Bom. Act VI of 1888, ss. 1 and 33*).

**Retrospective effect.**—This section, as amended by Bom. Act VI of 1901, has retrospective effect and empowers the Collector to transfer a forfeited occupancy freed from all liens, whether such occupancy was validly forfeited under the Code prior to the Amending Act or was forfeited in compliance with the provisions of s. 153 as amended by Bom. Act VI of 1901 (*Gagandas v. Yusuf*, 8 S. L. R. 233).

**Applicability of this section.**—This section does not apply where there has been no forfeiture under s. 153 (*Chitta Bhulla v. Bai Janmat*, 40 Bom. 486).

**Co owners—Grant of fallow forfeited land.**—A grant of fallow forfeited land to one of several co-owners is a grant to him personally, especially where it is granted to him on restricted tenure, unless it is proved that he availed himself of his position as co-owner and gained an advantage in derogation of the rights of others (*Abdul Rahman v. Haji Mahomad*, A. I. R. 1929, Sind, 212).

**Mortgagors’s right to redeem.**—The plaintiff’s grandfather mortgaged his lands in 1872 and placed the mortgagee in possession. There was default in payment of assessment, as the result of which the property was forfeited by Government under this section as it stood before its amendment in 1901. Government re-sold the property to the mortgagee in 1884, and transferred its khata from the name of the mortgagor to that of the mortgagee. In 1921, the plaintiff sued to redeem the mortgage. *Held*, that the right to redeem was lost owing to the forfeiture of the land under the original section; and that before the plaintiff could succeed he must show that the forfeiture and the revenue sale were due to the default of the mortgagee in not paying the assessment and that the income of the land was sufficient to pay the assessment or that in some way the mortgagor had put the mortgagee in funds wherewith to pay the assessment (*Abdul Rahman v. Vinsayk*, 29 Bom. L. R. 1056).

**Forfeiture of occupancy.**—Where an occupancy forfeited under this section has been disposed of by the Collector under ss. 83 and 62 of the Rules under s. 214 (old rules), to a person signing a kabulyat in form B, the Collector cannot subsequently order the occupancy to be taken from that person and restore it to the occupant before forfeiture (*Dharma v. Bolamiya*, 36 Bom. 91).

**Re-grant if free from incumbrances.**—Where a land vests in the original tenure-holder under a new tenure created by this section as amended by Act VI of 1901, the land vested free from all incumbrances and from all previous equities. The fact that default in the payment of revenue was made is immaterial (*Vedu Shital v. Kals*, 37 Bom. 692).

**Arrears of assessment.**—Forfeiture ordinarily implies the loss of a legal right by reason of some breach of obligation. When arrears of assessment are levied by sale, then this section, in pursuance of an obvious policy, empowers

the Collector to sell "freed from all tenures, incumbrances and rights created by the occupant.....or any of the predecessors in-title or in any wise subsisting as against such occupant." Should the Collector otherwise dispose of the occupancy, this section affords no such protection; and the legal relations must be determined by reference to the ordinary law. So judged, the effects of a forfeiture and subsequent acquisition of the forfeited property are subject to the control of equities arising out of the conduct of the parties (*Amolak Banechand v. Dhondi Khandu Bhosale*, 30 Bom. 466). See also *Balkrishna v. Madhavrao*, 5 Bom. 73).

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] The words repealed by Bom. Act IV of 1913, s. 17 are omitted.

[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. Act I of 1910, 1st Sch., Part II, serial No. 3, for the original section.

**Hereditary officers to grant receipts.**—The provisions of sections 58 and 59 should be made applicable to Hereditary officers (G. R. No. 5430, dated 14th October 1880, quoted in *Sathe's Land Revenue Code*, 4th ed., p. 70).

**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, quoted in *Sathe's Land Revenue Code*, 4th ed., p. 70).

**Receipts exempt from stamp duty.**—

Every receipt given under this section 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, quoted in *Sathe's Land Revenue Code*, 4th ed., p. 70).

**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).

59. Any person convicted of a breach of the provisions of the last preceding section after summary inquiry before the Collector shall be liable to a fine not exceeding three times the amount received for which a receipt was not duly granted, and one-half of the fine may, at the discretion of the Collector, be paid to the informer, if any. Such inquiry may at any time be instituted by the Collector of his own motion without any complaint being preferred to him

Penalty for failure to grant receipts.

**CHAPTER VI**

**OF THE GRANT, USE AND RELINQUISHMENT OF UNALIENATED LAND [a]**

Written permission of Mamlatdar or Mahalkari required previous to taking up unoccupied land.

60. Any person desirous of taking up unoccupied land which has not been alienated must, previously to entering upon occupation, obtain the permission in writing of the Mamlatdar or Mahalkari.

[a] This heading was substituted by Bom. Act IV of 1913, s. 19, for the original heading which was as follows :—

Of the occupation of unalienated land and the rights of occupants.

**Note.**—Sections 60 to 67 (both inclusive) do not apply to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars Act, 1888, extends (See Bom. Act VI of 1888, ss. 1 and 33).

The sale of unoccupied lands held by Mamlatdars under s. 62 and permission to occupy such lands given under this section are within the scope of s. 211 as proceedings which the Commissioner has justification to call for and revise and to pass such orders therein as he deems fit and no suit would lie against Government on account of that officer exercising his legal powers under that section (*Parapa v. The Secretary of State*, F. J. 1891, p. 230).

[a] 61. Any person who shall unauthorizedly enter upon occupation of any land set apart for any special purpose, or any unoccupied land which has not been alienated, and any person who uses or occupies any such land to the use or occupation of which by reason of any of the provisions of this Act he is not entitled or has ceased to be entitled shall, [a]

Penalties for unauthorized occupation of land.

[a-a] This para. was substituted for the original para. by Bom. Act III of 1921, s. 2 (a).

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 [b] unauthorized occupation, and

if the land so occupied by him has not been assessed, such amount of assessment as would be leviable for the said period in the same village on the same extent of similar land [c] used for [c] 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 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, [g] or to summary removal. [g]

Forfeitures under this section shall be adjudged by the Collector, and any property so forfeited shall be disposed of as the Collector may direct [g] and the cost of the removal of any encroachment under this section shall be recoverable as an arrear of land revenue. [g]

[b] The word "unauthorized" was inserted by Bom. Act III of 1921, s. 2 (b).

[c-e] These words were substituted by Bom. Act IV of 1913, s. 20, for the original words "appropriated to".

[d-d] These words were substituted by Bom. Act IV of 1913, s. 20, for the original words "appropriated it to".

[e-e] These words were substituted for the original words by Bom. Act XVI of 1895, Second Schedule.

[f-f] Words repealed by Bom. Act IV of 1901, s. 7, are omitted.

[g-g] These words were added by Bom. Act II of 1919, First Schedule.

**Note.**—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. This section provides distinctly for (1) the levy of assessment, (2) fine of five rupees or ten times the assessment, (3) eviction, and (4) forfeiture of crop. The introduction of the penalty of fine 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 (*Report of the Select Committee*).

**Object of amending para (1).**—The object of amending paragraph 1 is to make it clear that this section applies to a case where a person having been lawfully in occupation of land authorizedly continues to hold over.

**Application of this section.**—This section applies only to roads which are the property of Government in unalienated villages or unalienated portions of villages and not to roads of alienated villages unless the right of Government, to the ownership of such roads has been reserved (G. R. No. 3130, dated 12-11-1920).

**Effect of this section.**—This section has no retrospective effect, *i. e.*, its provisions cannot be enforced in respect of anything done before the Code became law on the 17th July 1879 (G. R. No. 6202, dated 1st September 1890).

**Application of this section to cases of unauthorized occupation which commenced subsequent to this Act.**—The use of the word "shall" in the first clause of this section does not restrict the application of this section to cases of unauthorized occupation which began subsequent to this Act 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 (*Pranlal v. Secretary of State*, F. J. 1897, p. 366).

This section applies only to unauthorized occupation of any land (a) set apart for any special purpose, and (b) any unoccupied land which has not been alienated (G. R. No. 3837, dated 3rd June 1890).

**Encroachment on Inam Gurocharan land.**—This section is not applicable to alienated villages or lands. The inamdar's proper remedy in such a case as that of encroachment on gurocharan in a surveyed alienated village is a suit in the Civil Court (G. R. No. 5205, dated 26th July 1885).

**This section applies only to lands the property of Government in unalienated villages.**—The plaintiffs, who were the inamdars of certain land, sued for a declaration of their ownership in and of their right to cultivate two plots of land which (they alleged) formed part of their inam. It was contended for the defendants as to these two plots of land that the plaintiffs had no right to cultivate them, as they had been made a part of a village site, and on that understanding they had not been numbered at the survey in 1863, and had been exempted from assessment for twenty years. It was held by the lower Appellate Court that this section applied. *Held*, that this section did not apply. This section relates back to s. 38 and both refer only to lands the property of Government in unalienated villages or unalienated portions of villages. They do not empower the Government to confiscate any land belonging to an inamdar and to confer it on the persons living in his villages (*Vinayakrao v. Secretary of State*, 23 Bom. 39).

**Encroachment on public road.**—Under s. 37 *ante* all public roads being the property of Government, it must be taken that the public road encroached upon by the accused is in the possession of the Local Government officers

on behalf of the 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 s. 441 of the Penal Code (*Fakirgadda*, Cr. Rg. 49 of 1888).

[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 specifically reserved under the provisions of section 40, and shall be recoverable as an arrear of land revenue.

[a] As to the local repeal of sections 62 and 63, see para. 3 of foot-note [a] on p. 1, *supra*.

[a] Sections 62 and 63 were substituted by Bom. Act IV of 1913, ss. 21 and 22 respectively, for the original sections.

**Co-operative Societies.**—Land may be granted free of occupancy price to co-operative societies when a public purpose is to be fulfilled (G. R. No. 2249/24, dated 21st April 1925, quoted in Joglekar's supplement No. 2, p. 13).

[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] See note No. 1 under s. 62 *supra*.

**Note.**—This section provides for the disposal of the occupancy of such alluvial or water-forsaken lands as under the provisions of the Code (s. 37) vests in Government. The object of this section is to secure to the neighbouring land holder, 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 (*Report of the Select Committee*).

[a] 64. When alluvial land forms on any bank or shore, the occupant, if any, of such bank or shore shall be entitled to the temporary use [b] thereof, unless or until the area of the same exceeds [c] one acre [b]. When the area of the alluvial land exceeds the said extent, it shall be at the disposal of the Collector, subject to the provisions of the last preceding section [b].

Temporary right to alluvial lands of small extent.

[a] As to the local repeal of sections 64 and 65, see para. 3 of foot-note [a] on p. 1, *supra*.

[b] Words and paragraph repealed by Bom. Act IV of 1913, s. 23, are omitted.

[c] This word was substituted by Bom. Act IV of 1913, s. 23, for the original words "half an."

**Non-riparian owner—Right to water.**—The plaintiff who owned non-riparian lands, used from times immemorial to irrigate his lands by river water which he took through the paddy fields belonging to defendants. The water did not flow in a definite channel but spread over the whole of the defendant's lands. If it overflowed into the plaintiff's lands. The defendants having obstructed the passage of water through their lands, the plaintiff sued to establish his right to the enjoyment of the river water. *Held*, that the plaintiff having acquired the right and enjoyed it from time immemorial was not prevented from enforcing it by any provision of the Easements Act by virtue of s. 2 (c) of the Act (*Janardhan v. Rajeji*, 20 Bom. L. R. 398, s. c. 43 Bom. 288).

A suit to recover possession of lands forming a river bed leased by the Collector is barred, if brought after a year of the date of the order of the Collector under s. 37 *ante* by which the Collector refused to entertain the plaint. Prior to the Bom. Act XII of 1912 the starting point of limitation is the date of the order (*Chhotubhai v. Secretary of State*, 22 Bom. I. R. 146).

65. An occupant of land [a] assessed or held for the purpose of agriculture [a] 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 [b] use for the purpose aforesaid. [b]

Uses to which occupant of land for purposes of agriculture may put his land

Procedure if occupant wishes to apply his land to any other purpose.

But, if any occupant [c] wishes to use his holding or any part thereof for any other purpose [c] the Collector's permission shall in the first place be applied for by the [d] occupant.

[a-a] These words were substituted by Bom. Act IV of 1913, s. 24 (a), for the original words "appropriated for the purposes of agriculture".

[b-b] These words were substituted by Bom. Act IV of 1913, s. 24 (a), for the original words "occupation for the purposes aforesaid".

[c-c] These words were substituted by Bom. Act IV of 1913, s. 24 (a), for the original words "wishes to appropriate his holding or any part thereof to any other purpose".

[d] The word "registered" was repealed by Bom. Act IV of 1913, s. 24 (b).

[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 [a] occupant.

[a-a] This was substituted by Bom. Act I of 1910, Schedule I, Part II, Serial No. 4, for the original para.

When any such land is thus [a] permitted to be used for any purpose unconnected with agriculture [a], 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-a] These words were substituted by Bom. Act IV of 1913, s. 24 (a) for the original words "appropriated to any purpose unconnected with agriculture".

**Occupant.**—The term "occupant" is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss. 1 and 33).

**Collector's permission must be express.**—This section confers on registered occupants who have applied to the Collector for permission to appropriate 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.

This section 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 (G. R. No. 5898, dated 20th July 1892).

Petitions under this section should be received and disposed of by Collectors only, and this duty should not be delegated to Assistant or Deputy Collectors or Mamlatdars (G. R. No. 5893, dated 20th July 1892).



“Farm buildings”.—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 (B. G. G., 1911, Pt. VII, p. 195).

Long possession and user without assessment.—In 1907 the District Collector ordered the Mamiadar to cause the building and the wood to be removed forthwith from a graveyard of which plaintiff had been in possession for 50 years without assessment and the order was confirmed on appeal by the Commissioner in April 1909. On the 22nd February 1910 the plaintiffs sued the Secretary of State for a declaration that they were the owners of the land, for a cancellation of the order and for a permanent injunction. Held, that as the land in dispute was not used for the purpose of agriculture, neither this section nor s. 66 *infra* applied to the case and that in view of the long and undisturbed possession of the plaintiffs, the order of eviction was *ultra vires* (*Rasul Khan v. Secretary of State*, 39 Bom. 494).

Application to the Collector for permission to use land for any other purpose other than agriculture is required to be made by the occupant. The Collector's permission cannot be “presumed” in any such case on the strength of an arrangement made by the applicant with that officer in a similar case in respect of another land (G. R. No. 2816, dated 19-4-1923).

Payment of fine and assessment.—It does not follow, from this section, that the payment of fine and assessment is a preliminary condition without which no agricultural land can be appropriated for the building purposes. It is clear that this Code contemplates appropriation both with and without permission, the fines in the one case being larger than in the other (*Bhujabalappa v. Collector of Dharwar*, 1 Bom. L. R. 454).

Procedure.—Under this section the Collector, on receiving an application, must first send a written acknowledgment of its receipt, and secondly, may, after due inquiry, either grant or refuse the permission applied for, provided that where the Collector fails to inform the applicant of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted; such period shall, if the Collector sends a written acknowledgment within seven days from the date of the receipt of the application, be reckoned from the date of the acknowledgment, but in any other case it shall be reckoned from the date of receipt of the application (*Shiopalasing v. Secretary of State*, 26 Bom. L. R. 371).

66. If any such land be so [a] used without the permission of the Collector being first obtained, or before the expiry of [b] the period prescribed by section 65 [b] the occupant and any tenant or other person holding under or through him,

Peasantry for so using land without permission.

[a] This word was substituted by Bom. Act IV of 1913, s. 25 (a), for the original word “appropriated.”

[b-b] These words were substituted by Bom. Act I of 1910, Schedule I Part, II, Serial No. 5, for the original words.

shall be liable to be summarily evicted by the Collector from the land so [a] used and from the entire field or survey number of which it may form a part, and the [b] 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 [a] used, such fine as the Collector may, subject to the general orders of Government, direct.

Any [c] tenant of any occupant or any other person holding under or through an occupant, who shall without the [b] occupant's consent [d] use any such land for [d] any such purpose, and thereby render the said [b] occupant liable to the penalties aforesaid, shall be responsible to the said [b] occupant in damages.

[a] See note [a] on page 47 *supra*.

[b] The word "registered" was repealed by Bom. Act IV of 1913, s. 25 (b).

[c] The words "co-occupant or any" were repealed by Bom. Act IV of 1913, s. 25 (b).

[d] These words were substituted by Bom. Act IV of 1913, s. 25 (a), for the original words "appropriate any such land to."

**Note.**—This section supplies an instance of resumption on account of appropriating agricultural land to other purposes without the permission of the Collector.

**Occupant.**—*Vide* note with regard to the term 'occupant' under the preceding section.

**Building of residential house on portion of land.**—Where a portion of land held for purposes of agriculture is used, without the permission of the Collector, for any purpose other than that of agriculture, *e. g.*, for building a residential house on it, the fine leviable for such user, under this section, is to be calculated with reference to the actual area built upon and not to the area of the entire holding. Section 148 *post* has no application to such a case (*Secretary of State v. Abdul Husen*, 29 Bom. L. R. 1350).

**Period runs from the date of acknowledgment.**—In order that a person can appropriate a land to a non-agricultural purpose without incurring the penalty of the fine provided by this section, it is necessary that he must wait for three months from the date of the acknowledgment of the application required to be given by the Collector by s. 65. It is no defence to plead that the Collector, though he received the application, omitted to send an acknowledgment (*Nawak Purushotam v. Secretary of State*, 1 Bom. L. R. 669).

**Maximum fine levied under this section.**—Any fine imposed by the Collector under this section shall be fixed by him at his discretion, but (subject to rule 101) shall not exceed the following rates, namely:—

(1) In a village placed for the purpose of altered assessment under rule 81 in-				
Class	I	...	Rs. 1,250	} per acre of the land actually used for any purpose unconnected with agriculture and at the same rate in proportion for any fraction of an acre.
"	II	...	" 750	
"	III	...	" 500	
"	IV	...	" 250	
"	V	...	" 100	

(2) In villages falling under rule 82 the same rates shall be charged as for class 1 (*Vide* rule 100).

But now that fine is only levied as a penalty for not getting permission—and thereby evading the Collector's control over industrial and building uses—the severity of the fine should apparently depend on the degree of harm done and the bad example set and not upon the fiscal considerations adduced in Resolution 5206 of 1897 (*Anderson's L. R. Rules*, 1921, 1st ed. of 1930, p. 94).

[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 section 67, see para. 3 of foot-note [a] on p. 1, *supra*.

[b] The words "in special cases" were repealed by Bom. Act IV of 1913, s. 26.

[c-c] These words were inserted in section 67 by Bom. Act VI of 1901 s. 8 (1).

[d-d] These words were substituted by Bom. Act IV of 1913, s. 26, for the original words "agreed on between Government and the registered occupant."

68. An occupant is entitled to the use and occupation of his land for the period, if any, to which his [a] 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 [b] or conditions [b] lawfully annexed to his [a] tenure.

[c] 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, *Proviso.*

[a] This word was substituted for the original word "occupancy" by Bom. Act IV of 1913, s. 27.

[b-b] These words were inserted in section 68 by Bom. Act VI of 1901, s. 8 (1).

[c] This proviso to section 68 was added by Bom. Act VI of 1901, s. 8 (2).

subject to [a] rules made by the Governor in Council in this behalf [a], prescribe, and in any such case the occupancy shall, whether a survey settlement has been extended to the land or not, be held only for the period and subject to the conditions so prescribed.

[a—] These words were substituted by Bom. Act IV of 1913, s. 27, for the original words “the orders of Government.”

**The proviso** enables the Collector to allow lands to be taken up on short leases and special terms which may include a restriction of transfer ability, whether by private contract or by attachment and sale under the orders of a Civil Court, notwithstanding that a survey settlement may have been extended to those lands, while s. 73A provides for the lands into which a Survey Settlement has not been introduced (*Statement of Objects and Reasons of Bill No. IV of 1901*).

**Note.**—This section does not apply to any village in the district of Ratnagiri or the district of Kolaba to which the Khoti Settlement Act, 1880, extends (Bom. Act I of 1880, ss. 1 and 39).

**Occupant.**—*Vide* note under the heading “occupant” under s. 65 *supra*.

**Occupancy, grant of, subject to prohibition of alienation.**—

Where a grant of occupancy was made to the plaintiff subject to restrictions prohibiting alienation and a few years afterwards, he made an application for transfer of the occupancy to the 2nd defendant, *held*, that the application amounted at most to an attempt to transfer which was never carried into effect, that there was no alienation and no breach of the conditions of the grant, that the order of the District Deputy Collector for summarily evicting the plaintiff was a nullity and that the Officer cannot be said to have acted in his official capacity (*Dhanji Jairam v. Secretary of State for India*, 45 Bom. 920).

**69.** The right of Government to mines and mineral products in all unalienated land is and is hereby declared to be expressly reserved :

Reservation of right of Government to mines and mineral products.

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.

Proviso.

**Occupant.**—*Vide* note under the heading “occupant” under s. 65 *supra*.

**Object of this section.**—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 (*Report of the Select Committee*).

**Mines and mineral products.**—In construing the words “mines” and “mineral products” regard must be had to the fact that they occur in a statute as things reserved. Similarly regard must be to the purpose for which the occupancy is granted. The word ‘mine’ is derived from a Latin word of the lower ages, *minare*, signifying *ducere*, to lead. It is a subterranean cavity or passage, especially a pit or excavation in the earth, from which metallic ores or other mineral substances are taken by digging. It is distinguished from the pits from which stones

only are taken, and which are called quarries. The term minerals includes everything except the vegetable surface, or everything except the mere surface, which is used for agricultural purposes.

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,

Occupancy when not liable to process of Civil Court; the Court to give effect to Collector's Certificate.

(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. Act 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. Act IV of 1913, s. 28 (b).

[c-c] These words were substituted for the original words "the transfer" by Bom. Act IV of 1913, s. 28 (b).

[d-d] These words were substituted for the original words "ordered by the Court" by Bom. Act IV of 1913, s. 28 (b).

[e] Words repealed by Bom. Act IV of 1913, s. 28 (c), are omitted.

**Occupancy.**—The term occupancy is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss. 1 and 33).

71. *Repealed by Bom. Act IV of 1913, s. 29.*

72. If an occupant who is either a Hindu, a Mahomedan or a Buddhist dies intestate and without known heirs, 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, and the law at the time in force concerning property left by Hindus, Mahomedans or Buddhists dying intestate and without known heirs, shall not be deemed to apply to the said occupancy but only to the proceeds of such sale after deducting all arrears of land revenue due by the deceased to Government and all expenses of the said sale.

**Note.**—This section does not apply to any village in the districts of Barmn-giri and Kolaba to which the Khoti Settlement Act, 1880, extends (Bom. Act I of 1880, ss. 1 and 39).

**Occupant.**—*Vide* note under the heading "occupant" under s. 65 *supra*.

**Non-applicability of this section 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).

**Entry of name in Collector's books—Proof of title.—**

The Collector's book is kept for purposes of revenue, not for purposes of title, and the fact of a person's name being entered in the Collector's book as occupant of land does not necessarily of itself establish that person's title, or defeat the title of any other person (*Fatma v. Darayasaheb*, 10 Bom. 187. See also *Collector of Poona v. Bhavanrao*, 10 Bom. 192, *Sangaya v. Bhimangowda*, 10 Bom. 194 and *Bhagoji v. Bapuji*, 13 Bom. 75).

73. [a] [b] An occupancy [b] shall, subject to the provisions contained in section 56, and to any conditions lawfully annexed to the [c] tenure, and save as otherwise prescribed by law, be deemed an heritable and transferable property.

Occupancy to be transferable and heritable.

[a] This section was substituted for the original section 73 by Bom. Act VI of 1901, s. 10.

[b-b] These words were substituted for the original words "the right of occupancy" by Bom. Act IV of 1913, s. 30.

[c] This word was substituted for the original word "occupancy" by Bom. Act IV of 1913, s. 30.

**Note.**—*Vide* the first note under the preceding section.

**Occupancy.**—The term "occupancy" is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss. 1 and 33).

[a] 73-A. (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.

Power to restrict right of transfer.

(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. Act 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. Act IV of 1913, s. 31.

**Occupancies.**—*Vide* note under the heading "occupancy" under the preceding section.

**Amendment Act VI of 1901.**—The Amending Act VI of 1901 by adding this section makes it competent to Government to publish a declaration that the occupancy or interest of the occupant shall not, after the declaration, be transferable without the previous sanction of the Collector. But this can only be in a tract or village in which the original survey settlement might be introduced after the passing of Bom. Act VI of 1901 and by a notification published before the introduction of the original survey settlement. The Amending Act of 1901 does not effect the right of transfer existing in occupants before the Act came into force.

**Scope.**—The prohibition contained in this section is not confined to an absolute and out and out transfer of an occupancy, but that it includes the transfer of an interest in the occupancy without the sanction of the Collector. A mortgage, therefore, of a share in land, held on restricted tenure, without the sanction of the Collector, is void and conveys no right to the mortgagee (*Dharamdas Thawerdas v. Sorabji*, A. I. R. 1930, Sind 75).

**Note.**—Collectors should generally permit members of agricultural Co-operative Societies holding lands on restricted tenure to alienate them to those societies. When such land passes into the possession of a society by default of its debtor member, it should be sold by auction on restricted tenure only with the sanction of the Collector, and that such lands should pass into the possession of a person who can hold land on restricted tenure in the district (G. R. No. A-501, dated 23-11-1921, quoted in Joglekar's Supplement No. 2 to his Land Revenue Code, p. 18).

**Effect of granting sanction under this section.**—The effect of the sanction of Collector under this section is only to authorize a particular transfer of the land and not to remove the character of restricted tenure impressed upon the land so as to render it transferable at will (*Ismail Khan Mir Azam Khan v. Official Receiver*, A. I. R. 1928, Sind 63).

**Notification declaring this section applicable to certain villages.**

Clause (1) of this section has been declared applicable to the following villages in the District of West Khandesh.—

- (a) 79 villages in Nandurbar Taluka, and  
66 villages in Navapur Peta of Khandesh district (Notification No. 1115A).
- (b) 17 villages in Shirpur in do. do. (Notification No. 1116B).
- (c) 42 villages in Taloda in do. do. (Notification No. 1116C).
- (d) 11 villages in Shahada in do. do. (Notification No. 1116D).

B. G. G. 1902, Pt. I, p. 298.

All Brahmins and Bonias (Wanis) holding lands in the villages of the Shirpur Taluka of the West Khandesh District (to which the provisions of this section, subsection 1, were declared to be applicable by Government Notification B. D. No. 1116B, dated 18th February 1902 (B. G. G. 1902, Pt. I, p. 290) are exempted from the operation of this section (B. G. G. 1908, Pt. I, p. 1897).

Marwadis, Kshatriyas, Parbhuis, Krayasthas, Bohris and Parsis are exempted from the operation of cl (1) of this section in the 17 villages of the Shirpur taluka mentioned in G. N. No. 1116B quoted above (G. R. R. D. No. 3875, dated 22nd April 1909).

[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 Mamlatdar or Mahalkari before the 31st March in any year or before such other date as may from time to time be prescribed in this behalf by the Governor in Council, and such relinquishment shall have effect from the close of the current year :

provided that no portion of land which is less in extent than a whole survey number or sub-division of a survey number may be relinquished. [a]

[a-a] This section was substituted by Bom. Act IV of 1913, s. 32, for the original section.

**Occupant.**—*Vide* note under the heading "occupant" under s. 65 *supra*.

**Notices exempted from registration.**—Notices, given under this section or section 76 of this Code, of relinquishment of occupancy by occupants or of alienated land by holders of such land, are exempted from registration (*Vide* s. 90 (1) (e) of the Indian Registration Act (XVI of 1908).

**Tenant remaining in occupation after passing rajinama.**

—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 this section. *Held*, also, that the plaintiff was entitled to sue in ejectment, although he had not been put in possession of the land (*Bhunia v. Ambo*, 13 Bom. 294).

**Rajinama.**—Among alienated villages, this section applied only to those brought under a Survey Settlement. The Rajinama can be presented only to the Mamlatdar, unless the inamdar has a commission under s 88 (e), (G. Rs. Nos. 3439, 5730 and 7045 of 1881 and 959 of 1882). Rajinamas may also be executed before a Forest Settlement Officer (G. R. No. 1709 of 1886) and then transmitted to the Mamlatdar and before Aval Karkuns when the Mamlatdar is absent (G. R. No. 1743 of 1889 and 7428 of 1905).

**Rajinama and Kabulyat.**—Rajinama is the notice of relinquishment given by the registered occupant. It is to be given to the Mamlatdar and Mahalkari and when the Mamlatdar is absent from his head-quarters, it should be given to the Aval karkun. The person in whose favour a holding is relinquished should signify his acceptance by a written agreement with the revenue officers. This written acceptance is called 'Kabulyat.'



**Execution of rajinama and kabulyat.**—No legal presumption arises from the passing of a rajinama and kabulyat that a transfer of ownership is intended to be effected and that, accordingly it operates, just as if it was a sale. It does not necessarily by itself amount to a transfer of the property (*Rachappa Chanbasappa v. Ningappa*, 49 Bom 847).

**Rajinamas and kabulyats—Registration if necessary.**—A mortgagor agreed to abandon his equity of redemption and also executed a rajinama in favour of the Mamladar under this section and the mortgagee executed a kabulyat. *Held*, that the rajinama combined with the kabulyat did not transfer the title of the mortgagor to the mortgagee as a transfer of the equity of a redemption must be registered under s. 54 of the Transfer of Property Act. (*Sakharam v. Ramchandra*, 18 Bom L R 980 (note). But it was *held* in the case of *Narso v. Nagava* (42 Bom. 359) that rajinamas and kabulyats, though in themselves documents of transfer, are fairly conclusive evidence that a transfer has in fact been made and as between the mortgagor and mortgagee extinguish the equity of redemption without the necessity of registration. An inamdar can receive notices of relinquishments under this section only where the survey settlement has been introduced or when the powers under s. 88 *post* have been given to him. These notices are exempt from registration under s. 90 of the Registration Act (*Shidraj Bhojraj Desai v. Dary Santram Maii*, 45 Bom. 898).

**A Rajinama by a Khatedar of unalienated lands**, subject to this section, abandoning his rights to another, subject to the payment of revenue, need not be registered under s. 90 of the Registration Act (*Motibhai v. Desaiibhai*, 41 Bom. 170).

The execution of a rajinama and a kabulyat does not by itself amount to a transfer of property. The transfer can be rebutted by evidence regarding the manner in which the parties concerned dealt with the property. Each case, however, must necessarily depend upon its own facts (*Chandanmal v. Bhaskar*, 22 Bom. L. R. 140).

**Relinquishments.**—Relinquishments by a Government department may be accepted even when third parties assert rights over such land. The rights should be settled under ss. 37 (2) and 79A, cases in which eviction is proposed being reported for the orders of Government (G R. R. D. No. 2104 of 1909); see also *Anderson's L. R. Rules*, 1st ed. of 1930, p. 73.

**Notice-Exemption.**—The notice, given under this section, of relinquishment of occupancy by an occupant does not require Court fee (Government of India's Notification No. 4650 at p. 807; B. G. G. of 19th September 1889), nor stamp duty (B. G. G., p. 384 of 28th July 1909) and is exempt from registration (sec. 90 (c) Act XVI of 1908). It must also be written by a village Accountant without fee.

75. Repealed by Bom. Act IV of 1913, section 33 (1).

Relinquishment of land described in paragraph 1 of section 49.

76. The provisions of [a] the last section [a] shall apply, as far as may be, to the holders of alienated land: provided that,

[a-a] These words were substituted for the original words "the two last sections" by Bom. Act IV of 1913, s. 33 (3).

(a) it shall not be lawful to relinquish, as aforesaid, any portion of any land held wholly or partially exempt under the circumstances described in the first paragraph of section 49 until the commuted assessment payable in respect of such portion of land has been determined under the provisions of the said section; and that

(b) if any person relinquish land on which, under the circumstances described in section 51, a larger revenue is levied than would ordinarily be leviable on such land, he shall be deemed to have relinquished also the land held with it which is wholly or partially exempt from payment of revenue.

**Note.**—This section does not apply to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars Act, 1888, extends (see Bom. Act VI of 1888, ss. 1 and 33).

77. If any person relinquishes land, the way to which lies through other land which he retains, the right of way to relinquished land, shall continue to the future holder of the land relinquished.

Saving of operation of section 74 in certain cases.

78. Nothing in [a] section 74 [a] shall affect—

[b] the validity of the terms or conditions 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 “sections 75 and 76” by Bom. Act IV of 1913, s. 34.

[b] Clause (a) and the letter “b” repealed by Bom. Act IV of 1913, s. 34 are omitted.

79. Repealed by Bom. Act IV of 1913, s. 35.

[a] 79A. Any person unauthorizedly occupying or wrongfully in possession of, any land

[b] (a) to the use or occupation of which by reason of any of the provisions of this Act he is not entitled or has ceased to be entitled or

[a] Section 79A was inserted by Bom. Act VI of 1901, s. 12.

[b] This clause was substituted for the original clause by Bom. Act III of 1921, s. 3.

(b) [a] which is not transferable without previous sanction under section 73A or by virtue of any condition lawfully [b] annexed to the tenure [b] under the provisions of section 62, 67 or 68, may be summarily evicted by the Collector.

[a] This word was substituted for the original words "of which the occupancy right" by Bom. Act IV of 1913, s. 36.

[b-b] These words were substituted for the original words "annexed to the occupancy" by Bom. Act IV of 1913, s. 36.

**Note.**—This section is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (See Bom. Act VI of 1888, ss. 1 and 33).

**Clause (a).—Object of amendment.**—The object of amending cl. (a) by Bom. Act III of 1921 is to provide for the eviction not only of a person whose right to occupancy has ceased under the provisions of this Act, but also of a person whose right to occupancy has ceased under the rules or any condition of an agreement.

**Scope of this section.**—This section refers to unauthorized occupation or wrongful possession of land. The question is whether the person was in wrongful occupation of land at the date of notice (*Bhaiji Ishwardas Shah v. Talukdari Settlement Officer*, 22 Bom. L. R. 906).

**Possession under decree of Civil Court.**—The powers given to the Collector by this section can be exercised only in cases of wrongful possession. It does not extend to cases where possession is obtained under the decree of a Civil Court. The Collector has, for the exercise of the power, to form his own opinion and decide whether in any particular case the possession is wrongful; but there is no provision in the Code which gives finality to the Collector's order of eviction so as to exclude the jurisdiction of a Civil Court to decide that the person evicted by that order was in rightful occupation (*The Talukdari Settlement Officer v. Umia-shankar*, 35 Bom. 72).

**Notice of suit.**—The Collector, holding the powers of the Talukdari Settlement Officer and acting under this section served upon the plaintiff a notice asking him to vacate certain land which he was declared to have held illegally without any right. The plaintiff was also warned that, if he did not comply with the notice, steps would be taken to evict him. The plaintiff sued for an injunction to restrain the Collector from taking possession summarily of the land. No notice of suit, required by s. 80 of C. P. Code, 1908, was given. *Held*, that the declaration and the notice were distinct acts on the part of the Collector done by him in his official capacity; and, therefore, a notice to the Collector by the plaintiff was necessary under s. 80 of the C. P. Code as a condition precedent to the maintenance of the suit (*Talukdari Settlement Officer v. Bhajibhai*, 14 Bom. L. R. 577).

**Summary eviction under this section can be only from Talukdari lands.**—

The powers of the Talukdari Settlement Officer under this section, read with s. 33 (2), cl. (c) of the Gujarat Talukdars' Act, 1888, to evict a person summarily, extends only to estate held on Talukdari tenure and not to all property of any kind of the individual Talukdar (*Shankardhas v. Raisingji*, 19 Bom. L. R. 855).

**Interference of Collector.**—Under this section supplemented by s. 33 (2), cl. (cc) of the Gujarat Talukdars' Act, the Collector can interfere only where the occupation is wrongful or in contravention of the provisions of the Act (*Talukdari Settlement Officer v. Rikhaudas*, 15 Bom. L. R. 378).

80. In order to prevent the forfeiture of an occupancy under the provisions of section 56 or of any other law for the time being in force through non-payment by the [a] occupant of the land revenue due on account thereof, it shall be lawful for any [b] person interested [b] to pay on behalf of such [a] occupant all sums due on account of land revenue, and [c] the Collector shall on due tender thereof [c] receive the same. And in any such case the Collector may [d] under section 86 [d] give to the person who has paid the land revenue as aforesaid [e] aid for the recovery of any portion of such land revenue [e] which he may consider to be properly payable by other persons [a]:

To prevent forfeiture of occupancy certain persons other than the occupant may pay the land revenue.

Collector may assist such persons in recovering the revenue from other parties liable therefor.

Provided that nothing authorized or done under the provisions of this section shall affect the rights of the parties interested as the same may be established in any suit between such parties in a Court of competent jurisdiction.

Proviso.

[a-a] Words repealed by Bom. Act IV of 1913, s. 37, are omitted.

[b-b] These words were substituted for the original words "co-occupant, tenant, mortgagee or other person interested in the continuance of the occupancy" by Bom. Act IV of 1913, s. 37 (a).

[c-c] These words were substituted for the original words by Bom. Act IV of 1905, First Schedule.

[d-d] These words were inserted by Bom. Act IV of 1913, s. 37 (b).

[e-e] These words were substituted for the original words "such aid for the recovery of the proportional amounts" by Bom. Act IV of 1913, s. 37 (c).

**Occupancy.**—*Vide* note under the heading "occupancy" under s. 73.

**Payment of land revenue by Khatedar creates no charge.**—An unsolicited expenditure in respect of the property of another, even if made for the purpose of its preservation, gives no lien over the property, outside maritime law. Hence, a payment of land revenue by a person of property belonging to another but included in his *khata*, does not create any charge over the property (*Shivrao v. Pundalik*, 26 Bom. 437).

81. Repealed by Bom. Act IV of 1913, s. 38.

Governor in Council empowered to suspend operation of section 60 or 74.

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.

**Note.**—This section does not apply to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (See Bom. Act VI of 1888, ss. 1 and 33).

## CHAPTER VII

### OF SUPERIOR AND INFERIOR HOLDERS

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 regard to all of the circumstances of the case, shall be just and reasonable.

And where, by reason of the antiquity of a tenancy, no 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, receives, 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-rendition of the services, either respectively originally fixed or duly enhanced as aforesaid.

“ Shall as against the immediate landlord.....of such landlord.”—The words “shall as against the immediate landlord of the tenant be presumed to be co-extensive with the duration of the tenure of such landlord” have a prospective and not a retrospective effect. They mean that it shall be presumed that the tenancy is to last as long as the landlord’s tenure may endure, but not necessarily that it was in existence when such tenure commenced. The mere fact, therefore, that the tenancy has come into existence since the beginning of the landlord’s tenure does not prevent the application of this section in cases in which owing to the antiquity of a tenancy no satisfactory evidence of its commencement is forthcoming (*Hari v. Tukaram*, P. J. 1893, p. 323).

The saving clause of this section 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. Permanency of tenure is not inconsistent with the absence of fixity in rent. The permanency of the tenancy and the fixity of the rent are distinct, and the latter may be the subject of agreement without touching the former (*Raghu Nath v. Lakshman*, 2 Bom. L. R. 93).

This section determines nature of tenancy.—Where Survey Settlement under Act I of 1865 is introduced, this section, and not section 68, applies in determining the nature of tenancy (*Khandrao v. Baslinga*, P. J. 1889, p. 19).

This section creates no new right ; it simply insists on the Courts adopting a better method of ascertaining whether in fact the right existed (*Nahanchand v. Modi Kekhusru*, 31 Bom. 189).

To claim the benefit of the presumption created by this section 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 to the tenancy (*Vishwanath v. Taty*, 6 Bom L. R. 615).

Presumption as to tenancy.—In order to create the presumption, contemplated in this section, it is not necessary that the tenancy should have existed for a stated number of years, and as it is not possible to lay down any one rule, and each case is to be decided according to the facts found to exist, the presumption can arise “whenever by reason of the antiquity of a tenancy, no satisfactory evidence of its commencement is forthcoming” (*Narayan v. Raghavndracharya*, 2 Bom. L. R. 281).

Effect of determining tenancy on sub-tenants.—A landlord putting an end by proper notice, to the tenancy of his tenant, thereby determines the estate of the under-tenants of the latter (*Timmappa v. Rama*, 21 Bom. 311).

Tenancy from year to year.—Where the plaintiff sued in ejectment, and the defendant set up a right as a permanent tenant, it was 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 v. Vishnath Joshi*, 8 Bom. 228).

Burden of proof of annual tenancy.—The presumption is that a tenant is an annual tenant and the onus is on him to prove that he is something more if he sets up permanent tenancy ; in the absence of any document, he must

prove antiquity of his tenure. If he succeeds, the burden is shifted to the landlord to prove the intended duration by agreement or usage. In the absence of any proof, it is presumed that the tenancy is co-extensive with the tenure of the landlord (*Maneklal v. Bai Amba*, 45 Bom. 350).

**Tenancy forty years old.**—This section does not apply to a tenancy which commenced about forty 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 the tenancy (*Lakshman v. Vithu*, 18 Bom. 22.).

**Tenancy not more than forty years old.**—This section 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 v. Bhaiji*, 16 Bom. 646).

**Tenancy hundred years old.**—Where the origin of the tenancy was not known but it appeared that the tenants had been in possession for nearly a hundred years prior to the suit and throughout this long period there was no demand for enhancement or attempt to eject the tenant, it was held, that under those circumstances the tenant was entitled to the presumption under sub-section (2) of this section and that they were not liable to be ejected (*Mansukh v. Trikambhai*, 31 Bom. L. R. 1279).

**Perpetual tenancy—Burden of Proof.**—The plaintiff's predecessor-in-title acquired the lands in dispute in A. D. 1780. The defendants were in possession as tenants. They proved their possession so far back as 1812. But it did not appear that they were put in possession first in that year. There was no evidence either of the commencement or of the duration of their tenancy. Held, that under this section, the defendant's tenancy should be presumed to be perpetual, and that it lay on the plaintiff to prove the contrary (*Daulata v. Sakharam*, 14 Bom. 392).

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, it was held, that the lease was not a perpetual lease (*Ramabhisahab Patwardhan v. Balaji*, 15 Bom. 701). See also *Gangabai v. Kalapa*, 9 Bom. 419, and *Gangadhar v. Mahadu*, F. J. 1889, p. 321.

**Duration of tenancy.**—Under this section a tenancy cannot be presumed to be co-extensive with the duration of the tenure of the landlord, even though its commencement cannot be traced to a particular year, provided it can be traced back to a definite period, e. g., from 1830 to 1850 (*Narayan v. Pandurany*, 24 Bom. L.R. 831).

**Permanent tenancy, presumption of.**—This section does not apply to a tenancy which, though very old, can be shown to have originated in a specified year (*Chikko v. Shidani*, 24 Bom. L. R. 226).

**Permanent tenant.**—The position of a permanent tenant under this section is not affected in any way by the prohibition contained in the Bhagdari Act against alienation (*Ibid.*).

A permanent tenant who has planted trees on his land has the right of cutting down and making use of them. This principle has found legislative sanction in

s. 108 cl. (A) of the Transfer of Property Act, 1882 (*Sitabai v. Shambhu*, 38 Bom. 716).

Where there is no satisfactory evidence of the commencement of a tenancy it is presumed to be permanent under this section, but the tenant is not a Mirasi tenant. The landlord has the right by usage, agreement or otherwise to enhance the rent in the case of a permanent tenant (*Vyasacharya v. Vishnu*, 44 Bom. 566).

The mere fact that tenancy has commenced subsequently to the commencement of the landlord's tenure does not prevent the application of cl (1) of this section, in cases where, by reason of the antiquity of the tenancy, no satisfactory evidence of its commencement is forthcoming (*Ramchandra v. Anant*, 18 Bom. 433).

Where it is proved that a tenant has been in occupation of certain land for so long that one cannot ascertain the commencement of the tenancy, the mere fact that during the currency of his holding he has signed a kabulyat which purports to be in terms of an agreement for an annual tenancy, may not be sufficient to displace the advantage he has obtained from his long holding, if he continues in possession for many years after he had signed the kabulyat, on the same rent. Each case, however, must stand entirely on its own facts. - First of all, a tenant claiming to hold as a permanent tenant must establish the facts which would entitle him to the presumption of this section. But it can be rebutted by the landlord by the production of a kabulyat. The effect of the kabulyat can, however, be destroyed by further evidence on the part of a tenant. The fact of the signing of the kabulyat is merely an isolated instance in the midst of a long holding at the same rent, will not necessarily prevent the tenant from succeeding (*Vijbhukkandas v. Ishwardas*, 25 Bom. L. R. 431).

The fact that the commencement of a tenancy cannot be determined coupled with the presumption of continuation of the tenancy and coupled also with the fact that a permanent building has been erected on the land as far back as memory can go, raises a strong presumption that the tenancy is permanent (*Rukmini v. Rayaji* 48 Bom. 541).

Under the last paragraph of this section if a tenant proves that he has fixity of tenure he is entitled to fixity of rent, unless the landlord can prove either by agreement, usage or otherwise that he has a right to enhance the rent. When it has been proved that he has such a right, then the question of the extent of the enhancement must be left to the Court as the final arbiter (*Giriappa v. Govindrao*, 27 Bom. L. R. 1381).

In the case of permanent tenants, under this section, the court allowed the ordinary landlord to enhance rent to the extent of three times the assessment. Where a permanent tenant improves the demised land by growing fruit trees, and the assessment on the land is consequently increased, the landlord is entitled to get rent based on the assessment but he cannot claim in addition rent for the fruit trees (*Ganagaram v. Ganesh*, 27 Bom. L. R. 1340).

Where a tenancy is shown to have originated at some time between 1758 and 1857, a presumption can arise, under this section that the tenancy is permanent. The period of a century is too long and indefinite a period to constitute satisfactory evidence of the commencement of a tenancy within the meaning of this section (*Shripadhat v. Rama*, 29 Bom. L. R. 271).

A person who is in possession of watan lands as a tenant of the watanदार cannot acquire a right by adverse possession to fixity of rent. Even if a



permanent tenant can acquire a right of fixity of rent as against the immediate holder of the watan by adverse possession, it will not prevail against next holder (*Vishnu v. Tukaram*, 49 Bom. 526).

The plaintiff was in possession of certain vanta land, for which he paid a fixed quit-rent or salami of Rs. 5 per year. He relied on title deeds the earliest of which was dated 1835 A. D., and described the land as pasaita. His father purchased the land in 1876. In 1885, the defendant landlord tried unsuccessfully in the Mamlatdar's Court to raise the rent. He gave in 1892 a notice to quit which was disregarded by the plaintiff. However, in the years 1895, 1896 and 1898, the plaintiff passed rent-notes for the land in suit as well as for an adjoining plot of land, agreeing to pay Rs. 5 as rent and to give up possession at the end of the cultivating season. These rent-notes were held to have been passed under a misapprehension that they related only to the adjoining land. The plaintiff having sued for a declaration of his right to hold the land permanently at a fixed salami of Rs. 5 a year, it was held (1) that the plaintiff was a permanent tenant at a fixed quit-rent or salami of Rs. 5 a year; (2) that the defendant was not at liberty to enhance the rent in absence of proof that he was entitled to do so by agreement, usage or otherwise. The onus of proving such a right to enhance the rent lies on the landlord unless there are special circumstances to the contrary. The rulings of the Bombay High Court recognizing the usage under which a landlord can enhance the rent of a mirasi tenant have no application to vanta land in Gujarat (*Jeeansingji v. Dola Chhala*, 27 Bom. L. R. 890).

The plaintiffs, who were landlords, gave notice to defendants, who were tenants of agricultural lands, on February 6, 1916, calling upon them to pay enhanced rent or else to quit possession within ten days. The defendants raised the plea that they were permanent tenants and claimed that they were in possession ever since the foundation of the village in 1655 A. D. Their names as tenants appeared in plaintiff's books from 1876, and in the earlier books though their names were not mentioned specifically, yet coupled with other evidence they showed that as far back as 1848 the defendant's ancestors were cultivating the lands. The plaintiffs having sued in ejectment, it was held (1) that under the circumstances the defendants were to be treated as permanent tenants by virtue of the presumption arising under this section; (2) that the notice to quit was bad as contravening the provisions of s. 84 *post*; and (3) that the plaintiffs had failed to make out a case for enhancement of rent (*Amarsingji v. Ranchhod*, 27 Bom. L. R. 267).

**Permanent tenants and tenants-at-will.**—Tenants-at-will do not deprive the Inamdar of his possession but "permanent" or occupancy tenants do. The distinction between "permanent tenants" and "tenants-at-will" is often hard to draw when not written by written leases (18 Bom. 433 and 17 Bom. 475), but the sutidars of Kurla are admitted to be permanent.

**Presumption as to ancient tenancy.**—Where a particular year is indicated as that in which the tenancy began, the case is excluded from those in which a presumption can be drawn under this section (*Ramchandra v. Dattu*, 27 Bom. L. R. 1238).

**Antiquity of tenancy—Presumption of duration.**—It is the tenant, who alleges that he is a permanent tenant, who in the first instance has to prove that, and if he has got no document which gives him a right on the land as

a permanent tenant, the presumption is that he is an annual tenant. But if he can show that he has been on the land so long that the commencement of his tenancy cannot be ascertained, then the presumption under para 2 of this section arises. Even although it is proved that the origin of the tenancy was of a later date than the lessor's tenure, still the presumption would arise provided that the actual date of the origin was not known. Para. 2 of this section has only to do with the point of time at which the tenancy commences. There is not a word in this section with regard to the actual terms of the tenancy. The paragraph has only to do with duration. When the presumption arises, then the Court must hold that the tenancy is co-extensive with the duration of the lessor's tenure. That means that the tenant cannot be turned out as long as the landlord's tenure continues. But there is no presumption as to what the terms of the tenancy are, that is to say, with regard to rent and other matters (*Sidhanath v. Chiko*, 23 Bom. L. R. 533).

**Tenant's liability to pay the cess.**—Under s. 8 of Bom. Act III of 1869 (Local Fund Cess) a lessor, who is in the position of a superior holder, may recover the local fund cess from his lessee (*Ram Tukoji v. Gopal Dhondi*, 17 Bom. 54). See also *Ranga v. Suba Hedge*, 4 Bom. 473.

**Burden of proof.**—It lies on the parties, who wish to rebut the presumption arising from the antiquity of a tenancy, to establish first, that there is no evidence of the period of its intended duration and secondly, that there is no usage of the locality as to the duration of such tenancy. Where a tenant and his ancestors had cultivated the land as far as memory could go and paid the same amount of rent to his landlord and were in possession all along, the mere fact that he executed a rent note for one year in 1882 does not rebut the presumption of the permanency of the tenancy which arose from its antiquity (*Rama Ranchhod v. Sayad Abdul Rahim*, 22 Bom. L. R. 1214).

A tenant, permanent or otherwise of agricultural lands may erect a building, on his holding in order that he may live there himself when he wants to be on the land for cultivation purposes (*Bhau Mahadu Toraskar v. Vithal Dattatraya*, 44 Bom. 609).

**Liability of inamdar to pay the cess.**—An inamdar is a superior holder within the definitions of Reg. XVII of 1827 and Bom. Acts I of 1865 and V of 1879. He is, therefore, the person primarily liable to pay the local fund cess under s. 8 of Bom. 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 v. Balwant*, 17 Bom. 432).

**Right of inamdar to enhance rent.**—Mirasdars in a village cannot always claim to hold at a fixed rent. An inamdar can enhance their rents within the limits of custom (*Vishwanath Bhikaji v. Dhondappa*, 17 Bom. 475).

A grant to an inamdar may be either of the Royal share of revenue or of the soil but ordinarily it is of the former description, and the burden rests on the Inamdar to show that he is an alienee of the soil. Where an Inamdar is an alienee only of the land revenue then his relations towards those who hold land within the area of the inam grant vary according to certain well-recognized conditions. If the holding was created prior to the grant of the Inam, then the Inamdar *as such* can only claim land revenue or assessment; for he has no interest in the soil in respect of which rent would be paid. 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 this section (*Rajya v. Balkrishna*, 29 Bom. 415).

**Resumption of Saranjam by British Government, effect of, on position and rights of the Saranjamdar.—**

A, the Chief of Kagvad, let certain land to the defendant for a term of twelve years by a lease dated 12th June 1857. A died in the same year without male issue, and his saranjam 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 A adopted the plaintiff as his 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 A, 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 A, 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 it was held that no distinction could be drawn between the public and private property of an absolute Chief, which A was. That, in the absence of a contrary intention, the resumption by the British Government of a saranjam or Inam leaves the occupancy rights of the saranjamdar or inamdar untouched; that a saranjamdar or inamdar may acquire occupancy rights during the continuance of the saranjam or 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 rights as landlord (*Ganpatrao Trimbak Patwardhan v. Ganesh Baji Bhat*, 10 Bom. 112).

**Right of landlord to evict on tenant's denying his title.—**

A tenant repudiating the title under which he entered, becomes liable to immediate eviction at the option of the landlord (*Vishnu v. Balaji*, 12 Bom. 352).

**Suit by tenant to recover possession claiming as full owner.**

—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*, 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 claims 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 (*Laku Gagal v. Bai Motan Bibi*, 17 Bom. 631).

**Whether District Judge can give notice to quit.—**

A District Judge cannot, in his judgment, give a notice to a tenant to quit the land which the plaintiff is bound to give to his tenants (*Abu Bakar Saiba v. Venkatramanna*, 18 Bom. 107).

**What constitutes adverse possession.—**

To constitute a title of adverse possession, the possession required to be proved must be adequate in continuity, in publicity and in extent, and it is displaced by evidence of partial possession by the party against whom the title by adverse possession is claimed. To prove ownership of an unclaimed piece of land, acts of ownership in one part may be presumed to be acts of ownership over the whole unless there are circumstances rebutting that presumption (*Vithaldas v. Secretary of State*, 26 Bom. 410).

**Compensation for improvements.—**A tenant is ordinarily not entitled to compensation for improvement or structure on land. He should take it away at the expiry of the term or it becomes landlord's property (*Ramchandra v. Vishnu*, 22 Bom. L. R. 948).

**Grantee of Royal share of revenue or of soil.—**

A grant to an inamdar may be either of the Royal share of revenue, or of the soil; but ordinarily it is of the former description. The burden rests on the Inamdar to show that he is an alienee of the soil (*Rajya v. Balkrishna*, 29 Bom. 415).

**Enhancement of rent—Usage of the locality.—**

In cases where enhancement of rent by an Inamdar is sought to be sanctioned by usage, the test is, whether there has been any and what enhancement according to the usage of the locality in respect of land of the same description held on the same tenure (*Ibid.*).

**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.**

Annual tenancy terminates on the 31st March.

An annual tenancy shall [a] in the absence of any special agreement in writing to the contrary [a] require for its termination a notice given in writing by the landlord to the tenant, or by the tenant to the landlord, at least three months before the end of the year of tenancy at the end of which it is intimated that the tenancy is to

cease. Such notice may be in the form of Schedule E, or to the like effect.

[a-a] These words were inserted by Bom. Act VII of 1914, s. 2.

**The object of this section** is to define the nature of contract of tenancy; but the landlord's right of forfeiture arising from denial of his title is no part of the contract of tenancy, but is a right which the law implies in all cases from the relationship of landlord and tenant. If the Legislature had intended to exclude the right of forfeiture in cases of annual tenancies, there would have been express provision to that effect (*Venkaji v. Lakshman*, 20 Bom. 354).

**Annual tenancy, determination of.**—An annual tenancy to which this Code applies, cannot be determined without a notice in writing by the landlord (or by the tenant) (*Ochhalal v. Gopal*, 32 Bom. 78).

The notice under this section ought to be of 3 months.—One of 17th March 1887 to enhance the assessment for the year 1887-88 is insufficient (*Bahiru v. Vinayak*, P. J. 1892, p. 298).

**Necessity of notice to quit.**—Where, in the case of agricultural land, the tenant entered into an agreement with the landlord that he would pay the amount of the annual rent every year as long as the landlord would keep the wadi (cart) with him, and would give back the same when the landlord would demand it, *Held*, that the contract between the parties took the case out of this section, and that, as the rent would not be payable until the end of the year, the landlord might put an end to the tenancy and demand the land at the end of any year without giving any previous notice of any particular period, but he could not demand immediate possession in the middle of a year (*Balkrishna v. Jasha*, 19 Bom. 160). An adverse possession of a khoti land of an occupancy tenant extinguishes the right of the occupancy tenant to actual possession but not right to relinquish his occupancy right to the khoti who, after due notice under this section, is entitled to eject the person in possession (*Vishnu v. Babla*, 43 Bom. 1001).

**When notice to quit is not necessary.**—Where the tenants agreed by their Kabuliat to give up the land in Kartik and where no subsequent tenancy was created either by agreement or by the acceptance of rent, *held*, that no notice to quit was requisite, that this section did not apply and that the plaintiff was entitled to recover the land immediately after Kartik (*Dattatraya v. Lakshman*, P. J. 1894, p. 218). An annual tenancy, under this section, is determined by the tenant's disclaimer of the landlord's title even where the Transfer of Property Act does not apply; and no notice to quit is necessary to determine the tenancy (*Vidyavardhak Sangh Co. v. Ayyapa*, 49 Bom. 842).

**Notice—Year of cultivation.**—Where a notice determining a tenancy was given in June and recited that the year of cultivation would terminate in October, but the only document that was filed indicated that the year ended in May, it was held that the notice did not terminate the tenancy (*Ichhalal v. Anjibai*, 30 Bom. L. R. 1602).

**Ten days' notice is invalid.**—The words of the particular notice given by the plaintiffs were:—"You are hereby given notice that within ten days from the date of receipt hereof you should pay over to us rent of the last year and you should give in writing a Kabulayat to pay rent for the lands you cultivate, failing which you should hand over to us the lands which you cultivate, and in default steps will be taken against you to take over possession from you or obtain any other remedy according to law." *Held*, that it cannot be implied that the notice to quit was to quit at the termination of the cultivating season and that it did not comply with this section. *Held*, further, that though the form of notice referred to in this section was not imperative, it still indicates the class of notice which the Indian Legislature had in mind, and that notice would be very much what would be required under English law and the notice in the present case was not a valid notice to quit (*Amarsingji Indrasingji v. Ramchhod Jethabhai*, 27 Bom. L. R. 267).

**\*84A.** (1) Whenever from any cause the payment of the whole or any part of the land revenue payable to Government by a superior holder in respect of any land is suspended or remitted, the Collector, acting under the general or special orders of Government, may suspend or remit, as the case may be, the payment to such superior holder of the rent or land revenue of such land by the inferior holder or holders to an amount which—

Order granting suspensions or remissions to inferior holders.

(a) in the case of land in respect of which full assessment is payable to Government, shall not exceed double the amount of the land revenue of which the payment by such superior holder has been suspended or remitted by Government, and

(b) in the case of land in respect of which land revenue less than the full assessment is payable to Government, shall not exceed double the amount which, in the opinion of the Collector, would have been suspended or remitted by Government in favour of the superior holder if the full assessment had been payable to Government in respect of such land.

(2) In the case of land in respect of which no land revenue is payable to Government by a superior holder, whenever from any cause the payment of the whole or any part of the land revenue payable to Government in respect of any other land in the same neighbourhood has been suspended or remitted, the Collector, acting under the general or special orders of Government, may suspend or remit, as the case may be, the payment to such superior 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.

Such order not to be questioned in any Court.

(3) An order passed under sub-section (1) or under sub-section (2) shall not 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.

\* This section was inserted by Bom. Act VII of 1914, s. 3.

(5) No application for assistance under sections 86 and 87 shall be entertained, no suit shall lie, and no decree of a Civil Court shall be executed, for the recovery by a superior holder of any rent or land revenue of which the payment has been remitted, or during the period of suspension of any rent or land revenue of which the payment has been suspended in favour of an inferior holder or holders; but, where the payment of rent or land revenue by an inferior holder or holders has been suspended, the period during which the suspension has continued shall be excluded from the period of limitation prescribed for a suit for the recovery of such rent or land revenue.

(6) Nothing in this section shall make it unlawful for the superior holder to take the crop-share fixed by custom or agreement in respect of any land on which rent is payable in whole or in part in the form of a share of the crop.

(7) Explanation—

In respect of land which has not been assessed under the provisions of Chapter VIII or under any survey settlement confirmed by section 112, the term assessment, for the purposes of this section, includes the rent or land-revenue payable by custom or by the usage of the locality.

(8) Nothing in this section shall apply to any land situated in the Province of Sind.

**Object of this section.**—The object of this section 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 suspension to the superior holder, the latter can recover the whole of the rent or land-revenue at once from the inferior holders. This section will now remedy this defect in the Act (*Statement of Objects and Reasons*).

[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.

(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

[a] This section was substituted by Bom Act I of 1910, 1st Sch., Part II, serial No. 6 for the original section.

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.

**Note.**—This section does not apply to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (see Bom. Act VI of 1888, ss. 1 and 33).

**Suit by superior holders to recover dues from inferior holders.**—This section does not bar the jurisdiction of Civil Courts to try suits by superior holders to recover the arrears of their dues from inferior holders (*Vishwanath v. Kondaji*, 42 Bom. 49).

**Enhancement of rent.**—A grant to an inamdar may be either of the Royal share of Revenue, or of the soil; but ordinarily it is of the former description. The burden rests on the inamdar to show that he is an alienee of the soil. Where an inamdar is an alienee only of the land revenue, then his relations towards those who hold land within the area of the Inam grant, vary according to certain well-recognized conditions. If the holding was created prior to the grant of the Inam, then the inamdar as such can only claim land-revenue or assessment, for he has no interest in the soil, in respect of which rent would be paid. If the holding is later in its origin than the inam grant, the inamdar even if only a grantee of revenue, would be entitled to place tenants in possession of the sheri lands, not by virtue of any interest in the soil, but as being entitled to make the most he can out of them by way of revenue. The difference between the two classes of holdings is obvious; in the last, direct contractual relations would be established between the inamdar and the holder. If these contractual relations are defined by an express contract of which there is evidence, then the rights of the parties must be determined by that contract. If no such contract can be proved, then the Court must have recourse to the criteria prescribed by law for determining their rights (*Rajya v. Balkrishna*, 29 Bom. 415).

**Usage of locality—Tests.**—In cases where enhancement of rent by an Inamdar is sought to be sanctioned by usage, the test is, whether there has been any and what enhancement according to the usage of the locality in respect of land of the same description held on the same tenure (*Ibid.*)

**Talati appointed to be Kulkarni not a hereditary village accountant.**—A talati appointed to be a Kulkarni of a commuted inam village is not a hereditary village accountant for the purposes of this section (G. R. No. 6560, dated 10-1-1923, quoted in Joglekar's supplement No. 2, p. 10).



86. Superior holders shall, upon written application to the Collector, be entitled to assistance, by the use of precautionary and other measures, for the recovery of rent or land-revenue payable to them by inferior holders, or by co-sharers in their holdings under the same rules, except that contained in section 137, and in the same manner as prescribed in Chapter XI [a] for the realization of land-revenue by Government :

Superior holders entitled to assistance in recovery of dues from inferior holders, &c.

But application must be made within the revenue year or within the year of tenancy.

Provided that such application be made within the revenue year or within the year of tenancy in which the said rent or land-revenue became payable.

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

Applications may be sent by post.—An application by a superior holder for assistance for the recovery of rent under this section is not liable to rejection if sent by post (G B No. 8027, dated 12th November 1890, quoted in Sathé's Land Revenue Code, 4th ed., p. 102).

Suit to recover enhanced rent.—Secs. 86 and 87 do not make it compulsory on the inamdar, or his assignee, to ask for the assistance of the Collector to recover enhanced rent from the tenants. If the inamdar, or his assignee, had made a demand on the tenants for the enhanced rent through the hereditary patel, or village accountant, as required by s. 85, and they had refused, he would have at once become entitled to his ordinary civil remedy (*Govindrao v. Balu*, 16 Bom 586).

Inamdar's remedy for arrears of rent.—Inamdars can only obtain a money decree for arrears of assessment in the Civil Court. Relief by forfeiture and sale of the tenants' lands must be had, if at all, through the Collector under this section (*Ratanji v. Sakharam*, F. J. 1884, p. 68).

Suit by Inamdar for arrears of assessment.—In a suit by an Inamdar for arrears of assessment from khatedars, there is no necessity to produce a certificate under s. 4 of the Pensions Act (XXIII of 1891). He is not entitled to charge on the lands of, but only to a money decree against, the occupants; hence, no personal decree can be passed against an occupant in respect of assessment for the years previous to his coming on the holding (*Vinayak v. Lakshman*, 28 Bom. 92).

Suit for declaration of rights—Injunction.—Where the Revenue authorities proceed under this section to assist a superior holder to recover his dues from an inferior holder and the latter, having exhausted his rights of appeal under this Code files a suit for declaration of his right, the Court in which the suit is pending shall not grant an injunction to restrain the procedure under this section (*Karimdin v. Ali Akbar*, 2 S. D. 572).

Municipality deemed to be a superior holder.—A Municipality is deemed to be a superior holder within the meaning of this and the following section (*Vide* s. 166 of the Bom. District Municipal Act (III of 1901) *post*).

[a] 87. (1) On application being made under section 86 to the Collector, he shall cause a written notice thereof to be served on the inferior holder or co-sharer fixing a day for inquiry into the case.

The Collector how to proceed on such application being made.

[a] (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.

[a] (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...[b] or any survey settlement confirmed by section 112, grant assistance to the extent only for the assessment so fixed upon the said land.

Assistance may be refused or granted to a limited extent only.

[a] (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] These sub-sections were originally paragraphs of section 87. They were numbered as sub-sections by Bom. Act IV of 1913, s. 39.

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

[c] This sub-section was added by Bom. Act IV of 1913, s. 39.

**Mamlatdar's order does not bar Civil suit.**—A mamlatdar's order under this section does not preclude the parties from having recourse to the Civil Court, if dissatisfied with it (*Ganesh v. Mehta*, 8 Bom. 188).

**Collector's power to refuse assistance.**—Paragraph 1 of this section leaves the Collector no discretion as to withholding assistance for the recovery of rent or land revenue which after a summary enquiry he finds to be lawfully due. The truth is that in these enquiries under this section 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 should he do so, the 4th paragraph of this section 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 thus be frustrated. Even when the question at issue is of a complicated or difficult nature, cl. 2 of this section assumes that there can be no such question about the survey assessment (G. Rs. Nos. 8402, dated 25th October 1884, and 1339, dated 14th February 1885).

The power given to the Collector, in the 3rd paragraph of this section, of refusing assistance to a superior holder for the recovery of dues from his inferior holders when the question at issue between the parties 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 the duty of the appellate authority to see that the subordinate exercises a sound discretion (G. R. No. 168, dated 8th January 1884).

**Suit for arrears of assessment.**—An Inamdar suing for arrears of assessment is not entitled to a charge on the lands of, but only to a money decree against, the occupants; hence no personal decree can be passed against an occupant in respect of assessment for the years previous to his coming on the holding (*Vinayak v. Lazman*, 28 Bom. 92).

**Rates of bhatta to witnesses.**—The rates of bhatta to witnesses as fixed by the High Court from time to time are applicable in the case of enquiries made under the provisions of this Code, and the orders regarding bhatta issued in G. R. No. 2880, dated 20th March 1888, are not binding (G. O. No. 3610, dated 28. 2-1920 quoted in Joglekar's Supplement No. 2, p. 20).

**Appointment of temporary clerks for assistance suits.**—Collectors can appoint temporary clerks for assistance suits when required, with the approval of Government, subject to the condition that the expenditure thereof is recovered from the process fees (G. R. No. 2515/24, dated 29-1-1925 quoted in Joglekar's Supplement No. 2).

**Lawyers.**—Government officers may allow representation by Lawyers, whenever such a course is likely to be helpful, in appeals under the

- (1) Land Revenue Code,
- (2) The Income Tax Act,
- (3) The Watan Act and other similar matters (*B. G. G., 1920, Pt. V, p. 23*).

**88.** It shall be lawful for the [a] 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):

(a) to demand security for the payment of the land-revenue or rent due to him, and if the same be not furnished, to take such precautions as the Collector is authorised to take under sections 141 to 145;

(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;

Commissioner may, by commission, confer certain powers on holders of alienated lands.

(e) to receive notices of relinquishment under section 74, and to determine the date up to which such notices shall be received as in that section provided;

(f) to take measures for the maintenance and repair of boundary-marks in the manner provided for survey officers in section 122:

Provided that the powers contemplated in clauses (c) to (f) shall be conferred only on holders of lands to which a survey settlement has been extended under the provisions of section 216.

[a] This word was substituted for the original words "Governor in Council" by Bom. Act IV of 1913, s. 40 (1).

**Note.**—This section is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Ganjar Talukdars' Act, 1888 extends (Bom. Act VI of 1888, ss. 1 and 33).

**Conferring of powers on Inamdar.**—There is no objection to the powers contemplated in cls (a) and (b) of this section being conferred upon an Inamdar at once, but none of the powers mentioned in cla. (c) to (f) can be conferred until a survey settlement has been extended to his village under s. 216 of the Code (*vide* the proviso to this section).

The grant of a commission under this section to a sharakatdar is not necessary, when he is a mere rent-charge holder (G. O. No 76, dated 10-1-21 quoted in Joglekar's Supplement No. 2).

89. Every such commission shall be in the form of Schedule F, and shall be liable to be withdrawn at the pleasure of [a] the Commissioner [a]; and a commission may, if the [b] Commissioner see fit be issued to one or more agents of a holder of alienated lands as well as to the holder in person.

**Note.**—*Vide* the first note under the preceding section.

[a-a] These words were substituted for the original word "Government" by Bom Act IV of 1913, s. 40 (2).

[b] This word was substituted for the original words "Governor in Council" by Bom Act IV of 1913, s. 40 (2).

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.

When compulsory process shall cease.

91. All compulsory process shall cease :

on the defaulter's paying or tendering the amount demanded of him under protest, or

on his furnishing either to the holder of the commission or his agent or agents, or to the Collector, satisfactory security in the form of Schedule D, or to similar effect.

And any holder of any such commission as aforesaid, by himself or his agents, proceeding with any compulsory process after payment made, or tendered as aforesaid, or after the furnishing of such security as aforesaid or after tender thereof, shall be liable on conviction in a summary inquiry before the Collector, to a penalty not exceeding three times the amount of the revenue sought to be recovered by such compulsory process.

Penalty for continuing compulsory process.

92. The power conferred by any such commission shall extend to the enforcement of the payment of the revenue or rent of the current year and of the year next immediately preceding, but not to that of former years.

Power under commission to extend to current and previous year's arrears.

93. The holder of any such commission shall not enforce a demand for revenue or rent in excess of what any inferior holder has paid, previously to the date of such demand, or of what he may have contracted in writing to pay. In the event of a dispute the Collector shall hold a summary inquiry and decide what is just, and the holder of a commission shall not enforce a demand for more than what is so decided to be just.

Holder of commission not to enforce any unusual or excessive demand.

The person against whom any demand shall have been enforced in excess of the amount of which payment is lawfully enforceable shall be entitled to recover, on conviction of the holder of the commission in a summary inquiry before the Collector, three times the amount of any such excessive demand by way of damages, and the sum so due by the holder of the commission shall be leviable from him as an arrear of land revenue.

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.

But holder of commission may establish his right to enhanced rent in Civil Court

(e) to receive notices of relinquishment under section 74, and to determine the date up to which such notices shall be received as in that section provided;

(f) to take measures for the maintenance and repair of boundary-marks in the manner provided for survey officers in section 122:

Provided that the powers contemplated in clauses (c) to (f) shall be conferred only on holders of lands to which a survey settlement has been extended under the provisions of section 216.

[a] This word was substituted for the original words "Governor in Council" by Bom. Act IV of 1913, s. 40 (1).

**Note.**—This section is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888 extends (Bom. Act VI of 1888, ss. 1 and 33).

**Conferring of powers on Inamdar.**—There is no objection to the powers contemplated in cls (a) and (b) of this section being conferred upon an Inamdar at once, but none of the powers mentioned in cls. (c) to (f) can be conferred until a survey settlement has been extended to his village under s. 216 of the Code (*vide* the proviso to this section).

The grant of a commission under this section to a sharakatdar is not necessary, when he is a mere rent-charge holder (G. O. No 76, dated 10-1-21 quoted in Joglekar's Supplement No. 2).

**89.** Every such commission shall be in the form of Schedule F, and shall be liable to be withdrawn at the pleasure of [a] the Commissioner [a]; and a commission may, if the [b] Commissioner see fit be issued to one or more agents of a holder of alienated lands as well as to the holder in person.

Form of such commission.

**Note.**—*Vids* the first note under the preceding section.

[a-a] These words were substituted for the original word "Government" by Bom Act IV of 1913, s. 40 (2).

[b] This word was substituted for the original words "Governor in Council" by Bom Act IV of 1913, s. 40 (2).

**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.

Reference must be made by holder of commission to the Collector in certain cases.

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.

When compulsory process shall cease.

91. All compulsory process shall cease :

on the defaulter's paying or tendering the amount demanded of him under protest, or

on his furnishing either to the holder of the commission or his agent or agents, or to the Collector, satisfactory security in the form of Schedule D, or to similar effect.

And any holder of any such commission as aforesaid, by himself or his agents, proceeding with any compulsory process after payment made, or tendered as aforesaid, or after the furnishing of such security as aforesaid or after tender thereof, shall be liable on conviction in a summary inquiry before the Collector, to a penalty not exceeding three times the amount of the revenue sought to be recovered by such compulsory process.

Power under commission to extend to current and previous year's arrears.

92. The power conferred by any such commission shall extend to the enforcement of the payment of the revenue or rent of the current year and of the year next immediately preceding, but not to that of former years.

Holder of commission not to enforce any unusual or excessive demand.

93. The holder of any such commission shall not enforce a demand for revenue or rent in excess of what any inferior holder has paid, previously to the date of such demand, or of what he may have contracted in writing to pay. In the event of a dispute the Collector shall hold a summary inquiry and decide what is just, and the holder of a commission shall not enforce a demand for more than what is so decided to be just.

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.

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.

But holder of commission may establish his right to enhanced rent in Civil Court

**Note.**—This section is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss. 1 and 33).

[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.

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[a] This section was inserted by Bom. Act IV of 1913, s 41.



## CHAPTER VIII.

OF SURVEYS, ASSESSMENTS AND SETTLEMENTS OF LAND REVENUE [a].

[a] This title was substituted for the original title by Bom. Act IV of 1913, s. 42.

**Note.**—The provisions of this Chapter do not apply to the maintenance of the Record of Right (*Raghavendra v. Secretary of State*, 28 Bom L R 559)

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.

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 measurement or classification of the lands to which the survey extends by furnishing flag-holders; and in the event of a necessity for employing hired labour for this or other similar object, incidental to survey operations, it shall be lawful to assess the cost thereof, with all contingent expenses on the lands surveyed, for collection as a revenue demand.

Assistance to be given by holders and others in the measurement or classification of lands.

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 Mamlatdar's office in each taluka, and shall be open to the inspection of the public at reasonable times.

Survey numbers not to be of less than a certain extent.

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] and records [a] shall be deemed to have been authorizedly made whatever be its extent.

[a-a] These words were substituted for the original words "survey records" by Bom. Act IV of 1913, s. 43.

99. Repealed by Bom. Act IV of 1913, s. 44.

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.

Officer in charge of a survey to fix assessments.

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.

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. Act IV of 1913, s. 45, are omitted.

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 or irrigation in respect of which no rate is levied [a] under

The assessment so made may be on land or on means of irrigation, &c.

[a] "levied" was substituted for "leviable" by Bom. Act VII of 1879, s. 2.

section 55 [a] or under the Bombay Irrigation Act, 1879 [a], or in any other manner whatsoever that may be sanctioned by Government.

[a-a] These words were inserted by Bom. Act VII of 1879, s. 2.

Assessment so made not leviable without the sanction of Government But may be fixed, with or without modification, by the Governor in Council for a term of years.

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 not exceeding thirty in the case of lands used for the purposes of agriculture alone, and not exceeding ninety-nine in the case of all other lands.

**Note**—This section empowers the Governor-in-Council to fix the assessment for a term of years not exceeding thirty in the case of lands used for the purposes of agriculture alone, and not exceeding thirty-nine in the case of all other lands. When the amount of the assessment is thus fixed under a settlement for a number of years, the occupant can hold the land at the fixed assessment till the expiry of the period.

[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. Act IV of 1913, s. 46, for the original section.

**Note**.—This section is subject to modification when applied to any village in the districts of Ratnagiri and Kolaba to which the Khoti Settlement Act, 1880, extends (*Vide* Bom. Act I of 1880, ss. 1 and 39).

**Conditions for starting resettlement**.—Two conditions are laid down under this section to validate the introduction of a survey settlement, first the sanction under s. 102 and second, the notice in accordance with the rules made by the Governor in Council. The departmental orders such as the one requiring fresh notice when the Government raises the rates proposed by the settlement Officer have not the force of legislative enactment and their non-observance does not invalidate the survey settlement. Government by its departmental rules may make changes as to the collection of the revenue but the Government resolutions which are not consistent with the Code have not the force of law (*Empress v. Morashwar Jamar-das*, 30 Bom. L. R. 1255).

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

Excess assessment not to be levied in the year in which a Survey Settlement is introduced;

the former shall be remitted, and the revised assessment shall be levied only from the next following year.

In the year next following that in which any [a] original or [a] revised survey settlement has been introduced, any occupant who may be dissatisfied with the increased rate imposed by such new assessment on any of the survey numbers [b] or sub-divisions of survey numbers [b] held by him shall on resigning such number [b] or sub-division [b] in the manner prescribed by [c] section 74 [c] on or before the 31st March, receive a remission of the increase so imposed.

[a-a] These words were inserted by Act XVI of 1895.

[b-b] These words were inserted by Bom. Act IV of 1913, s. 47.

[c-c] These words and figures were substituted for the original words and figures "sections 74 and 76" by Bom. Act IV of 1913, s. 47.

**Note.**—The second para. of this section does not apply to any village in the districts of Ratnagiri and Kolaba to which the Khoti Settlement Act extends (Bom. Act I of 1880, ss. 1 and 39).

**Occupant.**—The term 'occupant' is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars', Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss. 1 and 38).

**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] or of the Bombay Irrigation Act, 1879. [a]

[a-a] These words were added by Bom. Act VII of 1879, s. 2.

**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

[a] This proviso was substituted for the original clause by Bom. Act IV of 1886, s. 1.

as final, no such classification shall be again made with a view to the revision of the assessment of such area.

**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. No. 7494, dated 12th October 1897, quoted in Sathé's Land-Revenue Code, 4th Ed., p. 198).

[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 :

Conditions applicable to revisions of assessment.

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. Act IV of 1886, s. 2.

[b] Bom. Act I of 1865 (except sections 37 and 38) is repealed by section 2 of this Act which has been repealed by Bom. Act IV of 1913, s. 5.

**"Value of land."**—The term "value of land" does not refer to the intrinsic richness or quality of land. The vernacular equivalent of "value" is not "magdur" but "kimmatt," i. e., price (Joglekar's Supplement No. 2 to his Land Revenue Code, p. 34).

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. Act IV of 1913, s. 48.

**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, quoted in Sathé's Land-Revenue Code, 4th ed., p. 204).

**Entry in the Survey Settlement Officer's record, finality of.**—The Settlement Officer's record fixing the amount of rent payable to a Khot in respect of lands in the Khoti village, though prepared in the form of statement published at p. 384 of the "General Rules of the Revenue Department" (ed. of 1893)

and labelled "botkhat," cannot be treated as a Survey Register under this section (*Vaidkhan v. Sakhya*, 20 Bom. 729).

The decision of a survey officer determining the tenure on which a survey number is held is not final under the Khoti Act (Bom Act I of 1880) and it can be reversed or modified by a competent Court (*Antaji v. Antaji*, 21 Bom. 480).

109, 110. *Repealed by Bom. Act IV of 1913, s. 49.*

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 [a] to grant unoccupied lands on lease [a] 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-a] These words were substituted for the original words "to sell the occupancy of unoccupied lands by auction" by Bom. Act IV of 1913, s. 50.

Note.—This section is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss. 1 and 35).

**Powers of Talukdari Settlement Officer.**—A Government officer in the temporary management of a talukdar's estate has, under s. 33 of the Gujarat Talukdars' Act, the same powers which the Collector has in an alienated village, to recover arrears of revenue inclusive of rent (*Jinabhai v. The Collector*, 28 Bom. L. R. 477).

112. Existing survey settlements of land-revenue made, approved and confirmed under the authority of the Governor in Council shall be, and are hereby declared to be in force subject to the provisions of this Act.

[a] 113. Expenses properly incurred in 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. Act IV of 1913, s. 51, for the original section.

Note.—*Vide* the first note under s. 111 *supra*.

**Scale of Bhatta (Allowance).**—The scale, according to which daily allowance is to be allowed to persons entrusted with the partition, actually on tour, is as follows :—

	Rs. A. P.
(a) A Government servant of the <i>first</i> grade ...	7 8 0
(b) A Government servant of the <i>second</i> grade on pay—	
(i) Up to Rs 250 ...	2 8 0
(ii) Above Rs 250 up to Rs 300 ...	3 0 0
(iii) Above Rs 300 up to Rs 350 ...	3 8 0
(iv) Above Rs 350 up to Rs 400 ...	4 0 0
(v) Above Rs 400 up to Rs 450 ...	4 8 0
(vi) Above Rs 450 up to Rs 749 ...	5 0 0
(c) A Government servant of the <i>third</i> grade on pay—	
(i) Up to Rs 50 ...	0 8 0
(ii) Above Rs 50 up to Rs 75 ...	0 12 0
(iii) Above Rs 75 up to Rs 100 ...	1 0 0
(iv) Above Rs 100 up to Rs 125 ...	1 4 0
(v) Above Rs 125 up to Rs 150 ...	1 8 0
(vi) Above Rs 150 up to Rs 175 ...	1 12 0
(vii) Above Rs 175 up to Rs 199 ...	2 0 0
(d) A Government servant of the <i>fourth</i> grade ...	0 8 0

(Bombay Civil Service Rules Manual, 1929, pp. 108-109).

**Decree for partition not properly executed.**—If a portion of the decree is not properly executed by the Collector, the readjustment of the orders can be ordered (*Ramchandra v. Krishnaji*, 40 Bom. 118).

**Civil Court cannot reopen partition.**—When the Collector, acting under s. 54 of the Civil Procedure Code, 1908, once effects a partition, it is not competent to the Civil Court to entertain any application seeking to reopen the partition (*Bhimangaevda v. Hanmant*, 20 Bom. L. R. 411, s. a. 42 Bom. 689).

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 :

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

[a-a] These words are repealed in the districts of Ahmedabad, Kaira, Broach and the Panch Mahals by Bom. Act VI of 1888, s. 3.

[b] Words repealed by Bom. Act IV of 1913, s. 52, are omitted.

(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 [a] as a revenue demand [a] from all the co-sharers in the estate divided.

[a-a] These words were substituted for the original words "under rule (3) of the last preceding section" by Bom. Act IV of 1913, s. 52.

115. *Repealed by Bom. Act IV of 1913, s. 53.*

[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. Act IV of 1913, s. 54, for the original section.

**Note.**—This section does not apply to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss. 1 and 33).

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. Act 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.

(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. Act IV of 1913, s. 56.



[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:

Provisions applicable on relinquishment or forfeiture of a sub-division.

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. Act IV of 1913, s. 76.

**Occupant.**—The term 'occupant' is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach and Ganesh Mahals to which the Gujarat Talukdars' Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss. 1 and 83).

## CHAPTER IX

### THE SETTLEMENT OF BOUNDARIES AND THE CONSTRUCTION AND MAINTENANCE OF BOUNDARY-MARKS

118. The boundaries of villages situated in British territory shall be fixed, and all disputes relating thereto shall be determined by survey officers, or by such other officers as may be nominated by Government for the purpose, who shall be guided by the following rules:—

*Rule 1.*—When the patels and other village officers of any two or more adjoining villages, and, 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

Village boundaries may be settled by agreement.

Determination of village-boundaries.

to the said officer that the agreement has been obtained by fraud, intimidation, or any other illegal means.

*Rule 2.*—If the patels and other village officers, and, 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.

*Note.*—This section is subject to modification when applied to any village in the districts of Ratnagiri and Kolaba to which the Khoti Settlement Act extends (*Vide Bom. Act I of 1880, ss. 1 and 39*).

The jurisdiction of a Civil Court is not ousted by s. 4 (g) of Act X of 1876, in case of a dispute as to the position of the boundary line between two survey numbers as laid down by the survey authorities, the defendant alleging that the boundary marks were changed, the plaintiffs alleging that they are in their right direction (*Bala v Nana, P. J. 1898, p. 41*)

**Court has no power to fix boundaries.**—When the assistance of the Court is sought for the purpose of ascertaining the boundaries, which the plaintiff himself is unable to point out by reason of some confusion in them, and to recover possession, when those boundaries have been ascertained by the Court, it was *held*, that the Court has no power to fix the boundaries of legal estates, unless some equity is superinduced by the act of the parties as some particular circumstance of fraud or confusion (*Kavasji v. Hormusji, 29 Bom. 73*).

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 the 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 [a] land records [a] 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.

[a-a] These words were substituted for the original words "Village records" by Bom. Act IV of 1913, s. 57.

If any dispute arise concerning the boundary of a field or holding which has not been surveyed, or if at any time [a] after the completion of a survey [a] a dispute arise concerning the boundary of any survey number, [b] or sub-division of a survey number [b] it shall be determined by the Collector, who shall be guided [c] by the land records [c] 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-a] These words were substituted for the original words "after the survey records have been handed over to the Collector" by Bom. Act IV of 1913, s. 57.

[b b] These words were inserted by Bom. Act IV of 1913, s. 57.

[c-c] These words were substituted for the original words "in the case of survey numbers by the survey records" by Bom. Act IV of 1913, s. 57.

Notes—*Vide* the first note under the preceding section.

Sections 119, 120 and 121 of the Code are primarily meant for the purposes of the Survey Settlement of the boundary marks as between the Government on the one hand and the occupancy tenants on the other (*Kanhailal v. Ismail-bhat*, 28 Bom. L. R. 1498).

What is 'dispute'—The word 'dispute' in the second part of this section means a dispute between two neighbouring owners and not a dispute between the Collector and the owner. Where a dispute arose between the plaintiff and the Collector as to whether the former had cut the trees from the Government land in front of his land and in the course of that dispute the Collector *suo motu* went into the question of boundary between the land of the plaintiff and that of his neighbour and later on ordered the correction of the revenue records on the basis of the enquiry, and the plaintiff subsequently sued for the declaration of his title to certain strip of land which he had been ordered to give up by the Collector, it was held that there was no such dispute as is necessary for the application of this section and that the question of the plaintiff's title to the land could be gone into in the later suit (*Malkarjunappa v. Anandraso*, 53 Bom. 766).

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:

When award may be remitted for reconsideration.

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 consideration 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].

[a-a] These words were substituted for the original words "section 520 of the Code of Civil Procedure" by Bom. Act IV of 1913, s. 58.

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.

Para. 14 of the 2nd Schedule to the Code of Civil Procedure.—The Court may remit the award or any matter referred to arbitration to the re-consideration of the same arbitrator or umpire, upon such terms as it thinks fit :—

- (a) when 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] This section was numbered sub-section (1) of this section by Bom. Act IV of 1913, s. 59.

[b] This sub-section was added by Bom. Act IV of 1913, s. 59.

“Determinative.”—When there is a settlement of boundaries under s. 119, the word ‘determinative’ in this section means conclusive as to the legal rights of the adjoining holders (*Lakshman v. Narayan*, P. J. 1890, p. 11).

**Settlement of boundary dispute by Collector.**—

This section must be read along with sections 119 and 120 of this Code. It is only when a boundary dispute arises between the owners of adjoining lands, and the Collector is called upon to determine the dispute, that his determination becomes final under this section so as to oust the jurisdiction of the Civil Court (*Lakshman v. Antaji*, 25 Bom. 312).

**Decisions of revenue officers as to boundaries are final.**—

In 1887 a dispute arose between plaintiffs and defendant as to boundaries of certain land, being survey Nos. 86 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 plaintiffs' claim, holding that the decision by the revenue officer was conclusive as to the boundary. The defendant applied, and the lower Appellate Court reversed the lower Court's decree. On appeal by the plaintiffs to the High Court, *held*, that under the provisions of this section the decision of the Collector as to boundaries was conclusive and that the plaintiffs were entitled to possession (*Bai v. Valji*, 10 Bom. 456).

**Jurisdiction of Civil Court.**—This section presents no bar to the cognizance of a suit by a Civil Court, to reconsider an order passed by a Survey Officer as to the site of some of the lands which does not involve any question of boundary line between two villages (*Narsangji v. Bai Ahrat*, 28 Bom. L. R. 1264). The Civil Court has jurisdiction to entertain a suit for settlement of boundaries of fields, where subsequent to the filing of the suit the boundaries have been determined by revenue officers (*Kanhailal v. Ismailbhai*, 28 Bom. L. R. 1498).

The settlement of a boundary by the Collector under this section does no more than establish where the boundary line lies, and the owners of the respective survey numbers are *prima facie* entitled to their property according to the boundary lines. But the Collector's decision does not prevent one of the disputing parties from filing a suit in the Civil Court on the ground that he has acquired a portion of his neighbour's survey number by adverse possession (*Bhaga Motiji v. Dorabji Sorabji*, 48 Bom. 67).

**Boundaries fixed by the Collector.**—The fixing of boundaries, by the Collector, of survey numbers under this section, has the same effect merely of showing what lauds belong to the persons in whose names the survey numbers are registered. It does not affect the right of any one of those persons to show in a Civil Court that he has acquired a title by adverse possession against a registered occupant (*Afanaik v. Narayan*, 22 Bom. L. R. 114, foot-note).

**Settlement of boundary.**—It is the duty of the enquiry officer, under this section, to settle the boundary between the lands of adjoining house owners, which can ordinarily be by means of a line drawn on a plan, and that line, according to the provisions of this section, is determinative of the rights of the land-holders on either side of the boundary so fixed. But it is not determinative of any rights which the holder of one number can claim to exercise over the land belonging to the holder of the adjoining number. This section does not give jurisdiction to the enquiry officer to decide, *e g.*, that a broad strip of land lying between two numbers is common to both the adjoining owners. This section applies to agricultural lands as also to the survey of land in a town (*Ganesh v. Ramchandra*, 23 Bom. L. R. 1209).

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]

[a-a] The words were substituted for the original words by Bom. Act VI of 1901, s. 14 (1).

[b-b] These words were inserted by Bom. Act IV of 1913, s. 60 (a).

whether cultivated or uncultivated, and to assess all charges incurred thereby on the holders or others having an interest therein.

Such officer may require landholders to construct, [a] lay out, maintain [a] or repair their boundary-marks, by a notification which shall be posted in the chavdi or other public place in the village, to which the lands under survey belong, directing the holders of survey numbers [b] or sub-divisions [b], to construct, [a] lay out, maintain [a] or repair, within a specified time, the boundary-marks of their respective survey numbers [b] or sub-divisions [b] and on their failure to comply with the requisition so made, the survey officer shall then construct [a], lay out [a] 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 [b] or sub-divisions [b] within the limits of the lands to which the survey extends.

[a-a] These words were inserted by Bom. Act VI of 1901, s. 14 (2).

[b-b] These words were inserted by Bom. Act IV of 1913, section 60 (a).

[a] 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 [b] made in this behalf under section 214, be determined by the Superintendent of Survey, according to the requirements of soil and climate.

[a] This paragraph was substituted for the original paragraph by Bom. Act VI of 1901, s. 14 (3).

[b] Words repealed by Bom. Act IV of 1913, s. 60 (b) are omitted.

**Note.**—Unless unploughed boundary strips are declared as boundary-marks by the Survey Officer or the Collector, the landholders will not be responsible to maintain or keep such marks in good repair (G. R. No. L. O. 1831, dated 11-9-1925 quoted in Joglekar's Supplement No. 2 to his Land Revenue Code, p. 26).

123. Every landholder shall be responsible for the maintenance and good repair of the boundary-marks of his holding, and for any charges reasonably incurred on account of the same by the revenue officers in cases of alteration, removal, or disrepair. It shall be the duty of the village officers and servants to prevent the destruction or unauthorized alteration of the village boundary-marks.

**Notes.**—This section is subject to modification when applied to any village in the Districts of Batnagiri and Kolaba to which they Khoti Settlement Act extends (Vide Bom. Act I of 1880, ss. 1 and 39).

The charges shall be levied under the provisions of this Code relating to realization of land-revenue (See s. 187 *post*).

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.

[a] These words were inserted by Bom. Act VI of 1901, s. 15.

125. Any person convicted after a summary inquiry before the Collector, or before a survey officer, Mamlatdar, or Mahalkari, of wilfully erasing, removing or injuring a boundary-mark, shall be liable to a fine not exceeding fifty rupees for each mark so erased, removed or injured.

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.

**Boundaries and boundary-marks—Jurisdiction.**—Boundaries and boundary-marks are dealt with in Chap. IX, and penalties, for injuring boundary-marks, are specially provided by this section, which gives no jurisdiction to Magistrates (*Trappa*, 13 Bom. 291).

## 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 landholders.

**"Site."**—The expression "site" occurring in this section means "*gaathan*" and not the total periphery of all the village land (G. O. No. 1684, dated 27th June 1921, quoted in Joglekar's supplement No. 2, to his Land Revenue Code, p. 26).

127. Act XI of 1852 and Bombay Acts II and VII of 1863, shall be deemed to be applicable, and to have always been applicable, in the territories to which they respectively extend, to all lands within the limits of the site of any town or city in which an inquiry into titles has been made under the provisions of Bombay Act IV

Limits of sites of villages, towns and cities how to be fixed.

Act XI of 1852 and Bombay Acts II and VII of 1863 how far applicable to lands in such sites.

of 1868 [a] 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] Bom. Act IV of 1868 is repealed by section 2 of this Act, which has been repealed by Bom. Act IV of 1913, s. 5.

**Notes.**—Secs 127 to 136 (both inclusive) do not apply to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act extends (see Bom Act VI of 1888, ss 1 and 33).

Act XI of 1852 goes by the name of Titles to Rent-Free Lands Act. Bombay Act No. II of 1863, by the name of Exemptions from land-revenue in territories subject to Act XI of 1852 and Bom. Act VII of 1863, Exemptions from land-revenue in territories not subject to Act XI of 1852.

[a] 128. The existing exemption from payment of land-revenue of lands other than lands which have hitherto been ordinarily used for purposes of agriculture only, situate within the sites of towns and cities in which Bombay Act IV 1868 has been in operation, [b] shall be continued;

*1st.*—if such lands are situated in any town or city where there has been in former years a survey which Government recognize for the purpose of this section, and are shown in the maps or other records of such survey as being held wholly or partially exempt from the payment of land-revenue;

*2nd.*—if such lands have been held wholly or partially exempt from the payment of land revenue for a period of not less than five years before the application of Bombay Act I of 1865, [c] or IV of 1868 [b] 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 3 of foot-note [a] on p. 1, *supra*.

[b] Bom. Act IV of 1868 is repealed by section 2 of this Act, which has been repealed by Bom. Act IV of 1913, s. 5.

[c] Bom. Act I of 1865 (except sections 37 and 38) is repealed by s. 2 of this Act, which has been repealed by Bom. Act IV of 1913, s. 5.



[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. [c].

[a] As to the local repeal of sections 129 to 131, see para. 3 of foot-note [a] on p. 1, *supra*.

[b] This sub-section was added by Bom. Act XI of 1912, s. 2, which also enacted that the original section 129 should be numbered sub-section (1) of section 129.

[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 unauthorizedly occupied for a period commencing less than two years before Bombay Act I of 1865 [b] or IV of 1863 [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] As to the local repeal of sections 129 to 131, see para. 3 of foot-note [a] on p. 1, *supra*.

[b] Bom. Act I of 1865 (except sections 37 and 38) is repealed by s. 2 of this Act which has been repealed by Bom. Act IV of 1913, s. 5.

[c] Bom. Act IV of 1868 is repealed by section 2 of this Act which has been repealed by Bom. Act IV of 1913, s. 5.

[d-d] These words were substituted for the original words "the price of the occupancy of the said lands" by Bom. Act IV of 1913, s. 61.

[e] This word was substituted for the original words "occupancy price" by Bom. Act IV of 1913, s. 61.

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 opera-

Survey of lands in such sites how to be conducted.

tions shall be regulated, according to the provisions of Chapters VIII and IX of this Act: Provided that nothing contained in sections 96, 97, 101, [a] 104, or 118 thereof

shall be considered applicable to any such survey in any town or city containing more than two thousand inhabitants.

[a] Figure repealed by Bom. Act IV of 1913, s. 62, is omitted.

[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]

In certain cases a survey-fee to be charged.

[a] As to the local repeal of section 132, see para. 3 of foot-note [a] on p. 1, *supra*.

[b-b] These words were substituted for the original words "rupees five for such survey number" by Bom. Act IV of 1913, s. 63 (a).

[c] The third paragraph of section 132 repealed by Bom. Act IV of 1913, s. 63 (b), is omitted.

[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]

Sanad to be granted without extra charge.

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.

Proviso.

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. 3 of foot-note [a] on p. 1, *supra*.

[b-b] These words were inserted by Bom. Act IV of 1913, s. 64.

**Sanad, a document of title.**—An entry in the Collector's books that a certain person is the occupant and liable to pay revenue does not afford much evidence of title. A sanad given under this section, after due enquiry, in the form in Schedule H, is itself a document of title (*Ulawappa v. Gadigawa*, 27 Bom. L. R. 948).

[a] 134. If any land within the site of any village, town, or city, hitherto ordinarily used for agricultural purposes only, with respect to which a summary settlement has been made between Government and the holder under the provisions of any law for the time being in force, be [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.

[a] As to the local repeal of section 134, see para. 3 of foot-note [a] on p. 1, *supra*.

[b-b] These words were substituted for the original words "appropriated to" by Bom Act IV of 1913, s. 63.

**Judi or quit rent.**—Under this section judi or quit rent cannot be increased in respect of those inam lands settled, under the Summary Settlement Act, which are not affected by the provisions of section 127 (G. R. No. 4690, dated 3-5-1923).

135. Repealed by Bom. Act XI of 1912, s. 3.

#### [a] CHAPTER X-A

#### OF THE RECORD OF RIGHTS

[a] This chapter was inserted by Bom. Act IV of 1913, s. 66.

**Note**—Chapter X-A applies also to alienated villages. Government is, therefore, entitled to maintain the Record of Rights in alienated villages without the consent of the Inamdar (*Raghavendra v. Secretary of State*, 28 Bom. L. R. 559).

135-A. 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.

135-B. (1) A record of rights shall be maintained in every village and such record shall include the following particulars :—

(a) the names of all persons (other than tenants) who are holders, occupants, owners or mortgagees of the land or assignees of the rent or revenue thereof;

(b) the nature and extent of the respective interests of such persons and the conditions or liabilities (if any) attaching thereto;

(c) the rent or revenue (if any) payable by or to any of such persons;

(d) such other particulars as the Governor in Council may prescribe by rules made in this behalf:

(2) Provided that the said particulars shall be entered in the record of rights with respect to perpetual tenancies, and also with respect to tenancies of any other classes to which the Governor in Council may, by notification in the *Bombay Government Gazette*, direct that the provisions of this section shall apply in any local area or generally.

**The Record of Rights—Its origin.**—The subject of the Record of Rights was first mooted by the Government of India in their letter 2770-369, dated 6-12-97 and it was intended purely for Settlement purposes. In April 1898 orders to make experiments were received. The first draft was prepared by Sir J. W. P. Muir Mackenzie, and the experiments were carried out in 1899 by Messrs. A. B. Forde, F. B. Young, H. B. Sathé. The first Act was passed in 1903 (IV of 1903), but this was repealed and incorporated in the Land Revenue Code of 1913. The Record has now also become the basis of the accounts of liability to pay land revenue: and also of the audit of alienations of land revenue. The first Act extended to all lands except those excluded by G. Rs Nos. 263 and 8653 of 1904. It was extended to all Sharakati villages in G. R. No. 2568 of 1909, and to surveyed inam villages, even if the period of settlement has expired, except those in Ratnagiri by G. R. No. 288 of 1913. All Revenue survey numbers or parts thereof used for non-agricultural purposes within municipal limits are brought under the Act by G. R. No. 11581 of 1913 and agricultural lands in various Municipalities by several notifications. All whole vanta villages, and vanta blocks in Government villages, were excluded by G. R. No. 5668 of 1911. But in Broach and Kaira those summarily settled are now decided not to be "Talukdari Estates," and therefore, come under the Record of Rights Act (G. R. No. 3180 of 1920). There is a special form for Kolaba khoti villages and some modifications for bhagdari and narvadari villages. It has not been applied to talukdari villages, where the Settlement Register, which is a sort of Record of Rights, is prepared; and not applied to Ratnagiri khoti villages (G. R. 399 of 1919). It was extended to the surveyed cities of Ahmednagar, Barisi, Gadag and Godhra (G. R. 685 of 1916) without any obligation upon the Municipality and to all other city-surveyed areas by G. R. 6108 of 1917, except those cities surveyed long ago, which were in need of revision survey before the Act can be applied (Ahmedabad City proper, Surat, Broach, Rander, Buisar, Hubli, Dharwar, Bijapur and cities in Sind). These cities have now been resurveyed. In pursuance of that policy cl. 5 of G. R. 263 of 1904 is amended: whenever a village, town or city site is surveyed under sec. 131, Chapter X-A is applied and sec. 135B is applied to all tenancies for 21 years and upwards: no register of tenancies is separately maintained (G. R. 13565 of 1918) (*Anderson's L. R. Revisé, 1st ed. of 1930, p. 96*).

**Introduction of Record of Rights in Inam villages.**—

The Record of Rights can be introduced in any inam village whether it is surveyed or not, without the consent of the Inamdar (H. O. R.—Dharwar Suit No. 54 of 1923 and First Appeal No. 350 of 1924, quoted in Joglekar's Supplement No. 2, p. 29).

**135-C.** 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

Acquisition of rights to be reported.

thereof, shall report orally or in writing his acquisition of such right to the village accountant within three months from the date of such acquisition, and the said village accountant shall at once give a written acknowledgment of the receipt of such report to the person making it :

Provided that where the person acquiring the right is a minor or otherwise disqualified, his guardian or other person having charge of his property shall make the report to the village accountant ;

provided further that any person acquiring a right by virtue of a registered document shall be exempted from the obligation to report to the village accountant.

*Explanation I.*—The rights mentioned above include a mortgage without possession, but do not include an easement or a charge not amounting to a mortgage of the kind specified in section 100 of the Transfer of Property Act, 1882.

*Explanation II.*—A person in whose favour a mortgage is discharged or extinguished, or lease determines, acquires a right within the meaning of this section.

135-D. (1) The village accountant shall enter in a register of mutations every report made to him under section 136-C and shall also make an entry therein respecting the acquisition of any right of the kind mentioned in [a] the first paragraph [a] of section 135-C 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.

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[a-a] These words were substituted for the original word and figure "sub-section (1)" by Bom. Act II of 1919, First Schedule.

(5) The transfer of entries from the register of mutations to the record of rights shall be effected subject to such rules as may be made by the Governor in Council in this behalf: provided that an entry in the register of mutations shall not be transferred to the record of rights until such entry has been duly certified.

(6) Entries in the register of mutations shall be tested and if found correct, or after correction as the case may be, shall be certified by a revenue officer of rank not lower than that of a Mamlatdar's first karkun.

Entries in register of mutations how to be certified.

(7) The provisions of this section shall apply in respect of perpetual tenancies and also in respect of any tenancies mentioned in a notification under sub-section (2) of section 135B, but the provisions of this section shall not apply in respect of other tenancies, which shall be entered in a register of tenancies in such manner and under such procedure as the Governor in Council may prescribe by rules made in this behalf.

Tenancies.

A Mamlatdar holding an enquiry relating to record of rights under chapter XII of this Code is a revenue Court under s. 195 (1) (c) of the Cr. P. C. (*Emperor v. Narayan*, 39 Bom. 310).

135E. (1) Any person whose rights, interests or liabilities are required to be, or have been entered in any record or register under this chapter shall be bound, on the requisition of any revenue officer or village accountant engaged in compiling or revising the record or register, to furnish or produce for his inspection, within one month from the date of such requisition, all such information or documents needed for the correct compilation or revision thereof as may be within his knowledge or in his possession or power.

Obligation to furnish information.

(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.

135F. Any person neglecting to make the report required by section 135C, or furnish the information or produce the documents required by section 135E within the prescribed period shall be liable, at the discretion of the Collector, to be charged a fee not exceeding twenty-five rupees, which shall be leviable as an arrear of land revenue.

Penalty for neglect to afford information.

**Note.**—Mamlatdars, Head Karkuns and Extra Head Karkuns and District Inspectors of Land records are authorized to levy fees upto a maximum of Rs. 15 in each case (G. R. No. 7624, dated 9th April 1924, and 13th April 1924, quoted in Joglekar's Supplement No. 2, p 30).

Requisition of assistance in preparation of maps.

**135G.** Subject to rules made in this behalf by the Governor in Council—

(a) any revenue officer or village accountant may for the purpose of preparing or revising any map or plan required for or in connection with any record or register under this chapter exercise any of the powers of a survey officer under sections 96 and 97, except the power of assessing the cost of hired labour under section 97, and

(b) any revenue officer of a rank not lower than that of an Assistant or Deputy Collector or of a survey officer may assess the cost of the preparation or revision of such map or plan and all contingent expenses, including the cost of clerical labour and supervision, on the lands to which such maps or plans relate, and such costs shall be recoverable as a revenue demand.

**135H.** (1) The plaintiff or applicant in every suit or application as hereinafter defined relating to land situated in any area to which this chapter applies shall annex to the plaint or application a certified copy of any entry in the record of rights, register of mutations or register of tenancies relevant to such land.

Certified copy of record to be annexed to plaint or application.

(2) If the plaintiff or applicant fails so to do for any cause which the Court or conciliator deems sufficient, he shall produce such certified copy within a reasonable time to be fixed by the Court or conciliator, and if such certified copy is not so annexed or produced the plaint or application shall be rejected, but the rejection thereof shall not of its own force preclude the presentation of a fresh plaint in respect of the same cause of action or of a fresh application in respect of the same subject-matter, with a certified copy annexed.

(3) After the disposal of any case in which a certified copy of any such entry has been recorded, the Court shall communicate to the Collector any error appearing in such entry and any alteration therein that may be required by reason of the decree or order, and a copy of such communication shall be kept with the record. The Collector shall in such case cause the entry to be corrected in accordance with the decree or decision of the Court, so far as it adjudicates upon any right required to be entered in the record of rights, register of mutations or register of tenancies. The provisions of this sub-section shall apply also to an appellate or revisional Court:

provided that, in the case of an appellate or revisional decree or order passed by the High Court or the Court of the Judicial Commissioner of Sind, the communication shall be made by the Court from which the appeal lay or the record was called for.

(4) In this section—

(a) "suit" means a suit to which the provisions of the Code of Civil Procedure, 1908, or of the Mamlatdars' Courts 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;

(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.

**Copy not attached to plaint**—Where, in a suit relating to land, the plaintiff omits to annex to his plaint a certified copy of the entry in the Record of Rights, as provided in this section, but the Court passes a decree, it is not open to the Appellate Court to reject the plaint in appeal merely on the ground of the omission; but it should give an opportunity to the plaintiff to produce the entry within a fixed time (*Girijabai v. Hemraj*, 45 Bom. 1339).

Where in a suit relating to land, the extract from the Record of Rights required by this section is not produced in the trial Court, and in the Court of appeal the point about absence of the extract is not pressed in arguments, it is not proper to reject the suit only on that ground, but the Court can well exercise its discretion in allowing the extract to be put in in appeal. Where the extract from the Record of Rights is once so put in, no application for review of judgment based on the ground of the absence of the extract can be entertained (*Ganesh v. Vithal*, 28 Bom L. R. 745; s. c. 46 Bom. 345).

**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,

Refusal of assistance under section 87.

register of mutations or register of tenancies.



**135J.** An entry in the record of rights and a certified entry in the register of mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.

Presumption of correctness of entries in record of rights and register of mutations.

**Retrospective effect.**—This section is not retrospective with respect to the entries for the purpose of determining the rights of the parties which were till after 1918 innocuous (*Hathising v. Kuber Jetha*, 44 Bom. 214).

**Entries in record of rights.**—Under this section entries in the record of rights shall be presumed to be correct, and in the absence of any other evidence, a Civil Court is obliged to be guided by any facts so entered in the record of rights (*Anandibai v. Narain*, 17 Bom. L. R. 49).

**135K.** Applications for certified copies of entries in the record of rights, the register of mutations and the register of tenancies may be made to, and such copies may be given by, the village accountant, Mahalkari or Mamlatdar.

Certified copies.

**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.

Bar of suits and exclusion of Chapter XIII.

(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.

Appeal.

## CHAPTER XL

### OF THE REALIZATION OF LAND REVENUE AND OTHER REVENUE DEMANDS.

[a] 36. (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 :

[a] This section was substituted for the original section by Bom. Act IV of 1913, s. 67.

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.

**Note.**—This section is subject to modification when applied to any village in the Districts of Ratnagiri and Kolaba to which the Khoti Settlement Act extends (*Vide* Bom. Act I of 1880, ss 1 and 39).

**Occupant.**—The term 'occupant' is subject to modification when applied to any estate in the Districts of Ahmedabad, Kaira, Feroch or Panch Mahals to which the Gujarat Talukdars' Act extends (*Vide* Bom. Act VI of 1888, ss. 1 and 33).

**137.** The claim of Government 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.

Claims of Government to have precedence over all others.

**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.

"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* (Joglekar's Land-Revenue Code, p. 452)).

**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.

Land-revenue may be levied at any time during the revenue year.

[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

Removal of crop which has been sold, &c., may be prevented until revenue paid.

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

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.

The powers contained in this section and the following 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 v. Dinkar*, 37 Bom. 542).

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—

In order to secure the land-revenue the Collector may prevent the reaping of the crop, or

(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.

142. The Collector's orders under either clause (a) or clause (b) of the last preceding section may be issued generally to all the holders of land paying revenue to Government in a village, or to individual holders merely.

Collector's orders under last section how to be made known.

If the order be general, it shall be made known by public proclamation to be made by beat of drum in the village and by affixing a copy of the order in the chavdi or some other public building in the village. If it be to individual holders, a notice thereof shall be served on each holder concerned.

Any person who shall disobey any such order after the 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.

**Removal of crops, though removal prohibited, does not become theft.**—If a person removes his wheat, the removal of which is prohibited and over which watchmen have been placed under s. 141, he cannot be convicted of theft under s. 379 of the Penal Code, but can be dealt with under this section (*Daya Karon*, 1 Bom. L. R. 515).

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.

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.

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. Act IV of 1905, Second Schedule, are omitted.

**Grant of village lands rent free by Talukdar.**—Plaintiff held rent free land from the talukdar of a village, who paid the Government assessment

for the village in a fixed lump sum. The village was attached by the Government for non-payment of the jama by the talukdar under this section. Held, that the Government had the right to levy the assessment on the lands of the plaintiff in the village, for, the grant of lands rent free by the talukdari did not affect the right of the Government to assess the lands (*Tulla v. The Collector of Kaira*, 43 Bom. 8).

145. The precautionary measures authorized by the last five sections shall be relinquished if the person primarily responsible for the payment of revenue or any person who would be responsible for the same if default were made by the person primarily responsible shall pay the costs, if any, lawfully incurred by the Collector up to the time of such relinquishment, and shall furnish security satisfactory to the Collector for the payment of the revenue, at the time at which, or in the instalments, if any, in which it is payable under the provisions hereinafter contained.

146. Land revenue, except when it is recovered 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.

Government to determine the dates, &c., on which land revenue shall be payable.

Arrear.

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.

Defaulters.

Note.—This section is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss. 1 and 33).

[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 authorized 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. Act IV of 1913, s. 69.

**Maximum penalty.**—A maximum penalty not exceeding  $\frac{1}{4}$  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 willfully 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, quoted in Sathe's Land Revenue Code, 4th ed., p. 243).

Interest or penalty under this section should be levied only in cases of proved contumacy (G. R. No. 194, dated 9th January 1884).

**149.** A statement of account, certified by the Collector or by an Assistant or Deputy Collector, shall, for the purposes of this chapter, be conclusive evidence of the existence of the arrear of the amount of land revenue due, and of the person who is the defaulter.

On receipt of such certified statement, it shall be lawful for the Collector of one district to proceed to recover the demands of the Collector of any other district under the provisions of this chapter as if the demand arose in his own district.

A similar statement of account certified by the Collector of Bombay may be proceeded upon as if certified by the Collector of a district under this Act.

**150.** An arrear of land revenue may be recovered by the following processes:—

(a) by serving a written notice of demand on the defaulter under section 152;

(b) by forfeiture of the occupancy or alienated holding in respect of which the arrear is due under section 153;

(c) by distraint and sale of the defaulter's moveable property under section 154;

(d) by sale of the defaulter's immoveable property under section 155;

(e) by arrest and imprisonment of the defaulter under sections 157 and 158;

(f) in the case of alienated holding consisting of entire villages, or shares of villages, by attachment of the said villages or shares of villages under sections 159 to 163.

**Notes.**—Cl. (b) of this section does not apply to any village in the districts of Ratnagiri and Kolaba to which the Khoti Settlement Act extends (*Vide* Bom Act I of 1880, ss. 1 and 30).

This section is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888 extends (Bom. Act VI of 1888, ss. 1 and 33).

**Seizure of account books.**—An attachment of account books by an officer acting under this section is illegal, and the officer is liable to damages for doing so (*Daluchand v. Gulabai*, 18 Bom. L. R. 323).

**Recovery of arrears of land-revenue.**—An arrear of land-revenue may be recovered by the several processes mentioned in this section. With regard to the process of sale of the defaulter's immovable property other than the land on which the arrear is due, it should be noted that the sale is subject to all incumbrances, or tenures or alienations effected by the occupant before the sale. The sale is just like the sale in execution of a money decree of a judgment-debtor's immovable property and the purchaser acquires only what the occupant could have honestly disposed of on the date of the sale. In this case the rights of incumbrancers are not touched (See *Venkatesh v. Mhal Pai*, 15 Bom. 67). The surplus after deducting the expenses of the sale and the arrears due shall be paid to the occupant whose property is thus sold, as required by s. 183 *post*.

151. The said processes may be employed for the recovery of arrears of former years as well as of the current year, but the preferences given by sections 137 and 138 shall apply only to demands for the current year :

Revenue demands of former years how recoverable.

Provided that any process commenced in the current year shall be entitled to the said preferences, notwithstanding that it may not be fully executed

Proviso.

within that year.

152. A notice of demand may be issued on or after the day following that on which the arrear accrues.

When notice of demand may issue.

The Commissioner may from time to time frame rules for the issue of such notices, and with the sanction of the Governor in Council shall fix the costs recoverable from the defaulter as an arrear of revenue, and direct by what officer such notices shall be issued.

**Notes.**—Fees of notice under this section, the costs of arrest under sec. 158 and expenses of sale under s. 183 leviable under the existing rules are doubled (G. R. No. 7828, dated 25-6-1923, quoted in Joglekar's Supplement No. 2, p. 31).

Fees are levied even when the notice is unserved (G. R. Nos. 954 of 1896 and 1194 of 1898).

Inamdars, even if commissioned, cannot charge notice fees (G. R. No. 2901 of 1886).

**Form of notice of demand.**—For form of notice of demand to be issued under this section, see p. 153 of Anderson's L. R. Rules supplied separately.

153. The Collector may declare the occupancy 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.

**Proviso.**

[a] 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] This proviso was added by Bom. Act VI of 1901, s. 16.

**Note.**—This section does not apply to any village in the districts of Ratnagiri and Kolaba to which the Khoti Settlement Act extends (Bom. Act I of 1880, ss. 1 and 89).

**Occupancy.**—The term 'occupancy' is subject to modification when applied to any estate in the Districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (See Bom. Act VI of 1888, ss. 1 and 33).

**Mere sale does not extinguish incumbrances.**—It cannot be assumed that the Collector has declared under this section 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 (*Govind v. Bhisva*, P. J. 1895, p. 70).

**When order of forfeiture is illegal.**—When a talukdari village is attached under s. 159 of the Code for arrears of land-revenue, so long as the attachment subsists, an order of forfeiture under this section is illegal (*Samaldas v. Secretary of State*, 10 Bom. 455).

**Forfeiture not followed by sale.**—A declaration of forfeiture under this section of the interests of a lessee holding under a permanent lease not followed by a sale, but by an order transferring possession of the holding to the lessor under s. 57, has not the effect of defeating prior incumbrances created by the lessee in favour of third persons (*Narayan v. Purshottam* 22 Bom. 309).

When a registered occupant's tenancy is forfeited under s. 56 ante, and that forfeiture is not followed by sale of the occupancy (the Collector allowing the person actually in possession to be registered as occupant on his paying up all arrears of Government revenue due on the land), the lease by which the person actually in possession was holding from the former registered occupant is not destroyed by the forfeiture and the lessee is still under liability to his landlord (*Ganparshibai v. Timmaya*, 24 Bom. 34).

**Proviso.**—This proviso provides 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 ss. 80 and 81 (*Select Committee's Report*).

**Declaration of forfeiture before sale.**—A sale of a holding for default of payment of assessment is not invalid, although prior to the sale there has been no declaration of forfeiture by the Collector. The declaration is not so



essentially a necessary preliminary of a sale that without it the sale is illegal and invalid. The fact that a sale has taken place is *prima facie* evidence that forfeitures had been declared (*Ganpati v. Gangaram*, 21 Bom. 381).

**Distrain and sale of defaulter's moveable property.** 154. The Collector may also cause the defaulter's moveable property to be distrained and sold.

Such 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.

**Distrains may be made by Taluka karkuns, Eulakarnis, Falatis 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, quoted in Sathe's Land Revenue Code, 4th ed., p. 252).

**Delegation to Mamlatdars and Mahalkaris of the power to distrain.**—The Collectors may delegate the powers exercised by them under this section, to Mamlatdars and Mahalkaris (G. R. No. 5954, dated 31st August 1891, quoted in Sathe's Land Revenue Code, 4th ed., p. 254).

**Defaulter's Property.**—This section will apply only if the distrained property is the moveable property of the defaulter and the onus is on the officer who effects a seizure to prove it (*Ganjaram v. Dinkar*, 37 Bom. 592).

**Distrain of chattels how effected.**—A seizure for distrain of chattels may be either actual or constructive. It is not necessary that the goods must be actually touched or handled (*Emperor v. Lallu Waghai*, 43 Bom. 500).

**Seizure of account books.**—An attachment of account books by an officer acting under this section is illegal, and the officer is liable to damages for doing so (*Daluchand v. Gulabai*, 18 Bom. L. R. 323).

**Cash and notes**—Under this section cash and particularly currency notes (being moveable property and liable to sale) may be distrained and sold (*Emperor v. Gulabrai*, 83 I. O. 899).

155. The Collector may also cause the right, title and interest of the defaulter in any immovable property other than the land on which the arrear is due to be sold.  
**Sale of defaulter's immovable property.**

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 distrain or sale, under either of the last two preceding sections.  
**Exemption from distrain and sale.**

The Collector's decision as to what property is so entitled to exemption, shall be conclusive.

**Exemption.**—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 or allowances equal to salary of any such public officer or servant as is referred to in clause (h), while on duty, to the extent of—

(i) the whole of the salary, where the salary does not exceed forty rupees monthly ;

(ii) forty rupees monthly, where the salary exceeds forty rupees and does not exceed eighty rupees monthly ; and

(iii) one moiety of the salary in any other case ;

(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 Section 80 shall be deemed—

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.

**Exemption from attachment and sale of houses and buildings occupied by agriculturists.**—The expression “materials of houses and other buildings belonging to, and occupied by, agriculturists” used in s. 266, cl (c) (now s. 60 (c) of the new Code of 1908) of the Civil Procedure Code, is intended to exempt from attachment and sale the house dwelt in by an agriculturist as such and the farm buildings appended to such dwelling (*Radhakisan v. Balwant*, 7 Bom. 580).

157. At any time after an arrear becomes due, the defaulter

Arrest and detention  
of defaulter.

may be arrested and detained in custody for ten days in the office of the Collector or of a Munsifdar or Mahalkari, unless the revenue due together with the penalty or interest and of notice of demand, if any, have issued and the costs of arrest and

the costs of arrest and  
the cost of his subsistence during detention, is sooner paid.

If, on the expiry of ten days the amount due by the defaulter

Imprisonment in Civil  
Jail.

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.

**Period of detention.**—Every person detained in the civil prison in execution of a decree shall be so detained :—(a) Where the decree is for the payment of a sum of money exceeding fifty rupees, for a period of six months, and (b) in any other case, for a period of six weeks (Civil Procedure Code (Act V of 1908), s. 58 (1))

158. The Commissioner may, with the sanction of the Governor in Council, from time to time, declare

Power of arrest by  
whom to be exercised.

by what officers, or class of officers, the powers of arrest conferred by section 157 may be exercised, and also fix the costs of arrest and

the amount of subsistence-money to be paid by Government to any defaulter under detention or imprisonment.

159. If the holding, in respect of which an arrear is due, consists of an entire village, or of a share of a

Power to attach defaulter's village, and take it under management.

village, and the adoption of any of the other processes before specified is deemed inexpedient, the Collector may, with the previous sanc-

tion 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.

**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.

**Note.**—This section is subject to modification when applied to any estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss. 1 and 33).

**Collector not to demand more (Local Fund) in addition to stipulated rent.**—

The plaintiffs were tenants of the Thakor of G. The Collector undertook the management of his estate and had, under s. 144 of this Code, attach the village G. *Held*, that the plaintiffs as tenants of the Thakor were liable to pay the Collector the stipulated rent only and that this section does not entitle him to demand more (*Collector of Ahmedabad v. Mosan*, F. J. 1892, p. 323).

**Right of Khot to sue for possession of Khoti Nisbat lands.**—  
A Watandar Khot is entitled to institute a suit for possession of his Khoti Nisbat lands which are alienated by the tenant without obtaining his consent, although the Khot's lands have been attached by Government under this Code (*Purushottam v. Ganpati*, 50 Bom. 806).

**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 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. Act III of 1886, are omitted.

**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.

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.

**Notes.**—*Vide* note 1 under s. 160.

This section is subject to modification when applied to any village in the districts of Ratnagiri and Kolaba to which the Khoti Settlement Act extends (*Vide* Bom. Act I of 1880, ss. 1 and 39).

**Khot's right to profits for one year when Khoti village under Government attachment.**—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 cl (1) of this section. Under this section the village or share of a village so attached shall be released from attachment, and the management thereof shall be restored to the superior holder on the said superior holder's making an application to the Collector for that purpose at any time within twelve years from 1st August next after the attachment. The Collector shall make over to the superior holder the surplus receipts, if any, which have accrued in the year in which his application for restoration of the village, or share of a village is made, after defraying all arrears and costs ; but such surplus receipts, if any, of previous years shall be at the disposal of Government. But this rule does not hold good where the village attached is one in the Kolaba district to which the Khoti Settlement Act (I of 1880) has not been extended, unless the Khots therein are Sanadi or Vatandar Khots (*Bhikaji v. Nizam*, 8 Bom. 525).

**163.** If no application be made for the restoration of a village or portion of a village so attached within the said period of twelve years, or if, after such application has been made, the superior holder shall fail to pay the balance, if any, still due by him within the period prescribed by the Collector in this behalf, the said village or portion of a village shall thenceforward vest in Government free from all incumbrances created by the superior holder or any of the sharers or any of his or their predecessors-in-title, or in any wise subsisting as against such

Village &c., to vest in Government, if not redeemed within twelve years.

superior holder or any of the sharers, but without prejudice to the rights of the [a] persons in actual possession of the land [a].

[a-a] These words were substituted for the original words "actual occupants of the soil" by Bom. Act IV of 1913, s. 70.

**Note**—This section does not extend to the estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gajarat Talukdars' Act, 1888, extends (See Bom. Act VI of 1888, ss. 1 and 33).

**164.** Any defaulter detained in custody, or imprisoned, shall forthwith be set at liberty, and the execution of any process shall, at any time, be stayed, on the defaulter's giving before the Collector or other person nominated by him for the purpose, or if the defaulter is in jail, before the officer in charge of such jail, security in the form of Schedule D, satisfactory to the Collector, or to such other person or officer.

But all processes to be stayed on security being given ;

And any person against whom proceedings are taken under this chapter may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment the proceedings shall be stayed.

or on amount demanded being paid under protest.

**165.** When any sale of either moveable or immoveable property is ordered under the provisions of this chapter, the Collector shall issue a proclamation, in the vernacular language of the district, of the intended sale, specifying the time and place of sale, and in the case of moveable property whether the sale is subject to confirmation or not, and, when land paying revenue to Government is to be sold, the revenue assessed upon it, together with any other particulars he may think necessary.

Procedure in effecting sales.

Such proclamation shall be made by beat of drum at the head quarters of the taluka, and in the village in which the immoveable property is situate, if the sale be of immoveable property ; if the sale be of moveable property the proclamation shall be made in the village in which such property was seized, and in such other places as the Collector may direct.

Proclamation 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 Mamlatdar or Mahalkari of the taluka or mahal in which the immoveable property is situate, the chavdi or some other public building in the village in which it is situate, and the defaulter's dwelling place.

Notification of sales.

In the case of moveable property, the written notice shall be affixed in the Mamlatdar's or Mahalkari's office, and in the chavdi

or some other public building in the village in which such property was seized.

The Collector may also cause notice of any sale whether of moveable or immoveable property, to be published in any other manner that he may deem fit.

167. Sales shall be made by auction by such persons as the Collector may direct.  
 Sale by whom to be made.

No such sales 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.  
 Time when sale may be made.

The sale may from time to time be postponed for any sufficient reason.  
 Postponement of sale.

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.  
 Sale of perishable articles.

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.

Date upto which defaulters may pay arrears.—Under this section 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, quoted in Sathé's Land-Revenue Code, 4th ed., p. 212).

170. Sales of perishable articles shall be at once finally concluded by the officer conducting such sales. All other sales of moveable property shall be finally concluded by the officer conducting such sales, or shall be subject to confirmation, as may be directed in orders to be made by the Collector either generally or specially in that behalf. In the case of sales made subject to confirmation, the Collector shall direct by whom such sales may be confirmed.  
 Sales of moveable property when liable to confirmation.

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.

Mode of payment for moveable property when sale is concluded at once.

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.

Mode of payment for moveable property when sale is subject to confirmation.

**Moveable property.**—This section applies to moveable property only (*Govind v Bhiwa*, P. J. 1895, p. 70).

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.

Deposit by purchaser in case of sale of immoveable property.

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.

Purchase money when to be paid.

**How to calculate fifteen days—When is the deposit to be paid.**—The period of 15 days for the payment of the balance of purchase-money should be counted from the date of the conclusion of the sale by the Mamladar. The payment of a deposit of twenty-five per cent. to the Karkun before the conclusion of the sale is an irregularity (G. R. No. 809, dated 4th February 1898, quoted in *Sathe's Land Revenue Code*, 4th ed., p. 264).

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

Effect of default.



forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

176. If the proceeds of the sale, which is eventually made, be less than the price bid by such defaulting purchaser, the difference shall be recoverable from him by the Collector as an arrear of land revenue.

Liability of purchaser for loss by 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.

Notification before re-sale.

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.

180. Whenever the sale of any property is not confirmed, or is set aside, the purchaser shall be entitled to receive back his deposit or his purchase-money, as the case may be.

Refund of deposit or purchase-money when sale set aside.

181. After a sale of any occupancy or alienated holding has

On confirmation of  
sale purchaser to be put  
in possession.

been confirmed, in manner aforesaid, the  
Collector shall put the person declared to be  
the purchaser into possession of the land [a]

[b] land records [b]

as occupant or holder in lieu of that of the  
defaulter, and shall grant him a certificate to  
the effect that he has purchased the [c] land

Certificate of purchase.

to which the certificate refers.

[a] Words repealed by Bom. Act IV of 1913, s. 71, are omitted.

[b-b] These words were substituted for the original words "revenue records"  
by Bom. Act IV of 1913, s. 71.

[c] This word was substituted for the words "occupancy or alienated holding"  
by Bom. Act IV of 1913, s. 71.

**Occupancy.**—The term 'occupancy' is subject to modification when applied to any estate in the Districts of Ahmedabad, Kaira, Broach or Paneh Mahals to which the Gujarat Talukdars' Act extends (see Bom. Act VI of 1888, ss. 1 and 3).

**Certificate of sale.**—Certificate of sale granted by the Civil Courts as well as those granted by the Revenue Officers are liable to stamp duty under Art. 16, Sch. 1 of the Stamp Act (G. R. No. 3,008, dated 15th June 1880, quoted in Sathe's L. R. Code, 4th ed., p. 267).

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 (See sec. 89 (4) of the Registration Act, XVI of 1908).

182. The certificate shall state the name of the person de-

Bar of suit against  
certified purchaser.

clared 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.

**Bar of suit against certified purchaser.**—The provisions of this section and s. 317 (now s. 66) of the 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 (*Ragho v. Vishnu*, 5 Bom. L. R. 329).

183. When any sale of moveable property under this chapter

Application of pro-  
ceeds of sale.

has become absolute, and when any sale of  
immoveable property has been confirmed, the  
proceeds of the sale shall be applied to de-  
fraying 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.

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.

**Claims of Creditors.**—After the arrears have been recovered from the sale—proceeds under s. 183, the excess, if any, must be treated as a sum to the defaulter's credit and is claimable by his creditors (G. R. No. 5730, dated 27th October 1879, quoted in Sathé's Land Revenue Code, 4th ed., p. 269).

[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.

Certified purchaser liable only for land revenue subsequently due.

[a] This section was substituted for the original section by Bom. Act IV of 1913, s. 72.

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.

**Delegation of powers to Mamlatdars and Mahalkaris.**—The Collectors are authorized to delegate the powers exercised by them under this section to Mamlatdars and Mahalkaris when the adoption of such a course may appear to them desirable (G. R. No. 8785, dated 19th November 1882, quoted in Sathé's Land Revenue Code, 4th ed., p. 270).

187. All sums due on account of land revenue, all quit-rents, nazaranas, 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;

What monies leviable under the provisions of this Chapter.

and all moneys due by any contractor for the farm of customs-duties, or of any other duty, or tax, or of any other item of revenue whatsoever and all specific pecuniary penalties to which any such contractor renders himself liable under the terms of his agreement;

and also all sums declared by this or by any other Act or Regulation at the time being in force [a] or by any contract with the Secretary of State for India in Council [a] to be 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].

[c] And any money ordered by a liquidator appointed under section 42 of the Co-operative Societies Act, 1912, to be recovered as a contribution to the assets of a society or as the costs of liquidation may, notwithstanding anything contained in sub-section (5) of section 42 of the said Act, be levied under the foregoing provisions of this chapter and all the foregoing provisions of this chapter shall, so far as may be, be applicable thereto :

Provided that every application for recovery in such manner of any such sum shall be accompanied by a certificate signed by the Registrar appointed under section 3 of the Co-operative Societies Act, 1912, that the amount may be recovered as an arrear of land revenue [c].

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 [d] and all the foregoing provisions of this chapter shall, so far as may be, be applicable to such persons [d].

On resumption of a farm no payments made to contractor in advance to be admitted.

And in the event of the resumption of any such farm as is aforesaid, no person shall be entitled to credit for any payments which he may have made to the contractor in anticipation.

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

[b-b] These were added by Bom. Act IV of 1913, s. 73 (1).

[c-c] These words were inserted by Bom. Act I of 1920, s. 2.

[d-d] These words added by Bom. Act IV of 1913, s. 74 (2).

[a] 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] This paragraph was added by Bom. Act IV of 1913, s. 73 (3).

The recovery of free grants as arrears of revenue in case of misuse.

The effect of this section is to make the provisions of ss. 153 and 56, and also those of s. 155, applicable to sales for the recovery of charges assessed under s. 122 in connection with boundary marks. Such charges may be recovered either by forfeiture or 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 freed from all incumbrances created by the occupant. In the latter case the rights of incumbrances are not touched (*Jankatesh v. Akhal Pat*, 15 Bom. 87).

## 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.

Subordination of revenue officers.

189. Every revenue officer not lower in rank than a Mamlatdar's first karkun, or an Assistant Superintendent of Survey, in their respective departments, shall have power to summon any person whose attendance he considers necessary either to be examined as a party or to give evidence as a witness, or to produce documents for the purposes of any inquiry which such officer is legally empowered to make. A summons to produce documents may be for the production of certain specified documents, or for the production of all documents of a certain description in the possession of the person summoned.

Power to summon persons to give evidence and produce documents.

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;

[a-a] These words were substituted for the original words "sections 64) and 64) of the Code of Civil Procedure" by Bom. Act IV of 1913, s. 74.

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.

This section does not empower a Mamlatdar to summon any person to attend before a Deputy Collector who is making certain enquiries about the appointment of a patel for an inam village. A failure to attend in obedience to such a summons is not an offence under s. 174 of the Penal Code (*Queen Empress v. Vidya Dhar*, Or Rg. 52 of 1889).

190. Every summons shall be in writing, in duplicate, and shall state the purpose for which it is issued, and shall be signed by the officer issuing it, and if he have a seal shall also bear his seal ;

Summons to be in writing, signed, and sealed ;

and shall be served by tendering or delivering a copy of it to the person summoned, or, if he cannot be found, by affixing a copy of it to some conspicuous part of his usual residence.

how to be served.

If his usual residence be in another district, the summons may be sent by post to the Collector of that district, who shall cause it to be served in accordance with the preceding clause of this section.

Services in district other than that of issuer.

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 ;

Mode of serving notices.

or by affixing a copy thereof to some conspicuous place on the land, if any, to which such notice refers.

No such notice shall be deemed void on account of any error in the name or designation of any person referred to therein, unless when such error has produced substantial injustice.

Notice not void for error.

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]

Procedure for procuring attendance of witnesses.

[a-a] These words were substituted for the original words "Code of Civil Procedure, section 160" by Bom Act IV of 1913, s. 75.

Procedure for procuring attendance of witnesses.—The procedure for parties applying for summonses for witnesses is given in Order XVI of the Code of Civil Procedure (Act V of 1908), which runs thus :—

"1. At any time after the suit is instituted, the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required to give evidence.

2. The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into 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.

3. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

5. Every summons for the attendance of a person to give evidence shall specify the time and place at which he is required to attend.

9. Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required."

For other particulars, see order XVI of the C. P. Code,

**Officer holding summary enquiry to be deemed a Civil Court.**—This 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 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. 4408, dated 10th July 1882, quoted in Sathé's Land-Revenue Code, 4th ed., p. 276).

**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

Mode of taking evidence in formal inquiries.

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.

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

Taking evidence given in English Translation to be on record.

194. Every decision, after a formal inquiry, shall be written by the officer passing the same in his own hand-writing, and shall contain a full statement of the grounds on which it is passed.

Writing and explanation of decisions.

195. In summary inquiries the presiding officer shall himself, as any such inquiry proceeds, record a minute of the proceedings in his own hand in English or in the language of the district, embracing the material averments made by the parties interested, the material parts of the evidence, the decision, and the reasons for the same :

Summary inquiries how to be conducted.

Provided that it shall at any time be lawful for such officer to conduct an inquiry directed by this Act to be summary under all, or any, of the rules applicable to a formal inquiry, if he deem fit.

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.

Every hearing and decision, whether in a formal or summary inquiry, shall be in public, and the parties or their authorized agents shall have due notice to attend.

Hearing and decisions. Notice to parties.

197. An inquiry which this Act does not require to be either formal or summary, or which any revenue officer may on any occasion, deem to be necessary to make, in the execution of his lawful duties, shall be conducted according to such rules applicable thereto, whether general or special, as may have been prescribed by the Governor in Council, or an authority superior to the officer conducting such inquiry, and, except in so far as controlled by such rules, according to the discretion of the officer in such way as may seem best calculated for the ascertainment of all essential facts and the furtherance of the public good.

Ordinary inquiries how to be conducted.

**Absence of judicial proceeding.**—Where the entry in the revenue registers was due to a misunderstanding of a certain order, it was held that the cause of the error being of the same nature with "oversight" falling within the description of errors in s. 109 of this Code, the rectification of the Register so as to bring it in accord with the order made after hearing both the parties was not contrary to natural justice. It was a case in which the Revenue officer concerned was authorized under this section to dispense with any judicial or quasi-judicial inquiry (*Fasudas v. Govind*, 36 Bom. 315).

**Mamlatdar — Revenue Court.**—A Mamlatdar holding an enquiry relating to Record of Rights, under Chap. XII of this Code, is a revenue Court within the meaning of s. 193(1)(c) of the Criminal Procedure Code (*Emparor v. Narayan*, 16 Bom. L. R. 678).



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.

Scale of copying fees.—The following is the statement showing the rules for 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 VIII A	Register of alienated land. Khatas of holding.	One anna per entry. One anna per Khata having 5 survey numbers or less and one and half anna for Khata of more than 5 survey numbers.
VIII B	Annual Khatas of dues and recoveries.	One anna for each Khata.
IX	Day and Receipt book.	One anna for each entry in the day book.
XI	Trial balance sheet	One anna per entry.
XII	Register of crops and tenancies.	Do.
XIII	Birth and death register.	Do.
XIV	Cattle census.	Do.

(G.R. No. 10809, dated 6th September 1917, quoted in Joglekar's Land Revenue Code, p. 527).

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.

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

Proviso.

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.

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.

Collector how to proceed in order to evict any person wrongfully in possession of land.

202. Whenever it is provided by this, or by any other Act for the time being in force, that the Collector may or shall evict any person wrongfully in possession of land, such eviction shall be made in the following 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 not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and,

if the officer removing any such person shall be resisted or obstructed by any person, the Collector shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause, and that such resistance and obstruction still continue, may, without prejudice to any proceedings to which such person may be liable under any law for the time being in force for the punishment of such resistance or obstruction, issue a warrant for the arrest of the said person, and on his appearance commit him to close custody in the office of the Collector or of any Mamlatdar or Mahalkari, or send him with a warrant, in the form of Schedule I, for imprisonment in the civil jail of the district for such period not exceeding thirty days, as may be necessary to prevent the continuance of such obstruction or resistance.

**Pasaita land settled as Pateli.**—The right to hold Pasaita land rent free was allowed so long as the services of patelship were rendered by the same person but the only effect of the creation of the office of patelship was to take away exemption to pay rent and not to put an end to the right of possession. So long as he paid the assessment to the Government, the Government have no right to evict him (*Bhasan Morar v. Secretary of State*, 45 Bom. 894).

**Mortgagee's eviction by Talukdari Settlement Officer.**—A portion of the Talukdari estate was granted by the original Talukdar to a cadet of his family as *jiwai*. The grantee mortgaged one of such lands with possession to the plaintiff's father on April 19, 1889. In 1891, the mortgagor died and in 1893 the mortgagee died; but the land mortgaged remained all along in mortgagee's possession. In November 1907, the Talukdari Settlement Officer sent a notice to

the plaintiff under this section calling upon him to vacate the land in question ; and evicted him under s. 79-A *ante* as amended by s. 38 of the Gujarat Talukdars' Act. The plaintiff sued to recover possession of the land. *Held*, that the plaintiff was entitled to succeed ; for he had been in adverse possession claiming title as an incumbrancer for more than twelve years since the death of the mortgagor (*Talukdari Settlement Officer v. Rikhwadas*, 15 Bom. L. R. 378).

### 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 itself have been passed on appeal from a subordinate officer's decision or order or not.

**Appeal.**—This Chapter does not apply to appeals under the Record of Rights Applications for compassionate allowances from discharged Revenue Officers are treated as "appeals" (G. R. No. 4997 of 1908).

In dealing with Civil Court Darkhasts, the Collector is not subject to appeals to, or revision by the Commissioner, but only by the Court. The Collector cannot set aside a darkhast sale, but can confirm or refuse to confirm it (G. R. No. 2172 of 1915).

**Decision or order.**—A notice of demand by a Mamlatdar to pay assessment is not a 'decision or order' within the meaning of this section or the following section (*Nathuram v. Secretary of State*, 46 Bom. 811).

**Order of Collector.**—An order made by the Collector under section 23 of the Bom. Irrigation Act falls within the purview of this section and an appeal against such order lies to the Commissioner in Sind (*Secretary of State v. Jaramdas*, 6 S. L. R. 241).

**Orders passed by Collector in execution proceedings transferred to him under s. 320, C. P. C.**—Under this section the Revenue Commissioner or the Government are vested with the appellate power in respect of orders passed by Collector in execution proceedings transferred to him under s. 320 of the C. P. Code, 1882 (*Mancherji v. Thakurdas*, 7 Bom. L. R. 682).

**Pleader not to be allowed to appear in proceedings under this section.**—A pleader cannot claim to appear in proceedings under this section (G. R. No. 8915, dated 8th December 1897, quoted in Sathe's L. R. Code, 4th ed., p. 282).

**Commissioner's powers.**—Sacs. 203 and 211 empower a Commissioner to take action in appeal or revision as regards any orders passed by a Collector, who under s. 8 performs all his duties in subordination to the Commissioner of the Division (G. R. P. W. D. 63 W. L.—934, dated 20th June 1897, quoted in Sathe's L. R. Code, 4th ed., p. 282).

**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.

**206.** Any appeal under this chapter may be admitted after the period of limitation prescribed therefor, when the appellant satisfies the officer or the Governor in Council to whom he appeals, that he had sufficient cause for not presenting the appeal within such period.

Admission of appeal after period of limitation.

No appeal shall lie against an order passed under this section admitting an appeal.

**207.** Whenever the last day of any period provided in this chapter for the presentation of an appeal falls on a Sunday or other holiday recognized by Government, the day next following the close of the holiday shall be deemed to be such last day.

Provision where last day for appeal falls on a Sunday or a holiday.

**208.** Every petition of appeal shall be accompanied by the decision or order appealed against or by an authenticated copy of the same.

Copy of order to accompany petition of appeal.

**209.** The appellate authority may 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.

Powers of appellate authority.

**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.

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 Mamlatdar, a Mahalkari, 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:

[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. Act IV of 1913, s. 76 (a).

[b] Words repealed by Bom. Act 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. Act IV of 1913, s. 76 (c).

**Revision by Commissioner under this section.**—The sale of unoccupied lands held by Mamlatdars under s. 63, and permission to occupy such lands given under s. 60 are within the scope of this section as proceedings which the Commissioner has jurisdiction to call for and revise and to pass such orders thereon as he deems fit, and no suit would lie against Government on account of that officer exercising his legal powers under the section (*Parapa v. The Secretary of State*, P. J. 1891, p. 230).

**"Finality."**—The reference to 'finality' in this section refers to 'finality' under this Code, for there are no words excluding the jurisdiction of the Civil Courts in the sections of the Act framed to that end (*Dattatraya v. Secretary of State*, 31 Bom. L. R. 1235).

**Revisional jurisdiction of Collector.**—Where a lease of certain sberi lands had expired in 1913 and in pursuance of a Government Resolution the Deputy Collector held an enquiry and ordered that the tenants should get an occupancy tenure on paying a certain assessment, but the said order was reversed by the Collector on revision after three years, it was held, in a suit questioning the validity of the order, that the Collector had the power to interfere at any time and

that his order was valid in law. *He'd*, also, that rights held under the tenant were also extinguished by reason of the Collector's order (*Ibid.*).

212. Wherever in this Act it is declared that a decision or order shall be final, such expression shall be deemed to mean that no appeal lies from such decision or order.

Rules as to decisions or orders expressly made final.

The Governor in Council alone shall be competent to modify, annul, or reverse any such decision or order under the provisions of the last preceding section.

## CHAPTER XIV

### MISCELLANEOUS.

213. Subject to such rules and the payment of such fees as the Governor in Council may from time to time prescribe in this behalf, all maps and [a] land records [a] shall be open to the inspection of the public at reasonable hours, and certified extracts from [b] the same [b] or certified copies thereof shall be given to all persons applying for the same.

Maps and land records open to inspection. Extracts and copies shall be given.

[a-a] These words were substituted for the original words "survey records and all village accounts and land registers" by Bom Act IV of 1913, s. 77.

[b-b] These words were substituted for the original words "such maps, registers and accounts" by Bom. Act IV of 1913, s. 77.

**Land records.**—The term 'Land records' is defined in s. 3 (26). Ordinary correspondence being an interchange of views between Government Officers, and specially such correspondence and opinions as are referred to in s. 139 (b), and the barnishis or registers of such correspondence are not land records as there defined, and copies thereof are very rarely given under rule 139. Survey records and vaccination records are included but not the Records of the Alienation Office. Petitions of parties would not be documents maintained under the provisions of or for the purposes of the Act (Sec. 3 (26)), nor are they records of the proceedings of any public officer, and, therefore, fall entirely into the optional class (*Anderson*).

**Survey records.**—Survey records are open to inspection and copies are available under this section (*Aludomal v. Ali*, 5 S. L. R. 43).

[a] 214. (1) The Governor in Council may, by notification published in the *Bombay Government Gazette*, make rules not inconsistent with the provisions of this Act to carry out the purposes and objects thereof and for the guidance of all persons in matters connected with the enforcement of this Act or in cases not expressly provided for therein.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may be made—

[a] This section was substituted for the original section by Bom. Act IV of 1913, s. 78.

(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] 215. It shall be lawful for the Governor in Council, in making any rule under section 214, to prescribe that any person committing a breach of the same shall on conviction by a Magistrate be punished with imprisonment for a term not exceeding one month or with fine not exceeding five hundred rupees, or with both, in addition to any other consequences that would ensue from such breach.

[a] This section was substituted for the original section by Bom. Act IV of 1913, s. 78.

Chapters VIII to X how far applicable to alienated villages. \* 216. (1) The provisions of Chapters VIII to X shall be applicable to

(a) all unalienated lands situated within the limits of an alienated village;

(b) unalienated shares of villages of which a definite share defined by metes and bounds is alienated;

(c) alienated villages the holders of which are entitled to a certain amount of the revenue, but of which the excess above such amount belongs to Government.

(2) Save as is otherwise provided in section 111 and in this section, no provision of the said Chapters shall be applied to any other alienated village except for the purposes of fixing its boundaries and of determining any disputes relating thereto, unless the extension of the provision is authorised by the Commissioner acting on the written application of the sole holder, or, if there be more than one holder, of the holder or holders representing in the aggregate not less than one-half of the total interests in the village in respect of its alienated revenue. If any share of the village is unalienated the prescribed proportion of one-half shall be reckoned as if the village were wholly alienated, Government being considered as the holder in respect of the unalienated share.

(3) In any case in which action under sub-section (2) is taken lawfully by the Commissioner on the application of some only of the holders of the village any covenant or agreement relative to the extension of the said Chapters or incidental thereto, entered into by such holders shall also be binding on the remaining holders of the village in respect of their shares in the revenue of the village as if such covenant or agreement had been entered into by them.

(4) All survey settlements heretofore introduced in alienated villages shall be valid as if they had been introduced in accordance with the provisions of this section.

\* This section was substituted for the original section by Bom. Act XV of 1929, s. 2.

**Note.**— This section does not extend to the estate in the districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends (*Vide* Bom. Act VI of 1888, ss. 1 and 33).



**Prior suit to recover the mamool rates.**—Where the plaintiff inamdar got a decree for the mamool rates for the years 1888-1890 in the year 1892 against the defendant's khots and where Survey Settlement was introduced in the village in 1881-1886 and where he filed a suit in 1917 for those dues for the years 1915 and 1916, it was *held*, that though the proper construction to be placed on this section was not strictly speaking *res judicata*, still on the principle of *stare decisis* the previous construction should be adhered to (*Sitaram v Lasman*, 45 Bom 1260).

**Nature of unalienated village lands.**—Lands in an unalienated village, granted by Government for rent wholly or partially free, do not fall within this section (*Sitaram v Tukaram*, 45 Bom, 994).

**Revenue settlement, extension of.**—An application under this section 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 v Lasman*, 2 Bom L. R. 235).

217. When a survey settlement has been introduced under the provisions of the last section or of any other 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 [a] holders of land [a] 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-a] These words were substituted for the original word "occupants" by Bom. Act IV of 1913, s. 80 (a).

[b-b] These words were substituted for the original word "occupants" by Bom. Act IV of 1913, s. 80 (a).

[c] Words repealed by Bom. Act IV of 1913, s. 80 (b) are omitted.

**Note.**—*vide* the first note under the preceding section.

**Scope of this section.**—This section embraces not only registered occupants of land in unalienated villages but also the holders of lands in alienated villages with the same rights and responsibilities in respect of those lands. The words in this section "so far as may be" do not limit the plain meaning of the first part (*Nanabhai v. Collector of Kaira*, 34 Bom, 686).

**Right of inamdar to enhance rent.**—An inamdar, to whom the Government has granted all its rights in the soil in a village as well as its other subsidiary interests is entitled even after a Survey Settlement had been introduced to raise the rents of the permanent tenants even when such permanent tenancies commenced before the alienation (*Pandu Bala Jagtap v. Ramchandra*, 43 Bom. 112; c. 20 Bom. L. R. 16).

An inamdar though he is a grantee of the soil and not merely of the Royal share of the revenue is not at liberty after the introduction of the Survey Settle-

ment into his village to enhance the rent of his mirasdar tenant beyond the amount of the land-revenue dues. A kadim inamdar who is a grantee by a kadim grant of the soil of a small part of the village, and who has consented to or acquiesced in the introduction of the Survey Settlement into the village is equally precluded by this section, from enhancing the rent of the mirasdar tenant beyond the amount of the land-revenue dues (*Pandu v. Ramchandra*, 22 Bom. L. R. 665).

**Contractual rights.**—The provisions of this section do not affect contractual rights arising before the introduction of the survey. In alienated villages, it is competent to Government to enter into contractual relationship with tenants or occupants. They might acquire fixity of tenure and fixity of rent. In an ancient village, where the alienee has entered into a contract with his tenants granting not only fixity of tenure but also fixity of rent, the provisions of this section do not enable such alienee to avoid his contractual liability and enforce against his permanent tenants the payment of assessment levied on occupancy land (*Suryajirao Ganpatrao v. Sidhanath*, 27 Bom. L. R. 615).

**Permanent tenant—Liability to pay enhanced rent.**—A person holding lands in an alienated village as a permanent tenant under s. 83 *ante* becomes, on the introduction of the survey settlement into the village, entitled to the rights and affected with the responsibilities of a holder in an alienated village, by virtue of this section. He remains what he ever was, a tenant, and does not become an occupant. He is liable, therefore, to pay enhanced rent to his landlord (*Kondi Ramji v. Vithalrao*, 60 Bom. 156).

**Survey Settlement.**—Survey Settlement was extended to an alienated village on the application of the inamdar under Bombay Act (I of 1865). The period of the settlement expired in 1888 and the inamdar recovered from 1895 higher assessment than that allowed under the Survey Settlement. The Commissioner objected in 1910 and the inamdar sued to establish his right to charge higher assessment. *Held*, that the inamdar had no such right since this section applied, when a survey Settlement had been introduced into an alienated village with the consent of the alienee under Bombay Act (I of 1865) and when the period of the Settlement had expired after the Code came into force (*Dhondo Vasudev v. the Secretary of State*, 44 Bom. 110).

**Holder.**—Before a person can claim the benefit of this section, he must be shown to be a "holder" within the meaning of s. 3 (11) of this Code (*Vasudev v. Govind*, 14 Bom. L. R. 124).

## SCHEDULE A.

*Repealed by Bom. Act IV of 1918, section 81.*

## SCHEDULE B.

## FORM OF BOND TO BE REQUIRED UNDER SECTION 23.

WHEREAS I,  
inhabitant of  
have been appointed to the office of  
and have been called upon to furnish security under the provisions of section 23 of the Bombay Land-Revenue Code for the due discharge of the trusts of the said office, or of any other office to which I may be hereafter appointed, and for the due account of all moneys, papers and other property which shall come into my possession or control by reason of any such office, I hereby bind myself to pay to the Secretary of State for India in Council, the amount of any loss or defalcation in my accounts, and to deliver up any papers or other property within such time, and to such person as shall be demanded by the person at the head of the office to which I belong, such demand to be in writing and to be left at my office or place of residence, and in case of my making default therein I bind myself to forfeit to the Secretary of State for India in Council the sum of  
Rupees.

[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).

## FORM OF SECURITY TO BE SUBJOINED TO THE BOND OF THE PRINCIPAL

WE

herely 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 [b] the sum of                      rupees, in which the abovesaid                      has bound himself, or such smaller [b] 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] This proviso was added by Bom. Act IV of 1905, First Schedule.

[b-b] These words were substituted for the original word "such" by Bom. Act IV of 1905, First Schedule.

## THE BOMBAY LAND REVENUE CODE

## SCHEDULE C

## FORM OF WARRANT TO BE ISSUED BY THE COLLECTOR UNDER SECTION 25 OR 157

Seal

To

THE OFFICER IN CHARGE OF THE CIVIL JAIL AT

WHEREAS A. B. of \_\_\_\_\_ was on the \_\_\_\_\_ day of \_\_\_\_\_ 187 \_\_\_\_\_, ordered by \_\_\_\_\_ to (*here state the substance of the demand made*); and whereas the said A. B. has neglected to comply with the said order, and it has, therefore, been directed, under the provisions of section \_\_\_\_\_ of the Bombay Land Revenue Code, that he be imprisoned in the Civil Jail until he obey the said order or until he obtain his discharge under the provisions of section 25 or 28 (*or section 157 or 164 as the case may be*) of the said Code; you are hereby required to receive the said A. B. into the Jail under your charge and to carry the aforesaid order into execution according to law.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 187 \_\_\_\_\_.

(Signature of Collector).

## SCHEDULE D

## FORM OF BOND TO BE REQUIRED UNDER SECTION 28 OR 164

WHEREAS I, \_\_\_\_\_, have been ordered by \_\_\_\_\_ to (*have 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 above-mentioned 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 \_\_\_\_\_ 187 .

(Signed) O. D.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 187 .

II.—FORM OF NOTICE TO BE GIVEN BY TENANT TO LANDLORD OF HIS INTENTION TO QUIT

To

O. D.

I do hereby give you notice that I shall quit and deliver up to you, at the end of this current year terminating on the \_\_\_\_\_ of \_\_\_\_\_ 187 , the land (*here give the description*) which I hold from you.

(Signed) A. B.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 187

SCHEDULE F

FORM OF COMMISSION TO BE ISSUED TO A HOLDER OF ALIENATED LANDS OR VILLAGES OR HIS AGENT, UNDER SECTION 89

Seal

The [a] Commissioner, by virtue of the powers vested in him by the Bombay Land Revenue Code, is pleased to confer on you (*Jayirdar, &c., or Agent, &c., as the case may be*), power to \_\_\_\_\_ in (or in respect of) the villages and lands specified in this Commission, in the manner prescribed in (or in section \_\_\_\_\_ of) the said Code.

The villages and lands over which the power thus conferred upon you extends are as follows :—

(*Here enter the description*)

The within delegated power is vested in you during the pleasure and subject to the recall of the said [a] Commissioner.

(Signed).

SCHEDULE H [b]

(See section 133)

FORM OF SANAD FOR BUILDING SITES

(*Royal Arms*)

To

THE SECRETARY OF STATE IN COUNCIL.

WHEREAS His Excellency the Governor of Bombay in Council, with a view to the settlement of the land revenue, and the record and preservation of proprietary and other rights connected with the soil has under the provisions of the Bombay Land Revenue Code, directed a survey of the lands within the \_\_\_\_\_ of \_\_\_\_\_ and ordered the necessary inquiries connected therewith to be made, this sanad is issued under section 133 of the said Code to the effect that—

There is a certain plot of ground occupied by you in the \_\_\_\_\_ division of the \_\_\_\_\_ of \_\_\_\_\_ register No. \_\_\_\_\_ in \_\_\_\_\_

[a-a] This word was substituted for the original words "Governor in Council of Bombay" by Bom. Act IV of 1913, s. 82.

[b] There is no Schedule G.

the map marked sheet \_\_\_\_\_ No. \_\_\_\_\_ and facing towards the  
 the road leading from \_\_\_\_\_ to \_\_\_\_\_, containing  
 about \_\_\_\_\_ square yards, and of the following shape and about the  
 following dimensions :—

You are hereby confirmed in [a] the said occupancy [a] exempt from all land  
 revenue (or subject to the payment of Rupees \_\_\_\_\_ 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 assess-  
 ment, 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 eight hundred  
 and \_\_\_\_\_ A. D.

(Signed).

#### SCHEDULE I

FORM OF WARRANT TO BE ISSUED BY THE COLLECTOR UNDER SECTION 202

Seal

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  
 where 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 \_\_\_\_\_ 197 .

(Signature of Collector).

[a-a] These words were substituted for the original words "the occupancy of  
 the above described ground" by Bom. Act IV of 1913, s. 83.

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THE  
**Bombay City Land Revenue Act**

BOM. ACT No. II OF 1876.

[26th October 1876.]

(As amended upto date.)

AN ACT TO AMEND THE LAW RELATING TO THE LAND-REVENUE  
ADMINISTRATION OF THE CITY OF BOMBAY.

*Preamble.*—WHEREAS it is expedient to amend the law relating to the assessment and collection of the land-revenue; to provide against encroachments upon public property, to ensure the preservation of survey-boundary-marks, and otherwise to improve the existing land-revenue administration in the City of Bombay; it is enacted as follows:—

*Part I.—Preliminary.*

1. *Short title.*—This Act may be cited as “The Bombay City Land-revenue Act, 1876.”

*Extent.*—It extends only to the City of Bombay.

2. *Regulation XIX of 1827 repealed.*—So much of Regulation XIX of 1827 as has not been already repealed is hereby repealed.

All references made in any Act or Regulation to any part of the said Regulation XIX of 1827 hereby repealed shall be read as if made to the corresponding portion of this Act.

And all rules prescribed, appointments made, powers conferred, orders issued, and notifications published under the said Regulation, and all other rules (if any) now in force and relating to any of the matters hereinafter dealt with shall (so far as they are consistent with this Act) be deemed to have been respectively prescribed, made, conferred, issued and published hereunder.

And all proceedings now pending, which have been commenced under any part of the said Regulation XIX of 1827 hereby repealed shall be deemed to have been commenced under this Act, and shall hereafter be conducted in accordance with the provisions of this Act.

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

\* (1) “Collector” or “Collector of Bombay” means the Collector of Land-revenue, Customs and Opium, Bombay, or such officer as Government conformably to law may appoint in this behalf;

(2) the words “land-revenue” signify any sum of money legally claimable by Government from any person on account of any

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\* The original sub-section (1) of section 3 was repealed by Bom. Act III of 1886, and the present clause was inserted by Bom. Act III of 1900, s. 1.

land, or interest in, or right exercisable over, land held by, or vested in, him, under whatever designation such sum may be payable ;

(3) the words "survey-boundary-mark" mean, primarily, any iron or other mark set up by the officers who conducted the Bombay City-survey hereinafter described, and include any such new mark that may hereafter be set up by the Collector or under his orders, according to the provisions of this Act ;

§(4) "superior holder" means the person having the highest title under Government to any land in the City of Bombay.

§ Sub-section (4) of section 3 was substituted for the original clause by Bom. Act III of 1900, s. 1.

*Part II.—The Collector of Bombay and his Subordinates.*

4. *Chief control in revenue matters.*—The chief controlling authority in all matters connected with the land-revenue is vested in the Collector of Bombay subject to the Governor in Council.

5. *Appointment and duties of the Collector of Bombay.* The Collector of Bombay shall be appointed by the Governor in Council, and shall exercise the powers and discharge the duties conferred and imposed on him by this Act, or by any other law for the time being in force, and, so far as is consistent therewith, all such other powers or duties as may from time to time be prescribed by the Governor in Council.

6. *His assistants and establishment how appointed.*—The Collector shall have as many assistants and such other establishment subordinate to him as the Governor in Council,\* may from time to time sanction, and their appointment shall be made in such manner as the Governor in Council may direct.

\* Words repealed by Act XXXVIII of 1920, s. 2 and Sch. I, are omitted.

*Their duties.*—The duties of the said assistants and other subordinates of the Collector shall be such as the Collector, subject to the orders of Government, may from time to time prescribe.

*and powers.*—Subject to the previous sanction of Government, the Collector may delegate any of his powers under this Act, or under any law which the Governor in Council is able to repeal or alter, to any of his assistants or other subordinates, and may at any time cancel such delegation.

7. *Punishment for misconduct.*—The Collector shall have power, subject to such rules as may from time to time be prescribed by Government, to fine, reduce, suspend or dismiss any of his assistants or other subordinates.

*Part III.—Assessment and Collection of Land-revenue.*

8. *Collector to fix and levy land revenue.*—It shall be the duty of the Collector, subject to the orders of Government, to fix and to levy the assessment for land-revenue.

When there is no right on the part of the superior holder in limitation of the right of Government to assess, the assessment shall be fixed at the discretion of the Collector subject to the control of Government.

When there is a right on the part of the superior holder in limitation of the right of Government, in consequence of a specific limit to assessment having been established and preserved, the assessment shall not exceed such specific limit.

9 *Settlement of assessment with whom to be made.*—The settlement of the assessment of each portion of land to the land-revenue shall be made with the superior holder of the same.

If the said superior holder be absent and have left no known authorized agent in Bombay, or if there be a dispute as to who is entitled to be considered the superior holder of the land, the settlement may be made with the person actually in possession of the land; and any assessment so fixed shall be binding upon the rightful superior holder of the land.

Any payment made by the person in possession in accordance with the provisions of this Act shall be deemed to have been made on behalf of the superior holder.

\* In any case wherein the superior holder or the person in possession cannot be readily ascertained, the Collector shall give notice calling on all persons claiming the right of a superior holder in or over the said land or a right to the possession thereof to intimate such claim to the Collector at the Collector's office.

\* If no person asserts such right by intimation to the Collector at the Collector's office within twenty-one days from the date of such notice, the Collector may assess such land at his discretion, and the superior holder and every person then or thereafter in possession of the land shall be liable accordingly.

\* These paragraphs were added to section 9 by Bom. Act III of 1900, s. 2.

"*Settlement of register*"—The phrase "settlement of register" in this section does not by itself imply the necessity of prior notice to the superior holder before the assessment is enhanced. The phrase means no more than that when the settlement is fixed the fact shall be communicated to the superior holder (*Vinagat v. The Collector of Bombay*, 26 Bom. 339).

10. *Liability for land-revenue.*—The superior holder of land, or, in his absence, the person actually in possession, shall be liable in person and property for the land-revenue due upon the holding.

§ Arrears of land-revenue due on account of land shall, on failure by the persons interested therein to pay the same within the date specified in that behalf in a notice demanding payment posted on or near the land, be a paramount charge on the land and on every part thereof.

§ This paragraph was added to section 10 by Bom. Act III of 1900, s. 3.

11. *Claims of Government to have precedence.*—The claim of Government to any moneys recoverable under the provisions of this Act shall have precedence over any other debt, demand or claim whatsoever, whether in respect of mortgage, judgment, decree, execution, attachment or otherwise howsoever, against any land, or the superior holder thereof.

12. *Collector to direct to whom and when and where revenue to be paid.*—Subject to such orders as may be passed by the Governor in Council, the Collector shall from time to time give orders and make known the same by notice to be served on all superior holders of land paying revenue, or, in their absence, persons in possession, regulating the persons, places and times to whom and within which the revenue payable in respect of any land shall be paid.

\* Provided that where the assessment leviable in any case under the provisions of this Act does not exceed one rupee *per annum* it shall be lawful for the Collector, subject to the orders of Government, to levy in lieu of such assessment, a single lump sum of such amount as the Collector, subject as aforesaid, deems to be a fair equivalent of the assessment but not in any case exceeding thirty times the assessment.

\* This proviso was added by Dom. Act I of 1910, s. 2 and Sch. I.

13. *Notice of demand may be served after arrears due.*—† If any land-revenue is not paid at, or within, the time when it becomes payable the Collector may, on or after the day following that on which the arrears accrue due, cause a notice of demand to be served on the superior holder or on the person in possession, or on both.

*Fees chargeable in respect of notice of demand.*—† Every person to whom any such notice is issued shall be chargeable in respect thereof with a fee not exceeding two rupees calculated according to the rates specified on this behalf in the table in Schedule A :

† Provided that in no case shall the fee chargeable for any notice exceed the amount of the land-revenue in respect of which the said notice is issued.

*On default of payment, defaulter's property may be attached and sold.*—If the superior holder or person in possession, as the case may be, shall, for the space of twenty days after service of written notice of demand of payment, fail to discharge the revenue due, it shall be lawful for the Collector to levy the same by attachment and sale of the land on which the revenue is due, or of any other property, moveable or immovable, of the defaulter.

*Sales to be held.*—Such sales shall be by public auction, and shall not take place until at least fifteen days after notice thereof shall have been published in the *Bombay Government Gazette*.

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† These paragraphs and proviso were substituted for the first seventeen words of section 13 by Dom. Act III of 1900, s. 4.



*Defaulters may be arrested and confined.*—If the sale of the defaulter's property shall not produce satisfaction of the demand, it shall be lawful for the Collector to cause him to be apprehended and confined in the civil Jail under the rules in force at the Presidency for the confinement of debtors, for which purpose a certificate of demand under the Collector's signature sent with the defaulter shall be the sheriff's sufficient warrant, equally with the usual legal process in ordinary cases of arrest in execution of judgment of debt :

Provided, however, that such imprisonment shall cease at any time upon payment of the sum due, and that it shall in no case exceed one day for each rupee of the said sum.

14. *Collector's decision to be acted on in first instance ; but may be stayed on security being furnished.*—The Collector's decision upon any question arising out of the provisions of sections 8 to 13† shall, unless superseded by the Revenue Judge, be binding upon all persons whom it may concern, and shall be acted upon accordingly ; but the Collector's decision shall be stayed on any such person giving security to the satisfaction of the Collector that he will, within thirty days from the date when such decision was made known to him, institute a suit before the Revenue Judge for the purpose of contesting the legality of the Collector's decision, and will fulfil the decree that may be passed against him, and will pay all costs and interests which may be so decreed ; or that, if he fail to file such suit as above specified, he will, when required, pay the amount demanded.

† Words repealed by Bom. Act III of 1886 are omitted.

15. *Compulsory process to cease on payment under protest ;*—All compulsory process against a defaulter shall cease on his paying or tendering the amount demanded of him under protest to the officer executing such process ; or

*or on instituting suit and furnishing security.*—on his instituting a suit before the Revenue Judge to contest the legality of the demand, and furnishing security satisfactory to the Collector or Revenue Judge, that he will, pending the decision of the said suit, neither quit the jurisdiction, nor remove nor transfer any of his property therein, without providing to the satisfaction of the Collector or of the Revenue Judge for the execution of the decree.

16. *Fees in respect of warrant for attachment and sale of defaulter's property. Additional fee.*—Fees shall be payable according to the table in the Schedule A\* on all warrants issued under the provisions of section 13\* for the attachment and sale of the property of defaulters, by the person in respect of whose property such warrants are issued, and an additional fee of four annas per diem shall be paid

\* Words repealed by Bom. Act III of 1886 are omitted.

in like manner in respect of each peon employed, whenever the peon or property distrained is placed in charge of any peon or peons.

*Part IV.—The Revenue Judge.*

17. *Revenue Judge.*—The Senior Magistrate of Police shall be the Revenue Judge.

*Duties and powers.*—The Revenue Judge shall decide all suits brought before him against the Collector, or any person on his establishment, on account of land-revenue, or of acts done in the official capacities by the Collector, or any of his assistants or other subordinates.

18. *Suits before Revenue Judge how conducted.*—All such suits shall be commenced and the trial thereof shall be conducted according to the provisions of the general law of civil procedure for the time being in force in a District Court.

*Appeals how and to whom to lie.*—An appeal shall lie against a decree passed by the Revenue Judge in any such suit to the High Court on its appellate side, and shall follow the same rules as would be applicable under any law for the time being in force to appeals from the decrees of a District Court in original suits tried by it.

*Decrees how executed.*—The decree in any such suit, whether made by the Revenue Judge or of the appellate authority, shall, if it be against the Collector, be fulfilled by the Collector.

If it be against the plaintiff, it may be enforced by the Collector under section 13\* as an established revenue-demand.

Provided, however, that execution shall in either case be stayed if an appeal be made, and on the plaintiff's furnishing security similar to that described in section 15\* if the appeal be brought by him.

\* Words repealed by Bom. Act III of 1886 are omitted.

*Part V.—The Bombay City-survey and Boundary-marks.*

19. *Bombay City survey recognized.* § The latest survey completed under the authority of Government shall be called "The Bombay City-survey"; and the demarcation of lands then made, and all the records of the said survey, shall be taken as *prima facie* evidence for all proceedings under and for all the purposes of this Act:

Provided that the Collector may, on the application of the parties interested in such lands, and shall, in pursuance of a decree or order of a competent Court, cause any alteration or correction to be made of any such demarcation of lands, or of any entry in any such record.

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§-§ These words were substituted for the original words by the Bombay City Survey Act, 1915 (Bom. Act IV of 1915), s. 16.

20. *Responsibility for maintenance and repair of boundary-marks.*—Every superior holder of the land shall be responsible for the maintenance and good repair of the survey-boundary-marks of his holding, and for any expenses, not exceeding five rupees for each mark, reasonably incurred on account of the same by the Collector in cases of alteration or removal.

21. *Collector or subordinates may enter upon lands.*—It shall be lawful for the Collector, or for any of his assistants or other subordinates in that behalf duly authorized by writing under the hand of the said Collector, to enter upon any lands for the purpose of inspecting the survey-boundary-marks erected thereon, or of altering, renewing or repairing such marks.

22. *Collector may require superior holders to renew or repair survey marks. Requisition how made.*—In the event of any survey-boundary-mark being destroyed, defaced, injured or removed, it shall be lawful for the Collector to cause to be served on the superior holder, or in his absence the person in possession of any land of which such mark designates the boundary, a requisition in writing signed by the said Collector, calling on such superior holder or person in possession to renew or repair the said mark, at his own expense, within fifteen days from the date of the service of such requisition.

23. *On default, Collector or assistants may enter and renew or repair. Charge for renewal or repair.*—If the said survey-boundary-mark be not renewed or repaired, within the said period, to the Collector's satisfaction, it shall be lawful for the Collector or any of his assistants or other subordinates, or other person duly authorized as hereinbefore mentioned, to enter upon any land to which the said mark appertains, and to renew or repair it; and for each such mark so renewed or repaired it shall be lawful for the Collector to charge each superior holder or person in possession, the boundary of whose land is designated by any such mark, such sum, not exceeding rupees ten in the whole, as he may deem fit.

#### *Part VI.—Government Lands and Foreshore.*

24. *Right of Government to lands and foreshore* —All unoccupied lands within the City of Bombay, and every unoccupied portion of the foreshore below high-water mark, shall be deemed, and are hereby declared to be, the property of Government, subject always to the rights of way and all other rights of the public legally subsisting.

25. *Such lands and foreshore how disposed of.*—It shall be lawful for the Collector, with the sanction of Government, to dispose of any Government lands or foreshore, in such manner and subject to such conditions as he may deem fit.

*Part VII.—Encroachments.*

26. *Power to abate encroachments on Government land or foreshore*;—In the event of any encroachment being made after the passing of this Act on any Government lands or foreshore, it shall be lawful for the Collector or his assistants, or other subordinates, duly authorized in this behalf by writing under his hand, to summarily abate or remove any such encroachment ;

\* and the expense incurred therefor shall be leviable from the person in occupation of the land encroached upon.

*or to prohibit or require abatement of such encroachments under penalty of fine* ;—\*The Collector or such subordinate may, by notice posted up on or near any such land and published in the *Bombay Government Gazette*, and in such local newspapers as he deems fit, prohibit or require the abatement or removal of encroachments thereon, and shall fix in such notice a date, which shall be a reasonable time after such notice, on which the same shall take effect.

\* Every person who makes, causes, permits or continues any encroachment on any land referred to in a notice so posted, shall be liable at the discretion of the Collector to a fine not exceeding twenty-five rupees for every day during any portion of which the encroachment continues after the date fixed for the notice to take effect.

\* These paragraphs were added to section 26 by Bom. Act III of 1900, s. 5.

*or to charge for and assess land and enter it in name of encroacher*.—But it shall be competent to the Collector, with the previous sanction of Government, and if the person making the encroachment so desire, to charge the said person a sum not exceeding five times the value of the land so encroached upon and to fix an assessment not exceeding five times the ordinary annual land-revenue thereupon, and then to cause the said land to be entered in his records in the name of the said person.

† The person who made such encroachment or who is in occupation of the land so encroached upon shall in any case also be liable to pay assessment at a rate not exceeding five times the ordinary land-revenue on the said land from the date when the encroachment was made, occupation of the land for a portion of a year being counted as for a whole year.

† These words were added by Bom. Act II of 1919, s. 2 and Sch. I.

**Meaning of sub-section (2).**—The meaning of sub-section (2) of this section is that the Collector can, if the encroacher so desire, permit him to acquire the property at the assessment named in this section ; this is, in effect, that subject to the limitations imposed by this section the Collector can sell the land, on which the encroachment has been made (*Jethabhoj v. Collector of Bombay*, 3 Bom. L.R. 621).

27. *Value and land-revenue how calculated*.—For the purposes of the preceding section, the value of the land that has been encroached

upon shall be fixed by the Collector according to the market value of similar land in the same neighbourhood at the time of such valuation.

And the annual revenue of any such land shall be assessed at the same rate as the land-revenue of similar land in the vicinity.

28. *Encroachments made before passing of Act how dealt with.*—In the case of any encroachment made within twenty years before the passing of this Act, the Collector may, with the sanction of Government, charge the person who made such encroachment, or who is in occupation of the land so encroached upon, a sum not exceeding double the value of the said land, and fix an assessment not exceeding double the ordinary annual land-revenue thereon, and recover arrears of land-revenue at the same rate from the date when the encroachment was made.

29. *Encroachments before passing of Act defined.*—For the purposes of the last preceding section, the amount by which any holding shall have been shown by the Bombay City-survey to exceed the area of such holding as entered in the Collector's previous records shall *prima facie* be held to be an encroachment.

*Value and land-revenue payable in respect thereof how calculated.*—And the value and land-revenue payable in respect of the same shall be calculated according to the market value of similar land in the neighbourhood, and the land-revenue chargeable in respect of the excess shall be calculated at the same rate at which the rest of the holding has been assessed.

In case there has been no such holding, the assessment shall be made at such rate as the Collector, with the sanction of Government, may fix.

#### *Part VIII.—Transfer of Lands, &c.*

30. *Notice of transfer of title to lands, &c., to be given to Collector.*—Whenever the title to any land, house or other immovable property, subject to the payment of land-revenue to Government, shall be transferred or assigned, the person transferring or assigning the same, and the person to whom the same shall be transferred or assigned, shall respectively cause notice of such transfer or assignment to be given to the Collector.

*Notice when to be given.*—Such notice shall be given within twenty days after execution of the instrument of transfer or assignment, or after its registration, if it be registered, or after the transfer or assignment is effected, if no instrument is executed.

*Transferees by death to give notice within one year.*—In the event of the death of any person in whose name the title to any property is entered in the Collector's records, the person to whom such

title shall be transferred as heir or otherwise shall cause notice thereof to be given to the Collector within one year from such death.

31. *Form of notice*—The notice shall be in the form either of Schedule B or Schedule C [a] as the case may be, and shall state clearly all the particulars required by the said form.

*Accompaniments.*—It shall be accompanied, whenever the Collector shall deem fit so to require, by the instrument of transfer, if any [b] by a plan to be furnished of the land which is the subject of the transfer or assignment, drawn and attested by [b] [c] such officer as the Collector may direct [c] and by a certificate that public notice has been given of the transfer or assignment by beat of bataki.

32. *Penalty for neglect to give notice.*—Every person neglecting to give the notice required by the two last preceding sections within the time therein specified, shall be liable at the discretion of the Collector to a fine not exceeding ten rupees in case of holdings paying less than one rupee as land-revenue, and in no other case exceeding rupees one hundred.

33. *Person transferring title and omitting to give notice to continue liable for revenue.*—Every person transferring the title to any land, house, or other immoveable property subject to the payment of land-revenue to Government, without giving the notice required by sections 30 and 31 [a] shall continue liable to Government for the payment of all land-revenue accruing due in respect thereof, until he shall have given such notice or until the requisite transfer shall have been effected in the Collector's records.

But nothing contained in this section shall be held to diminish the liability of the land, house or other immoveable property to attachment or sale under the provisions of section 13. [a]

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

[b-b] These words were inserted in section 31 by Bom. Act III of 1900, s. 6.

[c-c] These words were substituted for the original words by the Bombay City Survey Act, 1915 ( Bom. IV of 1915 ), s. 17. The original words were inserted by Bom. III of 1900, s. 6.

34. *Proceeding in case of dispute as to entry or transfer.*—\*Whenever any dispute or question shall arise with respect to the making or completion of any entry or transfer in the records of the Collector, of or relating to any land, house or other immoveable property subject to the payment of land-revenue to Government, the Collector shall summon all the parties interested in such entry or transfer, and shall call for such evidence, and examine such witnesses, as he shall consider necessary, and shall thereupon decide summarily what entry shall be made in his records in respect of such land, house or other immoveable property.

If at any time a certified copy shall be produced to the Collector of an order of a competent Court determining the title to any such

\* Words repealed by Bom. III of 1886 are omitted.

land, house or other immoveable property, the Collector shall amend his records in conformity with such order.

35. *Registration or transfer not to affect right of Government.*—The registration or transfer of any title in the Collector's records shall not be deemed to operate so as in any way to affect any right, title or interest of Government in the land, house or other immoveable property in respect of which any such transfer is made or registered.

*Part IX.—Procedure.*

36. *Law applied to summonses, &c.*—The provisions of the Code of Civil Procedure in force for the time being with respect to the issue of summonses and commissions, and the compelling the attendance of witnesses, and for their remuneration, in suits before a District Court, shall apply to all persons summoned to appear before the Collector under the provisions of this Act.

*Notices how to be served*—\* Any notice which the Collector or any of his subordinates is by this Act required or empowered to issue shall be deemed to have been sufficiently served,

(a) if it is addressed to any person and has been—

(i) delivered to such person, or

(ii) delivered at his abode and in his absence to any adult male member or servant of his family, or

(iii) sent by post in a letter addressed to him at his last known residence, address or place of business and registered under Chapter VI of the Indian Post Offices Act, 1898, or

(b) if the Collector is in doubt as to the person to whom such notice should be addressed or as to the residence, address or place of business of any person on whom it is desired to serve such notice, and

(i) causes the notice to be posted in some conspicuous place on or near the land to which it relates, and

(ii) publishes the notice either in the *Bombay Government Gazette* or in such local newspapers as he deems fit or by proclamation on or near such land accompanied with beat of drum.\*

\* This paragraph was added to section 36 by Bom. Act III of 1900, s. 7.

*Part X.—Levy of House-rent, Fees, Penalties, &c.*

37. *Dues leviable as revenue demands.*—All arrears of rent payable by any person in respect of the occupation of any house the property of Government, and all fees, fines and penalties chargeable under this Act, and all moneys leviable under the provisions of this Act, on account of the value of any land, or on account of the altera-

tion, removal, renewal or repair of survey-boundary marks,\* or on account of the abatement or removal of an encroachment,\* shall be realized in the same manner as other revenue demands, under the provisions of 13 of this Act.

\* These words were inserted in section 37 by Bom. Act III of 1900, s. 8.

38. *Power to Collector of Bombay to assist other Collectors in realization of dues.*—It shall be lawful for the Collector of Bombay to levy, in the same way as any arrear of land-revenue due under this Act, any sum certified by the Collector or Assistant or Deputy Collector of any district or collectorate in the Presidency of Bombay to be due and recoverable as an arrear of land-revenue, from any person residing or owning property in the city of Bombay, by whom the same is so certified to be due.

*Part XI.—Miscellaneous.*

39. *Collector to keep registers and rent-rolls.*—It shall be the duty of the Collector to prepare and keep in such form as Government may from time to time sanction a separate register and rent-roll of every description of land according to the nature and terms of the tenure on which such land is held.

40. *Maps, land-registers and records where to be kept ; to be open to inspection. Extracts and copies to be given.*—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 land-registers, and other records of the Bombay City survey, and all records concerning the land or the land-revenue, shall be kept in the Collector's office, and shall be open to the inspection of the public at reasonable hours ; and certified extracts from such maps, registers and records, or certified copies thereof, shall be given to all persons applying for the same.

41. *Power to frame and vary rules for guidance of Collector, &c., and for matters not provided for.*—It shall be lawful for the Governor in Council from time to time to frame, and from time to time to vary or repeal, rules not inconsistent with the provisions of this Act from the guidance of the Collector and his assistants and other subordinates in the discharge of their duties, or for any other purpose connected with the subject-matter of this Act, not expressly provided for therein.

Any of such rules as the Governor in Council may deem fit may be published, and when published shall, until cancelled or amended by the Governor in Council, have the force of law.



## SCHEDULE A.

*Table of Fees payable under the provisions of section 16 of this Act.*

Sum distrained for.	Fee.
	Rs. as.
Not exceeding Rs. 5	0 8
Over Rs. 5 and not exceeding Rs. 10	1 0
" 10                   "    " 15	1 8
" 15                   "    " 20	2 0
" 20                   "    " 25	2 8
" 25                   "    " 30	3 0
" 30                   "    " 35	3 8
" 35                   "    " 40	4 0
" 40                   "    " 45	4 8
" 45                   "    " 50	5 0
" 50                   "    " 60	6 0
" 60                   "    " 80	7 8
" 80                   "    " 100	9 0
Upwards of Rs. 100	10 0

*[a] Table of Rates of fees payable under the provisions of section 13 in respect of notices demanding payment of arrears of revenue.*

Revenue due.	Notice fee
	Rs. as.
Not exceeding Rs. 25	0 8
Over Rs. 25 and not exceeding Rs. 100	1 0
Over Rs. 100	2 0

[a] This table was added to Schedule A by Bom. Act III of 1900, s. 9.

**SCHEDULE B.**

*Form of Notice of Transfer to be given under section 30 of this Act, when the transfer has taken place otherwise than by Instrument.*

To

**THE COLLECTOR OF BOMBAY.**

I, *A. B.*, hereby give notice, as required by section 30 of the Bombay City Land-revenue Act, of the following transfer of property.

Date of Notice.	Name in which the property is at present entered in the Collector's records	To whose name it is to be transferred.	Description of the property.						
			Of what it consists.	Situation.	Collector's No.	Bombay City Survey No.	Dimensions of land.	Boundaries.	Remarks.

( Signed )

*A. B.*

**SCHEDULE C.**

*Form of Notice of Transfer to be given under section 30 of this Act, when the transfer has been effected by Instrument.*

To

**THE COLLECTOR OF BOMBAY.**

I, *A. B.*, hereby give notice, as required by section 30 of the Bombay City Land-revenue Act, of the following transfer of property.

Date of Notice.	Date of instrument.	Name of vendor or assignor.	Name of purchaser or assignee.	Amount of consideration.	Description of the Property.						If instrument has been registered the date of registration.	Remarks.	
					Of what it consists.	Situation.	Collector's No.	Bombay City survey No.	Dimensions of land.	Boundaries.			

(Signed)

*A. B.*

THE BOMBAY CITY LAND REVENUE ACT.

## RULES UNDER SECTION 40

:o:

In exercise of the powers conferred by section 40 of the Bombay City Land Revenue Act, 1876 ( Bom. II of 1876 ), and in supersession of all existing orders on the subject, the Governor in Council is pleased to make the following rules and prescribe the following fees for the inspection, search or obtaining copies of all maps and land registers and other records of the Bombay City Survey and all records concerning the land or the land-revenue kept in the office of the Collector of Bombay :—

1. Every application for search, inspection and supply of copies of, or extracts from, the Records shall be made in writing on paper bearing a Court Fee Stamp of the value of one anna.

The date of receipt shall be endorsed upon the application and the date on which the requisition was satisfied and the amount of the fee received shall be duly recorded.

2. All fees for search, inspection or copies including value of stamps required must be paid in advance.

3. Certified copies will be given on stamped papers in accordance with Article 24, Schedule I of Act II of 1899 and Schedule I of Act VII of 1879.

4. All certified copies applied for of documents or extracts from documents in the Records shall be prepared and compared by members of the Collector's establishment and charges will be made at the following rates :—

### Documents.

#### *Copying Fees.*

#### FOR ORDINARY DOCUMENTS.

Annas two per folio of 100 words or fraction of 100 words to a minimum charge of annas 8.

#### FOR TABULATED DOCUMENTS.

	...	Annas.
Extracts from Survey Registers, each entry	...	8
„ Rent Rolls	...	8
„ Reference Books	...	8
Transfer Schedules, each entry	...	8

### PLANS

#### SQUARE YARDS.

		...	Rs.
For plans of areas below	100	...	2
„ between	100 and 500	...	3
„ „	500 and 1,000	...	4
„ „	1,000 and 3,000	...	5
„ „	3,000 and 10,000	...	8
„ over	10,000	...	10

*Comparing Fees.*

FOR DOCUMENTS.

The comparing fee shall be equal to the copying fee subject to the minimum fee of one rupee and the maximum fee of two rupees.

FOR PLANS.

For copies of Revenue Survey plans the comparing fee shall be Rs. 3 for plans of areas below 3,000 square yards, and Rs. 5 for plans of areas above 3,000 square yards.

For copies of other plans the comparing fee shall be Rs. 2.

5. A fee of Rs. 5 for each day will be charged in every case for search and inspection when permitted by the Collector. In no case will less than Rs. 5 be charged for search or inspection.

6. No search, inspection or copies of documents will be charged in cases where it is obvious that such a course would be prohibitive to interests of Government.

**RULES UNDER SECTION 41.**

RULES REGARDING THE PRODUCTION OF RECORDS OF THE COLLECTOR  
OF BOMBAY BEFORE THE COURTS OF LAW UNDER  
SUBPOENA DUCES TECUM.

1. Every summons for a production of the Collector's records, maps, or rent rolls into Court should be accompanied with a fee of Rupees five, for which a receipt in due form will be given, and the amount credited to Government.

2. A clerk, surveyor, inspector or other non-gazetted officer or any gazetted officer under the Collector of Bombay producing the record on behalf of the Collector shall, subject to the orders of the Collector, be entitled to buggy-hire and daily attendance fee according to the scale noted in the margin.

<i>Non-gazette Officers.</i>			
Persons getting Rs. 30 or less per month		Rs. 1	
Do. 31 to 60 "		Rs. 2	
Do. 61 to 100 "		" 3	
Do. above Rs. 100 "		" 5	
<i>Gazetted Officers.</i>			
	Rs. 30.		

3. In the event of the party refusing to pay the fees or buggy-hire mentioned in rules 1 and 2, the clerk or other persons charged with production of the required record shall attend the Court, and inform the Judge that the fee has not been paid, and the order given by the Judge in the matter should be reported to the Collector in writing.

RULES REGARDING THE DISPOSAL OF GOVERNMENT LANDS  
FOR THE MANUFACTURE OF SALT.

(1) Government salt lands or lands occasionally overflowed by salt water should not ordinarily be disposed of under section 25 of the Act,

without first ascertaining by reference to the Salt Department whether they are wanted or likely to be wanted for salt manufacture.

(2) On receiving an intimation from the Collector of Salt Revenue that any unoccupied Government land at the disposal of the Collector of Bombay is wanted or is likely to be wanted for salt manufacture, the Collector of Bombay may, if he sees no objection to its appropriation for that purpose, dispose of such land to the Salt Department, and shall, in such case, cause a note to that effect to be made in the Survey Register.

Such land shall thenceforth be at the disposal of the Collector of Salt Revenue, subject to the general orders of Government to let for the manufacture of salt or to make other arrangements as to its use for that purpose, on such conditions and for such period as, subject to the said orders, he may deem fit (*Vide Local Rules and Orders, Vol. IV, pp. 58-61*).

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**THE  
Bombay Local Funds Act**

BOM. ACT No. III OF 1869.

[ 3rd April 1869.

An Act to provide in the Presidency of Bombay funds for expenditure on objects of local public utility and improvement. (a) \* \* \*

WHEREAS it is expedient to provide funds for local works of public utility and convenience, and to make better provision for education and sanitary improvements in the Presidency of Bombay [b] \* \* \*; it is enacted as follows:—

[a] The words “and to constitute Local Committees for the due administration of such funds” were repealed (except as to Aden) by the Bombay Local Boards Act, 1884 ( Bom. Act I of 1884 ).

[b] The words repealed ( except as to Aden ) by the Bombay Local Boards Act, 1884 ( Bombay Act, I of 1884 ) are omitted.

1 to 5.—[Power to define limits of districts ; Local fund committees ; officers and establishments ]. Rep. ( except as to Aden ) by Bom. Act I of 1884.

6. It shall be lawful for Government to levy, for the purposes of this Act, on the conditions and in the manner hereinafter described, from all lands in the Presidency of Bombay, except jagir-lands not under the general Regulations, and also from every farmer of land or sair revenue in respect of any such farm taken from the Collector or other officer on behalf of Government after the date on which this Act comes into operation, a cess not exceeding one anna on every rupee that is assessable to the ordinary land-revenue, or that would have been so assessable had there been no alienation of such revenue, and on every rupee that is payable by such farmer of land or sair revenue in respect of such farm :

Provided that in respect of lands of which a settlement for a term of years is for the first time made after this Act comes into operation such cess be imposed at the time when such settlement is made, and at no other period during the currency of the term.

7. In assessing this cess on alienated villages as defined in [a] the [b] [Bombay Land-revenue Code, 1879] the following rules shall be adopted :—

I.—If the village has been surveyed and assessed on the principles laid down in [b] the [c] [ Bombay Land-revenue Code, 1879 ],

the cess shall be fixed on the total annual assessment of the village as made by the survey-officers.

II.—If the village has come under summary settlement under Bombay Act II or Bombay Act VII of 1863, the cess shall be fixed until the village is brought under the preceding rule on the total annual assessment as settled for the purposes of summary settlement.

III.—On villages not included in the preceding rules, the cess shall be fixed on the old or kammal rate recorded in the Collector's books; but [d] [if no such rate is so recorded or if the rate so recorded is] objected to by the holder or proprietor of the alienated village, then the cess may be fixed as agreed on by the Collector and such holder or proprietor, or failing agreement, then by a rough survey and assessment to be made by survey-officers, the expense of such rough survey being borne half by Government and half by the holder or proprietor of such village.

[d] The word "the" was inserted by the Repealing and Amending Act, 1895 (16 of 1895).

[c] These words and figures were substituted for the words and figures "(Bombay) Act I of 1865" by the Bombay Local Boards Act, 1884 (Bom. Act I of 1884). The amendment does not, however, extend to Aden as Bom. Act I of 1884 does not apply to Aden.

[d] These words were substituted for the words "if this rate be" by the Bombay Local Boards Act, 1884 (Bom. Act I of 1884, s. 75 (c)).

8. The cess described in sections 6 and 7\*\*\* [a] shall be levied in the same manner, and under the same provisions of law, as the ordinary land-revenue and through the agency of such officers as shall from time to time be appointed for the purpose by the Collector, acting under the general control of Government or of the [b] (Commissioner of the division) or other officer from time to time duly empowered on that behalf by Government.

[a] The words "of this Act" were repealed by the Bombay General Clauses Act, 1886 (Bom. Act 3 of 1886), Schedule B.

[b] These words were substituted for the words "Revenue Commissioner" by the Bombay Local Boards Act, 1884 (Bom. Act I of 1884), s. 75 (b). The amendment does not affect Aden, as Bom. Act I of 1884 does not extend to Aden.

The provisions of the law relative to the assistance to be given to superior holders for the recovery of their dues from their tenants and occupants under them shall be applicable to all superior holders, whether of alienated or unalienated land in respect of the recovery of this cess from their tenants and occupants, and shall be applicable



also to occupants of land under [a] the [b] Bombay Land revenue Code, 1879, for the recovery of this cess from their tenants or joint occupants.

[a] The word "the" was inserted by the Repealing and Amending Act, 1895 ( 16 of 1895 ).

[b] These words and figures were substituted for the words and figures " ( Bombay ) Act of I 1865" by the Bombay Local Boards Act, 1884 ( Bom Act I of 1884 ), s. 75 (a). The amendment does not affect Aden, as Bombay Act I of 1884 does not extend to Aden.

*Superior holder.*—The plaintiff's ancestors, as the Ruling Chief of Patdi, granted to defendants' ancestors, the village of Kamijala as "Jiwak iras." When in 1869, this Act was passed, which empowered Government to levy from all lands the local fund cess, it was decided that as Kamijala was one of the villages of the Patadi State, the cess upon it was fixed on the old Kamal rate. Since that time down to 1884 the revenue officers levied the cess in the first place from the Patdi Chief, who, in his turn, levied it from the defendants. In 1884, the Local Boards Act was passed, and then disputes arose as to whether assistance was to be given to plaintiff in recovering the local fund cess from the defendants; this resulted in the decision of the Bombay Government, that the defendant and not the plaintiff must be held to be superior holders responsible to Government for the local fund cess. This decision was communicated to plaintiff on April 24, 1888, and was afterwards upheld by the Secretary of State. Plaintiff, thereupon, filed the suit for a declaration that defendants were not the superior holders, and had no right to pay the local fund cess direct to Government, and that he was entitled to pay the same to Government and recover it from the defendants and for recovery of the cess which he paid from 1888 to 1895. *Held*, (1) that the plaintiff was not an "occupant" either generally or under the Bombay Land Revenue Code, for he was not in occupation of the land and the term under the Land Revenue Code is applicable to unalienated land; nor was plaintiff "superior holder" under the Bombay Land Revenue Code, since the words at the end of the second paragraph of this section do not control the preceding portion of the paragraph and the word "all" before "superior holder" does not extend the meaning of the latter term;

(2) that the plaintiff was not entitled to recover the cess already paid by him from 1888 to 1895, for since 1885 Government had ruled that plaintiff was not primarily responsible for the cess and that though he was interested in the village, the defendants being always anxious to pay the same, ss. 69 and 70 of the Contract Act did not apply and that under the circumstances the notice given by the mamlatdar to the plaintiff to pay the cess was not sufficient to bring the case within the operation of s. 69 of the Indian Contract Act ( *Gordhanlal v. Sarajmalji*, 4 Bom. L. R. 209 ).

*Fraudulent collection of cess.*—The plaintiffs sued to recover back from the defendant the amount levied by him as local cess on certain wasta lands belonging to the plaintiffs, the defendant claiming to be the superior holder of the village in which the lands were situated. The amount was levied by the defendant through the assistance of the mamlatdar under Bombay Act III of 1869, s. 8. The defendant contended that, in consequence of a demand from Government, he had

paid local cess on the whole of his talukh, including the village in which the plaintiff's lands were situated, and was, therefore entitled, under ss 69 and 70 of the Contract Act (IX of 1872), to recover from them the amount which he had paid to Government as a portion of the cess which rateably fell upon their lands. It was found that the defendant was not the proprietor of the lands held by the plaintiffs, and that the relation of landlord and tenant did not exist between them; also that defendant paid local cess for the plaintiffs' lands fraudulently and with the intention of thereby making evidence of title to their lands, knowing that he had no lawful or just claim to them. *Held*, that the defendant was not the superior holder of the lands within s. 8 of Bombay Act III of 1869, and was, therefore, not entitled to the assistance of the revenue officers of Government to recover the cess provided by that section for superior holders as against tenants and occupants, although he might have paid the local cess due on the land in the plaintiff's possession; and that, consequently, the aid of the mamlatdar was illegally and improperly given to the defendant for the recovery of the amount from the plaintiffs (*Desai Hamatsinji v. Bhovabhai Kayabhai*, 4 Bom. 643).

*Tenant's liability to pay the cess.*—Under this section a lessor, who is in the position of a superior holder, may recover the local fund cess from his lessee (*Ranga v. Saba*, 4 Bom. 473; *Ram Tukji v. Gopal Dhondi*, 17 Bom. 54).

*Liability of inamdar to pay the cess.*—An inamdar is a "superior holder" within the definitions of Reg. XVII of 1827 and Bom. Acts I of 1865 and V of 1879. He is, therefore, the person primarily liable to pay the local fund cess under this section. There is no provision of law entitling an inamdar to charge for his expenses in collecting the cess (*Secretary of State for India v. Balwant*, 17 Bom. 422).

9 to 13. [Accounts; assignment; administration of other funds: power to make rules; "Collector" and "Sub-Collector" defined. *Rep. except as to Aden*] Bom. Act I of 1884.

14. Cess collected previous to operation of Act. *Rep. Act XVII of 1873.*

Sindh and City of Bombay excluded.

15. This Act is not applicable to the Province of Sind or the City of Bombay.

Short title.

15. This Act may be cited as the Bombay Local Funds Act, 1869.

THE  
Sind Local Funds Act,

BOMBAY ACT No. VIII of 1865.

[27th December, 1865].

An Act to authorize taxation in the Province of Sindh for  
objects of public local utility and improvement.

*Preamble.*—WHEREAS it is expedient to provide funds for local works of public utility and improvement..... ; It is enacted as follows :—

1. *Levy of local cess on lands.*—It shall be lawful to levy for the purposes of this Act from all lands in the Province of Sindh a cess not exceeding one anna on every rupee assessable to the ordinary land-revenue, and such cess shall be levied in the same manner, and under the same rules, as the ordinary land-revenue :

*Levy of cess on settled lands.*—Provided that in all cases where an assessment of land-revenue has been authoritatively fixed for a term of years before this Act comes into operation and no cess has been theretofore levied upon such assessment, the cess authorized by this Act to be levied shall not be levied until the expiration of such term :

*Cess on lands hereafter settled to be imposed at time of settlement.*—Provided also that, in respect of lands of which a settlement for a term of years may be made after this Act comes into operation, such cess be imposed at the time when such settlement is made, and at no other period during the currency of the term.

*Note.*—The net proceeds of the cess on land and of the shop-tax levied under Bom. Act 8 of 1865 are to be credited to the Local Fund constituted by the Bombay Local Boards Act, 1884 (Bom. Act 1 of 1884), *see s. 44 of that Act.*

2. *Cess on alienated lands.*—It shall also be lawful, in the case of jagir and other alienated lands, to levy such cess at the rate 2 [ of ] five per centum on the assessable value of those lands, instead of the rate hereinbefore directed to be levied. ]

3. *Levy of cess from farmers of land or sair revenue.*—It shall also be lawful to levy a cess not exceeding one anna on every rupee leviable under the head of land or sair revenue from all farmers of land or sair revenue who may take farms subsequently to this Act coming into operation.

4. *Levy of shop-tax.*—It shall also be lawful to levy a shop-tax at rates according to classes to be approved and notified by the Commissioner in Sindh from time to time, but in no case exceeding rupees ten per

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1 The words "and to aid in defraying the expense of the Department of Public Works in the Province of Sindh" were repealed by the Bombay Local Boards Act, 1884 (Bom. Act 1 of 1884).

2 The word "of" was substituted for the words "heretofore customarily levied, namely" by the Bombay Local Boards Act, 1884 (Bom. Act 1 of 1884).

## THE SINDH LOCAL FUNDS ACT.

annum for each shop, and such tax shall be leviable from all persons who carry on any profession, trade or employment for gain, and use a shop or office for the purpose, and shall be enforced in the same manner and under the same rules as are provided for the levy of land-revenue, so far as applicable.

5. *Cess and tax by whom levied and how collected.*—The cess and tax to be levied under this Act shall be levied by the Commissioner in Sindh under the orders of the Governor in Council of Bombay, and shall be collected by such officers as the said Commissioner, acting under such orders, shall direct to collect the said cess and tax.

6 to 8. [*Assignment of portion of taxes to local fund committees ; primum of residuum to Government ; account to be kept.*] Rep. Bom. Act 1 of 1884.

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**THE**  
**Bombay Revenue Jurisdiction Act**

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ACT No. X OF 1876

(As amended by Acts XVI of 1877, XV of 1880, XII of 1891, IV of 1894, XIV of 1895 and Bom. Act XXI of 1929).

[28th March 1876

An Act to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the Land-revenue, and for other purposes.

WHEREAS in certain parts of the Presidency of Bombay, the jurisdiction of the Civil Courts in matters connected with the land-revenue is more extensive than it is in the rest of the said Presidency ;

Preamble.

And whereas it is expedient that the jurisdiction of all the Civil Courts in the said Presidency should be limited in manner hereinafter appearing ;

And whereas it is also expedient to amend the Bombay Civil Courts Act, section 32, and to revive certain provisions of the [1] thirteenth section of Regulation XVII of 1827 of the Bombay Code, which was repealed by the Land Improvement Act, 1871 ; [2]

[1] Section 17 of this Act which revised s. 13 of Bom. Reg. 17 of 1827 was repealed by Act XV of 1880, except in scheduled districts to which the Bombay Land Revenue Code, 1879 (Bom. Act 5 of 1879) does not extend.

[2] The portion repealed by the Repealing and Amending Act IV of 1894 is omitted.

It is hereby enacted as follows :—

Short title. 1. This Act may be called "The Bombay Revenue Jurisdiction Act, 1876 :"

Commencement. So much of section four as relates to claims to set aside, on the ground of irregularity, mistake or any other ground except fraud, sales for arrears of land revenue, shall come into force on such\* day as the Governor General in Council directs in that behalf by notification in the *Gazette of India*. The rest of this Act shall come into force on the passing thereof.

Extent. And it shall extend to all the territories for the time being under the Government of the Governor of Bombay in Council, but not so as to affect—

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\* The 10th September 1881—G. N. 1881, Pt. I, s. 92.

(a) any suit regarding the assessment of revenue on land situated in the Collectorate of Bombay, or the collection of such revenue;

(b) any of the provisions of Bombay Acts V of 1862 and VI of 1862, or of Act XXI of 1881, or of Act XXIII of 1871;

[a] \* \* \* \* \*

[a] Clause (c) was repealed by the Repealing and Amending Act XVI of 1895.

2. [Repeal of enactments] *Rep. Act XII of 1891.*

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

“Land” includes the sites of villages, towns and cities: it also includes trees, growing crops and grass, fruit upon, and juice in, trees, rights-of-way,

“Land.” ferries, fisheries and all other benefits to arise out of land, and things attached to the earth, or permanently fastened to things attached to the earth:

“Land-revenue” means all sums and payments, in money or in kind, received or claimable by or on behalf of Government from any person on account of any land held by or vested in him, and any cess or rate authorized by Government under the provisions of any law for the time being in force:

“Revenue officer” means any officer employed in or about the business of the land-revenue, or of the surveys, assessment, accounts or records connected therewith.

4. Subject to the exceptions hereinafter appearing, no Civil Court shall exercise jurisdiction as to any of the following matters:—

(a) claims against Government relating to any property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act No. III of 1874, or any other law for the time being in force, or of any other village-officer or servant, or

claims to perform the duties of any such officer or servant, or in respect of any injury caused by exclusion from such office or service, or

suits to set aside or avoid any order under the same Act or any other law relating to the same subject for the time being in force passed by Government or any officer duly authorized in that behalf, or

claims against Government relating to lands held under treaty, or to lands granted or held as saranjam, or on other political tenure, or to lands declared by Government or any officer duly authorized in that behalf to be held for service;

**Scope.**—So far as a plaintiff's claim to perform the duties of any office or claim for the cancellation of the watan register is concerned, the words of this section are wide enough to preclude the Civil Courts from entertaining such claim. A suit, however, for a declaration that the plaintiffs are the nearest heirs of the deceased representative watanidar is not barred by this section (*Hanmant v Secretary of State*, 54 Bom. 126, s. c. 32 Bom. L. R. 155).

Where a person in possession of watan lands under a miras lease or mortgage from the owner continues in adverse possession of the land after death of the owner for the statutory period, he is still liable to be ousted under the Hereditary Offices Act, and so he is at most entitled only to an injunction restraining the owners from taking proceedings other than under the Hereditary Offices Act to recover possession. An order which, though purporting to be passed under the Hereditary Offices Act, is not authorized by the Act, does not come within the purview of this Act (*Maganchand v. Vithalrao*, 37 Bom. 37).

**Suit to recover Saranjam lands.**—A suit to recover back possession of land, the Saranjam rights in which have been resumed by Government, is not barred by this section (*Gururao v. Secretary of State*, 41 Bom. 408).

**"Claims to perform duties of Hereditary officer."**—The plaintiff who was a Deshpande, an Hereditary District Officer, claimed against Government to perform the duties of a Deshpande's office. *Held*, that such suits were excluded from the jurisdiction of the Civil Courts (*Narayan v. Secretary of State*, P. J. 1897, p. 425).

**"Claims relating to property of village officer."**—When it has been decided that a particular land is service inam land, the Civil Court, under this clause, ceases to have jurisdiction over the plaintiff's claim against Government in respect of the trees growing thereon, as such claims related to property appertaining to the office of a village officer (*De souza Davino v. Secretary of State for India*, 18 Bom. 319).

**"Claims in respect of injury."**—A suit in respect of any injury caused by exclusion from office or service is barred by the 2nd paragraph of cl. (a) of this section. Having regard to the wording of the clauses of this section, the bar therein provided is not limited to suits against Government (*Naro v. Mahadeo*, 12 Bom. 614).

**"Treaty."**—The word 'treaty' in this clause ought not to be broadly interpreted. The word 'treaty' must, seeing that it is not defined in this Act, receive its generally accepted meaning, viz., that it is an agreement between two or more independent sovereign powers of State (*Kalabhai v. The Secretary of State for India*, 29 Bom. 19).

**"Claims to lands held on political tenure."**—A suit in a Civil Court against Government to recover possession of inam lands together with arrears of the amals is barred both under this section and s. 4 of the Pensions Act (XIII of 1871). It was barred under Reg. XXIX of 1827. These Acts, though not retrospective in their operation, still do not create rights to relief against the Government where none subsisted before (*Shivram v. Secretary of State for India*, 11 Bom. 222).

**Commutation of watan.**—Where a Collector orders commutation of watan services at the instance of the widow of the last watanidar, but without

observing the procedure prescribed by s. 73 of the Bom. Hereditary Offices Act, 1874, the order passed is *ultra vires* of him ; and a suit to set it aside can be entertained by a Civil Court notwithstanding the provisions of cl. (a) of this section (*Bhikaji v. Secretary of State*, 27 Bom. L. R. 463).

**Suit for declaration.**—A suit for a declaration that the plaintiffs are hereditary Vatandar Kulkarnis, and that they are entitled to be Vatandar and entitled to the Vahivat of the Vatan hereditarily, is barred by the provisions of clause (a) of this section (*Damodar v. Collector of Nasik*, 44 Bom. 261).

**Suit for share in emoluments of watan.**—Neither Act III of 1874 nor this Act contains any provision excluding the jurisdiction of Civil Courts in a suit brought to establish a share in the emoluments of a watan which has ceased to be a service watan (*Mohyodin v. Chhotibibi*, 5 Bom. 578).

**Suit for damages.**—A suit, in respect of any injury caused by exclusion from office or service, claiming damages by reason of a breach of an agreement between the co-sharers, is barred by para. (2) of cl. (a) of this section (*Naro v. Mahadeo*, 12 Bom. 614).

This section applies to all suits, and not to suits against Government only (*Ibid.*).

**Maintainability of suit as against Government.**—Where an order was passed by the Government under s. 36 of the Watan Act recognizing the claim of a certain person to succeed a deceased representative watandar, it was held that a suit against Government to have the resolution of the Government set aside is barred under this section (*Hanman v. Secretary of State*, 54 Bom. 125, s. c. 32 Bom. L. R. 155).

**Suit against Government.**—So far as the plaintiffs seek to have their own right to officiate declared, the Civil Court has no jurisdiction since the passing of the Bom. Hereditary Offices Act, 1874 ; but that Act did not take away the jurisdiction of Civil Courts to determine who were watandars. The discretion of the Collector only came into play when it is determined if one is a watandar ; so far as the plaintiffs ask for a declaration that defendant is not entitled to be on the list of watandars, the Civil Courts have jurisdiction (*Yallappa v. The Secretary of State*, P. J. 1888, p. 224).

Where an order is passed by revenue officers that a person is not a Vatandar a suit to obtain a declaration from a Civil Court that the decision is bad, is barred under the 3rd paragraph of cl. (a) of this section. If such a suit seeks relief against Government relating to watan land, it falls also within the first paragraph of cl. (a) (*Basingappagouda v. Secretary of State*, 28 Bom. L. R. 651).

A party against whom an order *ex-parte* is made by revenue authorities is entitled to have the matter fully heard after arguments on both sides. An order so passed on further hearing is not an order passed in revision, but an order properly made after hearing both the parties, one of whom had not been heard on the previous occasion (*Ibid.*).

**Jurisdiction of Civil Courts.**—The Civil Court has no jurisdiction to set aside orders made under ss. 11, 11A and § (2) of the Bombay Hereditary Offices Act (*Ibid.*).

Under para. 2 of cl. (a) of this section the jurisdiction of a Civil Court is excluded in a suit by a Deshpau's, an hereditary district officer, claiming against



Government the right to perform the duties of a Deshpande's office. The meaning of the words "claims to perform the duties of any such officer or servant" is to be taken from the preceding sentence (*Narayan v. Secretary of State*, P. J. 1894, p. 450).

A Civil Court has no jurisdiction to entertain a suit brought by Mahars for a declaration that they are entitled to a share in the Maharki Watan and for an injunction restraining the defendants from obstructing them in the enjoyment of the said share (*Bhiva v. Vithya*, 25 Bom. 186).

Under this section a Civil Court has no jurisdiction to entertain a suit for a declaration that the plaintiffs are watandar patils and kulkarnis of the village, and for cancellation of the watan register. The words of this section in question are wide enough to preclude the Civil Courts from entertaining any claim to the watan offices in opposition to the claim of the hereditary officers appointed or recognized under the Bom. Hereditary Offices Act, 1874, and also any claim for the cancellation of the watan register (*Laxmanrao v. Shrinivas*, 51 Bom. 830, P. C.).

The jurisdiction of the Civil Courts to entertain the claim for a refund of the contribution levied under the Bom. Hereditary Offices Act, 1874, is not barred by this section (*Ibid*).

The Mamlatdar passed a decree in plaintiff's favour in an assessment suit for rent. In the course of the execution proceedings under that decree, the plaintiff got attached a buffalo belonging to the defendant. On this, the petitioner applied to the Mamlatdar to raise the attachment on the ground that the buffalo had been pledged to him and the same was ordered. Plaintiff's case was that the alleged pledge was a fraud and she sued for damages. Held, that the suit was intended for the rehearing of the decision of the Mamlatdar as to whether the buffalo was pledged to the applicant and was not a *bona fide* suit for damages for a fraud practised on the court and that consequently it was not maintainable (*Sadoshie v. Radhabai*, 31 Bom. L. R. 504).

It is competent to a Civil Court to grant a declaration that the plaintiffs are Watandars of a Maharki Watan (*Raaji v. Dargdu*, 41 Bom 23; s. c. 18 Bom. L. R. 839).

Where Government have resolved that a certain person should be recognized as a representative watandar of a watan, a suit brought against Government to set aside the Government Resolution is barred under this section (*Hannant v. Secretary of State*, 54 Bom. 135; s. c. 32 Bom. L. R. 155).

**Cognizance of Civil Court.**—A suit by the Mahar Watandars to restrain the villagers of their village from delivering the carcasses of dead animals and paying baluta to the mangs, is not cognizable by a Civil Court, having regard to s. 18 of the Bom. Hereditary Offices Act, 1874 (*Mahadu v. Krishna*, 47 Bom. 95).

A suit to obtain a declaration that the Plaintiff, being of the eldest family, is the nearer heir to the late Watandar than the defendant, is cognizable by the Civil Court (*Shankar v. Dattatraya*, 17 Bom L. R. 725).

**Cl. (a) ultra vires.**—The plaintiff, a watandar patil, was, under orders of Government, dismissed from his office, and his life-interest in Patilki watan was forfeited. He sued the Secretary of State for a declaration that the order of Government was illegal and did not legally effect forfeiture within the meaning of

s. 61 of the Bom. Hereditary Offices Act, and for possession of the lands. The lower Court dismissed the suit on the ground that it is barred by para. (1) of cl. (a) of this section. The plaintiff appealed contending that para. (1) of cl. (a) was *ultra vires* of the Government of India: *Held*, that para. (1) of cl. (a) was not *ultra vires* of the Government of India, inasmuch as a claim like the plaintiffs could not have been brought in the ordinary Civil Courts against the East India Company by virtue of the preamble to Act XI of 1852 (*Rachangauda v Secretary of State*, 21 Bom. L. R. 1155).

“**Claims to land held for service.**”—This clause bars the jurisdiction of the Civil Courts to entertain suits against Government regarding land of which the plaintiff is put into occupation by Government free from exemption of the reward of his service. The plaintiff cannot escape from the bar by contending that his claim is for the possession of land, while the property that appertains to his office is not the land but the revenue arising from the land (*Appaji v. Secretary of State*, 28 Bom. 435).

**Land held in Saranjam—Suit against Government.**—The Inam Commissioner decided in 1858, under the provisions of Act XI of 1852, that certain estate was Saranjam and not sarva Inam. On the death of its holder P, in 1899, Government resumed the property on the ground that it was Saranjam and granted it to V, one of the grandsons of P. The plaintiff, another grandson of P, sued the Secretary of State for India and V, for a declaration of title to and for possession of the property, alleging that it was Serva Inam and that it was not competent to Government to resume and regrant it to any one it liked. *Held*, (1) that the decision of the Inam Commissioner was, by virtue of the provisions of r. 2 of Sch. A of Act XI of 1852, final as regards interests concerned in the decision; (2) that the title to and continuance of the estate must be determined under Sch. B. r. 10 of the Act under such rules as Government might find it necessary to issue from time to time; (3) that in accordance with those rules the estate was on P's death resumed by Government who re-granted it to V; (4) that the suit having been one against Government relating to land held as Saranjam, was excluded from the jurisdiction of the Civil Court by the provisions of sub-section (a) of this section (*Ramrao v. The Secretary of State*, 11 Bom. L. R. 1333)

**Mahar Vatan.**—The plaintiffs, who were residing in a village, sought for an injunction to prevent the skins of their dead animals being taken away by defendants who were Village Mahars and claimed the right of taking away the skins as Vatandars. The lower Courts held that the suit was barred by s. 18 of the Hereditary Offices Act, 1874, and sub-section (a) of this section. The plaintiffs having appealed, it was *held*, (1) that the question, whether there was or was not a Mahar Vatan as contended for, was within the jurisdiction of the Civil Court; (2) that the plaintiffs would be entitled to injunction unless the Mahars should succeed in showing that there was an hereditary office as alleged by them (*Savla v. Santya* 20 Bom. L. R. 993).

**Alienation.**—Where, on an application by a Vatandar to declare that a particular alienation is null and void, the Collector refuses to make an order that the alienation is null and void, it is open to the party aggrieved to file a suit in a Civil Court against the alienee in respect of the alienation (*Dattatraya v. Tukaram*, 23 Bom. L. R. 876).

**(b) objections—**

to the amount or incidence of any assessment of land-revenue authorized by Government, or

to the mode of assessment, or to the principle on which such assessment is fixed, or

to the validity or effect of the notification of survey or settlement, or of any notification determining the period of settlement;

**Objections.**—An objection to come within either of the two heads 1 and 3 of cl. (b) of this section must be an objection which touches them directly, i. e., an objection to them *per se* which admits the liability to pay land-revenue on the part of the objector but quarrels with its amount or incidence or the validity and effect of the notification of survey settlement as *by themselves* objectionable, not because some other right affects them or makes them inapplicable to his particular case. Objections in cl. (b) may be raised by a suit or in defence to a suit; but in whichever way they are raised they must be of the particular nature described in cl. (b). Where they fall outside that class, they can be raised in defence as well as by a suit (*Lakshuman v. Govind*; *Govind v. Lakshuman*, 28 Bom. 74).

**“Objection to amount.....land-revenue.”—**

In a suit by an inamdar of a village against a Khot to recover rent in kind (according to the market rate at the time of payment), the defendant (Khot) contended that he was only liable to pay cash assessment as fixed by the survey made by the British Government, which was at a lower rate than he had previously paid and that the Civil Court had no jurisdiction to entertain the suit under this clause. *Held*, that as there was no objection by either party to the amount or incidence of assessment of land-revenue fixed by Government, and the question being whether the Khot was liable to pay to the inamdar maktas or assessment, the suit was not taken away from the cognizance of a Civil Court by this clause (*Gangadhar v. Morbhat*, 18 Bom. 525).

**Jurisdiction of Civil Court.**—Where water-rate is levied under s. 48 of the Irrigation Act, the question whether the Civil Courts have jurisdiction in view of cl. (b) of this section, in a suit for the determination of the legality or otherwise of such levy, depends upon whether the incidence of the rate is authorized by the provisions of s. 48 of the Irrigation Act. Under it, the condition precedent to levying the rate is not the fact ascertained by evidence whether the water in dispute has percolated from the canal, but the opinion of the Canal Officer that it has so percolated, he and not the Civil Court being made the Judge of such percolation for the purposes of the Act. Such water-rate falls within the denomination of land-revenue (*Balwanth v. Secretary of State*, 22 Bom. 377).

(c) claims connected with or arising out of any proceedings for the realization of land-revenue or the rendering of assistance, by Government or any officer duly authorized in that behalf, to superior holders or occupants for the recovery of their dues from inferior holders or tenants;

claims to set aside, on a account of irregularity, mistake or any other ground except fraud, sales for arrears of land-revenue;

**“ Claims connected with proceedings for realization of land-revenue.”—**

The plaintiff sued to redeem certain land mortgaged by him to the first defendant. The second defendant claimed the land as owner, alleging that the mortgagee had failed to pay the assessment on the land to the Native Chief to whom it was due. The latter had accordingly sold it by public auction to realise the assessment, and he (defendant No. 2) had bought it. The Court of first instance rejected the plaintiff's claim on the ground that the suit could not be entertained by a Civil Court under the provisions of this Act and the Land Revenue Code. On appeal the District Court reversed the decree and remanded the case for trial on the merits. *Held*, confirming the order of the District Court, that Government having rendered no assistance in the proceedings for the realization of the revenue by the Native Chief on whom the defendant relied, the jurisdiction of the Civil Court was not taken away by cl. (c) of this section (*Mahadu v. Lakshman*, 17 Bom 68').

**“ Claim to set aside sale for arrears of land-revenue.”—**

Plaintiff was the owner of a certain village. Defendant No. 3 was the watan-dar Kulkarni of the village. He enjoyed for the performance of his duties some inam lands, and a cash allowance of Rs 5 paid annually by the inamdar. In 1884 defendant No. 3 having failed to perform the service in person or by deputy the Collector appointed defendant No. 2 to act as Kulkarni. Defendant No. 2 officiated from 20th November 1884 to 4th December 1886. On the application of Defendant No. 2, the Collector increased his remuneration according to the scale fixed for Government villages known as the Wingate scale, and ordered plaintiff to pay the increased remuneration, so as to make up the amount due under that scale. On 26th September 1890, the Collector recovered the sum of Rs 171 from the plaintiff by attachment of his property. The plaintiff thereupon sued the Secretary of State for India in Council to recover this amount as being illegally levied. The defendant pleaded that the Collector, having determined the amount of Defendant No. 2's remuneration under s. 17 of the Hereditary Offices Act, 1874, the plaintiff had no cause of action against him, and that the suit was barred under this clause. *Held*, that as the cash payment made by the plaintiff to the watan-dar was certain, and not of a fluctuating or indeterminate character, the Collector had no power to increase the remuneration of the officiator under s. 17 of the Hereditary Offices Act, and that the suit was not barred by this clause (*Anantacharya v. Secretary of State*, 19 Bom. 581).

An order made by a Collector removing A's lands from his Khata, and transferring them to B's Khata, on the ground that A had allowed the assessment thereof to fall into arrears and that B had paid the assessment, does not by itself amount to forfeiture of A's interest in the lands. A suit by A to recover such land from B being simply a suit between private parties for the purpose of establishing a private right, this clause does not bar the jurisdiction of the Civil Court (*Bhav v. Hari*, 20 Bom. 747).

**“ Proceeding for the realization of land-revenue.”—**

A suit for a declaration that an order of forfeiture under s. 153 of the Bombay Land Revenue Code passed after an attachment issued under s. 150 of the same Code was illegal is not barred by this clause, as the order of forfeiture is not a proceeding for the realization of land-revenue (*Samaldas v. Secretary of State*, 16 Bom. 455).

**Land-revenue does not include abkari revenue.—**

The plaintiff sued to recover from the defendant, a farmer of Abkari duties on the manufacture of spirits, under s. 60 of Bom. Reg. XXI of 1827, a sum of money alleged to have been illegally levied by him as a tax or rent in respect of certain cocoanut trees tapped by the plaintiff. *Held*, that the Civil Courts have jurisdiction to entertain such a suit. If the claim be held to be one in respect of land-revenue, it falls within the exception contained in cl. (c) of s. 5. If it is not, this section has no application (*Narayan v. Sakharam*, 9 Bom. 462).

**Right of Government to sell land.**—Whenever the land-revenue is in arrears, Government is entitled to sell the land and to realize its due, whoever is the defaulter (*Balkrishna v. Madhavao*, 5 Bom. 73).

**Suit to set aside sale on ground other than fraud.**—This clause excepts from the jurisdiction of the Civil Courts claims to set aside, on account of irregularity, mistake or any other ground except fraud, sales for arrears of land-revenue. It is doubtful whether the exception of fraud in this clause is confined to fraud on the part of officers conducting sale for arrears of land revenue (*Ibid.*).

**Suit to set aside Collector's order.**—The predecessor-in-title of defendants Nos. 2 to 8 alienated his vatan land to the plaintiff. After the death of the alienor, the defendants applied to the Collector to take proceedings for the protection of the vatan. On October 5, 1904, the Collector made a declaration, under s. 11 of the Vatan Act, that the alienation was null and void. The Collector did not summarily resume possession of the land but decided to assess it at a full rent. On July 8, 1908, the Collector held further proceedings and assessed the land at a rental of Rs. 75 per annum. On March 15, 1915, the Collector ordered to forfeit the land as the plaintiff had not paid the full amount of arrears of rent then due. The plaintiff sued for a declaration that the order of forfeiture made by the Collector was invalid. He contended that the rent was due from July 6, 1908, when the assessment was fixed; and there were, therefore, no arrears of rent due. *Held*, that the plaintiff's suit was barred by cl. (c) of this section (*Dhondi v. Secretary of State*, 25 Bom. L. R. 785).

**Wrongful attachment.**—The defendant who was a Mamladar of Khanapur, in the Satara District, attached some pieces of jagery 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 s. 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 ground that it was barred by s. 4 (c) of this 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 this Act. On appeal it was *held*, that s. 4 (c) 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 the land-revenue. The proceedings mentioned in s. 4 (c) must be in their inception legal (*Gangaram v. Dinkar*, 15 Bom. L. R. 665).

## (d) claims against Government—

(1) to be entered in the revenue survey or settlement records or village papers as liable for the land-revenue, or as superior holder, inferior holder, occupant or tenant, or

(2) to have any entry made in any record of a revenue survey or settlement, or

(3) to have any such entry either omitted or amended ;

(e) the distribution of land or allotment of land-revenue on partition of any estate under Bombay Act IV of 1868, or any other law for the time being in force ;

## (f) claims against Government—

to hold land wholly or partially free from payment of land-revenue, or to receive payments charged on or payable out of the land-revenue, or to set aside any cess or rate authorized by Government under the provisions of any law for the time being in force, or respecting the occupation of waste or vacant land belonging to Government ;

**Claim to hold lands free from payment of Government revenue.**—The effect of the amendment of this section by Act XVI of 1877 is that Civil Courts mentioned in the Districts annexed to the amending Act are not prevented from exercising their jurisdiction over claims against Government to hold lands wholly or partially free from payment of land-revenue (*Kalabhai v. The Secretary of State for India*, 29 Bom. 19).

**Claims respecting occupation of waste land.**—The fact that the tenants of the neighbouring lands have cut the grass on the disputed land for the use of their rice cultivation and have taken the produce of the trees standing thereon would not change the character of the land which was always treated as unassessed waste land (*Shridhar v. The Secretary of State*, P. J. for 1893, p. 248).

**Right of Government over waste lands.**—While the Courts may have jurisdiction to declare that the villagers of a specified village are entitled to rights of free pasturage over Government waste lands within the limits of their village, still they can go no further and enjoin the Collector to pursue any particular course in connection with them, while he is acting *bona fide* in pursuance of the powers which the provisions of the statute confer upon him. The claim being against Government respecting the occupation of the waste land belonging to Government, the Civil Courts are precluded from entertaining it under cl. (f) of this section. A question relating to the discontinuous occupation of village wastes by the village cattle is as much a question of land-revenue as one relating to the permanent occupation of them or a portion of them by an individual (*Trimbak v. Secretary of State*, 21 Bom. 684).

(g) claims regarding boundaries fixed under Bombay Act No. I of 1865, or any other law for the time being in force, or to set aside any order passed by a competent officer under any such law with regard to boundary-marks :

Provided that if any person claim to hold land wholly or partially exempt from payment of land-revenue under—

Proviso.

The jurisdiction of a Civil Court is not ousted by this clause, in case of a dispute as to the position of the boundary line between two survey numbers as laid down by the survey authorities, the defendant alleging that the boundary marks were changed, the plaintiff alleging that they are in their right direction (*Bala v. Nana*, P. J. 1898, p. 41).

**Adverse possession of survey numbers.**—The Collector's decision as to the fixation of boundaries, under sec. 121 of the Land-Revenue Code, 1879, does not prevent one of the disputing parties filing a suit in the Civil Court on the ground that he has acquired a portion of his neighbour's survey number by adverse possession (*Bhaga v. Dorabji*, 43 Bom. 67).

**Proviso** contains no exceptions in respect of holdings unaccompanied by proprietary right in the soil and there is no saving clause which would suggest that such a claim to such holdings might fall within the purview of the Pensions Act. The right of an alienee of the revenue to sue for disturbance of his possession by a stranger or by Government is clearly recognized by the proviso, and the only condition required is that the claim should be under an enactment, instrument, sanad, written grant or judgment such as is described in the proviso (*Balwant v. The Secretary of State for India*, 29 Bom. 480).

A person claiming the benefit of the proviso must prove that there was a written grant by the British Government, and it cannot be presumed that a written grant of some kind must have been made simply because a grant is not denied (*The Secretary of State v. Dalpaibhai*, P. J. for 1893, p. 168).

The effect of the proviso is that where an occupancy tenant holding under Government is called upon to pay land revenue according to the survey rates, it is open to him to resist the claim of Government in a Civil Court on the ground that he holds under a written grant or an enactment, &c., which prevents Government from claiming more than can be recovered under the grant or enactment, &c. (*Lakshman v. Govind*, 28 Bom. 26).

(h) any enactment for the time being in force expressly creating an exemption not before existing in favour of an individual or of any class of persons, or expressly confirming such an exemption on the ground of its being shown in a public record, or of its having existed for a specified term of years, or

**Note.**—Clauses (h), (i), (j) and (k) stand independent of one another; the source of title, referred to in each, stands apart from the rest, and each clause is connected only with that portion of the proviso which precedes clause (h) (*Kalabhai v. The Secretary of State for India*, 29 Bom. 19).

(i) an instrument or sanad given by or by order of the Governor of Bombay in Council under Bombay Act No. II of 1863, section I, clause first, or Bombay Act No. 7 of 1863, section 2, clause first, or

(j) any other written grant by the British Government expressly creating or confirming such exemption, or

**"Any other written grant."**—The phrase "any other written grant" in this clause means any written grant other than that which falls within cls. (h) and (i) of this section (*Kalabhai v. Secretary of State*, 29 Bom. 19).

**Such exemption.**—These words obviously refer to the exemption mentioned in that portion.

(k) a judgment by a Court of law, or an adjudication duly passed by a competent officer under Bombay Regulation XVII of 1827, chapter X, or under Act No. XI of 1852, which declares the particular property in dispute to be exempt ;

such claim shall be cognizable in the Civil Courts.

**“Competent officer.”**—These words, as used in this clause, included the Governor in Council, who is one of the authorities upon whom judicial powers were conferred by Act XI of 1852 (*Janardanrao v. Secretary of State*, 13 Bom. 442).

**Khatib inam.**—Lands assigned to a Khatib inam were enjoyed rent-free by the grantee and continued to him on the same terms by the Inam Commissioner in 1856 under Act XI of 1852. Plaintiff, an alienee from a Khatib, enjoyed them similarly from 1864 to 1910 and claimed to have performed the Khatib service. In 1911 the Commissioner resumed the lands by levying full assessment on them. Plaintiff sued for a declaration that he was the full owner of the lands of the Khatibgari right appertaining to them. *Held*, that the plaintiff's claim to hold the land wholly or partially free from payment of land revenue under an adjudication order passed by a competent officer under Act XI of 1852 was cognizable in the Civil Courts under proviso (k) to this section (*Fakroddin Sahab v. Secretary of State*, 22 Bom. L. R. 1166).

**Land exempted from land-revenue.**—Lands appurtenant to Kaji Vatan were continued by the Inam Commissioner in 1852 as sarva inam to a predecessor-in-title of the plaintiff. Plaintiff, an alienee from a Kaji, held the lands free of assessment, though the service of the Kaji continued to be performed by the descendants of the Kaji. The Collector ordered in 914 full assessment to be levied for the lands in question and in case of non-payment lands to be forfeited. Plaintiff sued for a declaration that the Collector's order was illegal and *ultra vires*. *Held*, that cognizance of the suit by the Civil Court was not barred under s. 4 (a)(1) of this Act, for the suit fell within proviso (k) (*Mahamadsahab v. Secretary of State*, 21 Bom. L. R. 1159).

#### *Illustrations to (k).*

(1) It is enacted that, in the event of the proprietary right in lands, the property of Government, being transferred to individuals, they shall be permitted to hold the lands for ever at the assessment at which they are transferred. The proprietary right in certain land is transferred to A at an assessment of Rs. 100. An exemption from higher assessment not before existing is expressly created in favour of A by enactment, and he may seek relief in the Civil Court against over-assessment.

(2) It is enacted that when a specific limit to assessment has been established and preserved, the assessment shall not exceed such specific limit. A is the owner of land worth Rs. 100 for assessment. He claims to be assessed at Rs. 50 only on the strength of a course of dealing with him and his predecessors under which his land has not been more highly assessed. There is no exemption



not before existing created by enactment, and A's claim is not cognizable in a Civil Court.

(3) It is enacted that land-revenue shall not be leviable from any land held and entered in the land-registers as exempt. A claims to hold certain land as exempt on the ground that it has been so held by him, and is so entered in the land-register. This is an exemption expressly confirmed by enactment on the ground of its being shown in a public record, and A's claim is cognizable in a Civil Court.

(4) It is enacted that the Collector shall confirm existing exemptions of all lands shown in certain maps to be exempt. A claims exemption alleging that his land is shown in the maps to be exempt. A's claim is cognizable in a Civil Court.

(5) It is enacted that assessment shall be fixed with reference to certain considerations, and not with reference to others. This is not an enactment creating an exemption in favour of any individual or class, and no objection to an assessment under such an enactment is cognizable in a Civil Court.

Saving of certain suits.

5. Nothing in section 4 shall be held to prevent the Civil Courts from entertaining the following suits : --

(a) Suits against Government to contest the amount claimed, or paid under protest, or recovered, as land-revenue, on the ground that such amount is in excess of the amount authorized in that behalf by Government, or that such amount had, previous to such claim, payment or recovery, been satisfied, in whole or in part, or that the plaintiff, or the person whom he represents, is not the person liable for such amount ;

(b) suits between private parties for the purpose of establishing any private right, although it may be affected by any entry in any record of a revenue survey or settlement or in any village papers ;

A suit between private parties relating to inam land for the purpose of establishing a private right falls within cl. (b) of this section (*Mootoo v. Trivembai*, P. J. for 1881 p. 191).

(c) suits between superior holders or occupants and inferior holders or tenants regarding the dues claimed or recovered from the latter ;

and nothing in section 4, clause (g), shall be held to prevent the Civil Courts from entertaining suits, other than suits against Government, for possession of any land being a whole survey number or a recognized share of a survey number,

\* and nothing in section 4 shall be held to prevent the Civil Courts in the district mentioned in the second schedule hereto annexed from exercising such jurisdiction as, according to the terms of any law in force on the twenty-eighth day of March 1876, they could have exercised over claims against Government—

(a) relating to any property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act No. III of 1874 or any other law for the time being in force, or of any other village-officer or servant;

(b) to hold land wholly or partially free from payment of land-revenue;

(c) to receive payments charged on, or payable out of, the land-revenue.

\* This para. was added by the Bombay Revenue Jurisdiction (Amendment) Act, 1877 (16 of 1877).

6. Revenue officers shall not be liable to be sued for damages in any Civil Court for any act *bona fide* done, or ordered to be done, by them as such in pursuance of the provisions of any law for the time being in force.

Bar of certain suits against Revenue officers.

If any Revenue officer absconds or does not attend when called on by his official superior, and if the Collector of the District proceeds against him or his sureties for public money, papers or property according to the provisions of any law for the time being in force, such Collector shall not be liable to pay damages or costs in any suit brought against him by such officer or sureties although it appears that a part only, or no part whatever, of the sum demanded was due from the officer so absconding or failing to attend, or that he was not in possession of the papers or property demanded of him.

Act not done in pursuance of law.—

The defendant who was a Mamletdar 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 s. 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 ground that as the defendant acted *bona fide* and was authorized under s. 154 of the Land Revenue Code to distrain the property the suit was barred by this section. On appeal, it was *held* that the defendant was not entitled to claim protection under this section 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 of the Land Revenue Code and it was not proved that he believed the property distrained to be that of the defaulter, as required under s. 154 of the Land Revenue Code (*Gangaram v. Dinkar*, 15 Bom. L. R. 605).

7. Nothing in any law for the time being in force which authorizes the punishment departmentally of any Revenue officer for any offence or breach of duty; or which sanctions his prosecution criminally for such offence or breach, shall be held to bar any remedy which may be had in the Civil Court against such officer.

Punishment or prosecution of Revenue officers no bar to Civil remedies.

8-10. [*Suits against Revenue officers; appeals from their proceedings; power for Local Government to call for record.*] *Rep. Act XV of 1880.*

11. No Civil Court shall entertain any suit against Government on account of any act or omission of any Revenue officer unless the plaintiff first proves that, previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit, it was possible to present.

Suits not to be entertained unless plaintiff has exhausted right of appeal.

This section requires only presentation of appeal and not waiting for the reply.—

This section does not require that a plaintiff should wait till he receives a reply to his appeal from Government. It is enough that he has presented an appeal—otherwise his suit might become time-barred before he receives the reply (*Ahaji v. Secretary of State for India*, F. J. for 1896, p. 686; s. c. 22 Bom. 579).

“Act.”—Under section 82 of the Land Revenue Code, the Collector ordered certain Government land to be sold. *Held*, that passing this order is an “act” within the meaning of this section (*Natha v. The Secretary of State*, F. J. for 1896, p. 341).

**Forest Officer is not a Revenue Officer.**—This section only applies to an act or omission of a revenue officer, and only in cases where the law allows an appeal. A Forest Officer is not a Revenue Officer. This Act must be construed strictly. No right of appeal can be given except by express words (*Narayan v. Secretary of State*, 30 Bom. 803).

The bar of jurisdiction contained in this section does not apply to cases in which a Collector moves under s. 81 of the Forest Act (VII of 1878) to recover, at the request of a Forest Officer, the price of out-timber sold by the latter under s. 81 of the Forest Act (*Haribhai v. Secretary of State*, 20 Bom. 714).

“All such appeals.”—This expression means appeals in respect of the “act or omission.” Hence the bar created by this clause does not apply where the act or omission concerned is not an order or decision in respect of which there is a right of appeal under the Land Revenue Code (*Sakharam v. Collector of Ratnagiri*, 28 Bom. 332).

“Appeal allowed by law.”—The words “appeal allowed by law” do not mean “an appeal within the time allowed by law.” They refer to the appeals which the law prescribes, and have no reference to the limitation in point of time, which the law may impose upon the bringing of such appeals (*Ranchhod v. Secretary of State*, 22 Bom. 683).

**Application to Commissioner is appeal allowed by law.**—Where the plaintiffs had obtained a decree declaring that the Government had not the right to enhance the land revenue on their village, and the Collector pending an appeal from such decree, took measures to levy such enhanced assessment, it was *held* that though the plaintiffs might have obtained an injunction against the Collector by motion either in the Court which had passed the decree, or in the High Court, that did not prevent the plaintiff from bringing an independent suit for that purpose, and that this section did not apply. Even assuming that an application to set aside a Collector's order made to the Revenue Commissioner would be an "appeal allowed by law" within the meaning of this section, the present case was not within Bombay Regulation V of 1830, inasmuch as cl 4 (1) of that Regulation would have excluded his intervention, as the claim to exemption from liability to enhancement of revenue had already been the subject of judicial investigation, and was still *sub-judice* in the High Court (*The Government of Bombay v. Bhimabhai*, P. J. for 1879, p. 851).

**Practice—Procedure.**—Under this Act, in a suit to which this Act applies, the Court, before taking evidence on the merits, should require the plaintiff to prove first of all that he has, previously to bringing the suit, presented all such appeals allowed by the law for the time being in force as within the period of limitation allowed for bringing such suit it was possible to prevent (*Ranchhod v. Secretary of State*, 22 Bom. 173).

**No appeal to revenue authority.**—Where a plaintiff files a suit for the reversal of an order of the Collector directing him to remove an encroachment on a public road and for an injunction, his omission to file an appeal from the Collector's order to the Revenue Commissioner or Government bars the suit under this section (*Dayal Khushal v. Secretary of State*, 32 Bom. L. R. 1089).

**Suit to set aside Collector's order.**—The plaintiff's land was forfeited on the 6th May 1911; after which he applied first to the Collector and then to the Commissioner to set aside the order. Eventually he filed a suit on 14th October 1915 for a declaration that the proceedings held by the revenue authorities in respect of the forfeiture were illegal and *ultra vires*. *Held*, that the suit was barred by limitation since if the plaintiff wished to have a decision of the Court upon the legality or illegality of the order of forfeiture, he was bound to put his plaint on the file within one year of the date of the order (*Ganesh v. Secretary of State*, 44 Bom. 451).

**Suit to set aside notice of demand to pay assessment.**—The plaintiffs, who held their land free of rent, were all of a sudden served by the Mamlatdar with a notice of demand to pay assessment. No order of the Collector was forthcoming. The plaintiffs having filed a suit for a declaration that they were entitled to hold their land rent free, the Secretary of State contended that the suit was barred under this section. *Held*, that this section did not apply to the case, since the notice of demand by the Mamlatdar could not be treated as an order or decision within the meaning of ss. 203 and 204 of the Bombay Land-Revenue Code (*Nathuram v. Secretary of State*, 46 Bom. 811).

**Suit for injunction.**—The Collector of Surat ordered the plaintiff, on the 6th February 1917, to remove an encroachment on a public road. No appeal was made to the Revenue Commissioner or to Government. On the 21st April, the

Collector intimated to the plaintiff that unless he filed a suit, the encroachment would be removed. On the 27th April, 1917, the present suit was filed for a reversal of the order and for an injunction to restrain the defendant from carrying out the order. *Held*, that no appeal from the Collector's order having been made either before the suit was filed or afterwards, the suit was barred by the provisions of this section (*Dayal v. Secretary of State*, 22 Bom. L. R. 1089).

12. If, in the trial or investigation of any suit, claim or objection, which, but for the passing of this Act, might have been tried or investigated by a Civil Court, there arises any question on which the Governor General in Council or the Local Government desires to have the decision of the High Court, the Governor-General in Council or the Local Government, as the case may be, may cause a statement of the question to be prepared, and may refer such question for the decision of the High Court of Judicature at Bombay.

The said High Court shall fix an early day for the hearing of the question referred, and cause notice of such day to be placed in the Court house.

The parties to the case may appear and be heard in the High Court in person or by their advocates or pleaders.

The High Court, when it has heard and considered the case, shall send a copy of its decision, with the reasons therefor, under the seal of the Court, to the Government by which the reference was made, and subject to any appeal which may be presented to Her Majesty in Council, the case shall be disposed of conformably to such decision.

If the High Court considers that any such statement is imperfectly framed, the High Court may return it for amendment.

The costs (if any) consequent on any such reference shall be dealt with as the High Court in each case directs.

**Reference by Government to High Court.**—Under this section Government can refer a question for the decision of the High Court, when investigating any claim or objection which before 1876 may have been excluded from the cognisance of a Civil Court (*Vasudev Harihar Pandit, In re*, 23 Bom. L. R. 161 ; a. c. Bom. 45 463).

This section gives the High Court absolute power not only to deal with costs by directing as to who should pay them, but also by giving directions as to how those costs should be ascertained (*Jayamath Vasudev Pandit In re*, 23 Bom. L. R. 189 ; a. c. 45 Bom. 1177).

The British Government granted by a Sanad in 1818 some villages in the talukas of Chikodi and Manowlee in Inam Dharmadaya from generation to generation to a predecessor of the respondent. Thereafter the Government ceded those talukas to the Maharaja of Kolhapur subject to the grant. In 1821, the Maharaja granted some more villages in the said talukas to the same grantee. In 1827, the two

talukas came to be handed back to the British Government by the Maharaja of Kolhapur under a treaty which confirmed the grant. In about 1864 the Government made a summary settlement of the village with the grantee's son. The widow of a descendant of the grantee made an adoption which was upheld by the Privy Council in 1914. The Maharaja took up the position that the adoption was invalid in absence of his consent; and that as the lands were held under treaty or on political tenure they were excluded from the settlement by s. 1 (2) of the Summary Settlement Act. *Held*, that the claim of the Maharaja was excluded from the jurisdiction of the Civil Courts under s. 4 *supra* and that, therefore, the Government were entitled to make a reference to the High Court under this section (*Maharaja of Kolhapur v Bala Maharaj*, 48. Bom. 1, 50 I. A. 308).

"In each case."—These words in the last paragraph of this section imply the jurisdiction of the High Court to give special directions in each case (*Ibid*).

13. If in any suit instituted, or in any appeal presented in a Civil Court, the Judge doubts whether he is precluded by this Act from taking cognizance of the suit or appeal, he may refer the matter to the High Court.

The High Court may order the Judge making the reference, either to proceed with the case or to return the plaint.

The order of the High Court on any such reference shall be subject to appeal to Her Majesty in Council, and save as aforesaid, shall be final.

14 Every reference under section twelve or section thirteen shall be heard by a Bench consisting of such number of Judges not less than three, as the Chief Justice from time to time directs.

15. For section thirty-two of the Bombay Civil Courts Act, No. XIV of 1869, the following shall be substituted (namely): "No Subordinate Judge or Court of Small Causes shall receive or register a suit in which the Government or any officer of Government in his official capacity is a party, but in every such case such Judge or Court shall refer the plaintiff to the District Judge, in whose Court alone (subject to the provisions of section nineteen) such suit shall be instituted.

\* 16. Whenever any suit is brought in any Court of a Subordinate judge of the first class against Government, or against any Revenue Officer, and the Government undertakes the defence thereof, it shall be lawful for the Government, by certificate signed by a Secretary thereto, to require that the trial of

\* This section was substituted for the original section by Bom. Act XXI of 1929, s. 2.

any such suit shall have precedence over the trial of any other suit or other civil proceeding then pending in the Court of the first class subordinate judge, or, if the suit is transferred, in the Court of the District Judge; and the Court shall give effect to every such requirement.

The privilege conferred on Government by this section shall, *mutatis mutandis*, apply to any appeal or special appeal against any decree in any such suit as is described in this section.

17. [*First clause.—Revival of section 13 of Bom. Reg. XVII of 1827.*] Repealed by Act XV of 1880; but the repeal does not operate in any scheduled district unless and until the Bombay Land Revenue Code (Bom. Act V of 1879) has been extended to such district.

[*Second clause.—Operation of Bom. Reg. XVII of 1827 in sites of villages and towns.*] Rep. Act XV of 1880.

[*Third clause.—Recovery of certain advances made by Local Government.*] Rep. Act XV of 1880.

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SCHEDULE

[ENACTMENTS REPEALED]

Repealed by Act XII of 1891

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THE SECOND SCHEDULE [1]

The district of Ahmedabad.

The district of Kaira, exclusive of the Panch Mahals.

The district of Broach.

The district of Surat, exclusive of the lapsed State of Mandvi, as described in the schedule annexed to [2] Act X of 1848.

The district of Thana.

The district of Kolaba, exclusive of the lapsed State of Kolaba mentioned in [2] Act VIII of 1853.

The district of Ratnagiri.

The district of Kanara.

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[1] This schedule was added by the Bombay Revenue Jurisdiction (Amendment) Act 1877 [16 of 1877]. It is referred to in s. 5.

[2] Acts 10 of 1848 and 8 of 1853 were repealed by the Repealing and Amending Act, 1891, 12 of 1891.

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THE  
Survey Settlement Act

BOMBAY ACT No. I OF 1865.

[ 21st January 1865.

An Act to provide for the survey, demarcation, assessment and administration of lands held under Government, in the districts belonging to the Bombay Presidency, and for the registration of the rights and interests of the occupants of the same.

Preamble. *Rep. locally by Bom. Act V of 1879.*

1 to 36. [*Rep. locally by Bom. Act V of 1879*].

37 [a] Whenever, in the Ratnagiri collectorate and in the Raigarh, Rajpuri and Sanksi taluqas of the Tana collectorate, the survey-settlement is introduced into villages or estates held by Khots, it shall be competent for the Superintendent of Survey or Settlement-officer, with the sanction of the Governor in Council to grant the Khot a lease for the full period for which the settlement may be guaranteed, in place of the annual agreements under which such villages have hitherto been held, and, further, the provisions of [b] section 36 in respect to the right of permanent occupancy at the expiration of a settlement-lease shall hold good in regard to those villages or estates.

[a] Ss. 37 and 38 of Bom. Act I of 1865 are repealed so far as they apply to any village in the Ratnagiri or the Kolaba District to which the Khoti Settlement Act, 1880 ( Bom. Act I of 1880 ) extends or is extended—see a, 2 of the latter Act.

[b] S. 36 was repealed ( locally ) by the Bombay Land-revenue Code, 1879 ( Bom. Act V of 1879 ).

38. It shall also be competent to such officer, with the sanction of the Governor in Council, to fix the demands of the Khot on the tenant at the time of the general survey of a district, and the terms thus fixed shall hold good for the period for which the settlement may be sanctioned.

Power to fix demands of Khot on tenant at time of Survey.

But this limitation of demand on the tenant shall not confer on him any right of transfer by sale, mortgage or otherwise, where such did not exist before, and shall not affect the right of the Khot to the reversion of all lands resigned by his tenant during the currency of the general lease.

Proviso.

Suit to recover rent at mamuli rates.—The plaintiff who was the khot of a village in the Kolaba District took a lease of the khoti rights from Gov-



ernment in 1869. From 1864 to 1892 the original survey settlement remained in force. In 1902 the revised settlement was introduced but the demands of the khot were not fixed under this section upto 1914. The plaintiff passed annual kabulyats to Government and continued to levy rates at the settlement rates. In 1923 the plaintiff having filed a suit to recover from the defendant, a khoti tenant of his rent at the *mamuli* rates for the years S. 1839-1844, it was held that the plaintiff was entitled to recover at the *mamuli* rates. In the absence of any exercise of their power under this section or evidence of intention to continue the rates of the expired settlement and the amount of the old rent being in law expressly enforced for the period of the old settlement and not enforced after the revised settlement the plaintiff cannot be prevented from falling back on his rights under the *mamuli vahisat* (*Abdul Rahim v. Pandu Sadhu*, 32 Bom. L. R. 175).

**An order of the settlement-officer** under this section, fixing the demand of the Khot on the tenant, could not bind the ryots to the land against their will. It was not intended to reduce them from the position of free tenants to *adscripti glebas* (*Narayana v. Babu*, P. J. 8879, 213).

**Fixing and sanctioning, distinction between.**—There is a distinction between “fixing” a period within which a sanctioned settlement is to be continued and “sanctioning” a settlement which simply accepts the rates proposed by the settlement Officer. So where a settlement has been sanctioned and a period fixed, the Khot is to levy rents at the sanctioned rate till the period comes to an end and even after it; if no new settlement is introduced, the settlement must be deemed to continue.—*Secretary of State v. Sadashiv*, 86 Bom. 290).

**39-51.** Repealed locally by Bom. Art V of 1879.

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**THE  
Revenue Recovery Act**

ACT No. I of 1890.

[14TH FEBRUARY 1890.]

*An Act to make better provision for recovering certain public demands.*

WHEREAS it is expedient to make better provision for recovering certain public demands; It is hereby enacted as follows:—

Title, extent and commencement.

1. (1) This Act may be called the Revenue Recovery Act, 1890.

(2) It extends to the whole of British India, and British Baluchistan; and

(3) It shall come into force at once.

Definitions.

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

(1) "district" includes a presidency-town;

(2) "Collector" means the chief officer in charge of the land-revenue administration of a district; and

(3) "defaulter" means a person from whom an arrear of land-revenue or a sum recoverable as an arrear of land-revenue, is due, and includes a person who is responsible as surety for the payment of any such arrear or sum.

3. (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.

4. (1) When proceedings are taken against a person under the last foregoing section for the recovery of an amount stated in a certificate, that person may, if he denies his liability to pay the amount or any part thereof and pays the same under protest made in writing at the time of pay-

Remedy available to person denying liability to pay amount recovered under last foregoing section.

ment and signed by him or his agent, institute a suit for the repayment of the amount or the part thereof so paid.

(2) A suit under sub-section (1) must be instituted in a Civil Court having jurisdiction in the local area in which the office of the Collector who made the certificate is situate, and the suit shall be determined in accordance with the law in force at the place where the arrear accrued or the liability for the payment of the sum arose.

(3) In the suit the plaintiff may, notwithstanding anything in the last foregoing section, but subject to the law in force at the place aforesaid, give evidence with respect to any matter stated in the certificate.

5. Where any sum is recoverable as an arrear of land-revenue by any public officer other than a Collector or by any local authority, the Collector of the district in which the office of that officer or authority is situate shall, on the request of the officer or authority, proceed to recover the sum as if it were an arrear of land-revenue which had accrued in his own district, and may send a certificate of the amount to be recovered to the Collector of another district under the foregoing provisions of this Act, as if the sum were payable to himself,

6. (1) When the Collector of a district receives a certificate under this Act, he may issue a proclamation prohibiting the transfer or charging of any immoveable property belonging to the defaulter in the district.

(2) The Collector may at any time, by order in writing, withdraw the proclamation, and it shall be deemed to be withdrawn when either the amount stated in the certificate has been recovered or the property has been sold for the recovery of that amount.

(3) Any private alienation of the property or of any interest of the defaulter therein, whether by sale, gift, mortgage or otherwise, made after the issue of the proclamation and before the withdrawal thereof, shall be void as against the Government and any person who may purchase the property at a sale held for the recovery of the amount stated in the certificate.

(4) Subject to the foregoing provisions of this section, when proceedings are taken against any immoveable property under this Act for the recovery of an amount stated in a certificate, the interests of the defaulter alone therein shall be so proceeded against, and no incumbrances created, grants made or contracts entered into by him in good faith shall be rendered invalid by reason only of proceedings being taken against those interests.

THE REVENUE RECOVERY ACT.

3

(5) A proclamation under this section shall be made by beat of drum or other customary method and by the posting of a copy thereof on a conspicuous place in or near the property to which it relates.

Saving of local laws relating to revenue. 7. Nothing in the foregoing sections shall be construed —

- (a) to impair any security provided by, or affect the provisions of, any other enactment for the time being in force for the recovery of land-revenue or of sums recoverable as arrears of land-revenue, or
- (b) to authorize the arrest of any person for the recovery of any tax payable to the corporation, commissioner, committee, board, council or person having authority over a municipality under any enactment for the time being in force.

8. When this Act has been applied to any local area which is under the administration of the Governor-General in Council, but which is not part of British India, an arrear of land-revenue accruing in that local area, or a sum recoverable as an arrear of land revenue and payable to a Collector or other public officer or to a local authority in that local area, may be recovered under this Act in British India.

Recovery in British India of certain public demands arising beyond British India.

THE SCHEDULE.

CERTIFICATE

[See section 3, sub-section (1).]

From  
The Collector of

To  
The Collector of

Dated the \_\_\_\_\_ of \_\_\_\_\_ 18\_\_ .

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.

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

# The Bombay Irrigation Act, 1879.

BOM. ACT VII of 1879.

[2nd October, 1879.]

(As amended by Bom. Acts III of 1880, III of 1886, XVI of 1895, I of 1910 and II of 1914).

An Act to provide for Irrigation in the Bombay Presidency.

WHEREAS it is necessary to make provision for the construction, maintenance and regulation of canals, for the supply of water therefrom and for the levy of rates for water so supplied, in the Bombay Presidency ; It is enacted as follows :—

Preamble.

## PART I.

### PRELIMINARY.

Short title.

1. This Act may be called the Bombay Irrigation Act, 1879.

Local extent.

It extends to the whole of the Presidency of Bombay, except the City of Bombay.

**Construction of Statutes.**—Statutes which encroach on the rights of the subjects, whether as regards person or property must receive a strict construction (*Secretary of State v. Balwant*, 6 Bom. L. R. 790 ; 28 Bom. 105 ).

2. In section 55 of the Bombay Land-revenue Code, 1879, for the words "or which has been made available in consequence of the construction, improvement or repair of any irrigational or other work by, or at the instance of, Government," the words "and in respect of which no rate is leviable under the Bombay Irrigation Act, 1879," shall be substituted ;

and in section 101 of the said Code, for the word "leviable" the word "levied" shall be substituted, and the words "or under the Bombay Irrigation Act, 1879," shall be inserted after the figures "55" ;

and to section 105 of the said Code, the words "or of the Bombay Irrigation Act, 1879," shall be added,

Interpretation clause.

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

(1) "Canal" includes—

(a) all canals, channels, pipes, and reservoirs constructed, maintained or controlled by Government for the supply or storage of water ;

(b) all works, embankments, structures and supply and escape channels connected with such canals, channels, pipes or reservoirs. and all roads constructed for the purpose of facilitating the construction or maintenance of such canals, channels, pipes or reservoirs ;

(c) all water-courses, drainage-works and flood embankments as hereinafter respectively defined ;

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(d) any part of a river, stream, lake, natural collection of water or natural drainage channel; to which the Governor in Council may apply the provisions of section 5, or of which the water has been applied or used before the passing of this Act for the purpose of any existing canal;

(e) or land belonging to Government which is situate on a bank of any canal as hereinbefore defined, and which has been appropriated, under the orders of Government for the purposes of such canal;

(2) "water-course" means any channel or pipe not maintained at the cost of Government, which is supplied with water from a canal, and includes all subsidiary works connected with any such channel or pipe, except the sluice or outlet through which water is supplied from a canal to such channel or pipe;

(3) "drainage work" means any work in connection with a system of irrigation or reclamation made or improved by the Government for the purpose of the drainage of the country, whether under the provisions of section 15 or otherwise, and includes escape channels from a canal, dams, weirs, embankments sluices, groins and other works connected therewith, but does not include works for their removal of sewage from towns;

(4) "flood embankment" means any embankment constructed or maintained by Government in connection with any system of irrigation or reclamation-works for the protection of lands from inundation or which may be declared by the Governor in Council to be maintained in connection with any such system, and includes all groins, spurs, dams and other protective works connected with such embankments;

(5) "Collector" [a] includes any officer appointed by the Governor in Council to exercise all or any of the powers of a Collector under this Act;

[a] Words repealed by Bom. Act III of 1886, Schedule B, are omitted.

(6) "Canal-officer" means any officer lawfully appointed or invested with powers under section 4;

(7) "Owner" includes every person having a joint interest in the ownership of the thing specified; and all rights and obligations which attach to an owner under the provisions of this Act shall attach jointly and severally to every person having such joint interest in the ownership.

4. Government or, subject to such orders as Appointment of Canal officers may from time to time be passed by Government, any officer of Government whom the Governor in Council empowers in this behalf may—

(a) appoint such officers with such designations and assign to them respectively such powers and duties, under this Act, as Government or such officer may deem fit;

(b) invest any Government officer, in any department, either personally or in right of his office, or any other person, with such powers, and impose upon him such duties, under this Act, as Government or such officer may deem fit;

Provided that any assignment of, or investment with, powers or duties made under this section may at any time be cancelled or varied by the authority who made it.

Proviso.

## PART II.

## OF THE CONSTRUCTION AND MAINTENANCE OF CANALS.

*Application of Water for purposes of Canals.*

5 Whenever it appears expedient to the Governor in Council that the water of any river or stream flowing in a natural channel, or of any lake or any other natural collection of still water, should be applied or used by the Government for the purpose of any existing or projected canal, the Governor in Council may, by notification in the Bombay Government Gazette declare, that the said water will be so applied or used after a day to be named in the said notification, not being earlier than three months from the date thereof.

Notification when water supply to be applied for purposes of Canal.

**Note.**—A natural stream, though its flow of water be in part derived by percolation from a canal, is not a canal until the Governor in Council has applied to it the provisions of this section (*Secretary of State v. Balwant*, 5 Bom L. R. 790, 28 Bom 105).

*Powers of entry on Land, etc.*

6. At any time after the day so named, any Canal-officer duly empowered in this behalf may enter on any land, remove any obstruction, close any channel and do any other thing necessary for such application or use of the said water, and for such purpose may take with him, or depute or employ, such subordinates and other persons as he deems fit.

Powers of Canal officers for purposes of so applying water-supply.

7. Whenever it shall be necessary to make any enquiry or examination in connection with a projected canal, or with the maintenance of an existing canal, any Canal-officer duly empowered in this behalf, and any person acting under the general or special order of any such Canal-officer, may—

(a) enter upon such land and as he may think necessary for the purpose, and

(b) exercise all powers and do all things in respect of such land as he might exercise and do if the Government had issued a notification under the provisions of section 4 of the Land Acquisition Act, 1894, [a] to the effect that land in that locality is likely to be needed for a public purpose, and

[a] The reference to Act X of 1870 is altered in accordance with Act I of 1894, s. 2.

(c) set up and maintain water-gauges and do all other things necessary for the prosecution of such enquiry and examination.

8. Any Canal-officer duly empowered in this behalf, and any person acting under the general or special order of any such Canal-officer, may enter upon any land, building or water-course, on account of which any water-rate is chargeable for the purpose of inspecting or regulating the use of the water supplied, or of measuring the land irrigated thereby or chargeable with a water-rate, and of doing all things necessary for the proper regulation and management of the canal from which such water is supplied.

**Note.**—This section only empowers a canal officer to enter on any land, etc., and in no way defines what he may do for the proper regulation and management of the canal (*Secretary of State v. Balwant*, 5 Bom. L. R. 790; s. c. 28 Bom 105).

Power to inspect and regulate water supply.

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9. In case of any accident being apprehended or happening to a canal, any Canal-officer duly empowered in this behalf, and any person acting under the general or special order of any such Canal-officer, may enter upon any land adjacent to such canal, and may take trees and other materials, and execute all works which may be necessary for the purpose of preventing such accident or repairing any damage done.
- Power to enter for repairs, and to prevent accidents.
10. When a Canal-officer or other person proposes, under the provisions of any of the three last preceding sections, to enter into any building or enclosed court or garden attached to a dwelling-house, not supplied with water from a canal, and not adjacent to a flood-embankment, he shall previously give to the occupier of such building, court or garden such reasonable notice as the urgency of the case may allow.
- Notice to occupier of building, etc.

*Canal Crossings.*

11. Suitable means of crossing canals shall be provided at such places as the Governor in Council [a] or any Commissioner if empowered by Government in this behalf [a] thinks necessary for the reasonable convenience of the inhabitants of the adjacent land; and suitable bridges, culverts or other works shall be constructed to prevent the drainage of the adjacent land being obstructed by any canal.
- Means of crossing canals to be provided and obstruction to drainage to be avoided

[a] These words were inserted by Bom. Act I of 1910, Schedule I, Part II, Serial No. 11.

*Removal of Obstructions to Drainage.*

12. Whenever it appears to the Governor in Council that injury to the public health, or public convenience, or to any canal or to any land for which irrigation from a canal is available, has arisen or may arise from the obstruction of any river, stream or natural drainage-course, the Governor in Council may, by notification published in the Bombay Government Gazette, prohibit, within limits to be defined in such notification, the formation of any such obstruction, or may, within such limits order the removal or other modification of such obstruction.
- Government may prohibit formation of obstructions of rivers, etc., within certain limits.

Thereupon so much of the said river, stream or natural drainage-channel, as is comprised within such limits, shall be held to be a drainage-work as defined in section 3.

13. Any Canal-officer duly empowered in this behalf may, after such publication, issue an order to any person causing or having control over any such obstruction to remove or modify the same within a time to be fixed in such order.
- Canal-officer may issue order to person causing obstruction.
14. If, within the time so fixed, such person does not comply with the order, the Canal-officer may cause the obstruction to be removed or modified; and if the person to whom the order was issued does not, when called upon, pay the expenses of such removal or modification,
- Canal officer may cause obstruction to be removed



such expenses shall be recoverable by the Collector as an arrear of land revenue.

*Construction of Drainage-works.*

15. Whenever it appears to the Governor in Council that any drainage-work is necessary for the public health or for the improvement of the proper cultivation or irrigation of any land, or that protection from floods or other accumulations of water, or from erosion by a river, is required for any land, the Governor in Council may cause a scheme for such work to be drawn up and carried into execution,

and the person authorized by the Governor in Council to draw up and execute such scheme may exercise in connection therewith the powers conferred on Canal-officers by sections 7, 8 and 9, and shall be liable to the obligations imposed upon Canal officers by sections 10 and 34.

When drainage-works are necessary, Government may order scheme to be carried out.

PART III.

OF WATER-COURSES.

*Construction of new water-courses.*

16. Any person may, with the permission of a Canal officer duly empowered to grant such permission, construct a new water-course if he has obtained the consent of the holder of the land required therefor.

17. Any person desiring to construct a new water-course, but being unable or unwilling to construct it under a private arrangement with the holder of the land required for the same, may apply, in writing, to any Canal-officer duly empowered to receive such applications, stating—

(1) that he is ready to defray all the expenses necessary for acquiring the land and constructing such water-course;

(2) that he desires the said Canal-officer, in his behalf and at his cost to do all things necessary for constructing such water-course.

18. If the Canal-officer considers the construction of such water-course expedient, he may call upon the applicant to deposit any part of the expense such officer may consider necessary,

and, upon such deposit being made, shall cause enquiry to be made into the most suitable alignment for the said water-course,

and shall mark out the land which, in his opinion, it will be necessary to occupy for the construction thereof,

and shall forthwith publish a notification in every village through which the water-course is proposed to be taken, that so much of such land as is situated within such village has been so marked out,

and shall send a copy of such notification to the Collector of every district in which such land is situated, for publication on such land.

Construction of new water-courses by private arrangement.

Application for construction by Canal-officer of new water-course.

Procedure when Canal-officer considers construction of water-course expedient.

## THE BOMBAY IRRIGATION ACT.

The said notification shall also call upon any person who wishes to share in the ownership of such water-course to make his application in that respect to the Canal-officer within thirty days of the publication of such notification.

Application by person wishing to be joint owner.

If any such applicant appears, and his application is admitted, he shall be liable to pay his share in the construction of such water-course, and in the cost of acquiring the land for the same, and shall be an owner of such water-course when constructed.

If application admitted, applicant liable for share of cost.

19. On receipt of copy of such notification, the Collector shall proceed to acquire such land under the provisions of the Land Acquisition Act, 1894, [a] as if a declaration had been issued by the Government for the acquisition thereof under section 6 of that Act, and as if the Government had thereupon directed the Collector to take order for the acquisition of such land under section 7 of the said Act, and (if necessary) as if the Government had issued orders for summary possession being taken under section 17 of the said Act.

[a] The reference to Act X of 1870 is altered in accordance with Act I of 1894, S. 2.

20. On being put in possession of the land, the Canal-officer shall construct the required water-course; and on its completion shall give to the owner notice thereof, and of any sum payable by him on account of the cost of acquiring the land and constructing the water-course. On such notice being given, such sum shall be due from the owner to the Canal-officer. On receipt of payment in full of all expenses incurred, the Canal-officer shall make over possession of such water-course to such owners.

Procedure after construction of water-courses.

*Rights and obligations of Owners of Water-Courses.*

21. Every owner of a water-course shall be bound—

Obligations of owner of water-courses.

(a) to construct and maintain all works necessary for the passage across such water-course, of canals, water-courses, drainage channels and public roads existing at the time of its construction, and of the drainage intercepted by it, and for affording proper communications across it for the convenience of the occupants of neighbouring lands;

(b) to maintain such water-course in a fit state of repair for the conveyance of water;

(c) to allow the use of it to others or to admit other persons as joint owners thereof on such terms as may be prescribed under the provisions of section 23;

and every owner of a water-course and every person duly authorised under the provisions herein-after contained to use a water-course shall be entitled—

Rights of owners and users of water-courses.

(d) to have a supply of water by such water-course, at such rates and on such terms, as may from time to time be prescribed under

section 44 and by the rules made by the Governor in Council under section 70 :

Provided always that any owner of a water-course and, subject to the terms of any agreement between the parties, or to any condition imposed under section 23, any such person as aforesaid may at any time, by giving three months' previous notice in writing in this behalf to a Canal-officer duly empowered to receive such notices, resign his interest in such water-course.

22. Any person desiring to have a supply of water through a water-course of which he is not an owner may make a private arrangement with the owner for permitting the conveyance of water thereby, or may apply to a Canal-officer duly empowered to receive such applications for authority to use such water-course or to be declared a joint owner thereof.

Arrangement with owner by other person.

**Scope.**—This section speaks merely of a supply of water and there is no valid reason for restricting these words to the case of a first supply of water, which a person may desire to have, or which may be authorised under s. 23 ; but where the special statutory powers given by the Act have been exercised without complying with the statutory requirements as to serving notice and hearing objections, the order is one passed without jurisdiction and is *ultra vires* ( 63 I. C. 225 ).

23. On receipt of any such application, the Canal-officer shall serve notice on the owner to show cause why such authority should not be granted, or such declaration should not be made, and, if no objection be raised, or if any objection be raised and be found insufficient or invalid, shall, subject to the approval of the Collector, either authorize the applicant to use the water-course, or declare him to be a joint owner thereof on such conditions as to the payment of compensation or rent or otherwise as may appear to him equitable.

Canal-officer after enquiry may authorise supply, or declare applicant to be joint owner.

**Order of Collector.**—An order made by a Collector under this section falls within the purview of s. 203 of the Bom. Land Revenue Code and is the order of the Collector though it is a confirmation of an order of a Canal-officer. An appeal from such an order lies to the Commissioner, and until presentation of the appeal, suit to set aside the order is incompetent ( *Secretary of State v. Joramdas Khatormal*, 6. S. L. R. 241 ).

24. No land acquired under this Part for a water-course shall be used for any other purpose without the previous consent of a Canal-officer duly empowered to grant such permission.

Use of land required for water-courses for other purpose.

25. If any owner of a water-course fails to fulfil any obligation imposed upon him by clause (a) or (b) of section 21, any Canal-officer duly empowered in this behalf may require him by notice, to execute the necessary work or repair within a period, to be prescribed in such notice, of not less than fifteen days, and, in the event of failure, may execute the same on his behalf, and, except as hereinafter provided in this section, all expenses incurred

If owner fails to execute work or to repair water-course, Canal-officer may execute same.

in the execution of such work or repair shall be a sum due by such owner to Government.

Every person other than an owner who uses any water-course in respect of which any repair has been executed by a Canal-officer under this section shall, in the absence of any agreement between the parties or of any condition imposed under section 23 at the time such person was authorized to use such water-course to the contrary, be liable to pay to Government such proportion of the expenses incurred in the execution of such repairs as shall be determined by the said Canal-officer.

*Settlement of Disputes concerning Water-courses.*

26. Whenever a dispute arises between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction or maintenance of a water-course, or among joint owners of a water-course, as to their respective shares of the expense of constructing or maintaining such water-course, or as to the amount severally contributed by them towards such expense, or as to failure on the part of any owner to contribute his share,

any person interested in the matter of such dispute may apply, in writing, to any Canal-officer duly empowered to receive such applications, stating the matter in dispute.

Such officer shall thereupon give notice to the other persons interested that, on a day to be named in such notice, he will proceed to enquire into the said matter,

and if all the persons interested consent, in writing, to his being arbitrator, he may pass his order thereon ;

failing such consent, he shall transfer the matter to the Collector, who shall enquire into and pass his order thereon.

Any order passed by the Collector under this section shall remain in force until set aside by a decree of a Civil Court.

**PART IV.**

**OF THE SUPPLY OF WATER.**

*Applications for supply.*

27. Every person desiring to have a supply of water from a canal shall submit a written application to that effect to a Canal-officer duly empowered to receive such applications, in such form as shall from time to time be prescribed by Government in this behalf.

If the application be for a supply of water to be used for purpose other than those of irrigation, the Canal-officer may, with the sanction of Government, give permission for water to be taken for such purposes under such special conditions and restrictions as to the limitation, control and measurement of the supply as he shall be empowered by Government to impose in each case.

*Provisions as to supply.*

28. The supply of water to any water-course or to any person who is entitled to such supply shall not be stopped except—

(a) whenever and so long as it is necessary to stop such supply for the purpose of executing any work ordered by competent authority;

(b) whenever and so long as any water-course by which such supply is received is not maintained in such repair as to prevent the wasteful escape of water therefrom;

(c) whenever and so long as it is necessary to do so in order to supply in rotation the legitimate demands of other persons entitled to water;

(d) whenever and so long as it may be necessary to do so in order to prevent the wastage or misuse of water;

(e) within periods fixed from time to time by a Canal-officer duly empowered in this behalf, of which due notice shall be given.

**Note.**—This section contemplates the supply of water (1) to a water-course, and (2) to a person. It does not deal with the supply of water to any person entitled to such supply, which means entitled under the Act to such a supply (*Secretary of State v. Balwant*, 5 Bom. L. R. 790; s. c. 28 Bom. 105.)

29. When canal-water is supplied for the irrigation of one or more crops only, the permission to use such water shall be held to continue only until such crop or crops shall come to maturity, and to apply only to such crop or crops.

30. Every agreement for the supply of canal-water to any land, building or other immoveable property shall be transferable therewith, and shall be presumed to have been so transferred whenever a transfer of such land, building or other immoveable property takes place.

No person entitled to the use of any work or land appertaining to any canal, and, except in the case of any such agreement as aforesaid, no person entitled to use the water of any canal, shall sell or sub-let, or otherwise transfer, his right to such use without the permission of a Canal-officer duly empowered to grant such permission.

PART V.

OF THE AWARD OF COMPENSATION.

*Compensation when claimable.*

31. Compensation may be awarded in respect of any substantial damage caused by the exercise of any of the powers conferred by this Act, which is capable of being ascertained and estimated at the time of awarding such compensation :

## Exceptions.

Provided that no compensation shall be so awarded in respect of any damage arising from—

- (a) deterioration of climate, or
- (b) stoppage of navigation, or the means of rafting timber or of watering cattle, or
- (c) stoppage or diminution of any supply of water in consequence of the exercise of the power conferred by section 5, if no use have been made of such supply within the five years next before the date of the issue of the notification under section 37, or

(d) failure or stoppage of the water in a canal, when such failure or stoppage is due to—

- (1) any cause beyond the control of Government,
- (2) the execution of any repairs, alterations or additions to the canal, or
- (3) any measures considered necessary by any Canal-officer duly empowered in this behalf for regulating the proper flow of water in the canal, or for maintaining the established course of irrigation ;

but any person who suffers loss from any stoppage or diminution of his water-supply due to any of the causes named in clause (d) of this section shall be entitled to such remission of the water-rate payable by him as may be authorized by the Governor in Council.

Remission of water rates when allowable.

**Scope.**—This section does not bar any suit for compensation for deficiency of water due to Govt. Engineer's action against the Secretary of State (*Gangaram v Secretary of State*, 68 I. C. 769) ( Sind ).

32. No claim for compensation under this Act shall be entertained after the expiration of twelve months from the time when the damage complained of commenced, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

Limitation of Claims.

33. [ *Repeated by Act XVI of 1895.* ]

*Summary Decisions.*

34. In every case of entry upon any land or building under section 6, section 7, section 8 or section 9, the Canal-officer or person making the entry shall ascertain and record the extent of the damage, if any, caused by the entry, or in the execution of any work, to any crop, tree, building or other property,

Compensation for damage caused by entry on land, etc.

and within one month from the date of such entry compensation shall be tendered by a Canal-officer duly empowered in this behalf to the landholder or owner of the property damaged.

If such tender is not accepted, the Canal-officer shall forthwith refer the matter to the Collector for the purpose of making enquiry as to the amount of compensation and deciding the same.

35. If the supply of water to any land irrigated from a canal be interrupted otherwise than in the manner described in clause (d) of section 31, the holder of such land may present a petition for compensation to the Collector for any loss arising from such inter-

Compensation on account of interruption of water-supply.

ruption, and the Collector, after consulting the Canal-officer, shall award to the petitioner reasonable compensation for such loss.

**Jurisdiction of Civil Court.**—A Civil Court has no jurisdiction to entertain a claim to recover compensation from Government for failure by the Irrigation Department to supply water for his crops when the claim has already been decided by the Collector under this section (*Vishnu v. Secretary of State*, 46 Bom. 738).

36. The decision of the Collector under either of the last two preceding sections as to the amount of compensation to be awarded, or, if in any rule framed under section 70, such decision shall be declared to be appealable, then the decision of the authority to whom the appeal lies, shall be conclusive.

Decision as to amount of compensation under either of last two sections conclusive.

*Formal Adjudications.*

37. As soon as practicable after the issue of a notification under section 5, the Collector shall cause public notice to be given at convenient places, stating that the Government intend to apply or use the water as aforesaid and that claims for compensation may be made before him.

Notice as to claims for compensation in certain cases.

A copy of sections 31 and 32 shall be annexed to every such notice.

38. All claims for compensation under this Act, other than claims of the nature provided for in sections 34 and 35, must be made before the Collector of the district in which such claim arises.

Claims to be preferred to Collector.

**Scope.**—This section does not bar any suit for compensation for deficiency of water due to Govt. Engineer's action against the Secretary of State (*Gangaram v. Secretary of State*, 58 I. O. 769, (Sind)).

39. The Collector shall enquire into every such claim and determine the amount of compensation, if any, which should in his opinion be given to the claimant; and sections 11, 12, 14, 5, 18 to 23 (inclusive), 26 to 40 (inclusive), 51 and 58 of the Land Acquisition Act, 1870 [a] shall apply to such enquiries :

Collector to be guided by provisions of Land Acquisition Act, 1870.

Provided that instead of the last clause of the said section 26, the following shall be read :—

“The provisions of this section and of sections 31 and 40 of the Bombay Irrigation Act, 1879, shall be read to every assessor in a language which he understands before he gives his opinion as to the amount of compensation to be awarded.”

[a] Act X of 1870 has been repealed by Act I of 1894, but see saving in s 2(3) of the latter Act.

Diminution in market value to be considered in fixing compensation.

40. In determining the amount of compensation under the last preceding section, regard shall be had to the diminution in the market-value, at the time of awarding compensation, of the property in respect of which compensation is claimed :

and, where such market-value is not ascertainable, the amount shall be reckoned at twelve times the amount of the diminution of the annual net profits of such property, caused by the exercise of the powers conferred by this Act.

41. All sums of money payable for compensation awarded under section 39, shall become due three months after the claim for such compensation was made ;

and simple interest at the rate of six per centum per annum shall be allowed on any such sum remaining unpaid after the said three months, except when the non-payment of such sum is caused by the neglect or refusal of the claimant to apply for or receive the same.

*Abatements of Land-revenue and rent.*

42. If the compensation is awarded under section 39 no account of a stoppage or diminution of supply of water to any land paying revenue to Government, and the amount of the revenue payable on account of such land has been fixed with reference to the water-advantages appertaining thereto, the holder of the said land shall be entitled to an abatement of the amount of revenue payable to such extent as shall be determined by the Collector.

43. Every inferior holder of any land in respect of which such compensation has been paid shall, if he receives no part of the said compensation, be entitled to an abatement of the rent previously payable by him to the superior holder thereof in proportion to the reduced value of the holding ;

but, if a water-supply which increases the value of the holding is afterwards restored to the said land otherwise than at the cost of the inferior holder, the superior holder shall be entitled to enhance the rent in proportion to such increased value : provided that the enhanced rent shall not in any case exceed the rent payable by the inferior holder before the abatement, unless the superior holder shall, independently of the provisions of this section, be entitled so to enhance the previous rent.

**PART VI.**

**OF WATER-RATES.**

*Supply Rates.*

44. Such rates shall be leviable for canal-water supplied for purposes of irrigation, or for any other purpose, as shall from time to time be determined by the Governor in Council.

If, owing to the construction of a new canal or to the improvement or extension of an existing canal, the amount or duration of any water supply, in respect of which either no-revenue or a fixed amount of revenue has hitherto been paid to Government, is increased,



rates shall be leviable under this section in respect of the increased water-supply only.

The said rates shall be payable by the person on whose application the supply was granted, or by any person who uses the water so supplied.

*Occasional Rates.*

Liability when person using water unauthorisedly cannot be identified.

45. If water supplied through a water-course be used in an unauthorized manner, and if the person by whose act or neglect such use has occurred cannot be identified, the person or all the persons on whose land such water has flowed, if such land has derived benefit therefrom,

or, if no land has derived benefit therefrom, the person, or all the persons chargeable in respect of the water supplied through such water-course,

shall be liable, or jointly liable, as the case may be, for the charges which shall be made for such use under the rules prescribed by the Governor in Council under section 70.

46. If water supplied through a water-course be suffered to run to waste, and if, after enquiry, the person through whose act or neglect such water was suffered to run to waste cannot be discovered,

the person or all the persons chargeable in respect of the water supplied through such water-course shall be liable or jointly liable, as the case may be, for the charges which shall be made in respect of the water so wasted, under the rule prescribed by the Governor in Council under section 70.

All questions arising under this and the last preceding section shall, subject to the provisions of section 67, be decided by a Canal-officer duly empowered in this behalf.

47. All charges for the unauthorized use or for waste of water may be recovered, as water-rates, in addition to any penalties incurred on account of such use or waste.

*Percolation and Leakage-rates.*

48. If it shall appear to a Canal-officer duly empowered to enforce the provisions of this section, that any cultivated land within two hundred yards of any canal receives, by percolation or leakage from such canal, an advantage equivalent to that which would be given by a direct supply of canal-water for irrigation,

or that any cultivated land, whenever situate, derives by a surface flow, or by means of a well sunk within two hundred yards of any canal after the admission of water into such canal, a supply of water which has percolated or leaked from such canal,

he may charge on such land a water-rate not exceeding that which would ordinarily have been charged for a similar direct supply to land similarly cultivated.

For the purposes of this Act, land charged under this section shall be deemed to be land irrigated from a canal.

## THE BOMBAY IRRIGATION ACT.

49 to 56. [ *Repealed by Bom. Act III of 1880.* ]

*Recovery of Water-rates and other Dues in Arrears.*

57. Every water-rate leviable under this Act shall be payable in such instalments and on such dates and to such officers as shall from time to time be determined under the orders of the Governor in Council [a] or of any Commissioner empowered by Government in this behalf [a].

[a] These words were added by the Bombay Repealing and Amending Act, 1910 (Bom. Act I of 1910), Schedule I, Part II, Serial No. 12.

Any such rate, or instalment of the same, which is not paid on the day when it becomes due, and any sum due to Government or to a Canal officer, whether on behalf of Government or of any other person, under Part III, [a] which is not paid when demanded, shall be recoverable according to the law and under the rules for the time being in force for the recovery of arrears of land-revenue.

[a] The words "of this Act" repealed by the Bombay General Clauses Act, 1910 (Bom. Act III of 1886), Schedule B, are omitted.

Rent payable to the owner of a water-course by a person authorized to use such water-course shall be payable in such instalments and on such dates as the Canal-officer duly empowered to act under section 23 shall direct, and may be recovered on behalf of the owner according to the law and rules aforesaid: Provided always that no more shall at any time be payable to the owner than is actually recovered from the said person.

Rent due to owners of water-courses to be recoverable as arrears of land-revenue.

## PART VII.

## OF OBTAINING LABOUR FOR CANALS ON EMERGENCIES.

58. Whenever it appears to a Canal-officer duly empowered to act under this section, that unless some work or repair is immediately executed, such serious damage will happen to any canal as to cause sudden and extensive public injury,

or, that unless some clearance of a canal or other work which is necessary in order to maintain the established course of irrigation is immediately executed, serious public loss will occur,

and that the labourers necessary for the proper execution of such repair, clearance or work cannot be obtained in the ordinary manner within the time that can be allowed for the execution of the same so as to prevent such injury or loss,

the said officer may, by order under his hand, direct that the provisions of this section shall be put into operation for the execution of such repair, clearance or work; and thereupon every able-bodied person who resides or holds land in the vicinity of the locality where such repair, clearance or work has to be executed, and whose name appears in the list hereinafter mentioned, shall, if required to do so by such officer or by any person authorized by him in this behalf, be bound to assist in the execution of such repair, clearance or work by labouring

Procedure for obtaining labour for works or repairs urgently required.

thereat as such officer or any person authorized by him in this behalf may direct.

All persons so labouring shall be entitled to payment at rates which shall not be less than the highest rates for the time being paid in the neighbourhood for similar labour.

59. Subject to such rules as may from time to time be prescribed under section 70 in this behalf, the Collector shall prepare a list of the persons liable to be required to assist as aforesaid, and may from time to time add to or alter such list or any part thereof.

60. All orders made under section 58 shall be immediately reported to the Collector for the information of the Commissioner of the Division, and likewise to the Chief Engineer for Irrigation, for the information of Government.

### PART VIII.

#### OF PENALTIES.

61. Whoever voluntarily and without proper authority—

- (1) damages, alters, enlarges or obstructs any canal ;
- (2) interferes with, or increases or diminishes the supply of water in or the flow of water from, through, over or under any canal, or by any means raises or lowers the level of the water in any canal ;
- (3) corrupts or fouls the water of any canals so as to render it less fit for the purposes for which it is ordinarily used ;
- (4) destroys, defaces or moves any land or level mark or water-gauge fixed by the authority of a public servant ;
- (5) destroys, tampers with, or removes any apparatus, or part of any apparatus, for controlling, regulating or measuring the flow of water in any canal ;
- (6) passes, or causes animals or vehicles to pass, in or across any of the works, banks or channels of a canal contrary to rules made under section 70, after he has been desired to desist therefrom ;
- (7) causes or knowingly and wilfully permits cattle to graze upon any canal or flood-embankment, or tethers or causes or knowingly and wilfully permits cattle to be tethered, upon any such canal or embankment, or roots up any grass or other vegetation growing on any such canal or embankment, or removes, cuts or in any way injures, or causes to be removed, cut or otherwise injured, any tree, bush, grass or hedge intended for the protection of such canal or embankment ;
- (8) neglects, without reasonable cause, to assist or to continue to assist in the execution of any repair, clearance or work, when lawfully bound so to do under section 58 ;
- (9) violates any rule made under section 70 for breach whereof the Governor in Council shall, in such rules, direct that a penalty may be incurred ;

and whoever—

(10) being responsible for the maintenance of a water-course, or using a water-course, neglects to take proper precautions for the prevention of waste of the water thereof, or interferes with the authorized distribution of the water therefrom, or uses such water in an unauthorized manner or prevents or interferes with the lawful use of such water-course by any person authorized to use the same or declared to be a joint owner thereof under section 23 ;

shall, when such act shall not amount to the offence of committing mischief within the meaning of the Indian Penal Code, on conviction before a Magistrate, be punished for each such offence with fine which may extend to fifty rupees, or with imprisonment [a] for a term which may extend to one month, or with both.

[a] Words repealed by Bom. Act III of 1886, Schedule B, are omitted

For endangering stability of canal, etc.

62. Whoever without proper authority—

(1) pierces or cuts through, or attempts to pierce or cut through, or otherwise to damage, destroy or endanger the stability of any canal;

(2) opens, shuts or obstructs, or attempts to open, shut or obstruct, any sluice in any canal ;

(3) makes any dam or obstruction for the purpose of diverting or opposing the current of a river or canal on the bank whereof there is a flood-embankment, or refuses or neglects to remove any such dam or obstruction when lawfully required so to do ;

shall, when such act shall not amount to the offence of committing mischief within the meaning of the Indian Penal Code, on conviction before a Magistrate of the first or second class, be punished for each such offence with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

63. Whenever any person is convicted under either of the last two preceding sections, the convicting Magistrate may order that he shall remove the obstruction or repair the damage in respect of which the conviction is held within a period to be fixed in such order. If such person neglects or refuses to obey such order within the period so fixed, any Canal-officer duly empowered in this behalf may remove such obstruction or repair such damage, and the cost of such removal or repair, as certified by the said officer, shall be leviable from such person by the Collector as an arrear of land-revenue.

64. Any person in charge of, or employed upon, any canal may remove from the lands or buildings belonging thereto, or may take into custody without a warrant, and take forthwith before a Magistrate or to the nearest Police station, to be dealt with according to law, any person who within his view—

(1) wilfully damages, obstructs or fouls any canal, or

(2) without proper authority interferes with the supply or flow of water, in or from any canal, or in any river or stream, so as to endanger, damage, make dangerous or render less useful any canal.

65. Nothing herein contained shall prevent any person from being prosecuted under any other law for any act or omission made punishable by this Act: provided that no person shall be punished twice in respect of one and the same act or omission.

Saving of prosecution under other laws.

66. Whenever any person is fined for an offence under this Act, the Court which imposes such fine, or which confirms in appeal or revision a sentence of such fine, or a sentence of which such fine forms part, may direct that the whole or any part of such fine may be paid by way of award to any person who gave information leading to the detection of such offence or to the conviction of the offender.

Payment of fine as award to informant.

If the fine be awarded by a Court whose decision is subject to appeal or revision, the amount awarded shall not be paid until the period prescribed for presentation of the appeal has elapsed, or, if an appeal be presented, till after the decision of the appeal.

## PART IX.

### MISCELLANEOUS.

67. Every order passed by a Canal-officer under sections 13, 18, 25, 30, 45, 46 and 48 shall be appealable to the Collector: provided that the appeal be presented within thirty days of the date on which the order appealed against was communicated to the appellant.

Appeals against orders under Act.

All orders and proceedings of a Collector under this Act shall be subject to the supervision and control of the Commissioner. [a]

[a] Words repealed by Bom. Act III of 1886, Schedule B, are omitted.

**Effect.**—This section does not amount to an express provision to the contrary as said in s. 203 of the Bombay Land Revenue Code (*Secretary of State v. Joramdas*, 6 S. L. R. 241).

68. Any officer empowered under this Act to conduct any enquiry may exercise all such powers connected with the summoning and examining of witnesses and the production of documents as are conferred on Civil Courts by the Code of Civil Procedure [a]; and every such enquiry shall be deemed a judicial proceeding.

Power to summon and examine witness.

[a] This reference should now be read as applying to Act V of 1908.

69. Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed by the officer therein mentioned. Whenever it may be practicable, the service of the notice shall be made on the person therein named. When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which person therein named ordinarily dwells or carries on business; and, if such person has no ordinary place of residence within the district, service of any notice may be made by sending copy of such notice by post in a registered cover addressed to such person at his usual place of residence.

70. The Governor in Council may from time to time make rules not inconsistent with this Act to regulate the following matters:—

(a) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter ;

(b) the cases in which, the officers to whom and the conditions subject to which orders and decisions given under any provision of this Act, and not expressly provided for as regards appeal, shall be appealable ;

(c) the person by whom, the time, place or manner at or in which, anything for the doing of which provision is made in this Act, shall be done ;

(d) the amount of any charge to be made under this Act ;

(e) and generally to carry out the provisions of this Act.

The Governor in Council may, from time to time, alter or cancel any rules so made.

Such rules, alterations and cancelments shall be published in the Bombay Government Gazette, and shall thereupon have the force of law.

71. Nothing in this Act shall be deemed to apply to any canal, channel, reservoir, lake or other collection of water vesting in any municipality.

## PART X. [a]

### OF SECOND-CLASS IRRIGATION WORKS.

72. This Part shall apply to Second-class Irrigation Works only.

[a] This Part was inserted by Bom. Act II of 1914, sec. 2.

73. (1) The Governor in Council may publish a notification in the Bombay Government Gazette—

(a) declaring that it is proposed to constitute any canal, channel, stream, river, pipe or reservoir, natural or artificial, or any part thereof, whether constructed, maintained or controlled by Government or not, which is actually used or required for the purposes of irrigation, a Second-class Irrigation Work ;

(b) fixing a period of not less than four months from the date of publication of such notification in the Bombay Government Gazette for the submission of objections to such proposal :

Provided that no artificial reservoir or water-course supplied from such reservoir which is actually used for the purposes of irrigation by a single irrigator shall be included in such notification except either with the consent of such irrigator or, if in the opinion of the Governor in Council such inclusion is necessary in the public interests, then without such consent but subject to the payment, after the issue of the declaration mentioned in sub-section (3), to such irrigator of such

compensation for his rights as may be settled in accordance with the provisions of section 79.

(2) After the publication of such notification in the Bombay Government Gazette it shall also be published by the Collector as soon as practicable in the language of the district at the Mamlatdar's Office of the taluka in which the work is situated and in every town and village which in the opinion of the Collector is likely to be affected by such notification.

(3) After considering such objections as may have been received within the period fixed as aforesaid the Governor in Council may, by notification in the Bombay Government Gazette, declare such canal, channel, stream, river, pipe or reservoir or any part thereof to be a Second-class Irrigation Work.

74. When a notification has been issued under sub-section (3) of section 73 the Collector shall publish in the language of the district at the Mamlatdar's Office of the taluka in which the work is situated, and in every town and village which in his opinion is likely to be affected by such declaration, a proclamation—

(a) specifying, as nearly as possible, the source of supply, situation and limits of the Second-class Irrigation Work notified under sub-section (3) of section 73;

(b) stating that this Part applies to the work so notified from the date of the notification published under sub-section (3) of section 73; and

(c) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right in the work so notified either to present to the Collector within such period a written notice specifying, or to appear before him and state, the nature of such right.

75. (1) A Second-class Irrigation Work shall be deemed to be a canal within the meaning of sub-section (1) of section 3 and to such work the following sections and Parts only shall, so far as may be, apply, namely :—

Sections 3, 4, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 28, 30, Part V, Part, VIII, except sub-section (3) of section 61, and Part IX.

(2) The aforesaid sections and Parts shall, for the purposes of this Part, be subject to the following modifications, namely :—

(i) In section 16 before the word 'any' prefix the words—

'Subject to any rights recorded in the Record-of-rights prepared or revised as hereinafter provided'.

(ii) In section 17 before the word 'any' prefix the words 'Subject as aforesaid'.

(iii) In section 21 for clause (d), the following shall be substituted, namely :—

(d) To have a supply of water on such terms as may be prescribed in the Record-of-rights prepared or revised as hereinafter provided.'

(iv) To section 22 the following proviso shall be added, namely :-

‘Provided that no such private arrangement shall affect any rights to water recorded in the Record-of-rights prepared or revised as hereinafter provided.’

(v) In section 30 for the words ‘every agreement for’ the words ‘all rights to’ shall be substituted and in the same section after the word ‘property’ the words ‘which have been recorded in the Record-of-rights prepared or revised as hereinafter provided’ shall be inserted. Paragraph 2 of the same section shall be omitted.

(vi) In Part V, section 31, proviso clause (e) and the last paragraph shall be omitted.

(vii) In Part V, section 34, the words ‘section 6, section 7’ shall be omitted.

(viii) In Part IX, section 67, after the figures ‘48’ the words ‘and Part X’ shall be inserted.

76. (1) As soon as possible after the expiry of the period fixed by the Collector under section 74, clause (c), a Canal-officer duly empowered in this behalf, who shall be a Revenue officer not below the rank of a Mamlatdar, shall enquire into and settle claims to any right in the Second-class Irrigation Work, and shall record the extent of such right and draw up in the form from time to time prescribed by the Governor in Council an Irrigation Record-of-rights so far as the same may be ascertainable from the records of Government and the evidence of any person likely to be acquainted with the same and any other documentary or oral evidence which the parties concerned or their witnesses may produce.

(2) Such Record-of-rights shall contain the following matters :-

(a) the nature of the Second-class Irrigation Work and any work subsidiary thereto,

(b) the lands irrigable therefrom,

(c) the custom or rule of irrigation,

(d) the rights to water and the conditions on which such rights are enjoyed, and

(e) such other matters as the Governor in Council may by rules prescribe in this behalf.

77. (1) For the purposes of the inquiries under section 76 such Canal-officer may enter, by himself or any officer authorised by him for the purpose, upon any land adjacent to any such work, and may survey, demarcate and make a map of the same.

(2) Notwithstanding anything contained in section 76 where no sufficient evidence is forthcoming as to all or any of the matters specified in that section such Canal-officer shall, so far as may be, settle and record the aforesaid matters in such manner as he may deem fit.

78. The Record-of-rights prepared under section 76 may be revised from time to time by a Canal-officer duly empowered in that behalf, who shall be a Revenue-officer not below the rank of a Mamlatdar,

Revision of Record-of-rights.



79. Where the Canal-officer who has prepared or revised any Record-of-rights under this Part finds that, having due regard to the maintenance or management of the Second-class Irrigation Work, any right contained in the Record-of-rights cannot continue to be exercised to the extent recorded, he shall (subject to such rules as the Governor in Council may from time to time prescribe in this behalf) commute such right wholly or in part, either by the payment to the holder of such right of a sum of money in lieu thereof, or by the grant of land, or in such other manner as he may think fit; and he shall revise the Record-of-rights accordingly.

80. In the event of Government undertaking at their own cost any work whereby the supply of water in any Second-class Irrigation Work is increased beyond the amount of such supply at the time of preparing or revising the Record-of-rights under this Part the Governor in Council may, without prejudice to any rights so recorded, direct that the right to such surplus water shall vest in Government and shall be applied as Government may deem fit and the Record-of-rights shall be revised in accordance with such direction.

81. When any Record-of-rights has been prepared or revised under this Part it shall be published in the language of the district at the Mamlatdar's Office of the taluka in which the work is situated and in every town and village which in the opinion of the Collector is affected by such Record-of-rights.

82. An entry in any Record-of-rights prepared or revised under this Part shall be relevant as evidence in any dispute as to the matters recorded, and shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor:

Provided that no such entry shall be so construed as to limit any of the powers conferred on the Governor in Council by this Part.

83. (1) In any suit or proceeding in which an entry made in any Record-of-rights prepared or revised under this Part is directly or indirectly called in question, the Court shall, before the final settlement of issues, give notice of the suit or proceeding to the Collector, and if moved to do so by the Collector, shall make the Secretary of State for India in Council a party to the same.

(2) Save as provided in sub-section (1) no suit shall lie against Government in respect of anything done by the Collector, Canal-officer or any other person acting under the orders of Government in the exercise of any power by this Part conferred on such Collector, Canal-officer or other person or on Government.

(3) Any suit or proceeding in which an entry made in any Record of rights prepared or revised under this Part is directly or indirectly called in question 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 publication under section 81 of the Record-of-rights containing the said entry, or

if one or more appeals have been made against any order of a Canal-officer with reference to any entry in such Record-of rights, then from the date of any order passed by the final appellate authority, as determined according to this Part.

84. In every Second-class Irrigation Work the following repairs shall be performed by the persons on whom the obligation to carry out petty repairs, obligation to perform them is imposed by the next following section that is to say :—

(1) The filling up of gullies, ruts and holes especially at the back of revetments, and all petty repairs of a like nature essential for the safety of bunds, of tanks, channel-banks or other portions of the said Second-class Irrigation Work.

(2) The prevention of the growth on such work of prickly pear, young trees and other vegetation endangering the safety or concealing the condition of such work.

(3) The preservation of such bushes and grasses as have been planted for the protection of the interior water slopes of such work.

(4) The clearance of silt from sluices, supply and distributing channels.

(5) The clearance of waste weirs and waste channels.

85. The obligation to perform the repairs prescribed by the last preceding section shall, with reference to any land irrigated from such work, be deemed to be imposed jointly and severally, in the case of unalienate land, on the occupants of the land, and, in the case of all other land, on the holders of the land, as defined in either case in the Bombay Land-revenue Code, 1879.

86. If any person on whom any obligation is imposed with reference to any Second-class Irrigation Work by any of the provisions of this Part, fails to fulfil the obligation so imposed, or if any person infringes any right recorded in the Record-of rights prepared or revised as hereinbefore provided, the Canal-officer may require him by notice to fulfil such obligation or to desist from infringing such right within a period to be prescribed in the notice of not less than fifteen days, and in the event of failure may take such steps as may be necessary for the discharge of the said obligation, or the enforcement of the said right, and the amount of any expense so incurred shall be a sum due to Government and recoverable as an arrear of land revenue.

87. It shall be the duty of the Patel of any village within the limits of which any Second-class Irrigation Work or portion of such work is situated to report to the Mamlatdar without unnecessary delay any failure or neglect to carry out any of the repairs specified in section 84.

88. No suit, prosecution or other legal proceeding shall be maintained against any public servant or person appointed under this part in respect of anything in good faith done or purporting to be done under the provisions thereof or the rules made thereunder.

89. The Governor in Council may, from time to time by notification in the Bombay Government Gazette and after previous publication, make rules as to all or any of the following matters—

- Power to make rules.
- (i) the manner of framing and revising the Record-of-rights,
  - (ii) the proceedings of any officer who under the provisions of this Part is required to take action in any matter,
  - (iii) and generally to carry out the provisions of this Part.
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# The Bombay Canal Rules, 1922.

—:—

( As revised by G. Rs. dated 10th June 1925, 8th February 1926,  
9th February 1926, 1st April 1927, 27th June 1927, 12th  
September 1927, 14th April 1928, 18th June 1928, 21st  
January 1929, 29th September 1929, 16th Oct. 1929,  
23rd Oct. 1929, 8th Jan. 1930, 31st July 1930,  
and 12th Aug. 1930).

In exercise of the powers conferred by section 70 of the Bombay Irrigation Act, 1879 (Bom. VII of 1879), and in supersession of Government Notification in the Public Works Department No. 1, dated 8th January 1881, as subsequently amended, the Governor in Council is pleased to make the following rules for the administration of canals in the Bombay Presidency, *excluding Sind*, namely :—

## CHAPTER I.

### DEFINITIONS.

1. *Short Title: Definitions.*—(1) These rules may be called the Bombay Canal Rules, 1922.
- (2) In these rules—
  - (a) "The Act" means the Bombay Irrigation Act, 1879.
  - (b) "Section" means a section of the said Act.
  - (c) "Executive Engineer" means the Executive Engineer in charge of Irrigation works in the district and includes any officer duly empowered on his behalf.
  - (d) "Superintending Engineer" means the Superintending Engineer of the Division.
  - (e) "Form" means a form appended to these rules.
  - (f) "Block System" means a system of water leases for a period of years in areas specially demarcated for this purpose on which perennial and other crops which will not require water after the expiration of the lease period may be grown during the lease period on terms agreed on and recorded in the contract.
  - (g) "Eight months lease" denotes a water lease for a period of years under which water is provided in each year for a continuous period not exceeding 8 months and expiring not later than the 14th day of February next after the commencement of such period.
  - (h) "Monsoon crops" are crops irrigated during the period from the break of the monsoon to, approximately, the 14th October ensuing.
  - (i) "Eight months crops" are crops irrigated ordinarily during the period from the break of the monsoon to the February 14th ensuing.

(j) "Rabi crops" are crops irrigated ordinarily during the period from October 15th to the February 14th ensuing.

(k) "Hot weather crops" are crops irrigated ordinarily during the period from February 15th to the June 14th ensuing.

2. *Exemptions.*—The Governor in Council may by notification in the *Bombay Government Gazette* exempt any canal from the operation of rules 8, 9, 10, 11 and 12 or any portion of such rules.

## CHAPTER II.

### APPLICATION FOR WATER.

3. *Application under section 27 how to be made.*—(1) Applications for water for the purpose of irrigation shall be made in duplicate to the Executive Engineer; if sent by post, the application must be countersigned by the Talati or a Patil specially selected by the Collector (hereinafter in these rules called 'the Patil').

(2) To avoid delay, however, the applicant should, where possible, hand over the application duly completed in duplicate at a place which will be notified; this will usually be the office of the subordinate of the beat in which the land is situated. Copies of the Record of Rights will be maintained at this office for reference.

4. *Forms.*—(1) Such applications shall be made in Form I or, if in respect of eight months leases, in Form II, or, if they are in respect of land under the block system, in Form III, or, if in respect of fruit-trees on long term permits, in Form IV, as the case may be. Blank copies of the requisite forms will be supplied to intending applicants free of charge.

(2) Applications for water for any purpose other than irrigation should be made in the form of an ordinary letter addressed to the Executive Engineer.

5. *Applications by whom to be made.*—(1) No application for water for the purpose of irrigation under the Block system or on 8 months leases or of fruit trees on long term permits shall ordinarily be sanctioned unless the application is made or signed by the occupant, as shown in the Record of Rights or in the case of alienated land by the superior holder of the land. The application shall be signed by each of several joint occupants or holders.

(2) In all other cases an application for a supply of water will be accepted even if not signed by the occupant or superior holder, provided it be accompanied by a security bond in Form V executed by two persons approved by the Executive Engineer, a note of which fact shall be made by the Executive Engineer in column 13 of Form. I.

6. *Applications when to be made.*—Applications are to be made as shown below :—

Type of crop for which water is required	Date of application for canals in the Bombay Presidency excluding those in Gujarat	Date of application for canals in Gujarat
Monsoon	... Any time	... Before October 15.
Eight months	... Before September 15	... Do
Rabi (whole season)	... Do* † ‡	... Do.
Rabi (occasional waterings)	... Any time	... Any time.
Hot weather	... Do	... Do.
Sugarcane	... Before such date as may be specially notified for each canal from time to time by the Executive Engineer.	... Before such date as may be specially notified for each canal from time to time by the Executive Engineer.
Other perennial	... Any time	... Any time.
Fruit trees	... Not less than six months before the water is required.	... Not less than six months before the water is required.

7. *Acknowledgment and disposal of application.*—On receipt of an application the counterfoil attached to the duplicate form shall be initialled and dated by the Executive Engineer and handed back to the applicant, or, if the application be received by post, shall be despatched to the applicant.

\*For canals in the Satara District applications for water for rabi (whole season) crops shall be made before November 8.

† For the following canals in the Sholapur Division, viz., Ashti, Ekruk, Koregaon and Pathri tanks, applications for water for rabi (whole season) crops shall be made before October 15."

‡ "Occasional single waterings, as distinct from additional single waterings (i.e., pre-seasonal and post-seasonal waterings), shall not be allowed on the following major irrigation works in the Deccan Irrigation Circle and the Irrigation Development and Research Circle :—

The Nira Right Bank Canal,  
 The Nira Left Bank Canal and Shetphal Tank.  
 The Godavari Canals.  
 The Pravara Canals,  
 Mutha Canal and Matoba Tank."

8. *Application may be rejected or complied with wholly or in part : Manner of sanction : Approval.*—(1) In those cases in which the Talati or the Patil has already verified and countersigned an application, the Executive Engineer, after instituting due inquiry, may either reject the application or sanction it, either in its original form, or subject to such amendment as the applicant at his suggestion accepts. If the application be sanctioned, the duplicate form shall be given to the applicant and the counterfoil attached to the original form shall be sent to the Talati or the Patil for information and record.

(2) In cases in which the application has not already been verified and countersigned by the Talati or the Patil, the original form shall be sent to him for verifying the entries, and stating whether there are any arrears outstanding against the applicant. The Talati or the Patil will return the form duly completed within 8 days; if the form be not received within this period, the Executive Engineer may nevertheless sanction, with or without amendment as aforesaid, the application if approved by him in other respects.

(3) No application in respect of land under the block system or for water for fruit trees shall be sanctioned before an abstract in Form VI of all such applications received in the same village has been countersigned by the Superintending Engineer in token of his approval.

(4) Where the Executive Engineer rejects an application under section 27 in whole or in part, an appeal shall lie against his order to the Superintending Engineer.

9. *Areas for which permission will be granted.*—Permission for irrigation shall ordinarily be given for areas which are multiples of twenty gunthas. Assessment shall be levied on multiples of 10 gunthas, any area smaller than 10 gunthas being treated as 10 gunthas unless otherwise specifically sanctioned.

10. *Priority in case of failure of supply.*—If, from any cause, the water supply from a canal proves insufficient to meet all the accepted applications for water, all questions regarding priority of right to receive the available water, and the quantity and regulation of supply, shall be finally determined by the Executive Engineer, provided that :—

(a) applications in respect of fruit-trees on long term permits and land under the block system shall have priority over all others ;

(b) applications in respect of eight months leases shall have priority over those for seasonal crops ;

(c) *Casaris pasibus*, applications for lands which have been divided into acre plots approved by the Executive Engineer shall have priority over those for lands not so divided ; and

(d) save as aforesaid, applications will be dealt with as far as possible in order of receipt.

### CHAPTER III.

#### DEMARICATION AND PREPARATION FOR IRRIGATION.

11. *Demarcation and preparation of land : Charge in case of default.*—(a) An area for which an application is made shall be demarcated and prepared for irrigation in accordance with the provisions of this rule.

In the case of areas which have not been passed for irrigation in previous years, if this rule is not complied with water may be withheld until the area is passed for irrigation, even though the application has been sanctioned. In the case of old areas (i. e., where the areas have already been correctly demarcated in previous years and the bands maintained according to specified dimensions irrigation may be commenced at any time after a water-pass has been issued; but if it is found that in any year, after the expiry of a period which will be laid down for each canal, the areas have not been prepared and maintained for irrigation in the manner prescribed in respect of demarcation and preparation, 25 per cent. higher water rates may be charged after inspection by the Executive Engineer.

(b) *Sugarcane.*—

(i) Areas to be irrigated shall be divided into plots not more than half an acre each: and these half acre plots must be divided into at least two smaller plots by bands situated where desired by the cultivator and of dimension sufficient to prevent water flowing from one plot into another.

(ii) Each area to be irrigated shall be surrounded by bands of not less than the following dimensions:—

1½ feet high with a 2 feet top width at the lower end of the field and for 2 chains (66 feet) up both sides;

1½ feet high with a 1½ feet top width, for the remainder of the side bands and for the half acre interior bands;

One foot high with 1 foot top width, (a) for the band at the upper end of the field and (b) for the half acre interior bands in the case of land certified to be properly levelled by the Executive Engineer. The band at the upper end may be dispensed with if there is a contiguous band constructed at the lower end of the field immediately above.

All bands to have side slopes of 1 to 1.

(iii) The lower band should be constructed on the line up to which it is proposed to take irrigation Water.

*Excess area permitted in certain cases.*—In areas in which only a few preliminary waterings are required owing to the land receiving subsoil percolation water, the irrigator may be allowed to take a limited number of waterings below the lower band, provided he has a band of the size of a half acre interior band around the additional area irrigated. This latter band may be cut as soon as irrigation is stopped in this additional area.

(iv) The Executive Engineer shall have power to prohibit sugarcane being planted in areas where the soil is less than 1'-6" deep or in land classed unsuitable.

(v) The Executive Engineer may prohibit the cultivation of sugarcane within half a chain (16½ feet) of any road, cart, track, open drain or nalla. The decision of the Executive Engineer as to the point from which this distance shall be measured shall be final.

(vi) When a crop has grown to a height of 4 feet the canes on both sides of the channel and bands must be bound together in bunches, so that the leaves do not overhang the channel or band or in any way obstruct the flow of water or inspection.



*(c) Crops other than Sugarcane.—*

(i) Areas to be irrigated in lands under the block system shall be surrounded by a band not less than 1 foot high by 1 foot top width and interior bands of the same dimensions shall be constructed and maintained round each half acre plot. Water must not be allowed to flow from one plot into another.

(ii) Areas to be irrigated but not under the block system shall be surrounded by a band not less than 1 foot high by 1 foot top width.

“ 11 (a).—*Boundary marks.*—Land under the block system shall be demarcated at each corner by boundary stones or other marks as approved by the Executive Engineer and every block-holder shall fix the boundary marks and shall be responsible for their proper maintenance.

On the failure of a block-holder to fix the boundary marks or to repair them within twenty days of his being called upon to do so by a written notice, higher rates may be charged after inspection by the Executive Engineer until such time as the block-holder fixes or repairs the marks himself or deposits the amount required for fixing or repairing them by Government agency, in which case the work shall be done departmentally and the charges met from the deposit. The higher rate so chargeable by the Executive Engineer shall not exceed the normal rate by more than 10 per cent.”

## CHAPTER IV.

## CULTIVATION AND USE OF WATER.

12. *Cultivation and use of water.*—The following provisions in respect of cultivation and use of water shall be observed :—

(a) No crop shall be planted in the channels leading to the plots.

(b) No crop shall be grown on the top of any band, but a subsidiary crop may be grown along the slopes of the bands, provided it does not interfere with inspection.

(c) The bands must remain intact until the crop has been removed, and the watering of a field must be begun at the plot at the lowest level and be continued upwards.

(d) Water shall be allowed into each plot direct from the cultivator's channel, which shall be constructed alongside the interior bands in such a way that there shall be a channel leading to each plot.

(e) No crop shall be planted within six feet of the edge of a main watercourse. The decision as to what is a main watercourse will rest with the Executive Engineer.

(f) Immediately after rain, bands may be cut without permission; but they must be properly repaired before the next watering is taken. When excess water flows into a field from another field or when excess water is let down the water course, the irrigator may be allowed to cut his bands and let out the excess water without penalty, provided the excess was not due to any fault of the said cultivator. Before the bands are cut permission to do so must be obtained from the Executive Engineer and an entry made to that effect in his pass book, if any.

(g) No “cuts” shall be permitted from a watercourse to a field, and only one outlet arrangement shall be constructed for each field

unless permission is first obtained from the Executive Engineer for any additional outlets required.

(4) On canals where the pass book system has been introduced, an irrigator's turn for water shall not be due until the date specified on the pass by the Executive Engineer and if the water is not utilised on the date noted in the pass, the turn will be lost; provided that if the irrigator is not to blame for failing to take water on the date specified, another date will be specified and he will be given water at the next opportunity.

(5) The irrigator or his servant must be present during the whole time that water is being taken for irrigating a field, and he must have his water pass, if he has one, in his possession.

## CHAPTER V.

### WATER RATES.

13. *Rates when payable.*—The dates of instalment for payment of rates for different kinds of crops will ordinarily be as follows :—

Name of crops	Dates.
Monsoon	... February 1.
8 months	... Do.
Rabi	... April 15.
Hot weather	... February 1.
Sugarcane	... Do.
Other perennial	... Do.
Fruit trees	... Do.

14. *Rates how to be fixed.*—The rates leviable for canal water supplied for purposes of irrigation will, in the absence of any special agreement or contract, be ordinarily as follows :—

- (1) acre rates varying according to the season or crop or kind of irrigation (or),
- (2) rates depending on quantity of water supplied.

15. *Rate leviable when mixed crops are grown.*—If mixed crops are grown in the same field, the rate leviable will be that for the highest rated crop for the season or seasons in which the crop has been irrigated.

16. *Rate leviable when first crop fails and a fresh one is sown.*—When the crop first sown fails and is ploughed up, a fresh crop may be sown in the same area which will be given water up to the date to which water would have been given to the crop first sown; no additional charge will be levied, provided that intimation is given to the Executive Engineer in writing within 8 days of planting the fresh crop and provided the second crop is assessable at the same or a lower rate.

17. *Rate leviable when portion of land demarcated for irrigation by canal water is irrigated partly by well water.*—If a portion of the land demarcated for the purpose of being irrigated by canal water has nevertheless been irrigated by well water for a part of the season owing to the deficiency in the supply of canal water, and the applicant has notified the fact in writing to the Executive Engineer within 8 days from the date on which he began taking well water, enquiry shall be made as to whether the use of well water was necessary; and, if it be shown

to the satisfaction of the Executive Engineer that it was so, the rate chargeable on the portion irrigated by well water may be reduced at the discretion of the Executive Engineer; provided that the minimum rate chargeable shall be the lift rate.

18. *Rate leviable when well water and canal water are conveyed in the same course.*—If well water is conveyed to any land in any channel used for conveying canal water, water rate shall be chargeable on the whole of the land irrigated from such channel: provided that if well water be taken for a part of the season owing to the deficiency in the supply of canal water and the applicant has notified the fact in writing to the Executive Engineer within 8 days from the date on which he began taking well water, and, if it be shown to the satisfaction of the Executive Engineer that it was so, the rate on the portion irrigated by well water may be reduced at the discretion of the Executive Engineer; provided that the rate charged shall be not less than the lift rate.

19. (1) *Provisions applicable to supply from escape channels and rates leviable.*—The same provisions shall apply to irrigation from escape channels as to irrigation from other parts of a canal.

(2) When the supply of water from any such channel lasts continuously throughout the period for which it is required for use, the same rates will be levied, as for a supply from the canal. When the supply is intermittent such reduced rates shall be charged as may be fixed in each particular case under the orders of Government.

20. *Rate leviable for supply of water for forming threshing floors.*—The Executive Engineer may give water for the purpose of forming threshing floors free to persons to whom a supply of water for irrigation has been sanctioned under these rules and to others at a charge per floor not exceeding half the lowest acre rate.

21. *For non-irrigational purposes rates will be charged for by volume or otherwise.*—Water supplied from a canal for any purpose other than irrigation will be charged for by volume or otherwise, at such rate as Government shall from time to time determine.

#### *Occasional Rates.*

22. *Rates leviable for supply of water obtained without permission or misused.*—(1) If a supply of water is obtained by any person from a canal for the purpose of irrigation without the previous permission of the Executive Engineer, the Executive Engineer may charge a rate for such water on each occasion when it is so obtained or used, up to a maximum of treble the rate chargeable for the season for the authorised irrigation of the area irrigated, and this rate will be leviable in addition to any penalty which may be imposed under the Act.

(2) If a supply of water is obtained by any person from a Canal for any purpose other than irrigation without the previous permission of the Executive Engineer or is used in any other unauthorized manner, the Executive Engineer may charge a rate for such water on each occasion when it is so obtained or used up to a maximum of treble the rate determined by Government from time to time under rule 21 and this rate shall be leviable in addition to any penalty which may be imposed under the Act.

23. *Rate leviable on late applications.*—When water is sanctioned on applications received later than on the specified date, the Executive Engineer may levy an additional charge of 50 per cent. on the area irrigated, except that in the case of sugarcane extra charge shall not be more than one-fourth of the rate for that crop.

24. *Rate leviable for water used for the irrigation of an area in excess of specified area such excess being discovered only after the crop has ceased to be irrigated.*—When permission has been given to irrigate a specified area in accordance with an application made under rule 3, and when the applicant irrigates an area in excess of such specified area, such excess being discovered only after the crop has ceased to be irrigated the Executive Engineer may charge a rate up to a maximum of treble the rate chargeable for such specified area for the excess area.

25. *Charge to be imposed when water supplied through a watercourse is suffered to run to waste.*—The Executive Engineer may charge, under section 46 or otherwise, on account of water supplied through a water course which is suffered to run to waste, rates as follows, namely:—

(a) if the water has flowed on any land, not exceeding double the single watering rate;

(b) in any other case, not exceeding double the rate chargeable under rule 1, on the volume of water estimated by the Executive Engineer to have been wasted.

#### *Exemptions and Remissions.*

26. *Exemption from water rates.*—(1) In the case of lands brought under the block system or on 8 months lease, if in any particular year an applicant is unable to irrigate a part of the whole of the area for which water has been sanctioned, he may apply to the Executive Engineer for exemption from water rate before the 15th of November in the case of land under the block system and before the 15th of September in the case of land on 8 months leases, in Form VII which may be obtained from the Sub-Divisional Officer. Should such exemption be granted, subsequent permission to irrigate the area exempted will only be given at 1½ rates and if water be available.

(2) In the case of lands, not under the block system nor on 8 months lease, when an application for water is submitted, water rates will be charged for the area sanctioned by the Executive Engineer, whether water is taken or not, provided water was available during the period.

(3) No rate will be charged in the case of perennial crops when the applicant gives a written intimation to the Executive Engineer within one month from the date of sanction to the application that water is not required.

27. *Cases in which remissions may be granted.*—Remission of the whole or a part of the water-rate payable by any person may be granted where such person has suffered loss,

(a) from any stoppage, diminution or increase of his water supply due to any of the causes named in clause (a) of section 31 or to any act or omission of canal officer not provided for in the said clause; or,

(b) from failure of his crops due to any local or general calamity where the failure is total or the outturn does not exceed one-quarter of the normal crop.

28. *Claims for remission under Rule 27.*—(1) Claims for remissions under rule 27 shall be preferred to the Executive Engineer direct; and, if not so preferred within one month from the time when the damage or failure in respect of which the remission is claimed, is alleged to have occurred, shall not be entertained.

(2) If, without giving the Executive Engineer at least 8 days' notice in writing of his intention, the claimant cuts the crops alleged to have been damaged or to have failed at any time within 20 days after preferring his application, his claim shall not be entertained.

29. *Readings for water gauges and meters set by Irrigation Department to be accepted as authoritative.*—In cases of dispute regarding water supply, or remission or exemption from water-rate, the water-gauges and meters set up by the Irrigation Department shall, if certified by the Executive Engineer to have been in good order during the period to which the dispute relates, be held to furnish authoritative data for all calculations of discharge.

## CHAPTER VI.

### EMERGENCY RULES.

30. *List when to be prepared.*—Whenever it appears to a Canal Officer duly empowered to act under section 58 of the Act, that circumstances may probably arise which will render it necessary for the provisions of that section to be put into operation for the execution of any repair, clearance or other work which is being or is about to be carried on by the Irrigation Department, he shall communicate with the Collector, who shall thereupon cause a list to be prepared of the able-bodied persons to whom the said provisions are applicable.

The list as prepared may from time to time be revised and amended.

31. *Area for which the list should be prepared.*—The list shall include the names of persons holding land or resident within such distance from the locality of the repair, clearance or work as the Collector, having regard to the number of persons likely to be required to assist at such repair, clearance or work, shall think proper.

32. *Classes of persons to be included or exempted.*—The list shall contain the name of every landholder holding land within the area fixed by the Collector under the last preceding rule and of every able-bodied man or woman who resides within such area and earns his or her livelihood by manual labour: provided that

(a) the names of persons who appear to the Collector to be under sixteen or over fifty years of age and of Indian soldiers, reservists and military pensioners shall be omitted, and,

(b) any landholder who is unaccustomed to manual labour shall be permitted when called to assist at any repair, clearance or work, to substitute any able-bodied person whose name is not on the list.

33. *Publication of list.*—The Collector shall cause the names of the persons holding land or resident in any village within the area fixed under rule 31 and included in the list to be posted up in the *charadi* or in some other public building in such village, and to be proclaimed in the village by beat of drum.

34. *Hearing of objections.*—Any person whose name is entered in the list may apply in writing to the Collector to have his name removed therefrom. The Collector, after such inquiry (if any) as he thinks

necessary, shall record his decision in writing, rejecting or granting the application.

Subject, as provided in section 37, to the supervision and control of the Commissioner of the Division, the Collector's order shall be final.

#### CHAPTER VII.

##### APPEALS.

35. *Appeals.*—Every order passed by an Executive Engineer under rule 17 or 18 shall be appealable to the Collector, provided that the appeal be presented within 30 days of the date on which the order appealed against was communicated to the appellant.

36. *Manner of preferring appeals.*—All appeals preferred under the Act or under these rules must be made by written petition signed by the appellant. Such petition may be delivered at the office of the authority appealed to, by the appellant in person during office hours or be forwarded through post.

#### CHAPTER VIII

##### MISCELLANEOUS.

37. *Charge under section 48 not to be levied without sanction of Government.*—No charge under section 48 shall be levied without special sanction of Government on land watered by wells sunk at a distance of more than 100 feet from any canal provided that such wells are fed by natural percolation only and not by a surface channel or a constructed underground channel or pipe.

38. *Except in cases of emergency canal not to be closed without sanction of Superintending Engineer.*—No canal shall be closed for the execution of any repairs, alterations, or additions thereto, except in cases of emergency, without the previous sanction of the Superintending Engineer or of an Executive Engineer duly empowered in this behalf by him who shall fix the period, or periods for which the supply of water may be stopped on account of the execution of such repairs, &c. When possible, an intended closure of a canal shall be notified 8 days or more in advance. In case of emergency a canal may be closed and the said period or periods may be fixed by the Canal officer of highest rank on the spot, who shall report the matter to the Superintending Engineer.

39. *Passing of persons, animals or vehicles in or across canals.*—

(1) No person shall pass, or cause any animal or vehicle to pass, in or across the bank or channel of any canal at any place except where indicated by a notice erected under the order of the Executive Engineer in a conspicuous place.

(2) In fixing places at which the passing in or across the bank or channel of a canal is permitted under sub-rule (1) of this rule, the Executive Engineer shall have careful regard to the reasonable convenience of the people residing or holding land in the vicinity who are required to cross the canal or water their animals.

40. *Maintenance of watercourses.*—The maintenance of a watercourse under section 21 (b) includes the construction of such masonry or other work as in the opinion of the Executive Engineer is necessary to prevent waste of water or damage to the channel and includes the construction of a pipe outlet in masonry or any other type of outlet arrangement approved by the Superintending Engineer for connecting the watercourse to the field channel.



water  
igation  
तलाख्याकडे  
याकरिता

To

The Executive Engineer for Irrigation,  
पाटबंधान्याचे एग्जिक्यूटिव्ह इंजिनियर,

District.

जिल्हा यांस

Original मूळ प्रत  
Canal कालबा

कालबा

I

resident of

Taluka

District

make this application for the supply of water from the above canal for the purpose of irrigating the undermentioned land hereinafter described subject to all the conditions printed on the reverse of the duplicate of this application and of the Bombay Canal Rules, 1922.

मी , राहणार , तालुके , जिल्हा , यांत खाली सांगितलेली जमीन भिन्न-  
विषयासाठी सदरील कालबातून पाणी मिळण्याबद्दल या अर्जाच्या नकल प्रतीच्या मागील बाजूस छापलेल्या सर्व शर्तींस ब सन १९२२ च्या  
मुंबईच्या कालबाबाबदच्या कायदा पात्र राहून अर्ज करतां:—

Distributing पाणी बांटणाऱ्या		Name of Village गावाचें नांव		Survey No. सर्वेचें नंबर	Phalmi No. फाळणी नंबर	Total area of S. No. or P. No. सव्हे नं.चें अगर फा. नं.चे एकूण क्षेत्रफळ		Area applied for ज्या क्षेत्रास पाणी मिळावें म्हणून सागणी केली तें क्षेत्र		Name of crop. पिकाचें नांव	Period for which water is required पासून पर्यंत ज्या सुदतीत पाणी पाहिजे ती सुदत		Area allotted by the Ex. Engineer एग्जिक्यूटिव्ह इंजि. मंजूर केलेलें क्षेत्र		Water rates to be charged per acre एकरा पाणीपट्टीचा दर	Remarks टीपा	
Channel No. बाटाचा नं.	Outlet No. दरवाण्याचा नं.	पा.	अ.			पा.	अ.	पासून	पर्यंत		पा.	अ.					
१	२			४	५	६	७	८	९		१०		११	१२			
																Single watering एक पाणी Monsoon पावसाळी खरीब Rabi रबी 8 months आठमाही Hot weather उन्हाळी Sugarcane ऊंस Ordinary perennials सामान्य बारमाही पिकें	

Date तारीख

Signature or left hand thumb impression of applicant

Signature of witness साक्षीदाराची सही

अर्जदाराची सही अगर डावे हाताचा आंगठा

Amount

Verified. The applicant is in arrears of Government dues Rs. तपासली. अर्जदाराकडून सरकारी बाकी बसूल येणें

रु. आहे  
कोही नाही

Signature of Talati or the Patil तलाख्याची अगर पाटलाची सही

Forwarded for sanction मंजूरीकरतां रवाना

Sanctioned मंजूर

l Officer.

सन १९३



Ordinary Application for Water for Irrigation.

Duplicate  
नकल प्रत

Form 1  
नमुना १

अर्जाचा नंबर

पाटबंधान्याचे एक्झिक्यूटिव्ह इंजिनियर, जिल्हा

यांस

मी

राहणार

तालुके

जिल्हा

यांत खाली सांगितलेली जमीन मिजविषयाकरिता सदरील कालव्यांतून पाणी मिळण्याबद्दल या अर्जाच्या नकल प्रतीचे मागिल बाजूस छापिलेल्या सर्व शर्तीस ब सन १९२२ च्या मुंबईच्या कालव्याबाबत कानूनस पात्र राहून अर्ज करतां:—

पाणी बांटणाऱ्या		नंबर	नंबर	नंबर	सर्व्हे नंबराचे अथवा फाळणी नंबराचे एकूण क्षेत्रफळ	ज्या क्षेत्रास पाणी मिळावें म्हणून मागणी केली तें क्षेत्र	नंबर	ज्या मुदतीत पाणी पाहिजे ती मुदत	एक्झिक्यूटिव्ह इंजिनियरने मंजूर केलेलें क्षेत्र	एकरा पाणीपट्टीचा दर	शेरा
पाटाचा नंबर	दरबा- ज्याचा नंबर	शाखा नंबर	सर्व्हे नंबर	फाळणी नंबर	ए. गुं.	ए. गुं.	पासून पर्यंत	ए. गुं.	११	१२	
१	२	३	४	५	६	७	८	९	१०	११	१२
										एक पाणी पावसाळी खरीप रबी धाढमाही उन्हाळी ऊंस सामान्य बारमाही पिकें	

तारीख माहे सन १९२२

अर्जदाराची सही अगर डाबे हाताचा आंगठा.

साक्षीदाराची सही

मंजुरीकरितां रवाना.

मंजूर.

सर्व्हे-डिव्हिजनल ऑफिसर.

स. डि.

Executive Engineer for Irrigation,  
District.

अर्जाप्रमाणें मागण्याप्रमाणें श्रेण	पाटाचा नंबर		दरवाजा नंबर		शेवफळ		केळी ते शेव		पासन पर्यंत		मंजूर केलेले क्षेत्र		एकपदी पाणट्याचा रकम	rule applicable	of the	neces the	
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२ पावसाळी रबी														पावसाळी खरीप रबी			
३ आठमाही उन्हाळी														आठमाही उन्हाळी			
४ सामान्य चार-माही पिके														सामान्य चारमाही पिके			

तारीख माहे सन १९१३ अर्जादाराची सही अगर इमे हाताचा आंगठा.

बाबरीदाराची सही

मंजुरीकरिता स्थाना.

मंजूर.

सर्व-किडिजनाल ऑफिसर.

स. डि.

Executive Engineer for Irrigation, District.

ता. माहे सन १९१३

ता. माहे सन १९१३

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अर्जादाराचे नाव

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अर्ज घेणाऱ्या अफसल-दाराची सही

ENGLISH VERSION OF THE NOTES ON THE BACK OF  
DUPLICATE FORM I.

1. The application shall be in duplicate, the original copy being for the Executive Engineer and the duplicate for the applicant.
2. Columns 1 to 9 shall be filled in by the applicant and 10 to 12 by the Executive Engineer.
3. When an application for water has not been signed by the occupant or joint occupants or in the case of alienated land, the superior holder of the land to be irrigated, the application shall not be sanctioned except on the execution of a security bond in form V executed by two approved persons, a note of which fact shall be made in column 12 of the application form.
4. After an application has been sanctioned full water rates shall be payable for the sanctioned area entered in column 10 for the period entered in column 9 whether the area is irrigated or not. No assessment will be charged in the case of perennial crops when the applicant gives a written intimation to Executive Engineer within one month from the date of sanction to the application that water is not required.
5. Each type of crop (namely, sugarcane, pan, ordinary perennial, 8 months and seasonal) shall be grown only to the extent of the sanction shown on the pass, but an equal area of any lower rated type may be substituted.
6. The excess over a sanctioned area when discovered only after the crop has ceased to be irrigated is chargeable at a rate not exceeding treble the rate on the sanctioned area and water is liable to be cut off under section 28.
7. No crop shall be planted within 6 feet of the edge of a main water-course. The decision as to what is a main water-course will rest with the Executive Engineer.
8. The Executive Engineer will ordinarily sanction areas which are multiples of  $\frac{1}{4}$  an acre.
9. The supply is liable to be withheld so long as any of the provisions of canal rule 11 are not complied with.
10. Water will be given for the whole season, if available, or for as many waterings as possible, at the discretion of the Executive Officer.
11. Full water supply is not guaranteed but an intimation of the possibility of a shortage of water during the season for which application is made will be given at the earliest date possible.
12. Where no permanent water channel exists, I agree to the construction of a temporary channel through my land, if necessary, along a line fixed by the Executive Engineer or his representative, for the benefit of irrigators whose fields are situate below mine.

## THE BOMBAY CANAL RULES.

## SCHEDULE.

*Names of tanks or canals.*

Bhatodi Tank.	Kadwa River Works.
Ashti Tank.	Krishna Canal.
Koregaon Tank.	Rewari Canal.
Pathri Tank.	Upper Man River Works.
Jamda Canals.	Yerla River Irrigation Works.
Hartala Tank.	Chikhli Canal.
Mhaswa Tank.	Maini Tank Canal.
Lower Panjhra River Works.	Mhaswad Tank.
Shahada Channel.	Muchkundi Tank.
Kasurdi Tank.	Shirsuphal Tank.
Bhadalwadi Tank.	Parsul Tank.
Matoba Tank.	Girna Left Bank Canal.

Non-perennial sections of the Mutha Canals.

Non-perennial sections of the Godavari Canals.

Non-perennial sections of the Pravara Canals.

Non-perennial sections of the Nira Right Bank Canal.

*N. B.*—The following numbers 10 and 11 shall be substituted for those given above in respect of applications for water from the Ekruk Tank, Viz :—

“ 10. Where no permanent water channel exists, I agree to the construction of a temporary channel through my land, if necessary, along a line fixed by the Executive Engineer or his representative, for the benefit of irrigators whose fields are situate below mine.

“ 11. Water for any area of sugarcane sanctioned is subject to the condition that water is liable to be withheld from new sugarcane area after 31st May, if necessary. Each consecutive watering after 31st May will require the sanction of the Executive Engineer. Such sanction will be accorded if water is available in the tank for agricultural purposes but if it is insufficient at any time of the season, all further waterings may be stopped and the irrigators shall not in that case claim compensation for any damage to the cane crop due to shortage of water.

The cases in which remissions may be granted and the manner in which the remissions shall be preferred are indicated in rules 27 and 28 of the Bombay Canal Rules, 1922, published in Government Notification in the Public Works Department, No. 1556, dated the 19th December 1922.

नकल नमुना १ यांच्या पाठीवरील टीपा.

१. अर्जाच्या दोन प्रती असल्या पाहिजेत, मूळ प्रत एक्झिक्यूटिव्ह इंजिनियर यांज-  
करिता व नकल प्रत अर्जदापकरितां.
२. कोष्टकें १ ते ९ अर्जदारानें भरावीं व १० ते १२ एक्झिक्यूटिव्ह इंजिनियरनें  
भरावीं.
३. जेव्हां मिजबिण्याच्या जामिनीच्या खातेदारानें अग्नर सामायिक खातेदारांनीं किंवा  
दुमाला जामिनीच्या बाबतींत बरिष्ठ धारण करणारानें पाण्यासाठींच्या अर्जावर सही केली नसेल  
तेव्हां मान्य असलेल्या दोन इसर्मांनीं सही केलेला नमुना ५ प्रमाणें जामीनकदवा स्थानें करून  
दिल्याखेरीज तो अर्ज मंजूर केला जाणार नाही ; व ह्या बाबतीची नोंद अर्जाच्या नमुन्याच्या  
१२ व्या कोष्टकांत केली पाहिजे.
४. अर्ज मंजूर झाल्यानंतर, १० व्या कोष्टकांत नमूद केलेल्या मंजूर झालेल्या क्षेत्रा-  
कारितां ९ व्या कोष्टकांत लिहिलेल्या सुद्धीसाठीं पूर्ण दरानें पाणीपट्टी दिली पाहिजे, मग त्या क्षेत्रास  
पाणी दिलेंलें असो अग्नर नसो, मात्र इतकेंच कीं, त्या सुद्धीत पाणी मिळण्याजोगें असलें पाहिजे,  
बारमाही विधांच्या बाबतींत अर्जदारानें पाण्याची जल्ली नाही अशी लेखी सूचना अर्ज मंजूर  
झाल्याच्या तारखेपासून एक महिन्याच्या आंत एक्झिक्यूटिव्ह इंजिनियर यास दिली असेल तर  
कोणतीही पट्टी घेतली जाणार नाही.
५. पासांत दाखल केलेली मंजुरी ज्या मर्यादितपयंत दिली आहे तेथपर्यंत पिकें ( जंत,   
पात, सामान्य बारमाही पिकें, आठमाही व इंगामी पिकें ) दरेक जातीचीं केलीं पाहिजेत;  
तथापि तेवढ्याच क्षेत्रावर त्यांच्याबद्दल कमी दर्जाचीं पिकें करण्यास हरकत नाही.
६. मंजुरी दिलेल्या क्षेत्रापेक्षा जास्त क्षेत्रासाठीं मंजुरी दिलेल्या क्षेत्रासाठींच्या तिप्पट  
दरपेक्षा जास्त नाही इतका दर आकारला जाईल व २८ व्या कलमाअन्वये पाणी बंद केलें  
जाण्यास पात्र आहे.
७. मुख्य पाटाच्या कडेपासून ६ फुटांचे आंत कोणतेही पिक लावितां कामा नये.  
मुख्य पाट कोणता हें ठरविणें एक्झिक्यूटिव्ह इंजिनियरचे अधिकारांत राहिल.
८. एक्झिक्यूटिव्ह इंजिनियर सामान्यतः ३ एकराच्या पटीचीं क्षेत्रे मंजूर करील.
९. कालव्याबाधत कानू ११ हिच्या कोणत्याही उरावाप्रमाणें जोपर्यंत वागणूक होणार  
नाहीं, तोपर्यंत पाणी बंद ठेवले जाण्यास पात्र आहे.

**Form No. 2**  
**नमुना:नं० २**

आठमारी ब्लॉक मंडळ  
केव्याबद्दल समज

Original Form II  
मूळ प्रत नमुना २

FORM OF APPLICATION OF WATER FOR IRRIGATION UNDER EIGHT-MONTH LEASES

No. of Application अर्जाचा नंबर

Canal कालवा

आठमारी ब्लॉकचा अर्ज  
दिश्याची बाबती

गांवाचे नंबर

सर्वे नंबर

काळणी नंबर

अर्जाचा नंबर

कालवा

मी

मिळविण्यासाठी ता. १६ माहे जुलै सन १९२२ पासून ता. १४ माहे फेब्रुवारी सन १९२२ पर्यंत चालोवाला सहा वर्षांच्या मुदतीत व बरसार्जित व रब्बी हंगामांत बरील काळव्याचे पाणी मिळवण्याबद्दल या अर्जाच्या नकळपतीच्या मागील बाजूस ठारलेल्या दिव्यामध्ये व सन १९२२ च्या शुंलहेंच्या काळव्याबाबत कामूसाखे निर्दिष्ट केलेल्या व सहा कडूळ अतलेल्या सर्व शर्तीस पात्र राहून अर्ज करतो ( म्हणजे ):-

नकळ प्रत. नमुना २.

आठमारी ब्लॉकांत जमीन मिळविण्यासाठी लागणाऱ्या पाण्याबद्दल अर्जाचे. एक्सप्लिटिव्ह इंग्लिश व फ्रेंच इतिहास, विव्हा

, राहणार , ताडुके , शिवा

शेत खाली नमूद केलेली जमीन

पर्यंत चालोवाला सहा वर्षांच्या

नकळपतीच्या मागील बाजूस ठारलेल्या

सर्व शर्तीस पात्र राहून

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Canal कालवा

मूळ प्रत

नुमुना २

FORM OF APPLICATION OF WATER FOR IRRIGATION UNDER EIGHT-MONTHS LEASES

आठमाही ब्लॉकांत जमीन भिजविण्यासाठी लागणाऱ्या पाण्याबद्दल अर्ज

To

The Executive Engineer for Irrigation,

District

मे. एक्सिक्यूटिव्ह इंजीनियर फॉर इरिगेशन, जिल्हा

यांस

I, \_\_\_\_\_, resident of \_\_\_\_\_, Taluka \_\_\_\_\_, District \_\_\_\_\_, make this application for the supply of water from the above canal in the monsoon and rabi seasons of six years in succession from 15th June 193 to 14th February 193 subject to all the conditions specified in the notes on the reverse of the duplicate of this application and in the Bombay Canal Rules, 1922, to which I agree, for the purpose of irrigating the land hereinafter described (namely) :—

मी \_\_\_\_\_, राहणार \_\_\_\_\_, तालुके \_\_\_\_\_, जिल्हा \_\_\_\_\_, यांत खाली नमूद केलेली जमीन भिजविण्यासाठी ता. १६ माहे जून १९३ पासून ता. १४ फेब्रुवारी सन १९३ पर्यंत सालेसाल सहा वर्षांच्या मुदतीत, बरसार्तीत व रब्बी हंगामांत वरील कालव्याचें पाणी मिळण्याबद्दल या अर्जाच्या दुसऱ्या प्रतीच्या मागील बाजूस छापलेल्या टीपांमध्ये व सन १९२२ च्या मुंबईच्या कालव्याबाबद कानूनमध्ये निर्दिष्ट केलेल्या व मला कबूल असलेल्या सर्व शर्तीस पात्र राहून अर्ज करतां ( म्हणजे ) :—

Distributing पाणी वांटून देणाऱ्या		Village गावाचे नांव	Survey No. सर्व्हे नंबर	Phalni No. फाळणी नंबर	Total area of Survey No. or Phalni No. सर्व्हे नंबराचें अगर फाळणी नंबराचें एकंदर क्षेत्रफळ	Area applied for ज्या क्षेत्रास पाणी मिळावें म्हणून मागणी केली तें क्षेत्र	Area allotted for Irrigation by the Executive Engineer भिजविण्याकरितां य. इंजीनियरनें मंजूर केलेलें क्षेत्र	Water rates per acre per year दरसाल दर एकर पाणीपट्टीचे दर
Channel No. पाटाचा नं.	Outlet No. दरवाजाचा नं.							
१	२	३	४	५	६	७	८	९
								Monsoon पावसाळी खरीप Rabi रब्बी 8 Months आठमाही

Date तारीख

Signature of the applicant or his left hand thumb impression

Signature of witness साक्षीदाराची सही

अर्जदाराची सही अथवा डाव्या हाताचा आंगठा

Verified, The applicant is in arrears of Government dues to the extent of Re. is not

तपासली. अर्जदाराकडून सरकारी बाकी घेवून होणेची

रुपये आहे  
काहीं नाहीं

Signature of Talati or Patil तलाठ्याची अगर पाटलाची सही

Forwarded for sanction मंजुरीकरितां रवाना  
Sub-Divisional Officer.

Sanctioned मंजूर  
Executive Engineer for Irrigation,



अर्जदाराचें नांव  
 मागणीप्रमाणें क्षेत्र  
 अर्जाची तारीख  
 शेरा

पाणी बांदून देणाऱ्या		गांवाचें नांव	सव्हे नंबर	फाळणी नंबर	सव्हे नंबराचें अगर फाळणी नंबराचें एकंदर क्षेत्रफळ	ज्या क्षेत्रांत पाणी मिळारें म्हणून मागणी केली तें क्षेत्र	मिजविण्याकरिता एक्सक्यूटिव्ह इंजीनियरनें मंजूर केलेलें क्षेत्र	दरसाल दर एकरा पाणी-पट्टीचे दर
पाटाचा नंबर	दरबाज्याचा नंबर							
१	२	३	४	५	६	७	८	९
								पावसाळी खरीप रब्बी आठमाही

अर्ज पोहोचल्याची तारीख

तारीख  
 साक्षीदाराची सही

अर्जदाराची सही अगर डाव्या हाताचा आंगठा

अर्ज वेगल्या कामगाराची सही

तारीख

मंजुरीकरिता रवाना

मंजूर

सब-डिव्हिजनल ऑफिसर,  
 सब-डिव्हिजन,

तारीख

एक्सक्यूटिव्ह इंजीनियर फॉर इरिगेशन,  
 जिल्हा.

THE BOMBAY CANAL RULES

ENGLISH VERSION OF THE NOTES ON THE BACK OF  
DUPLICATE FORM II.

1. The application shall be in duplicate, the original copy being for the Executive Engineer and the duplicate for the applicant.
  2. Columns 1 to 7 shall be filled in by the applicant and columns 8 and 9 by the Executive Engineer.
  3. Applications for water on Form II will not be entertained unless signed by the occupant, as shown in the Record of Rights, or in the case of alienated land, by the superior holder.
  4. The area allotted by the Executive Engineer for any permit shall be in units of  $1\frac{1}{2}$  acres.
  5. The following conditions apply to the irrigation of crops to be grown in 8 months' blocks :—
    - (i) Water will be reserved in the rabi season for the sanctioned area of rabi crops. The lease-holder may, however, substitute for each  $1\frac{1}{2}$  acres of rabi crops 1 acre of 8 months' crops. Irrigation in the monsoon season is optional; but monsoon crops up to the sanctioned area may be grown and for each  $1\frac{1}{2}$  acres of monsoon crops 1 acre of 8 months' crops may be substituted.
    - (ii) At the risk of the applicant and provided well water is available, an equal area of ordinary perennial crops (excluding sugarcane, pao and fruit trees) may be irrigated instead of 8 months' crops.
    - (iii) If the holder of an eight months' lease wishes to irrigate in any year an area in excess of the sanctioned lease area he must submit an application in Form I for the same; such applications will, however, be given preference over those received from other applicants who are not lease-holders.
    - (iv) If, in any particular year, an applicant is unable to irrigate a part or the whole of the area for which water has been sanctioned, he may apply to the Executive Engineer for exemption from water rate before the 15th of September in Form VII, which may be obtained from the Sub-divisional Officer. The area that is to be irrigated after exemption of a part shall be a multiple of a unit. Should such exemption be granted, subsequent permission to irrigate the area exempted will only be given at 1½ rates and if water be available.
  6. Water is liable to be withheld at any time so long as the provisions of canal rule 11 are not complied with.
  7. No crop shall be planted within 6 feet of the edge of a main water-course. The decision as to what is a main water-course will rest with the Executive Engineer.
- N. B.*—The following additional notes shall be inserted in respect of applications for water from the Ekruk Tank, viz :—
8. Where no permanent water channel exists, I agree to the construction of a temporary channel through my land, if necessary, along a line fixed by the Executive Engineer or his representative, for the benefit of irrigators whose fields are situate below mine.
  9. If water is taken for monsoon or eight-months crops, no water shall be guaranteed for rabi crops.
  10. Water is liable to be withheld at any time.
  11. After an application has been sanctioned, full water rates shall be payable for the sanctioned area entered in column 8 whether

the area is irrigated or not, provided water was available during the period.

N. B.—In respect of applications for water from the Ekruk tank condition 5 (i) shall be amended by the insertion of the following words at the beginning namely :—

“ Subject to the provisions of condition 9.”

N. B.—The following additional note shall be inserted in respect of the Ashvi, Pathri and Koregson tanks, viz :—

8. Where no permanent water channel exists, I agree to the construction of a temporary channel through my land, if necessary, along a line fixed by the Executive Engineer or his representative, for the benefit of irrigators whose fields are situate below mine.

#### नकल नमुना २ याच्या पाठीवरील टीपा

१. अर्जाच्या दोन प्रती असल्या पाहिजेत, मूळ प्रत एक्झिक्यूटिव्ह इंजीनियर यांचे कठिण व नकल प्रत अर्जदाराकठिण.

२. कोष्टकें १ ते ७ अर्जदारांने मराठी व ८ ते ९ एक्झिक्यूटिव्ह इंजीनियरने मराठी.

३. इकाच्या पत्रकांत दाखविल्याप्रमाणे खातेदारांने अर्जावर सही केलेली असल्या खेरीज किंवा दुमाला जमिनीच्या बाबतींत बरिष्ठ धारण करणारांने सही केलेली असल्याखेरीज पाण्यासाठीच्या नमुना २ वरील अर्जाचा विचार केला जाणार नाही.

४. कोणत्याहि परवान्याकठिण एक्झिक्यूटिव्ह इंजीनियरने बांदून दिलेले क्षेत्र १३ एकरांच्या गुणकांत असेल.

५. आठमाही ब्लॉकमध्ये करावयाच्या पिकांस पाणी देण्यासंबंधाने खालील शर्ती लागू आहेत:—

(१) रबीच्या पिकांसाठी मंजूर केलेल्या क्षेत्राकठिण रबीच्या इंगामांत पाणी राखून ठेवले पाहिजे. तथापि, पट्टा धारण करणारास रबीच्या पिकाच्या दरेंक १३ एकरांच्या बदला आठमाही पिकाचा १ एकर वेण्यास हरकत नाही.

पावसाळ्यांत पाणी देणे बैकल्पिक आहे; तथापि मंजूर केलेल्या क्षेत्रापुरती पावसाळी पिकें काढण्यास हरकत नाही आणि पावसाळी पिकाच्या दरेंक १३ एकरांच्या बदला आठमाही पिकाचा १ एकर वेण्यास हरकत नाही.

(२) अर्जदाराच्या जोखमेवर व बिहिरीचे पाणी मिळण्यासारखे असेल तर आठमाही पिकांच्या बदला सामान्य बारमाही पिकांच्या तेवढ्याच क्षेत्रास ( जंस, पान व फळझाडे खेरीज कल्लु पाणी देण्यास हरकत नाही.

(३) आठ महिन्यांचा पट्टा धारण करणाराची मंजूर केलेल्या पट्टांतील क्षेत्रापेक्षा जास्त क्षेत्रांत पाणी देण्याची कोणत्याहि वर्षी इच्छा असेल तर त्यासाठी नमुना १ प्रमाणे त्याने अर्ज केला पाहिजे; जे पट्टा धारण करणारे नाहीत अशा इतर अर्जदारांकडून आलेल्या अर्जापेक्षा अशा अर्जाचा पहिल्याने विचार केला जाईल.

(४) कोणत्याहि एकाद्या वर्षी, अर्जदारास आपला सर्व प्रॉट मिजवितो येत नसेल तर पाणीपट्टीची माफी मिळण्यासाठी ७ व्या नमुन्याप्रमाणे सप्टेंबरच्या १५ तारखेपूर्वी त्याने अर्ज करावा. सदर नमुना त्याला सर्व-बिड्जिनल ऑफिसराकडून मिळू शकेल. अशी माफी मिळाले असता माफी दिलेले क्षेत्र मिजबिण्यासाठी मागाहून परवानगी देणे ती १३ एट दराने व पाणी मिळण्यासारखे असेल तरच फक्त देण्यांत येईल.

६. कालभ्यांवाबत कानू ११ हिच्या ठरावाप्रमाणे जॉपयेंत बागणूक होणार नाही तोंपयेंत पाणी कोणत्याहि वेळी बंद केले जाण्यास पात्र आहे.

७. मुख्य पाटाच्या फडेपासून ६ फुटांचे आंत कोणतेहि शीक लावितो कामा म्हे. मुख्य पाठ कोणता हें ठराविने एक्झिक्यूटिव्ह इंजीनियरने अधिकारांत राहिल.

To—The Executive Engineer for Irrigation, Division  
 मे. एग्जिक्यूटिव्ह इंजीनियर फॉर इरिगेशन, जिल्हा  
 resident of , Talaka District  
 make this application for the supply of water from the above canal for years in succession from 15th February 193 to 14th February 193 subject to the provisions of the Bombay Irrigation Act, 1879, and of any other law for the time being in force relating to irrigation and subject to all the conditions specified in the notes on the reverse of the duplicate of this application and of the Bombay Canal Rules, 1922, to which I agree, for the purpose of irrigating the land hereinafter described, namely:—

मी , राहणार , तालुके , जिल्हा खाली नमूद केलेली जमीन भिजविण्याकरिता वरिल कालव्याचें पाणी ता. १५ माहे फेब्रुवारी सन १९३ पासून ता. १४ माहे फेब्रुवारी सन १९३ पर्यंत सालोसाल वर्षांच्या मुदतीत या अर्जाचे नकल प्रतीचे मागील बाजूस टोपांमध्ये ब सन १९२२ च्या मुंबईच्या कालव्याबाबत कानूंमध्ये दर्शविलेल्या व मला कबूल असलेल्या सर्व शर्तीस पात्र राहून अर्ज करतो:—

Name of Village गांवाचें नांव	Distributing पाणी वांटणाऱ्या		Survey No. सर्व्हे नंबर	Pot No. पोत नंबर	Total area of Survey No. or Pot No. सव्हे नंबरचें अगर पोत नंबरचें एकूण क्षेत्रफळ	Total area of the plot in the plot क्षेत्र एकूण क्षेत्र	Area applied for in the plot in the plot इतरांत भिजविण्याकरिता मागिल्लें क्षेत्र	Block No. ब्लॉक नंबर	Plot No. प्लॉट नंबर	Area sanctioned by the Executive Engineer एग्जिक्यूटिव्ह इंजीनियर वार्नी मंजूर केलेलें क्षेत्र	Permissible cane area उसाच्या परवानगेंत क्षेत्र	Period for which the application is sanctioned अर्ज मंजूर केलेली मुदत	Water rate to be charged her acre per year दर एकरा व दर साल पाणीपट्टीचा दर	Security bond if any attached जामीन कबळ्याचा नमुना असल्यास जोडणें
	Channel No. पाटलाचो नंबर	Outlet No. इखाण्याचो नंबर												
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१५														

Date तारीख  
 Signature of witness अर्जदाराची सही अगर डाव्या हाताचा आंगठा  
 साक्षीदाराची सही  
 Signature of the applicant or his left hand thumb impression  
 Signature of the owner or surety or occupant or superior holder as the case may be in case the applicant be not the owner or surety or occupant or superior holder of the land  
 अर्जदार जमिनीचा मालक अगर जामीनदार अगर खातेदार अगर बरिष्ठ धारण करणारा नसल्यास मालकाची अगर जामीनदाराची अगर खातेदाराची अगर बरिष्ठ धारण करणाऱ्याची सही

Certified that the applicant is the <sup>owner</sup> <sub>lessee</sub> of the lands for which water is applied for in this application  
 दाखला देण्यांत येतो की ह्या अर्जांमध्ये ज्या नमूद केलेल्या जमीनीसाठी पाणी मागण्यांत आलें आहे, त्या जमीनीचा अर्जदार हा मालक आहे खंडकरी

Verified, The applicant is in arrears of Government dues to the extent of Rs. तपासली. अर्जदाराकडून सरकारी बाकी बसूल होणेची कांहीं राहिली नाहीं  
 Signature of Talat/Patal तालाच्याची अगर पाटलाची सही

*Conditions.*

(1) The application shall be in duplicate, the original copy being for the Executive Engineer and the duplicate for the applicant.

(2) Columns 1 to 8 shall be filled in by the applicant and columns 9 to 10 by the Executive Engineer.

(3) No application for water for irrigation shall ordinarily be sanctioned unless the application is made or signed by each of the occupants or joint occupants of the land to be irrigated as shown in the Record of Rights, or in the case of alienated land, by the superior holder. In case of Inam lands and mortgaged lands and in the case of lands held by companies or institutions, a security bond in form No. V (P. W. D. 452) for the full amount of the water rate and other charges for the full period of the lease, executed by each of two approved persons, shall also be furnished and mention made of the same in the assessment papers. Block shall be sanctioned in multiples of 1 or 12 acres according as 2 or 3rd is allowed under canal. A block may consist of several plots, each plot being an isolated area subject to a minimum of 1 acre in the case of blocks with 2 cane and to a minimum of 1½ acres in the case of blocks with 1st cane. Each block shall, however, be on a single outlet.

*Note.*—Half proportion cane blocks shall be limited to selected areas on the Mitha Canals only.

(4) The area of sugarcane in the block shall not exceed that shown in column 12 during the hot weather season (15th February to 15th June), except when overlapping is allowed.

(5) If sugarcane is not grown on the full area shown in column 12, twice the area in units not so utilized may be planted with other crops (excluding long term fruit trees and pan gardens). If sugarcane or other crops grown in less than full, a similar or lower rated crop or a succession of such crops may be planted in the same or any other equal area of the block in the hot weather.

*Note.*—This condition shall not hold good for half proportion cane blocks on the Mitha Canals.

(6) In a block area, no second rotation of sugarcane shall be allowed, nor shall cane or Kharva (1st rotation) be allowed on the same land more than three times in every six years in the same blocks.

(7) When it is desired for any reason to plant a new crop before the old one has been harvested, application for overlapping shall be made on an ordinary application (Form No 1). In case overlapping is sanctioned on an ordinary application, the period of sanction shall not ordinarily without the sanction of the Superintending Engineer exceed 4 months and if the original crop has not been removed within that period, it shall be considered as unauthorised.

(8) To the remaining area of the block, water shall be given for irrigation for about 8 months, i. e., from the 15th June till the 15th February following. This area shall not be irrigated either from the canals or wells between the 15th February and the 15th June of the following year.

(9) The water rate per acre for blocks with 2 and 3rd area under canal shall be such as may be fixed by Government from time to time.

(10) No crop shall be planted within 9 feet of the edge of a main water course. The decision as to what is a main water course shall rest with the Executive Engineer.

(11) All provisions in respect of demarcation and preparation of land, and cultivation and use of water as given in canal rules 11 and 12 shall be strictly observed.

(12) Water rate shall be payable, so long as water is available, for the whole period of the permit, whether a block is irrigated or not. If in any particular year an applicant is unable to irrigate parts or the whole of the area for which water has been sanctioned, he may apply to the Executive Engineer for exemption from water rate before the 15th November of the previous year in form No. VII, which may be obtained from the Sub-divisional Officer. Such exemptions shall be granted only in multiples of 1 acre in 2 and 1½ acres in 3rd canal blocks respectively. Subsequent permission to irrigate the area exempted shall only be given at his rates, provided water is available. If such exemptions are applied for and granted for more than two years in a six years' period, the block sanction shall be cancelled. Any other cases requiring cancellation or exemption shall be referred to the Superintending Engineer for decision.

(13) In the case of new area, the supply of water is liable to be withheld under canal rule 11, even though the water pass may have been issued, so long as the provisions of the said rule are not complied with.

(14) The block sanction is liable to be cancelled at the end of the first year if, in the Executive Engineer's opinion, further continuance of the supply is objectionable. During the remaining period of the sanction, the block agreement may be terminated by either party by giving to the other party one year's notice in writing to that effect before the commencement of a block year, viz., 15th February.

रमाही ब्लॉक मंजुरीची समज

गांवच्या तलाख्याकडे पाठविण्याकरिता

कालबा—

अर्जाचा नंबर व नाव

गांधी बांटणाऱ्या पाटाचा नंबर

गांधी बांटणाऱ्या दरवाजाचा नंबर

अर्जाचा नंबर व अर्जदाराचे नाव

अर्जाचा मंजूर केलेला क्षेत्र

साल दर एकरी

अर्ज मंजुरीची तारीख

अर्जदाराची मुदत

शेरा

क्यानाल ऑफिसर

रीख

जिल्हा

अर्जाचा नंबर

I

make this application for the supply of water from the above canal for \_\_\_\_\_ years in succession from 15th February 193\_\_\_\_\_ to 14 February 193\_\_\_\_\_ subject to the provisions of the Bombay Irrigation Act, 1879, and of any other law for the time being in force relating to irrigation and subject to all the conditions specified in the notes on the reverse of the duplicate of this application and of the Bombay Canal Rules, 1922, to which I agree, for the purpose of the irrigating the land hereinafter described, namely:—

मी \_\_\_\_\_, राहणार \_\_\_\_\_, तालुके \_\_\_\_\_, जिल्हा \_\_\_\_\_ खालील नमूद केलेली जमीन भिजविण्याकरिता वरील कालव्याचे पाणी ता. १५ माहे फेब्रुवारी सन १९३\_\_\_\_\_ पासून ता १४ माहे फेब्रुवारी सन १९३\_\_\_\_\_ पर्यंत सालोसाल वर्षाच्या मुदतीत या अर्जाचे नकल प्रतीचे मागील बाजूस टीपांमध्ये व सन १९२२ च्या मुंबईच्या कालव्याबाबत कानूनमध्ये दर्शविलेल्या व मला कबूल असलेल्या सर्व शर्तीस पात्र राहून अर्ज करतां:—

Name of Village	Distributing पाणी बांटणाऱ्या		सर्व्हे नंबर	Pot No. पोट नंबर	Total area of Survey No. or Pot No. सर्व नंबर अगर पोट नंबरचे एकूण क्षेत्रफळ	Total area of the Plot. प्लॉटचे एकूण क्षेत्रफळ	Area applied for in the plot प्लॉटांत भिजविण्याकरिता मागितलेलं क्षेत्र	Block No. ब्लॉक नंबर	Plot No. प्लॉट नंबर	Area sanctioned by the Executive Engineer एक्झिक्यूटिव्ह इंजिनियर यांना मंजूर केलेलं क्षेत्र	Permissible cane area उंसाच्या परवानगीचें क्षेत्र	Period for which the application is sanctioned अर्ज मंजूर केलेली मुदत	Water rate to be charged per acre per year दर एकरी व दरसाल पाणी पट्टीचा दर	Security bond if any attached जामीन कवल्याचा नमुना असल्यास जोडणें.
	गावाचें नांव	Channel No. पाटाचा नंबर												
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१५														

Date तारीख \_\_\_\_\_ Signature of the applicant or his left hand thumb impression.

Signature of witness अर्जदाराची सही अगर डाव्या हाताचा आंगठा.

साक्षीदाराची सही. Signature of the owner or surety or occupant or superior holder in case the applicant be not the owner or surety or occupant or superior holder of the land.

अर्जदार जमिनीचा मालक अगर जामीनदार अगर खातेदार अगर बरिष्ठ धारण करणारा नसल्यास मालकाची अगर जामीनदाराची अगर खातेदाराची अगर बरिष्ठ धारण करणाराची सही.

Certified that the applicant is the  $\frac{\text{owner}}{\text{lessee}}$  of the lands for which water is applied for in this application.

दाखला देण्यांत येतो की, ह्या अर्जांमध्ये ज्या नमूद केलेल्या जमीनसाठी पाणी मागण्यांत आलें आहे, त्या जमीनीचा अर्जदार हा  $\frac{\text{मालक}}{\text{खंडकरी}}$  आहे.

Verified. The applicant  $\frac{\text{is}}{\text{is not}}$  of arrears of Government due to the extent of Rs. तपासली. अर्जदाराकडून सरकारी

बाकी वसूल होण्याची कांहीं राहिली नाही. रुपये आहे. Signature of Talati/Patil तलाख्याची अगर पाटलाची सही.

Forwarded for sanction Date Sub-Divisional Officer, Sub-Division. Date Executive Engineer for Irrigation, Division. Sanctioned

*Conditions.*

- (1) The application shall be in duplicate, the original copy being for the Executive Engineer and the duplicate for the applicant.
- (2) Columns 1 to 8 shall be filled in by the applicant and columns 9 to 15 by the Executive Engineer.
- (3) No application for water for irrigation shall ordinarily be sanctioned unless the application is made or signed by each of the occupants or joint occupants of the land to be irrigated as shown in the Record of Rights, or in the case of alienated land, by the superior holder. In case of Inam lands and mortgaged lands and in the case of lands held by companies or institutions, a security bond in Form No. V (P. W. D. 453) for the full amount of the water rate and other charges for the full period of the lease executed by each of two approved persons shall also be furnished and mention made of the same in the assessment papers. Blocks shall be sanctioned in multiples of 2 acres. A block may consist of several plots, each plot being an isolated area subject to a minimum of 2 acres. Each block shall, however, be on a single outlet.
- (4) The area of sugarcane in the block shall not exceed that shown in column 12 during the hot weather season (15th February to 14th June), except when overlapping is allowed.
- (5) If sugarcane is not grown on the full area shown in column 12, twice the area in units not so utilised may be planted with other crops (excluding long term fruit trees and pan gardens). If sugarcane or other crops grown in *lieu* thereof fail, a similar or lower rated crop or a succession of such crops may be planted in the same or any other equal area of the block in *lieu* thereof.
- (6) In ablock area, no second ratoon of sugarcane shall be allowed; nor shall cane or Khodva (1st ratoon) be allowed on the same land more than twice in every six years.
- (7) When it is desired for any reason to plant a new crop before the old one has been harvested, application for overlapping must be made on an ordinary application (Form No. I). In case overlapping is sanctioned on an ordinary application, the period of sanction shall not ordinarily without the sanction of the Superintending Engineer exceed 4 months and if the original crop has not been removed within that period, it shall be considered as unauthorised. The limit of 4 months for overlapping may, however, be relaxed when the old cane is planted between the 15th June and the 14th November of the previous year and a longer overlapping starting after the 15th June allowed on condition that the old cane is fully harvested before the 14th February following.
- (8) To the remaining area of the block water shall be given for irrigation for about eight months, *i. e.*, from the break of the monsoon till the 14th February following.  
In addition, pre-seasonal waterings to monsoon and two seasonal crops may also be allowed in one-fourth of the area of the block at such rates as may be sanctioned by Government from time to time, provided that:—
  - (i) water was applied for before a date to be notified for each canal, and
  - (ii) for every half acre of overlap sanctioned in the block in the hot water season, subsequent to 15th March, a corresponding half acre shall be deducted from the one-fourth of the block area in which pre-seasonal watering is allowable, *i. e.*, the area in which overlap subsequent to the 15th March is sanctioned together with the area receiving pre-seasonal waterings as aforesaid shall not exceed one-fourth of the area of the block.
- (9) The water rate per acre for these blocks shall be such as may be fixed by Government from time to time.
- (10) No crop shall be planted within 6 feet of the edge of the main water course. The decision as to what is a main water course shall rest with the Executive Engineer.
- (11) All provisions in respect of demarcation and preparation of land, and cultivation and use of water as given in canal rules 11 and 12 shall be strictly observed.
- (12) Water rate shall be payable, so long as water is available, for the whole period of the permit, whether a block is irrigated or not. If in any particular year an applicant is unable to irrigate a part or the whole of the area for which water has been sanctioned, he may apply to the Executive Engineer for exemption from water rates before the 15th November of the previous year in Form No. VII, which may be obtained from the Sub-divisional Officer. Such exemptions shall be granted only in multiples of 2 acres. Subsequent permission to irrigate the area exempted shall only be given at  $1\frac{1}{2}$  rates provided water is available. If such exemptions are applied for and granted for more than two years in a six years' period, the block sanction shall be held to be cancelled. Any other cases requiring cancellation or exemption shall be referred to the Superintending Engineer for decision.
- (13) In the case of new areas, the supply of water is liable to be withheld under canal rule 11, even though the water pass may have been issued, so long as the provisions of the said rule are not complied with.
- (14) The block sanction is liable to be cancelled at the end of the first year if, in the Executive Engineer's opinion, further continuance of the supply is objectionable. During the remaining period of the sanction, the block agreement may be terminated by either party by giving to the other party one year's notice in writing to that effect before the commencement of a block year, *viz.*, 15th February.

FORM OF APPLICATION FOR WATER FOR IRRIGATION OF FRUIT TREES

फळझाडे मिजविण्यासाठी लागणाऱ्या पाण्याबद्दल अर्ज

कालबा  
अर्जाचा नंबर  
गांवाचे नांव  
पाणी बांटणाऱ्या पाटाचा  
नंबर  
पाणी बांटणाऱ्या दर-  
वाच्याचा नंबर  
सर्व्हे नंबर  
फाळणी नंबर  
अर्जदाराचे नांव  
मंजूर केलेले क्षेत्र  
मंजुरीची तारीख  
मंजुरीची मुदत

To  
The Executive Engineer for Irrigation,  
मे. एक्सिक्यूटिव्ह इंजिनियर फॉर इरिगेशन, जिल्हा  
District  
यांस  
I, resident of \_\_\_\_\_, taluka \_\_\_\_\_ in the \_\_\_\_\_ district, make this application for  
the supply of water from the above canal for \_\_\_\_\_ years in succession from 15th February 193 \_\_\_\_\_ to 14th  
February 193 \_\_\_\_\_ subject to all the conditions specified in the notes on the reverse of the duplicate of this  
application and in the Bombay Canal Rules, 1922, to which I agree, for the purpose of irrigating the land  
hereinafter described (namely) :—  
मी \_\_\_\_\_, राहणार \_\_\_\_\_, तालुकें \_\_\_\_\_, जिल्हा \_\_\_\_\_, यांत खाली नमूद केलेली जमीन मिजविण्या-  
करिता ता. १५ माहे फेब्रुवारी सन १९३ \_\_\_\_\_ पासून ता. १४ माहे फेब्रुवारी सन १९३ \_\_\_\_\_ पर्यंत सालोसाल \_\_\_\_\_ वर्षांच्या मुदतीत सदरील  
कालव्याचे पाणी मिळण्याबद्दल ह्या अर्जाच्या दुसऱ्या प्रतीच्या मागील बाजूस लिहिलेल्या टीपामध्ये व सन १९२२ च्या मुंबईच्या कालव्याबाबत  
कानूनमध्ये निर्दिष्ट केलेल्या व मला कबूल असलेल्या शर्तीस पात्र राहून मी अर्ज करतो, ( म्हणजे ) :—

Distributing पाणी बांटून देणाऱ्या		Village गांवाचे नांव	Survey No. सर्व्हे नंबर	Phalni No. फाळणी नंबर	Total area of Survey or Phalni No. सर्व्हे नंबराचे अगर फाळणी नंबराचे क्षेत्र	Name of fruit tree फळझाडाचे नांव	Area applied for ह्या क्षेत्रास पाणी मिळवून घेणून साराणी केली क्षेत्र	Area sanctioned by the Executive Engineer मिजविण्याकरिता एक्सिक्यूटिव्ह इंजिनियरने मंजूर केलेले क्षेत्र	Rate chargeable up to 15th February 193 when it will be subject to revision ता. १५ माहे फेब्रुवारी सन १९३ पर्यंत पट्टी द्यावयाची ती त्या वेळी पुन्हा पहाणी होण्यास पाल आहे.
Channel No. पाटाचा नंबर	Outlet No. दरवाऱ्याचा नंबर								
१ 1	२ 2	३ 3	४ 4	५ 5	६ 6	७ 7	८ 8	९ 9	१० 10
						A.	G.	A.	C.

शेरा  
क्यानाल ऑफिसराच्या  
सहीची  
आयाक्षरें

Date तारीख \_\_\_\_\_ Signature of applicant or his left hand thumb impression  
Signature of witness साक्षीदाराची सही \_\_\_\_\_ अर्जदाराची सही अगर डाव्या हाताचा आंगठा  
Verified तपासली

The applicant \_\_\_\_\_ is \_\_\_\_\_ in arrears of Government dues to the extent of Rs. \_\_\_\_\_ अर्जदाराकडून सरकारी बाकी बसूल होणे रुपये \_\_\_\_\_ आहे  
is not \_\_\_\_\_ कांहीं नाही

Signature of Talati or the Patil तलाठ्याची अगर पाटिलाची सही \_\_\_\_\_  
Forwarded for sanction मंजुरीकरिता रवाना \_\_\_\_\_ Sanctioned मंजूर \_\_\_\_\_  
Date तारीख \_\_\_\_\_ Sub-Divisional Officer \_\_\_\_\_ Executive Engineer for Irrigation \_\_\_\_\_

THE BOMBAY CANAL RULES



ENGLISH VERSION OF NOTES ON THE BACK OF  
ORIGINAL FORM IV.

1. This form is intended for trees with a normal life of 15 years or more (*i. e.*, excluding plantains, papayas and similar short-lived species), and is to be used for areas in which water can ordinarily be supplied at regular intervals throughout the year.

2. Permits shall not be granted for a period extending beyond the 13 years after the 15th February of the year in which the next revision of water rates falls due.

3. When available, expert advice as to the suitability of the sub-soil drainage should be obtained before the application is sanctioned. In cases in which a decision has to be arrived at by the local Executive Engineer he should bear in mind that for deep soil areas to be suitable for fruit cultivation the sub-soil water should remain at a depth not less than 6 feet; while in the case of fruit trees which thrive in shallow soils, such as pomegranates, the sub-soil water level must remain not less than 1 foot below the murum level.

4. A record of the date of plantation of all gardens should be maintained in the District Office.

नमुना ४ याच्या मूळ प्रतीवरील टीपा

१. हा नमुना जी झाडे म्हणजे (केळी, पोपये व अशाच प्रकारची थोडे दिवस जगणारी झाडे खेरीज करून) १५ वर्षे किंवा अधिक वर्षे सामान्यतः जगतात अशा झाडांसाठी आहे. आणि त्याचा उपयोग ज्या क्षेत्रांत संबंध वर्षभर पाणी नियमित मुदतीने साधारणतः पुरवितां येतें अशा क्षेत्राकरितां आहे.

२. ज्या वर्षी पाणीपट्टी पुन्हा नव्याने बसवावयाची असते त्या वर्षाच्या १५ फेब्रुवारी-नंतर १२ वर्षांपेक्षां जास्त मुदतीसाठीं परवाने देण्यांत येणार नाहीत.

३. अर्ज मंजूर होण्यापूर्वी जमिनीखालील पाणी काढून टाकणें सोईचें आहे किंवा कसें याविषयी तज्ज्ञांकडून सहा मिळण्यासारखा असल्यास मिळवावा. स्थानिक एक्झिक्यूटिव्ह इंजीनियरकडून ज्या बाबतीत निकाल व्हावयाचा असेल त्या बाबतीत खोलपर्यंत माती असलेली जमीन फळांच्या लागवडीस योग्य होण्यास ६ फुटांहून कमी नाही इतक्या खोलीवर जमिनी-खालील पाणी तसेंच राहूं द्यावें ही गोष्ट त्यानें लक्षांत ठेविली पाहिजे. डाळिंबासारखी जी फळांसाठीं उचळ जमिनीत चांगली होतात अशा झाडांच्या बाबतीत जमिनीखालील पाणी घुर-माच्या खाली १ फुटांहून कमी नाही इतक्या उंचीवर असलें पाहिजे.

४. सर्व बागांच्या लागवडीच्या तारखेची नोंद डिस्ट्रिक्ट ऑफिसांत ठेविली पाहिजे.

अर्ज दिस्याची पावती

अर्जाचा नंबर

नकल प्रत. नमुना ४

कालबा  
अर्जाचा नंबर  
गांवाचें नांव  
पाणी बांदून देणाऱ्या  
वाटाचा नंबर  
पाणी बांदून देणाऱ्या  
दरबाज्याचा नंबर  
सव्हे नंबर  
फाळणी नंबर  
अर्जदाराचें नांव  
मंजूर केलेलें क्षेत्र  
मंजुरीची तारीख  
मंजुरीची मुदत

कालबा

गांवाचें नांव

फळशाळें मिजविण्यासाठी लागणाऱ्या पाण्याकरितां अर्ज

मी राष्ट्रपार मे. एक्झिक्यूटिव्ह इंजिनियर फॉर इरिगेशन,  
, ताळुके , जिल्हा , अर्ज करतो की खाली नमूद केलेली जमीन  
मिजविण्याकरितां सा. १६ माहे फेब्रुवारी सन १९२२ पासून ता. १५ माहे फेब्रुवारी सन १९२२ पर्यंत सालोसाल वर्षाच्या मुदतीत  
सदरील कालव्याचें पाणी मिळण्याबद्दल ह्या अर्जाच्या दुसऱ्या प्रतीच्या मार्गल बाजूस लिहिलेल्या टीपामध्ये व सन १९२२ च्या कालव्याबाबत  
कानूनमध्यें निर्दिष्ट केलेल्या शर्तीस व मला कबूल असलेल्या शर्तीस पात्र राहून मी अर्ज करतो ( म्हणजे ):-

पाणी बांदून देणाऱ्या	गांवाचें नांव	सव्हे नंबर	फाळणी नंबर	सव्हे नंबराचें अगर फाळणी नंबराचें क्षेत्र	फळशाळाचें नांव	ज्या क्षेत्रास पाणी मिळावें म्हणून मागणी केली तें क्षेत्र	मिजविण्याकरितां एक्झिक्यूटिव्ह इंजीनियरनें मंजूर केलेलें क्षेत्र	सा. १५ माहे फेब्रुवारी सन १९२२ पर्यंत पाणीपट्टी यावयाची ती त्या वेळीं तपासणी होण्यास पाल आहे
वाटाचा नंबर	दरबाज्याचा नंबर	३	४	५	६	७	९	१०
१	२						ए. गुं.	ए. गुं.

शेरा

तारीख १९२२  
साक्षीदाराची सही  
मंजुरीकरितां रावाना

अर्जदाराची सही अगर बाब्या हाताचा आगठा

तपासलें

अर्जदाराकडून सरकारी बाकी बसूल होणे

रुपये आहे

काहीं नाहीं

तलाठ्याची अगर वाटिलाची सही

मंजूर

एक्झिक्यूटिव्ह इंजीनियर फॉर इरिगेशन

जिल्हा.

क्यानाल ऑफिसराच्या  
सहीची  
आथाफरें

सन्-डिव्हिजनल ऑफिसर,

सन्-डिव्हिजन

THE HON'BLE DYKAL BUTLER

ENGLISH VERSION OF NOTES ON THE BACK OF  
DUPLICATE FORM IV.

1. The date on which the sanction to the application will expire to be filled in by the Executive Engineer before Forms are issued.
2. Columns 1 to 8 to be filled in by applicant and 9 and 10 by the Executive Engineer.
3. The application shall be in duplicate, the original copy being for the Executive Engineer and the duplicate for the applicant.
4. No application for water shall ordinarily be sanctioned unless the application is made or signed by the occupant or joint occupants of the land to be irrigated as shown in the Record of Rights.
5. Water rates will be subject to revision at the same time as those for other crops, i. e., at intervals of 6 years.
6. The water rate shall be payable, provided water is available for the whole period of the permit whether water is taken or not, but the applicant may, by giving six months notice in writing, terminate his contract.
7. New trees may be planted to replace those that have died without special permission on the distinct understanding that this will in no way entitle the applicant to an extension of the period of the permit.

नमुना ४ याच्या नकल प्रतीवरील टीपा

१. ज्या तारखेस अर्जाची मंजुरी संपेल ती तारीख एक्झिक्यूटिव्ह इंजीनियराने नमुने देण्यापूर्वी भरावयाची.
२. कोष्टकें १ ते ८ अर्जदाराने व ९ ते १० एक्झिक्यूटिव्ह इंजीनियराने भरावयाची.
३. अर्जाच्या दोन प्रती असल्या पाहिजेत—मूळ प्रत एक्झिक्यूटिव्ह इंजीनियर याज-करिता व नकल प्रत अर्जदारकरिता.
४. इकांच्या पलकांत दाखविल्याप्रमाणे भिजवावयाच्या जमिनीच्या खातेदाराने किंवा सामायिक खातेदारांनी अर्ज केलेला असल्याखेरीज व त्यावर सहा केलेल्या असल्याखेरीज पाण्याकरिता केलेला कोणताहि अर्ज साधारणतः मंजूर केला जाणार नाही.
५. इतर पिकांच्यासाठीची पाणीपट्टीची फेरतपासणी होईल त्याच वेळी, म्हणजे ६ वर्षांच्या मुदतीने पाणीपट्टी पुन्हा तपासणी होण्यास पात्र आहे.
६. पाणी घेतलेले असो किंवा नसो, परवान्याच्या पूर्ण मुदतीपर्यंत पाणी मिळव्याजोगें असेल तर पाणीपट्टी दिली पाहिजे; तथापि सहा महिन्यांची लेखी नोटीस देऊन अर्जदारास करार संपविण्याचा अधिकार आहे.
७. मेलेल्या झाडांच्या जागी विशेष परवानगीशिवाय नवी झाडे लावण्यास हरकत नाही. मात्र तसें केल्यामुळे परवान्याची मुदत वाढविण्यास अर्जदारास कोणत्याहि रीतीने मुळावें हक प्राप्त होत नाही, हें स्पष्ट समजावें.

FORM V.

FORM OF SECURITY BOND.

To—The Executive Engineer for Irrigation District.

Whereas *A B* of has applied for a supply of water to irrigate the undermentioned crop on the land hereinbelow described (namely) :—

Village.	Taluka.	Survey No.	Area of field to be irrigated.	For what crop required.	For what period required.

and whereas he has been required to furnish security for the payment of the water-rate and other charges :

‘We, *C. D.* of and *E. F.* of , do hereby declare ourselves sureties for the abovementioned *A. B.* of , that he shall duly pay at the prescribed time or times every rate, charge, penalty or other sum whatsoever that shall become due from him in respect of the supply of water granted to him in pursuance of his said application ; and in case of his making default therein we, each of us, for himself, his heirs, executors and administrators, agree to pay to the Secretary of State for India in Council such sum not exceeding in the aggregate) rupees as shall be demanded of us, or of either of us, or of any heir, executor or administrator of either of us, on account of any such rate, charge, penalty or other sum aforesaid :

‘and we do further agree and allow that the amount of any such rate, charge, penalty or other sum aforesaid may, if necessary, be recovered from either of us or from any heir, executor or administrator of either of us, as if the same were an arrear of land-revenue due from us, or either of us, to Government.’

Dated this day of 192 .

Signed by *C. D.*

(Signed) *C. D.*

in the presence of

Signed by *E. F.*

( , ) *E. F.*

in the presence of

नमुना ५

जामीनसताचा नमुना

एन्सिनयूटिन्ड इंजीनियर फॉर इरिगेशन, जिल्हा यांस.  
 ज्याअर्थी अ. ब. राहणार यानें खाली दिलेल्या बर्णनाच्या जमिनीवरील  
 खाली सांगितलेल्या पिकासाठी पाणी मिळण्याबद्दल अर्ज केला आहे ( म्हणजे ) :—

गांव	तालुका	सर्व्हे नंबर	मिजवाबयाच्या शेताचें क्षेत्र	कोणत्या पिकासाठी पाहिजे	कोणत्या मुदतीपर्यंत पाहिजे.

आणि ज्याअर्थी पाणीपट्टी व इतर खर्चाच्या रकमा देण्याच्या बाबतीत त्यापासून जामीन मागितला आहे;

त्याअर्थी, सदरहूँ अ. ब. राहणार

याच्या सदरहूँ अर्जाप्रमाणें त्याला पाणी दिल्याबद्दल जी कोणतीहि पाणीपट्टी, खर्च, दंड अगर इतर कोणतीहि रकम त्याजकडून येणें होईल ती तो नेमिलेल्या एका अगर अनेक वेळी योग्य रितीनें देत जाईल अशाबद्दल आम्ही, क. ड., राहणार,

आणि इ. फ. राहणार

, हे जामीन आहां असें यावरून

लिहून देतो, आणि त्यांत त्याजकडून चूक झाल्यास आम्ही, आमच्यापैकी प्रत्येक जण आपल्या बतीनें व आपले बासदार, मृत्युपत्र चालविणार व बहिबाट चालविणार यांच्या बतीनें असें कबूल करितों की, सदरहूँ कोणतीहि पाणीपट्टी, खर्च, दंड अगर इतर रकम हिच्या संबंधानें बट रुपयांहून अधिक नाही अशी जी रकम आम्हांकडे अगर आमच्यापैकी कोणाहि एकाकडे अगर आमच्यापैकी कोणाचाहि बास, मृत्युपत्र चालविणारा अगर बहिबाट चालविणारा याजकडे मागितली जाईल ती आम्ही सेक्रेटरी ऑफ स्टेट फॉर इंडिया इन् कौन्सिल यांस देऊं.

आणि सदरहूँ कोणतीहि पाणीपट्टी, खर्च, दंड अगर इतर रकम, जरूर बाटल्यास, आम्हां-पैकी कोणत्याहि एकाकडून अगर त्याचा बास, मृत्युपत्र चालविणारा अगर बहिबाट चालविणारा याजकडून आमच्याकडे अगर आम्हांपैकी कोणत्याहि एकाकडे ती सरकारच्या जमीनमहसुलाचीच बाकी यकली आहे असें घमजून बवल करून घेतल्यासहि हरकत नाही व त्यास आमची कबूली आहे.

आज तारीख . माहे  
 यासमस सी. डी.

सन १९२

( सही ) सी. डी.

यानें सही केली असे.  
 यासमस इ. फ

( ,, ) इ. फ.

यानें सही केली असे.

No.  
नंबर

Form VI  
नमुना ६

Canal  
कालवा

ABSTRACT OF APPLICATION FOR SUPPLY OF WATER FOR IRRIGATION in lands brought under the Block System  
or for fruit trees years commencing from

Name of Village  
गावाचें नांव

ब्लॉक पद्धतीखाली आणलेल्या जमिनी अग्र फळस.चें मिजबिण्यासाठी वासून  
बवें बाणी भिळण्यासाठी केलेल्या अर्जाचा गोपवारा

No. of Application अर्जाचा नंबर	Distributing बाणी वाटणान्या		Survey No. सर्व्हे नंबर	Phalni No. फाळणी नंबर	Names of the occupants or holders of the land and applicant for water जमिनीच्या खातेदारांची व पाण्यासाठी अर्ज-दागचें नांव	Total area of Survey No. or Phalni No. सर्व्हे अग्र फाळणी नंभरांतील एकंदर क्षेत्र		No. of Block in Village गावांतील ब्लॉकचा नंबर	Plot No. प्लॉट नंबर	Area of Plot to be irrigated मिजबिण्याच्या प्लॉटाचें क्षेत्र		Water rates to be charged per acre per Annum दरसाल दर एकरी याबाबतचा दर		Remarks टिपणे
	Channel No. पाटाचा नंबर	Outlet No. दरबाण्याचा नंबर				A. ए.	G. गुं.			A. ए.	G. गुं.	Rs. रु.	s. आ.	

THE BORNAV CANAL BOARD

A

आठमाही ब्लाकांतील पाणीपट्टीची माफी  
बारमाही ब्लाकमधील पाण्याच्या पट्टीची माफी मिळविण्याविषयी अर्जदाराने अर्ज केलावरून ती मंजूर झाल्याबद्दल त्यास समज.

गांवाचे नांव  
अर्जदार  
पाणी बांदून देणाऱ्या पाटाचा नंबर  
शेतातील दरबाज्याचा नंबर  
अर्जाची तारीख

माफी द्यावयाच्या मंजूर केलेल्या झाटाचे एकूण क्षेत्र				मागितलेल्या माफीची मुदत	
सर्व्हे नं.	फाळणी नं.	प्लॉक नं.	झाटाचे एकूण क्षेत्र	पावून	पर्यंत
			ए.	गुं.	

तारीख

क्यानाल ऑफिसर, जिल्हा.

B

माफीसाठीचा अर्ज पोहोचल्याची पावती.  
Receiving Officer.

C

No. नंबर

APPLICATION FOR EXEMPTION FROM WATER RATES IN EIGHT MONTHS Canal कालबा  
PERENNIAL BLOCK

आठमाही ब्लाकमधील पाण्याच्या पट्टीची माफी मिळविण्याविषयी अर्ज.  
बारमाही

To

The Executive Engineer for Irrigation, District.  
मे. एक्झिक्यूटिव्ह इंजिनियर फॉर इरिगेशन, जिल्हा यास,  
I, resident of Taluka in the district, make this application  
for stopping my supply of water from the above canal and exemption of water rates.  
मी, राहणार तालुक्यात जिल्हा, अर्ज करतो की, सदरील कालव्यांतील मला  
होत असलेला पाण्याचा पुरवठा बंद व्हावा व पाणीपट्टीची माफी मिळावी.

Distributing पाणी बांदून देणाऱ्या		Total area of sanctioned plots requiring exemption. माफीसाठी मंजूर झालेल्या झाटाचे एकूण क्षेत्र										Remarks. धोरा
Channel No. पाटाचा नंबर	Outlet No. दरबाज्याचा नंबर	Village गांवाचे नांव	Survey No. सर्व्हे नंबर	Plahi No. फाळणी नंबर	Block No. ब्लॉक नंबर	Plot no. प्लॉट नंबर	Area क्षेत्र	Brief reasons why exemption is required माफी कां पाहिजे त्याची शेडक्यास कारणे		Reference to the sanctioned application form मंजूर केलेल्या नमुन्याच्या अर्जाचा नंबर		
१	२	३	४	५	६	७	८	९	१०	११		

Date तारीख

Signature or left hand thumb impression of applicant.

Signature of witness

साक्षीदाराची सही अर्जदाराची सही अगर् झाल्या हाताचा आंगठा

Forwarded for sanction मंजुरीसाठी रवाना

Sanctioned मंजूर

Executive Engineer for Irrigation, District

Sub-Divisional Officer सव्-डिविजनल ऑफिसर,

एक्झिक्यूटिव्ह इंजिनियर फॉर इरिगेशन,

56

THE BOMBAY CANAL TRUSTS

## ENGLISH VERSION OF NOTES ON THE BACK OF FORM VII.

1. If in any particular year a holder of land on the block system or on 8 months lease is unable to irrigate his entire plot he may apply for exemption from water rate in form VII before the 15th of September in the case of 8 months lease and the 15th of November in the case of perennial blocks. Should the exemption be granted subsequent permission will be given at  $1\frac{1}{2}$  rates only if water be available.
2. Columns 1 to 10 shall be filled up by the applicant, column 11 by the Executive Engineer. Columns 6 and 7 apply only to perennial blocks.
3. The application shall be made on a single form which will be retained in the canal office and a receipt for the same given (on counterfoil B) to the applicant by the receiving officer. The sanction of the exemption will be obtainable later on counterfoil A on application of the sectional officer after the same has been duly received by him from the sanctioning officer.

## नमुना ७ याच्या पाठीवरील टीपा

१. जर कोणत्याहि विवक्षित वर्षी ब्लॉकपद्धती खालील अगर आठमाहि पट्ट्याने घेतलेली जमीन घारण करणारा आपला सगळा प्लॉट मिजविण्यास असमर्थ होईल तर पाणीपट्टीची माफी मिळण्यासाठी आठमाहि पट्ट्याच्या बाबतीत तारीख १५ माहे सप्टेंबरपूर्वी आणि बारमाही ब्लॉकांच्या बाबतीत तारीख १५ माहे नोव्हेंबरपूर्वी त्यास अर्ज करण्याचा अधिकार आहे. माफी मंजूर झाल्यास मागाहूनची परवानगी पाणी मिळण्याजोगे असेल तर १३ दरानेच फक्त दिली जाईल.
२. कोष्टक १ ते १० अर्जदाराने व कोष्टक ११ एक्झिक्यूटिव्ह इंजीनियरने भरले पाहिजे. कोष्टक ६ व ७ बारमाही ब्लॉकासच फक्त लागू आहेत.
३. अर्ज एकेरी नमुन्यावर केला पाहिजे व तो क्यानाल ऑफिसांत ठेवण्यांत येईल, त्याबद्दलची पावती ( व स्थळ प्रतीवर ) अर्जदारास रिसीव्हिंग ऑफिसराकडून मिळेल. माफीच्या मंजुरीबद्दल सेक्शनल ऑफिसराकडे अर्ज केला असता तो मंजुरी देणाऱ्या ऑफिसराकडून त्याला योग्य रीतीने मिळाल्यावर ती पुढे अ स्थळ प्रतीवर मिळू शकेल.



# THE Suits for Lands Act

ACT No. XVI of 1838.\*

[23rd July 1838].

1. *First.*— In the territories subject to the Presidency of Bombay, all suits in regard to tenures, and the nature and extent of the interest and advantage which in virtue thereof should be enjoyed by the parties concerned, and all suits in which the right to possession of land is claimed, shall be brought in the Courts of Adalat and the Courts subordinate thereto, and not in the Courts of Revenue.

Suits to be brought in Civil, and not Revenue Courts.

*Second.*—*Repealed by Bombay Act III of 1876.*

*Third.*—*Repealed by Bombay Act II of 1866.*

2. If a suit be presented in the Court of a Judge or Collector, which such Judge or Collector shall not deem within his jurisdiction the party presenting such suit shall be referred by the Court in which it may be first presented to that in which, in the opinion of such Court, the jurisdiction lies, and the latter Court shall, in the event of its doubting its jurisdiction in the case, refer the question of jurisdiction to the Sadar Diwani Adalat, whose decision on the point shall be final.

Procedure on suit being presented to superior Court doubting its jurisdiction.

3. If a suit be presented in any Court subordinate to the Court of a Judge or Collector, which suit such subordinate Court shall not deem to be within its jurisdiction, such subordinate Court shall submit the case to the Judge's or Collector's Court to which such subordinate Court is subordinate; and if the superior Court to which the case is so submitted shall be of opinion that such subordinate Court has jurisdiction in the case, such superior Court shall direct such subordinate Court to proceed with the case; and if such superior Court shall be of opinion that such subordinate Court has not jurisdiction in the case, such superior Court shall proceed in the manner directed in the last preceding section.

And in subordinate Court so doubting.

4. Whenever a Court of Adalat or a Revenue Court shall have entered on its file, under this Act, a suit in which it has not jurisdiction, it shall be competent to the Sadar Diwani Adalat, either on a reference from the Judge or Collector (as the case may be), or on application from the parties, to direct that the suit be transferred, with all the proceedings which may have taken place therein up to the period of transfer, to the Court possessing jurisdiction, which shall proceed therewith as if the suit had been originally filed in that Court.

Transfer of suit entered in Court not having jurisdiction.

\* Act XVI of 1838 has been declared to apply to the whole of the Bombay Presidency, except the Scheduled Districts, by the Laws Local Extent Act (XV of 1874), s. 5.

## THE SUITS FOR LANDS ACT.

5. When any Court trying an appeal finds that the action was originally brought and decided in a Revenue Court, when it ought to have been brought and decided in a Court of Adalat, or a Court subordinate thereto, or that the action was originally brought and decided in a Court of Adalat or a court subordinate thereto, when it ought to have been brought and decided in a Revenue Court, the Court trying the appeal shall, instead of quashing the whole proceedings, annul only the decree, and refer the suit to be tried in the Court to which the jurisdiction properly belongs, and the Court trying any such case referred under the foregoing section shall take further pleadings, exhibits, and evidence only if it deem such necessary, and shall pass a new decree.

THE  
Religious Endowments Act, 1863

ACT No. XX OF 1863.

RECEIVED THE G.-G'S ASSENT ON THE 10TH MARCH 1863.

*An Act to enable the Government to divest itself of the management of Religious Endowments.*

*Preamble.*—WHEREAS it is expedient to relieve the Boards of Revenue, and the Local Agents, in the Presidency of Fort William in Bengal and, the Presidency of Fort Saint George, from the duties imposed on them by Regulation XIX, 1810, of the Bengal Code (*for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples, Colleges, and other purposes; for the maintenance and repair of Bridges, Sarais, Kaltra and other public building; and for the custody and disposal of Nazul Property or Escheats*), and Regulation VII, 1871, of the Madras Code (*for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples and Colleges, or other public purposes for the maintenance and repair of Bridges; Choultries, or Chattrams, and other public buildings; and for the custody and disposal of Escheats*), so far as those duties embrace the superintendence of the lands granted for the support of Mosques or Hindu temples and for other religious uses; the appropriation of endowments made for the maintenance of such religious establishments; the repair and preservation of buildings connected therewith, and the appointment of trustees or managers thereof; or involve any connection with the management of such religious establishments;\* It is enacted as follows:—

1. [*Repeal of parts of Bengal Regulation XIX of 1810 and Madras Regulation VII 1817.*] Repealed by Act XIV of 1870.

2.† “*Civil Court*” and “*Court*”.—The words “*Civil Court*” and “*Court*” shall save as provided in section 10”‡ mean the principal Court of original civil jurisdiction in the district in which “*or any other Court empowered in that behalf by the Local Government within the local limits of the jurisdiction of which*”‡ the mosque, temple, or religious establishment is situate, relating to which, or to the endowment whereof, any suit shall be instituted or application made under the provisions of this Act.

\* Certain words, which were repealed by Act XVI of 1874, have been omitted.

† After this certain words repealed by Act X of 1914 have been omitted.

‡ Added by Act 21 1925.

3. *Government to make special provision respecting mosque, &c.*—In the case of every mosque, temple or other religious establishment to which the provisions of either of the Regulations specified in “*the preamble to this Act*”\* are applicable, and the nomination of the trustee, manager, or superintendent thereof at the time of the passing of this Act, is vested in, or may be exercised by, the Government or any public officer, or in which the nomination of such trustee, manager,

\* In a § the words quoted have been substituted for the word and figure “*section I*” by Act XII of 1891.

or superintendent shall be subject to the confirmation of the Government or any public officer, the Local Government shall, as soon as possible after the passing of this Act, make special provision as hereinafter provided.

**Whether property is alienable.**—Property given for the maintenance of a *matr* as a general rule is inalienable in the absence of special circumstances, but such property can be lost by the operation of the statute of limitation (4 Bom. L. R. 733). But in certain circumstances it is alienable (10 C. W. N. 1000).

**Character of Endowment.**—The circumstances that a committee was appointed under this section, and worked for many years without protests and challenge, were *prima facie* evidence that the endowment was of the character described in this section (40 Cal. 323).

**Accounts to be kept.**—The trustee of a Dargra, which falls under this section, is bound to keep proper accounts, and to submit them to the Committee (31 Mad. 212).

**Burden of proof.**—In a suit by members of a temple Committee the burden of proving that the temple was of the class mentioned in this section lies on the plaintiff (12 Mad. 368).

4. *Transfer to trustee, &c., of trust property in charge of Revenue Board.*—In the case of every such mosque, temple or other religious establishment, which, at the time of the passing of this Act, shall be under the management of any trustee, manager or superintendent, whose nomination shall not vest in, nor be exercised by, nor be subject to the confirmation of the Government or any public officer, the Local Government shall, as soon as possible after the passing of this Act, transfer to such trustee, manager, or superintendent, all the landed or other property which, at the time of the passing of this Act, shall be under the superintendence or in the possession of the Board of Revenue or any local agent, and belonging to such mosque, temple, or other religious establishment, except such property as is hereinafter provided.

*Cessation of Board's powers as to such property.*—And the powers and responsibilities of the Board of Revenue, and the local agents, in respect to such mosque, temple or other religious establishment, and to all land and other property so transferred, except as regards acts done and liabilities incurred by the said Board of Revenue or any local agent, previous to such transfer shall cease and determine.

**Notes.**—Though a temple may be subject to the control and superintendence of a Temple Committee, that fact does not give the committee any right of supervision over the *Kattalai* which is an independent trust (1632 M. W. N. 704).

5. *Procedure in case dispute as to right of succession to vacated trusteeship.*—Whenever from any cause a vacancy shall occur in the office of any trustee, manager, or superintendent to whom any property shall have been transferred under the last preceding section, and any dispute shall arise respecting the right of succession to such office, it shall be lawful for any person interested in the mosque, temple, or religious establishment to which such property shall belong, or in the

performance of the worship or of the service thereof, or the trusts relating thereto, to apply to the Civil Court to appoint a manager of such mosque, temple, or other religious establishment; and thereupon such Court may appoint such manager to act until some other person shall by suit have established his right of succession to such office.

*Powers of managers appointed by Court.*—The manager so appointed by the Civil Court shall have and shall exercise all the powers which, under this or any other Act, the former trustee, manager, or superintendent in whose place such manager is appointed by the Court, had or could exercise in relation to such mosque, temple, or religious establishment, or the property belonging thereto.

**Not a Suit.**—A proceeding started under section 5 of the Religious Endowments Act is not a suit; consequently an order passed under that section is not a decree and is not appealable (47 Ind. Cas. 484). But see 4 Mad. 295 where it has been held that appeal from order under section s. 5 lies by virtue of s. 647 of the Code of Civil Procedure.

**To appoint a Receiver.**—The Court has no power to appoint a receiver except in certain events under s. 5 of the Act (8 C. W. N. 404).

**Temporary appointment of a manager.**—District Courts have no power upon a vacancy occurring in the office of the trustee of a religious endowment, to appoint a trustee under s. 5 of the Religious Endowments Act, unless the endowed property has been actually transferred to the former trustee under s. 4 of the Act by the Board of Revenue or Government. Section 5 of the Act contemplates the temporary appointment of a manager by the Court, pending the decision by a trial Court of the title of any other applicant to the office (14 C. W. N. 1104). An order purporting to be passed under s. 5 of the Act without any inquiry as to whether the foundation for the District Judge's jurisdiction exists is open to the revisional and not appellate jurisdiction of the High Court (48 Ad. 50).

6. *Rights &c., of trustees to whom property is transferred under s. 4.*—The rights, powers, and responsibilities of every trustee, manager, or superintendent to whom the land and other property of any mosque, temple, or other religious establishment is transferred in the manner prescribed in section 4 of this Act, as well as the conditions of their appointment, election and removal, shall be the same as if this Act had not been passed, except in respect of the liability to be sued under this Act, and except in respect of the authority of the Board of Revenue and local agents, given by the Regulations hereby repealed, over such mosque, temple, or religious establishment and over such trustee, manager, or superintendent, which authority is hereby determined and repealed.

*Appointment of committees.*—All the powers which might be exercised by any Board or local agent, for the recovery of the rent of land or other property transferred under the said section 4 of this Act, may, from the date of such transfer, be exercised by any trustee, manager, or superintendent to whom such transfer is made.

7. *Constitution and duties of committees.*—In all cases described in section 3 of this Act the Local Government shall, once for all, appoint one or more committees in every division or district, to take the place,

and to exercise the powers, of the Board of Revenue and the local agents under the Regulations hereby repealed.

Such committee shall consist of three or more persons, and shall perform all the duties imposed on such Board and local agents, except in respect of any property which is specially provided for under section 21 of this Act.

**Disqualification of a candidate.**—A candidate is disqualified to be elected as a member of Devasthan if he had given money or other valuable consideration "in return for" votes and as the result of a bargain with the voters that they should vote for him (29 Mad. 166).

**Status.**—A committee appointed under this section is a legal person endowed with powers which do not belong to individual members. The committee does not cease on the death of any or all of its members (39 Cal. 304).

8 *Qualifications of members of committee.*—The members of the said committee shall be appointed from among persons professing the religion for the purposes of which the mosque, temple, or other religious establishment was founded or is now maintained, and in accordance, so far as can be ascertained, with the general wishes of those who are interested, in the maintenance of such mosque, temple, or other religious establishment.

The appointment of the committee shall be notified in the official Gazette.

*Ascertaining wishes of persons interested.*—In order to ascertain the general wishes of such persons in respect of such appointment, the Local Government may cause an election to be held under such rules (not inconsistent with the provisions of this Act) as shall be framed by such Local Government.

**Notes**—The word "religions" does not mean sect. (9 M. L. J. 173). A member of a committee of a temple, appointed under this section, can retire from his office of his own will (6 Mad. 114). The qualifications contained in this section regarding committee members apply to vacancy filled up under s. 10 (29 Mad. L. J. 671).

9. *Tenure of office.*—Every member of a committee appointed as above shall hold his office for life, unless removed for misconduct or unfitness;

*Removal.*—and no such member shall be removed except by an order of the Civil Court as hereinafter provided.

10. *Vacancies to be filled.*—Whenever any vacancy shall occur among the members of a committee appointed as above, a new member shall be elected to fill the vacancy by the persons interested as above provided.

*Procedure.*—The remaining members of the committee shall, as soon as possible, give public notice of such vacancy, and shall fix a day, which shall not be later than three months from the date of such vacancy, for an election of a new member by the persons interested as above provided, under rules for elections which shall be framed by the Local Government;

and whoever shall be then elected, under the said rules, shall be a member of the committee to fill such vacancy.

*When Court may fill vacancy.*—If any vacancy as aforesaid shall not be filled up by such election as aforesaid within three months after it has occurred, the Civil Court, on the application of any person whatever, may appoint a person to fill the vacancy, or may order that the vacancy be forthwith filled up by the remaining members of the committee, with which order it shall then be the duty of such remaining members to comply; and, if this order be not complied with, the Civil Court may appoint a member to fill the said vacancy.

\**Explanation.*—In this section “Civil Court” means the principal Court of original civil jurisdiction in the district in which the mosques, temples or religious establishments for which the committee has been appointed or any of them are situate.”

\* Inserted by Act 21 of 1925.

**Procedure.**—A District Judge, acting under this section, is not bound to take evidence before appointing a person to the vacancy of a member of the Devasthan committee. The nature of the application under this section invoking the District Judge's power of appointment to the vacancy of a member of the Devasthanam committee makes that part of the procedure in the trial of suits which relate to the taking of evidence not obligatory on the District Judge though there is nothing of course to prevent his taking such evidence. A person improperly appointed under s. 10 can be removed either by proceedings by *quæ warrantò* or by injunctions (29 M. L. J. 671).

**Appeal to review.**—No appeal lies against an order passed by a District Judge under this section (*Ibid.*)

11. *No member of the committee to be also trustee, &c. of mosque &c.*—No member of a committee appointed under this Act shall be capable of being, or shall act, also as a trustee, manager, or superintendent of the mosque, temple or other religious establishment for the management of which such committee shall have been appointed.

12. *On appointment of committee Board and local agents to transfer property.*—Immediately on the appointment of a committee as above provided, for the superintendence of any such mosque, temple, or religious establishment, and for the management of its affairs the Board of Revenue or the local agents acting under the authority of the said Board, shall transfer to such committee all landed or other property which at the time of a appointment shall be under the superintendence, or in the possession, of the said Board or local agents, and belonging to the said religious establishment, except as is hereinafter provided for;

*Termination of powers and responsibilities of Board and agents.*—and thereupon the powers and responsibilities of the Board and the local agents, in respect to such mosque, temple or religious establishment, and to all land and other property so transferred, except as above, and except as regards acts done and liabilities incurred by the said Board or agents previous to such transfer, shall cease and determine.

*Commencement of powers of Committee.*—All the powers which might be exercised by any Board or local agent for the recovery of the rent of land or other property transferred under this section may from the date of such transfer be exercised by such committee to whom such transfer is made.

**Notes.**—This section relates only to the rents of property transferred by Government to the Committee of such institution ( 17 Mad. 143 ). A devasthanam committee has no power to interfere with the acts of the temple trustees in a question of purely temporal honours to definite persons (54 Ind. Cas. 281).

13. *Duty of trustee, &c., as to accounts.*—It shall be the duty of every trustee, manager, and superintendent of a mosque, temple, or religious establishment to which the provisions of this Act shall apply to keep regular accounts of his receipts and disbursements, in respect of the endowments and expenses of such mosque, temple, or other religious establishment ;

*and of committee.*—and it shall be the duty of every committee of management, appointed or acting under the authority of this Act, to require from every trustee, manager, and superintendent of such mosque, temple or other religious establishment, the production of such regular accounts of such receipts and disbursements at least once in every year ; and every such committee of management shall themselves keep such accounts thereof.

#### Notes.

A temple committee constituted under this Act has no business to interfere in the internal management of the temple or in mere matters of ritual and ceremonial. They should not interfere with the trustee, except where interference is necessary in discharge of the secular duties which the Act imposes on the committee. The committee's functions are primarily to see that the funds of the endowment are preserved and not wasted (54 Ind. Cas. 281).

The committee of a temple cannot dismiss the *Dharma Karta* under the powers vested in them under Act XX of 1863, on the ground that the *Dharma Karta* did not voluntarily render accounts of any particular period. Before exercising the privilege of dismissal, the committee are bound to call for accounts from *Dharma Karta* and the dismissal will be valid only on the latter's failure to comply with the order (18 Ind. Cas. 68).

14. *Person interested may singly use in case of breach of trust, etc.*—Any person or persons interested in any mosque, temple, or religious establishment, or in the performance of the worship or of the service thereof, or the trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court the trustee, manager or superintendent of such mosque, temple or religious establishment, or the member of any committee appointed under this Act, for any misfeasance, breach of trust, or neglect of duty, committed by such trustee, manager, superintendent, or member of such committee, in respect of the trusts vested in, or confided to, them respectively ;

*Powers of Civil Court.*—and the Civil Court may direct the specific performance of any act by such trustee, manager, superintendent, or member of a committee,

and may decree damages and costs against such trustee, manager, superintendent, or member of a committee,

and may also direct the removal of such trustee, manager, superintendent, or member of a committee.



## Notes.

**Who can sue.**—This section is sufficiently general in terms to empower any person interested in any temple, mosque, or religious endowment or in the performance of the trusts relating thereto to sue the trustee, manager or superintendent, or the member of a committee appointed under the Act, for misfeasance and also to empower the Court to order the removal of a trustee etc. (2 Mad. 197). See also 7 Calc. 769.

**This section applies to certain religious trusts.**—This section only applies to certain religious trusts and endowments which had been or might come to be under the management of Government (2 Calc. L. R. 128; 3 C. 363).

**Committee may sue without leave.**—A committee appointed under this Act, may, without leave of Court previously obtained, sue their manager, or superintendent, for damages for misappropriation and for injunction (9 Calc. 133).

**Removal of all trustees.**—This section empowers the Civil Court to remove trustees for misfeasance, etc. and it does not recognise any difference in respect of trustees, whether hereditary or selected (2 Mad. 197). The words "trustee, manager, or superintendent of a mosque etc.," mentioned in the Act mean the trustees, manager, or the superintendent of a mosque etc., to which the provisions of the Act are applicable, not the trustee etc. of any mosque (3 Calc. 32). In a suit for removal of a trustee the only question for the Court to decide is if the trustee has been guilty of any misfeasance, breach of trust or neglect of duty (89 Ind. Cas. 429).

**No appeal.**—No appeal lies against the order as to costs (21 Mad. 421).

**Suit against transferee.**—A transferee of a trust property under a transaction which amounts to a breach of trust on the part of the trustee of the institution cannot be proceeded against under the provisions of this Act (22 Mad. 223).

**15. Nature of interest entitling person to sue.**—The interest required in order to entitle a person to sue under the last preceding section need not be a pecuniary, or a direct or immediate, interest, or such an interest as would entitle the person suing to take any part in the management or superintendence of the trusts.

Any person having right of attendance, or having been in the habit of attending, at the performance of the worship or service of any mosque, temple, or religious establishment, or of partaking in the benefit of any distribution of alms, shall be deemed to be a person interested within the meaning of the last preceding section.

**16. Reference to arbitrators.**—In any suit or proceeding instituted under this Act it shall be lawful for the Court before which such suit or proceeding is pending to order any matter in difference in such suit to be referred for decision to one or more arbitrators.

**Civil Procedure Code applied.**—Whenever any such order shall be made, the provisions of Chapter XXXVII of the Code of Civil Procedure shall in all respects apply to such order and arbitration, in the same manner as if such order had been made on the application of the parties under section 506 of the said Code.

## Notes.

Under this section a Court may refer any matter in difference in the suit for decision by an arbitrator, but it is not open to the Court to refer the whole suit (26 Mad. 361). Vide also 19 Mad. 498.

17. *Reference under Civil Procedure Code.*—Nothing in the last preceding section shall prevent the parties from applying to the Court or the Court from making the order of reference under the said section 506 of the said Code of Civil Procedure.

18. *Application for leave to institute suits.*—No suit shall be entertained under this Act without a preliminary application being first made to the Court for leave to institute such suit. †

The Court, on the perusal of the application, shall determine whether there are sufficient *prima facie* grounds for the institution of a suit, and, if in the judgment of the Court, there are such grounds, leave shall be given for its institution. †

*Costs.*—If the Court shall be of opinion that the suit has been for the benefit of the trust, and that no party to the suit is in fault, the Court may order the costs or such portion as it may consider just to be paid out of the estate.

## Notes.

*Leave to institute suits.*—Leave to bring a suit should be obtained under this section (3 Calc. 563). Such a suit may be brought in *forma pauperis* (24 Mad. 419). Applications to District Courts under this section should be only verified and prosecuted either by the applicant in person or by his pleader (24. Mad. 685).

19. *Court may require accounts of trust to be filed.*—Before giving leave for institution of a suit, or, after leave has been given, before any proceeding is taken, or at any time when the suit is pending, the Court may order the trustee, manager or superintendent, or any member of a committee, as the case may be, to file in Court the accounts of the trust, or such part thereof as to the Court may seem necessary.

20. *Proceedings for criminal breach of trust.*—No suit or proceedings before any Civil Court under the preceding sections shall in any way affect or interfere with any proceeding in a Criminal Court for criminal breach of trust.

21. *Cases in which endowments are partly for religious and partly for secular purposes.*—In any case in which any land or other property has been granted for the support of an establishment partly of a religious and partly of a secular character,

or in which the endowment made for the support of an establishment is appropriated partly to religious and partly to secular uses,

the Board of Revenue, before transferring to any trustee, manager or superintendent, or to any committee of management appointed under this Act, shall determine what portion, if any, of the said land or other property shall remain under the superintendence of the said Board for application to secular uses,

and what portion shall be transferred to the superintendence of the trustee, manager, or superintendent, or of the committee,

† Certain words after this, which are repeated by Act VII of 1870, have been omitted.

and also what annual amount, if any, shall be charged on the land or other property which may be so transferred to the superintendence of the said trustee, manager, or superintendent, or of the committee, and made payable to the said Board or to the local agents, for secular uses as aforesaid.

In every such case the provisions of this Act shall take effect only in respect to such land and other property as may be so transferred.

22. *Government not to hold charge henceforth of property for support of any mosque, temple, &c.*—Except as provided in this Act, it shall not be lawful\* for any Government in India, or for any officer of any Government in his official character,

to undertake or resume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any mosque, temple, or other religious establishment, or

to take any part in the management or appropriation of any endowment made for the maintenance of any such mosque, temple, or other establishment, or

to nominate or appoint any trustee, manager, or superintendent thereof, or to be in any way concerned therewith.

\* Certain formal words which were repealed by Act XVI of 1874, have been omitted.

23. *Effect of Act in respect of Regulations therein mentioned, and of buildings of antiquity.*—Nothing in this Act shall be held to affect the provisions of the Regulations mentioned in this Act, except in so far as they relate to mosques, Hindu temples, and other religious establishments; or to prevent the Government from taking such steps as it may deem necessary, under the provisions of the said Regulations, to prevent injury to and preserve buildings remarkable for their antiquity, or for their historical or architectural value, or required for the convenience of the public.

24. *“India”*—The word “India” in this Act shall denote the territories which are or may become vested in Her Majesty by the Statute 21 & 23 Vict. c. 106, entitled “An Act for the better Government of India.”

# THE Bhagdari and Narwadari Tenures Act

BOMBAY ACT No. V OF 1862.

[ 24th April 1862.

An Act for the preservation of the Bhagdari and Narwadari Tenures.

WHEREAS it has been found that the permanence of the tenures known as the Bhagdari and Narwadari tenures, which have existed from time immemorial in certain parts of the Presidency of Bombay, is endangered by the increasing practice of attachment and sale by civil process of the homesteads and building-sites ("gabhan") appertaining or appendant to the constituted bhags or the recognized sub-divisions of such bhags or shares, in bhagdari or narwadari villages ;

and whereas it is desirable to prevent the alienation, assignment, mortgaging, charging or incumbering of any portion of any bhag or share in any bhagdari or narwadari village other than a recognized sub-division of such bhag or share, or the alienation, assignment, mortgaging, charging or incumbering of any homestead, building-site (gabhan), or premises appurtenant or appendant to any such bhag or share, or recognized sub-division separately or apart from such bhag or share or recognized sub-division ;

It is, therefore, enacted as follows :—

1. No portion of a bhag or share in any bhagdari or narwadari village other than a recognized sub-division of such bhag or share shall [1] \* \* be liable to seizure, sequestration, attachment or sale by the process of any Civil Court, and no process of such Court shall be enforced so as to cause the dismemberment from any such bhag or share or recognized sub-division thereof, of any homestead, building-site (gabhan) or premises appurtenant or appendant to such bhag or share, or recognized sub-division thereof.

[1] The words "from and after the passing of this Act" were repealed by the Repealing Act, 1873 (XII of 1873).

**Object of this Act.**—The principal object of this Act is to prevent the further dismemberment of bhags or shares in bhagdari villages ; it renders null and void any future alienation of any portion of a bhag, other than a recognized sub-division, but it does not invalidate previous alienations (*Bhaisankar v. Collector of Kaira*, 5 Bom. 77).

A 'bhag' means not only a sub-division but an aliquot share of a village subject to an aliquot portion of the total land-tax imposed on it, and not any sub-division by partition or otherwise. When, there-

fore, certain co-sharers partitioned a bhag between them before the passing of this Act, each share did not thereby become a separate bhag so as to enable the proprietor thereof to alienate it as a whole after the passing of this Act (*Gulam Narotam v. Secy of State*, 8 Bom. 596, R., on whom certain land forming part of a bhag had devolved by marriage and inheritance before this Act came into force alienated it to the plaintiff after this Act came into force. *Held*, following the above case, that the alienation being after this Act came into force, fell within its operation (*Rahim v. Bai Gulab*, P. J. 1890, p. 5).

This section does not prohibit the sale of an unascertained share of an undivided bhag. The object and intention of this Act is to prevent a *physical* dismemberment of a bhag, or recognized sub-divisions thereof, and not a mere increase in the number of persons who may from time to time be owners of the bhag (*Bai Kuwarbai v. Bhagwan Ichsharam*, 13 Bom. 203).

*This section is not retrospective.*—No retrospective operation can be given to this section so as prejudicially to affect existing rights. The words "attachment or sale by the process of any Civil Court," used in this section, were intended to prevent attachment and sale under simple money decrees, and not to prevent the sale of mortgaged property in satisfaction of a valid mortgage (*Ranchhodas v. Ranchhodas*, 1 Bom. 581).

*This section does not bar the right of action.*—A Civil Court would not be bound to make a decree though it might anticipate that this section would stand in the way of the execution of the decree. After a decree has been passed against a portion of a bhag, the Collector might recognize such portion as a division of the bhag, if assured that justice required that the decree should be executed—(*Ibid.*)

*Sale of portion of bhag in execution of a decree.*—The appellant was the mortgagee of a portion of a bhag under a mortgage, dated 1880, and in a suit brought upon the mortgage obtained a decree for sale of the mortgaged property. An attachment was issued, and an order for sale was made. Thereupon the Collector applied under s. 2, to set aside the attachment and order for sale. *Held*, distinguishing 1 Bom. 681 cited above, that the mortgage of a portion of a bhag was unlawful under s. 3, and a process having been issued for the sale of such portion, the Collector was entitled to have it quashed (*Narberam v. Collector of Broach*, 22 Bom. 737).

*Sale of unrecognized portion of bhag.*—No law of limitation applies to proceedings taken by a Collector under this Act. The words in this section "no portion of a bhag, etc., shall be liable to seizure, sequestration, attachment or sale by the process of any Civil Court" mean that "no portion of a bhag shall be seized, sequestered, attached or sold by the process of any Civil Court," and any such seizure, sequestration, attachment or sale is thereby rendered absolutely illegal and void. It is under this section that the Collector is authorized and bound to move in order to get the process of a Civil Court set aside or quashed (*Collector of Broach v. Desai Raghunath*, 7 Bom. 546).

*Sub-division of recognized bhag not defined by this Act.*—There is no definition in this Act of the expression "recognized sub-division of a bhag". But the Collector's records show what portions of a bhag are such, and the Legislature had that circumstance before it when section

3 was enacted. There being a presumption in favour of the legality of an Act, it lay upon the defendant, by production of records from the Collector or otherwise, to prove strictly that the deed of sale relates to an unrecognized sub-division (*Suleman v. Abraham*, P. J. 1888, p. 9).

*Sale of portion of bhag before this Act.*—A sale of a portion of a bhag previous to the passing of this Act constitutes what remains in the bhagdar's hands a distinct bhag, which, after the passing of this Act, could be alienated in its entirety (*Bhaktidas v. Manchersha*, P. J. 1887, p. 60).

*Narwa land.*—Where the proprietor of a recognized sub-division of a Narwa land separates a portion of the land for building purposes and the separation has been recognized by the Collector, such separation in no way derogates from the constitution of the Narwa homestead, and the separated portions become recognized sub-divisions of the Narwa (*Bai Samju v. Lallubhai*, 27 Bom. 958).

*Bhagdari tenure.*—There is nothing in this Act which debars a Civil Court from making a decree for the partition of narwadari land among the bhagdars, even though such partition may cause a further division of recognized sub-divisions of bhags (*Veribhai v. Ragabhai*, 1 Bom. 225).

## 2. Whenever any process has issued out of any Civil Court

On issue of such process, Collector may move that it be set aside.

for the seizure, sequestration, attachment or sale of any portion of a bhag or share in any bhagdari or narwadari village other than a recognized sub-division of such bhag or share,

or for the seizure, sequestration, attachment or sale of any homestead, building site (gabhan) or premises appurtenant or appendant to such bhag or share, or recognized sub-division thereof, it shall be lawful for the Collector or other chief revenue-officer of the district in which any such bhagdari or narwadari village is situated, although not a litigating party, to move in such Civil Court, that such process shall be set aside or quashed, and that the provisions of this Act be put in force;

and if such Court be of opinion, on the evidence adduced by the Collector or other chief revenue-officer of

Court to set aside process if case fall within Act.

the district on such motion, that the case is one falling within this Act, it shall set aside

or quash such process, and cause the provisions of this Act to be put in force; [1] \* \* \* any order which the said Court may make on such motion shall be appealable in the same manner as a decree of the Court in which it is made.

[1] The words "and it is hereby further enacted that" were repealed by the Repealing Act, 1876 (XII of 1876).

*Mortgage of portion of bhag invalid.*—Under this section the Collector is entitled to move the Court to quash the process issued for the sale of a portion of a bhag in satisfaction of a mortgage debt thereon. The remark to the contrary in *Ranchhodas v. Ranchhodas* (1 Bom. 581) must be confined to a mortgage made before the Act was promulgated.

The fact that a mortgage, though of a portion of a bhag, other than a recognized sub-division, is a mortgage of the whole remaining interest of the mortgagor by reason of a prior sale, similarly illegal, of the rest of his interest in that bhag does not validate the mortgage (*Narberham v. Collector of Broach*, 22 Bom. 737).

*Sale of unrecognized portion of a bhag.*—*N* held unrecognized fourth share in a certain bhag. *R* obtained a decree against *N* and in execution of it sold his right, title and interest in the bhag on the 28th February 1876. It was purchased by *B*. The sale was subsequently confirmed, and *B* was put in possession of a portion of the land. On the 30th September 1880, the Collector applied to the Court to set aside the sale on the ground that it was illegal under this Act. It appeared that the Collector did not know till November 1877 that the land sold was an unrecognized portion of the bhag, and not the whole of it. *Held*, that the sale might be set aside under this section notwithstanding its confirmation and subsequent delivery of possession (*Collector of Broach v. Rajaram*, 7 Bom. 542).

3. It shall not be lawful to alienate, assign, mortgage or otherwise charge or incumber any portion of any bhag or share in any bhagdari or narwadari village other than a recognized sub-division of such bhag or share, or to alienate, assign, mortgage or otherwise charge or incumber any homestead, building-site (gabhan) or premises appurtenant or appendant to any such bhag or share or recognized sub-division, appurtenant or appendant thereto, apart or separately from any such bhag or share, or recognized sub-division thereof.

Any alienation, assignment, mortgage, charge or incumbrance, contrary to the provisions of this section, shall be null and void; and it shall be lawful for the Collector or other chief revenue-officer of the district, whenever he shall, upon due inquiry, find that any person or persons is or are in possession of any portion of any bhag or share of any homestead, building-site (gabhan) or premises appurtenant or appendant to such bhag or share in any bhagdari or narwadari village other than a recognized sub-division of such bhag or share, in violation of any of the provisions of this section, summarily to remove him or them from such possession, and to restore the possession to the person or persons whom the Collector shall deem to be entitled thereto;

and any suit brought to try the validity of any order or orders which the Collector may make in such matter must be brought within three [1] months after the execution of such order or orders.

Limitation of suit on Collector's order.

[1] The word "calendar" was repealed by the Bombay General Clauses Act, (Bom. Act 3 of 1880), Schedule B.

*This section has no bearing on sales by order of a Civil Court, but is intended to apply to unlawful sales and alienations of portions of bhag made out of Court, or by private individuals (Collector of Broach v. Desai Raghunath, 7 Bom. 564).*

'Alienation'—The word 'alienation' as used in this section not only covers transfers '*inter vivos*', but extends to testamentary dispositions also (*Javer Tijibhai v. Haibhai* 40 Bom. 207).

*Alienation of bhag.*—Plaintiff and defendant being brothers were owners of equal shares in a *bhag*. The plaintiff alienated his share to a stranger in 1871. In 1883, the defendant applied to the Revenue Authorities to have the alienation cancelled under the Bhagdari Act, and the alienation was set aside in 1882. From 1883, the defendant remained in possession of the alienated share. On a suit brought by the plaintiff for recovering possession of the share:—*Held*, that at the setting aside of the alienation, under the Bhagdari Act, plaintiff's previous title was revived. The sale by the plaintiff of his share in that *bhag* and the possession of his alienee were as adverse to the defendant as they were to the plaintiff, and the action of the Collector, in 1883, in setting aside the sale and reinstating the owners in the possession of the *bhag*, was beneficial to both, and the effect of it was to restore the parties to their original condition as owners of an unincumbered *bhag*. *Held*, further, that the defendant could not prefix to his possession, since 1883, the possession of the plaintiff's alienee between 1871 and 1883, and count the whole period as his possession adverse to the plaintiff. He did not derive his title from the vendees. Their possession being declared illegal, could not be pleaded as adverse against the person from whom they derived this title, and who alone was entitled to possession under this Act (*Mahamad v. Amanji*, 1 Bom. L. R. 203).

*Alienation of part of Bhag.*—Where the owner of an entire bhag succeeds by inheritance to a share of a survey number, which the revenue authorities proceed to incorporate with the original bhag, this will not prevent the owner from alienating the original bhag. Such an alienation is not contrary to the provisions of this section. There is nothing in this Act which empowers the Revenue authorities to alter or add to existing recognized sub-divisions. Much less can the inference be deduced from this Act that the Revenue authorities are empowered to add the property of A to that of B, so as to prevent the amalgamated properties of A and B from being liable to the ordinary incidents of property, *i. e.*, sale, mortgage or alienation (*Amanji Isa v. Javer*, P. J. 1880, p. 41).

An allegation by the defendants, who cultivated lands admittedly included in the plaintiff's bhag, that they held independently of the bhagdar, and as tenants of the Government, paying assessment, and assessed only to the Government, is inconsistent with the tenure of a bhagdari village. If not inferior bhagdars they must, from the constitution of bhagdari villages, be treated as ganoties or tenants, and liable to pay rent to the bhagdar. (*Eduji v. Jukawad*, P. J. 1880, p. 167).

*Alienation of lands in bhag.*—This section does not prohibit alienation by a permanent tenant of lands in a *bhagdari* and *narwadari* village, whose rights existed before the Act. The Collector's interference with the sale is wrong (*Venids v. Bai Hari*, 38 Bom. 679).



## THE BHAGDARI AND NARWADARI TENURES ACT.

*Alienation of undivided share of a bhag.*—The alienation of an undivided portion of a bhag, or share in the bhag to a person who is not a bhagdar, is void under this section (*Purshotam v. Hira*, 15 Bom. 172).

*The prohibition against alienation of an unrecognized sub-division of a bhag.* provided by this section, applies to the person in possession of the bhag, though he may not be the bhagdar. Where an alienation is declared to be void under this section, an order for refund of the consideration money which has passed under the impeached transaction may be made (*Jibhai v. Nagji*, 11 Bom. L. R. 693).

*Sale of unrecognized portion is illegal.*—The sale of a portion of a bhag or share in a bhagdari or narwadari village other than a recognized sub-division of such bhag or share, or of a building site appurtenant to it, is illegal under this section; and a judgment-creditor cannot, in execution of his decree, evade the law by describing his debtor's separate portion in a bhag as his "right, title and interest in the whole bhag"; for under s. 213 of the Code of Civil Procedure, the creditor is bound to specify the debtor's share or interest to the best of his belief, or so far as he has been able to ascertain the same. *Quare.*—If the sale of an undivided share in a bhag be lawful, but even if it be, the purchaser cannot insist upon the possession of any particular portion of the bhag as representing the share of his debtor. All he can do is to sue for partition. But it is doubtful if such partition could be made (*Ardesir Nasarvanji v. Muse Nath Amiji*, 1 Bom. 601).

There is no alienation such as is prohibited by this section, where the effect of a transaction had not been to effect dismemberment of bhags or shares, but to bring together the various severed portions of a recognized sub-division into the hands of one owner (*Gulab v. Bai Tej Lai*, 21 Bom. L. R. 707).

*Award-Division of recognized sub-division of bhag.*—An award the result of which will be to effect further partition in a certain recognized sub-division of a bhag is void under this section. The substance and effect of the transaction is what must be looked to, for the purpose of determining whether it is within the mischief of the Act. If the transaction clearly amounts to an alienation of an unrecognized sub-division of share in a *narva*, its real nature cannot be disguised by calling it a compromise. (*Nagar Kashi v. Bai Dhuli*, 20 Bom. L. R. 342).

*Mortgage of unrecognized sub-division of bhag.*—An unrecognized sub-division of a bhag, namely, a house, was mortgaged and the mortgagors were in possession as tenants. In a suit for possession the defendant admitted the mortgage deed and rent notes. *Held*, that the mortgage and rent notes were void under this section, the consideration for the mortgage failed *ab initio* and a suit for its recovery is barred if brought more than 3 years after. (*Javerbhai v. Gordhan*, 30 Bom 358.)

*Adverse possession of an unrecognized share.*—Under this section the Collector can act at any time, and the Statute of Limitation is no bar to his action. So adverse possession for however a long time of an unrecognized share of a Bhagdari village is no bar to the Collector acting under this section and removing the occupant from possession. (*Dala v. Parag*, 4 Bom. L. R. 707).

Where the parties to a suit arrive at a compromise the effect of which is that a nerva is split up into two portions over one of which one party gives up his right in favour of the other and the division so effected is not a recognised sub-division, the compromise is void under this section and s. 5. Where a transaction is not lawful under cl. (1) of this section, the Civil Court is bound to adjudicate upon it independently of the question whether the Collector interferes or not under cl.(2) of this section. The Collector can under this section take action at any time and the plea of adverse possession cannot prevail against any order that he may make. (*Jethabhai v. Nanabhai*, 6 Bom. L. R. 128; 28 Bom. 399).

*Possession, acquired under an alienation made in contravention of this section can become adverse and bar a suit for recovery by the individual alienor, or his representatives in interest.* (*Adam Omar Sale v. Bapu Baraji*, 10 Bom. L. R. 1128 ; 33 Bom. 116).

*Alienation of fruit of the trees on land.*—There is nothing in this Act to prevent a permanent tenant of a Bhagdar, from alienating the fruit of the trees on the land, of which he is a tenant in the same way as he could alienate the crops or grass upon such land. The position of a tenant—of a Bhagdari land—who is presumed to be a permanent tenant under s. 83 of the Land Revenue Code, 1879, is not affected in any way by the prohibition contained in this Act, against alienation (*Nahanchand v. Kekhushru*, 9 Bom. L. R. 50 ; 31 Bom. 183).

*Suit to try validity of Collector's order of ouster.*—The suits referred to in this section are such as are instituted by persons against whom the order of the Collector is made or whom it affects injuriously and which are brought to try the validity of the order of ouster. The Collector is not competent under this section to pass any order as to the title of the sharers in the Narwa. (*Haribhai v. Gokal*, P. J. 1897, p. 109.)

A, B, C and D were members of a Bhagdar family. A purchased B's share and sold both his and B's share to a stranger in 1874. C's share had in the same way passed out of the family. In 1883, the Collector at the instance of D directed the different portions to be re-joined to the Bhag, and delivered them in the possession of D who was then the registered owner of the Bhag. In 1892, A sued D to recover possession of his and B's shares which were so delivered to D by the Collector in 1883. D contended that as no suit had been brought within three months of the Collector's order, the present suit was barred by this section. *Held*, following the above case, that the suit was not so barred, as there was nothing in the Collector's order which A could object to or sue to set aside. (*Amanji v. Mahmud*, P. J. 1897, p. 228).

*Sale apparently of entire bhag.*—The appellants were the mortgagees from the plaintiffs-respondents. The latter brought a suit in redemption. Accounts were made up and the plaintiffs were declared entitled to redeem on payment of the amount by instalments. The mortgagors failed to pay the instalments. The mortgagees threatened to put up the property to sale and the mortgagors in order to retain possession of at least a portion agreed to transfer the other portion to the mortgagees decree-holders for the decretal balance due. In order to avoid the provisions of this Act, the parties decided that the real sale of one-half should take the apparent form of a sale of the whole for double the appellant's decretal amount. The plaintiffs, how-

ever, continued to remain in possession of their half and subsequently documents were passed by which the appellants agreed to reconvey the portion of which the former were in possession on receipt of a certain price. In a suit questioning the validity of the original sale, it was *held* that the transaction in reality was a sale of one-half of the recognised portion and that it must be declared to be unlawful even though the plaintiffs might have taken advantage of it for a period of twelve years and though the revenue authorities had apparently never intervened. *Held*, however, that having regard to the equities the Court should order the repayment of the actual consideration to the appellants (*Damodar Bechar v Mohan Javer*, 31 Bom. L. R. 1422).

*Tenant cannot plead the invalidity of the lease when sued in ejectment.*—The defendant mortgaged in 1895 an un-recognized sub-division of a Narwa, but remained in possession of it under a rent-note executed in favour of the mortgagee. The mortgagee assigned his rights to the plaintiff. The plaintiff having sued the defendant in ejectment, the latter pleaded that the mortgage, the lease and the assignment were void under this section. *Held*, overruling the contention, that the defendant having attorned to the plaintiff it was not open to him to contend in the ejectment suit that the plaintiff had no right to let out the property on rent; and that, therefore, the plaintiff was entitled to succeed (*Devidas v. Shamlal*, 22 Bom. L. R. 149).

*Unrecognised sub-division of a Narwa-Alienation.*—In 1892, the plaintiffs' predecessors-in-title conveyed to defendants the right to hold an un-recognized sub-division of a Narwa for a period of 500 years in consideration of a sum of money. The plaintiffs sued in 1918 for accounts on the footing that the transaction of 1892 was a mortgage. The defendants contended that the alienation of 1892 was void under this Act and that they held the lands adversely to the rightful owners for upwards of twelve years. *Held* (1) that the defendants were entitled to such rights as they had acquired by the document of 1892 by adverse possession; (2) that the transaction of 1892 was an alienation by way of a lease for a long term, and not an out-and-out sale (*Craturbhai v. Motibhai*, 24 Bom. L. R. 1315).

*Gabhan, one, forming portions of two bhags.*—A bhag is a definite, described or demarcated portion or division of land, and a gabhan cannot possibly at one and the same time be within the limits of, and, therefore, a portion of, two bhags. Several persons may have shares in, and be joint owners of, a gabhan, and yet that gabhan may be appurtenant or appendant to only one bhag. Where, therefore, two persons having partitioned their property have become owners of distinct bhags, but the gabhan not having been partitioned has remained appurtenant to one of the bhags only, either bhag may be sold separately with or without the gabhan according as it is appurtenant to it or not (*Collector of Broach v. Jamnadas*, P. J. 1897, p. 274).

*Succession—Custom.*—*Held*, that custom whereby in the District of Broach male relations succeeded as heirs in Bhagdari villages in preference to daughters had not yet received such judicial recognition as would have entitled the Court in the absence of any pleading of the custom and without any evidence of its existence in the village where the property is situate, to assume that the custom existed in the particular village (*Adarji v. Bai Mani*, P. J. 1894, p. 171).

In the village of Amanpur in the Broach district there is a custom whereby daughters and daughters' sons are excluded from succession by male members of the Bhagdari family; the widow, however of the deceased brother of the last male holder succeeds and is not excluded by male pitara's as such succession has not the effect of taking the property out of the bhagdar's family (*Bai Jivi v. Bavan*, P. J. 1894, p. 188).

4. \* \* \* \* [1] Nothing in this Act contained shall be construed as prohibiting the issue and execution of any such process as aforesaid against any bhag or share, or recognized sub-division of any bhag or share, in any such village as aforesaid, conjointly and in the gross with its homestead, building-site (gabhan) and other proper appurtenances, if the issue and execution of such process be in other respects authorized by law.

5. \* \* \* \* [1] Nothing in this Act contained shall be construed as prohibiting the alienation, assignment, mortgaging, charging or incumbering any bhag or share, or recognized sub-division of any bhag or share, in any such village as aforesaid, conjointly and in the gross with its homestead, building-site (gabhan) and other proper appurtenances, if such alienation, assignment, mortgage, charge or incumbrance be in other respects warranted by law, the object and intention of this Act being to prevent the dismemberment of bhags or shares, or recognized sub-divisions thereof, in bhagdari or narwadari villages and also to prevent the severance of homesteads, building-sites (gabhan) or other premises, appurtenant or appendant to bhags or shares, or recognized sub-divisions of bhags or shares, from the same or any of them.

[1] The words in ss. 4 and 5 "And it is hereby further declared, that" were repealed by the Repealing Act, 1873 (XII of 1872).

THE  
Gujarat Talukdars' Act

BOMBAY ACT No. VI of 1888.

[ 25th March, 1889.

An Act to provide for the Revenue Administration of Estates held by certain superior land-holders in the districts of Ahmedabad, Kaira, Broach and the Panch Mahals, and to limit the further operation of Bombay Act VI of 1862.

WHEREAS it is expedient to remove doubts as to the applicability of certain portions of the Bombay Land-Revenue Code, 1879, to estates held by certain superior landholders in the districts of Ahmedabad, Kaira, Broach and the Panch Mahals, and to make special provision for the revenue administration of the said estates and for the partition thereof; It is enacted as follows :—

PART I.

PRELIMINARY.

Short title.

1. (1) This Act may be cited as the Gujarat Talukdars' Act, 1888.

(3) It extends only to the districts of Ahmedabad, Kaira, Broach and the Panch Mahals.

Definitions.

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

(a) "talukdar" includes a thakur, mehwasai, kasbati and naik [a] [and a mulgameti who holds land directly from Government];

[a] These words were added by the Gujarat Talukdars' (Amendment) Act, 1905 (Bom. Act 2 of 1905), s. 2 (1); and the amendment is to be deemed to have come into force on the 25th March 1889: ib. s. 2 (3), but see foot-note to s. 31.

Taluk—Talukdar.—In Gujarat, especially in Kaira and Panch Mahals Districts and the Rewakantha and Mahikantha Agencies, the expression "taluk" is applied to a group of villages, or even to a single village or an estate held in proprietary right by a single individual or a body of individuals. The expression "a talukdar" means, therefore, the holder of a taluk. As this Act extends only to the districts of Ahmedabad, Kaira, Broach and the Panch Mahals, the expression "talukdar" applies only to a holder of a taluk or taluks (proprietary villages or estates) in the said districts.

A purchaser from a talukdar does not become a "talukdar" within the meaning of this clause (*Narasindas v. Purshotam*, 4 Bom. L. R. 550; s. c. 26 Bom. 657).

**Thakors.**—The expression “Thakor” means any individual entitled to reverence or respect whence it is generally applied to persons of rank and authority in different parts of India as a lord, a chief, a master.

**Mehwasssi.**—This term is derived from the expression “Mehwas” meaning literally, residence or country near or on the borders of the river Mahi (Wilson’s Glossary of Revenue and Judicial terms, p. 320). It is a general term for a lawless tribe of kolees and Bheels and free-booters in Gujrat (Do. p. 46).

**Kasbatis.**—In different parts of the Ahmedabad District, but especially in Dholka, a body of men called *kasbatis* or townsmen, the descendants of rich soldiers, had by lending money and acting as revenue securities raised themselves to be upper landlords or middlemen.

The tenure known as *kasbati* in the Viramgeon taluka is permanent (*i. e.*, as opposed to temporary and not in the sense of perpetual); at the same time, it is not an unconditional holding and the British Government have the power to resume the villages in case any of the conditions imposed is not fulfilled (*Secretary of State v. Bai Rajbai*, 39 Bom. 625, P. O.).

Bombay Act VI of 1862 (Ahmedabad Talukdars) does not apply to *Kasbatis* and a *Kasbati’s* rights under this Act are subject to, and limited by, his *pattas* (*Ibid*).

The *kathis* of the village of Salagpur in the Dhandhuka Taluka of the District of Ahmedabad are *Mulgametis*, but they do not hold land directly from Government and consequently are not Talukdars within the meaning of this clause (*Sir Dolatsingji v. Oghat Vitha*, 25 Bom. L. R. 726).

**Naiks.**—Naiks or Naikdars are found only in Panch Mahals and Rewakantha.

**Gometis.**—Gometis mean Rajput Grashigas in the Ahmedabad Collectorate. *Gometis* or village owners are a class of owners of proprietary villages in the Ahmedabad District.

(b) “registered talukdar” means a sole talukdar, or the eldest or principal of several co-sharers of a talukdari estate, whose name is authorizedly entered in the Government records as holding such estates, or as the representative of the several co-sharers holding the same;

(c) “jama” means land-revenue payable by a talukdar to Government;

(d) “alienation” means a transfer of ownership, and “alienee” means a person to whom ownership is transferred;

(e) “incumbrance” includes a mortgage, charge, usufructuary grant and any interest other than that of an ordinary tenant or of an alienee or talukdar, and “incumbrancer” means a person in whom an incumbrance vests;

(f) Any word or expression which is defined in the Bombay Land-Revenue Code, 1879, and is not hereinbefore defined, shall be deemed to have the meaning given to it by that Code.

Expressions defined in the Bombay Land-Revenue Code.

- (2) In Part II, unless there be something repugnant in the subject or context, "talukdar" includes any class of holders of unalienated estates, upon which the land-revenue is fixed by a lump assessment, to whom the Governor in Council deems fit from time to time, by notification in the *Bombay Government Gazette*, to extend the provisions of the said part.
- Meaning of "talukdar" in Part II.
3. [*Repeal of part of s. 114, Bombay Act V of 1879.*] *Rep. Act XVI of 1895.*

## PART II.

## SURVEY AND SETTLEMENT.

*Revenue survey.*

4. It shall be lawful for the Governor in Council, whenever it may seem expedient, to direct a revenue-survey or a revised revenue survey of any talukdari estate, under the provisions of the Bombay Land-Revenue Code, 1879, applicable to such surveys.
- Government may direct survey of a talukdari estate.

Talukdar's estate—Talukdari estate.—When an estate is held by a single talukdar it is described as a talukdar's estate; whereas when an estate has different sharers having different interests therein, it is called a talukdari estate.

*Settlement register*

5. The settlement register prepared by the survey officer under section 103 of the said Code on the occasion of making any such survey shall, unless Government otherwise direct, contain, in lieu of the particulars specified in the said section, the following particulars (namely):—
- Settlement register of a talukdari estate what to contain.

- (a) the area and assessment of each survey number;
- (b) the name of the registered talukdar, and, if there are co-sharers, the name of each co-sharer and the extent of each one's interest in the estate;
- (c) if the estate is undivided,—
- (i) the manner in which the profits derived from sources common to the co-sharers are to be distributed amongst them;
- (ii) the share to be contributed by each co-sharer of the jama, of police charges, of the cost of erecting and maintaining boundary marks, and of any other charge to which under any law for the time being in force the co-sharers are liable in common;
- (iii) the manner in which the co-sharers are to collect from the tenants;

(d) if a partition of the estate has been effected and the co-sharers hold their respective shares in severalty—

(i) the extent and limits of each separate share ;

(ii) the same particulars in respect of the several sub-sharers, if any, of each such share, as are required to be given concerning all the co-sharers when an estate is undivided ;

(e) the name and description and the nature and extent of the interest of every alienee and of every incumbrancer of the estate or any portion thereof, together with a specification of—

(i) the aggregate area over which such interest extends ;

(ii) the amount and nature of rent, or land revenue, if any, payable or receivable by each alienee and incumbrancer ;

(iii) the basis of such interest, whether grant, contract, custom or other ;

(iv) the conditions of service or other conditions on which such interest depends ;

(v) any other particulars which Government shall from time to time direct.

#### *Determination of disputes*

6. (1) If it appears to the Survey officer who frames the said register that there exists any dispute as to any matter which he is bound under this Act to record therein, he may, either on the application of any of the disputant parties, or of his own motion investigate and determine such dispute and frame the register accordingly.

(2) Provided that, when any such dispute shall appear to the Survey officer to have been already finally decided by a Court of competent jurisdiction, the entry in the said register shall be made in conformity with such decision.

#### *Custody and amendment of Records*

7. (1) When the Survey settlement of a talukdari estate is completed, the said register and the other records thereof shall be kept by the Collector, and every registered talukdar shall be entitled to receive one copy of the register free of any charge except the cost of copying.

(2) So long as the said register and other records are in the charge of the Survey officer, the said officer, and afterwards the Collector, shall cause to be entered therein all changes that occur, and everything that affects any of the rights or interests therein recorded ; and shall at any time correct or cause to be corrected any clerical error therein and also any other error



which all the parties interested admit to have been made in the same.

Bar of suits against Government, etc., to set aside decisions under section 6 or 7; but effect to be given to decrees obtained by parties *inter se*.

8. (1) No suit shall lie against Government or against any officer of Government to set aside any decision or order of a Survey officer or of a Collector under section 6 or 7.

(2) But the said register and other records shall from time to time be amended by the Survey officer, or, when the survey settlement is completed by the Collector, in accordance with any final decree of a Court of competent jurisdiction which the parties may obtain *inter se* on an application accompanied by a certified copy of such decree, being duly made to the Survey officer or Collector for that purpose.

(3) In any suit in a Civil Court between the parties or persons claiming under them, a decision or order of a Survey officer or Collector under section 6 or 7 shall not be held to be conclusive as to any matter therein decided.

Changes in records to be communicated to parties affected thereby.

9. Every change in the said register and other records shall be communicated without delay by the officer making it to each of the parties affected thereby.

### PART III PARTITION

10. (1) Every person who has obtained a final decree of a Court of competent jurisdiction declaring him to be entitled to a share of a talukdari estate and every co-sharer whose name is recorded, as such, in the settlement register prepared in accordance with section 5 and pending the preparation of the said register, every person whose title to any such share as aforesaid is not disputed by any other person claiming a share in the same estate, shall be entitled to have his share divided from the rest of the estate and to hold the same as a separate estate.

(2) Any two or more such co-sharers or persons shall be entitled to have their shares divided from the rest of the estate and to hold the same jointly as a separate estate.

**Application for partition.**—In 1863, the appellant obtained a decree for partition, which declared his right to a one-sixth share in a certain village. The decree was never executed. In the year 1888, he presented an application to the talukdari settlement officer under this section for partition under the decree. *Held*, that as the execution of the decree was barred when the Act was passed, and as no fresh suit could have been brought against the defendant upon the right declared by the decree, the application should be rejected (*Jamsang Devabhai v. Goyabhai Kinkani*, 16 Bom. 498).

**The Talukdari Settlement Officer is not a Court** subordinate to the High Court of Bombay; and the latter, therefore, cannot interfere in revision under s. 115 of the Civil Procedure Code of 1908 with orders passed by that officer (*Gambhirsingji v. Agarsing*, 13 Bom. L. R. 118).

**Res judicata.**—Under this section every person who has obtained a final decree of a competent Court, declaring him to be entitled to a share of a Talukdari estate, is entitled as of right to have his share divided from the rest of the estate and to hold the same as a separate estate. There is no provision in this section that the decree alluded to must of necessity operate as *res judicata* between all the parties appearing before the Talukdari Settlement Officer (*Ibid*).

Applications for partition to whom to be made.

11. Applications for partition shall be made to the talukdari Settlement-officer or to such other officer as the Governor in Council appoints in this behalf.

12. (1) The Talukdari Settlement officer, or other officer aforesaid, on receiving an application for partition, shall, if the application be not open to objection on the face of it, publish a notification of the same in the office of the Mamlatdar of the Taluka and at some conspicuous place in the village in which the estate to which the application relates is situate or in each of the villages comprised in the said estate, as the case may be.

Notification of application.

(2) He shall also serve a notice on each of the known co-sharers who has not joined in the application, requiring any of them who objects to the partition to appear before him to state his objection either in person or by a duly authorized agent, on a day to be specified in the notice, not less than thirty or more than sixty days from the date on which such notice is issued.

Notice to co-sharers not joining in the application.

“**Known co-sharers.**”—The phrase ‘known co-sharers’ in this section covers all who are known to have interest in the property and is not limited to those only whose names are recorded under this Act (*Sursangji v. Pratapsing*, 28 Bom. 209).

13. Where, from any cause, notice cannot be personally served on any co-sharer, the Talukdari Settlement-officer or other officer aforesaid shall order the same to be served by affixing a copy thereof upon some conspicuous part of the house, if any, in which such co-sharer is known to have last resided, or in such other manner as the Talukdari Settlement-officer or other officer aforesaid thinks fit.

Procedure where notice cannot be personally served on co-sharer.

14. If, on or before the day specified, any objection is made to the partition by any sharer, and the Talukdari Settlement-officer or other officer aforesaid, on a consideration of such objection, is of opinion that there is any good and sufficient reason

Power to refuse partition when objection is admitted.

why the partition should be disallowed, he may refuse the application, recording the grounds of his refusal.

15. (1) If the objection raises any question as to the right of the applicant to partition or any other question of title which has not been already determined by a Court of competent jurisdiction, the Taluqdari Settlement-officer or other officer aforesaid may either decline to grant the application until the question in dispute has been determined by a competent Court, or if no suit is at the time pending in any such Court in which the question is likely to be determined, may proceed to inquire into the merits of the objection

(2) In the latter case, the Taluqdari Settlement-officer or other officer aforesaid, after making the necessary inquiry and taking such evidence as may be adduced, shall pass a decision declaring the nature and extent of the interests of the party or parties applying for the partition and of the other co-sharers of the estate, if any, and directing by whom, and in what proportion, the costs of the inquiry and of the partition (which shall be recoverable as an arrear of land-revenue) are to be paid.

(3) The procedure to be observed by the Taluqdari Settlement-officer or other officer aforesaid in any such inquiry shall be that laid down by the Code of Civil Procedure, 1882, for the trial of original suits, and the provisions of Chapter XLVII of that Code, in so far as they apply to a review of judgment in an original suit, shall be applicable to the decision of the Taluqdari Settlement-officer or other officer aforesaid. The Taluqdari Settlement-officer or other officer aforesaid may, with the consent of the parties, refer any question arising in such inquiry to arbitration, and the provisions of the same Code relative to arbitrators shall apply to such references.

16. (1) An appeal shall lie from any decision, or from any part of a decision, passed under the last preceding section by the Taluqdari Settlement-officer or other officer aforesaid, to the District Court, as if such decision were a decree of a Court from whose decisions the District Court is authorized to hear appeals.

(2) Upon such appeal being made, the District Court may issue a precept to the Taluqdari Settlement-officer or other officer aforesaid, requiring him to stay the partition pending the decision of the appeal.

The decision contemplated by this section is the decision, referred to in sub-section (2) of s. 15 *supra*, which is come to after the making of all necessary enquiry and the taking of such evidence as may be adduced (*Gambhirsingji v. Agarsing*, 13 Bom. L. R. 118).

**Second appeal to High Court not competent.**—No second appeal lies to the High Court from the decision of the District Court under this section (*Amarsangji v. Deepsangji*, 27 Bom. L. R. 345).

17. (1) When it has been decided to make a partition, the Taluqdari Settlement-officer or other officer aforesaid shall give the parties the option of making the partition themselves; in the event of their not agreeing or of their failing to make the partition, within a period prescribed by the Taluqdari Settlement-officer or the officer aforesaid in this behalf, the Taluqdari Settlement-officer or other officer aforesaid shall either make it himself or, if he thinks fit, shall entrust it to arbitrators appointed for this purpose by the parties.

(2) In making the partition, the Taluqdari Settlement-officer or other officer aforesaid and any person acting under his orders shall have the same powers to enter on the estate under partition, for making out the boundaries, surveying the land and other purposes as are conferred on Survey-officers by the Bombay Land Revenue Code, 1879.

When partition is complete, order to be made confirming it.

18. (1) When the partition is completed the Taluqdari Settlement-officer or other officer aforesaid shall make an order confirming it.

(2) On making such order the Taluqdari Settlement-officer or other officer aforesaid shall publish a notification of the fact in the office of the Mamlatdar of the taluka and at some conspicuous place in the village in which the estate which has been divided is situate, or in each of the villages comprised in the said estate, as the case may be; and the partition shall take effect on and from the first day of June next after the date of such notification, or such other date next after the date of such notification between the first day of June and the first day of October as the Taluqdari Settlement-officer or other officer aforesaid, having regard to the usual season of cultivation in the said estate, shall fix in this behalf.

19. (1) If necessary, the Taluqdari Settlement-officer or other officer aforesaid may, at any time after the date aforesaid, order delivery of the share, or any portion of the share, allotted to any co-sharer to be made to him in the manner in which delivery of the same might be ordered by a Civil Court, under the Code of Civil Procedure, 1882, in execution of a decree.

(2) If, in executing the order of the Taluqdari Settlement-officer or other officer aforesaid, the officer charged with the execution thereof is resisted or obstructed by any person, or if a co-sharer is resisted or obstructed in obtaining possession of the share or of any portion of the share allotted to him, the Taluqdari Settlement-officer or other officer aforesaid shall proceed in the manner in which, by section 202 of the Bombay Land-Revenue Code, 1879, a Collector is authorized to proceed for the purpose of inquiring into the reasonableness of any resistance or obstruction to the execution of an order made under that section and of preventing the continuance thereof.

20. An appeal against the decision of the Taluqdari Settlement-officer or other officer aforesaid confirming a partition shall lie to the Commissioner within one year from the date of the order confirming such partition.

Appeals against order confirming partition to the Commissioner.

21. No Civil Court shall entertain any suit or application for partition of a taluqdari estate; provided that nothing in this section shall be deemed to affect the jurisdiction of Her Majesty's High Court of Judicature at Bombay.

Civil Courts barred from entertaining suits or applications for partition.

The expressions "taluqdar's estate" and "taluqdari estate" in this Act are used to denote different matters; the former expression means something other than taluqdari estate. The expression "taluqdari estate" in this section means an estate of taluqdari tenure (*Purshottam v. Bai Pooji*, 4 Bom L. R. 817).

## PART IV

### REVENUE ADMINISTRATION

#### *Taluqdar's Jama*

22. (1) If a taluqdar's estate, or any portion thereof, is not wholly or partially exempt from land-revenue and its liability to payment of land revenue is not subject to special conditions or restrictions, the jama payable to Government in respect of such estate or portion thereof shall, if a survey settlement has been extended thereto, be the aggregate of the survey assessments of the lands composing such estate or such portion thereof, minus such deduction, if any, as Government shall in each case direct.

Taluqdar's jama how to be calculated.

(2) The Governor in Council may declare the amount of jama so ascertained fixed for any term not exceeding thirty years.

23. (1) Nothing in this Act shall be deemed to affect the validity of any agreement heretofore entered into by or with a talukdar and still in force as to the amount of his jama, nor of any settlement of the amount of jama made by or under the orders of Government for a term of years and still in force.

(2) Every such agreement and settlement shall have effect as if this Act had not been passed.

24. (1) The registered talukdar shall be primarily responsible to Government for the jama of his village, and, if there are sharers, all the co-sharers shall be jointly and severally responsible therefor.

(2) If the registered talukdar fails to pay the jama according to the rules legally prescribed in that behalf, it may be recovered from his co-sharers, if any, or to the extent to which it is due in respect of the holding of any mortgagee in possession, inferior holder or person in actual occupation of the estate or of any portion thereof, from such mortgagee in possession, inferior holder or person.

(3) When jama is recovered from any such co-sharer, mortgagee in possession, inferior holder or other person, he shall be allowed credit for all payments which he may have made to the talukdar at or after the prescribed or usual time of such payments, and he shall be entitled to credit in account with the talukdar for the amount recovered from him.

25. (1) When a partition has taken place and a talukdari estate is held in severalty, the jama payable in respect of each separate portion into which the same has been divided shall be determined by the Collector, and thereupon each such portion shall, for the purposes of the last preceding section, be deemed to be a distinct estate.

(2) Provided that the aggregate jama payable in respect of the several portions into which the estate has been divided shall not exceed the jama which would be leviable from the entire estate if still undivided.

*Management of talukdar's estates by Government Officers.*

26. (1) If owing to disputes among the sharers in any talukdari estate, or for other cause, the Governor in Council shall deem that there is reason to apprehend danger to the peace of the country or injury to the well-being of the inferior holders, he may direct the Collector

Management of talukdari estate may be assumed by Collector in certain contingencies.

to cause such estate to be attached and taken under the management of himself or any agent whom he appoints for this purpose; and, on the application of any registered talukdar or co-sharer, the Collector shall furnish him with a copy of the reasons on which the orders of Government were passed.

(2) When any estate is so attached and taken under management, the sharers, or any one or more of the sharers therein, may at any time apply to the District Magistrate to restore the management thereof; and, if the applicants shall prove to the satisfaction of the District Magistrate that no reason for any such apprehension as aforesaid any longer exists, the District Magistrate may order restoration of the management to be made to the talukdar.

27. (1) With the sanction of the Commissioner, the Talukdari Settlement-officer or other officer appointed by Government may hold the estate in which partition is being effected under his own management, pending the completion of the partition.

Power to take up management of estate pending partition.

(2) Provided that, before applying to the Commissioner for sanction under this section, the Talukdari Settlement-officer or other officer aforesaid shall give to the parties reasonable notice of his intention so to do, and shall forward, with his application, for the Commissioner's consideration, any written statement of objection thereto which any of the parties shall present to him for this purpose.

[a] 28. (1) With the sanction of Government, the Talukdari Settlement-officer or any other officer appointed by Government for this purpose may, upon the written application of a talukdar in this behalf, take charge of such talukdar's estate and keep the same under his management for such period as may be agreed upon.

Power to take up management of estate at talukdar's request.

[a] S. 28 was re-numbered 28, sub-section (1) by the Gujrat Talukdar's (Amendment) Act, 1905 (Bom. Act 2 of 1905), s. 3 (1), and sub-section (2) and the proviso were substituted for the concluding words and proviso of section 28 by s. 3 (2) of the same Act.

[b] (1A) Any co-sharer of a talukdari estate, other than a co-sharer in a family undivided according to Hindu law, may make an application under sub-section (1) in respect of his own share in such estate.

[b] This sub-section was inserted by Bom. Act I of 1910.

[c] (2) "In every case where a talukdari estate is held by co-sharers in a family undivided according to Hindu law or otherwise," an application signed by co-sharers holding an aggregate

[c] Printed as amended by Bom. Act I of 1910.

interest of not less than three-fourths of the whole estate shall, for the purposes of sub-section (1), be deemed to be an application by a talukdar in respect of the "whole estate:"

provided, *firstly*, that no sanction shall be given on any such application under sub-section (1) where it appears to the Governor in Council doubtful whether the aggregate interest of the co-sharers signing "the" application amounts to three-fourths of the whole estate; and

provided, *secondly*, that nothing in this Act shall be deemed to prevent any co-sharer other than those signing any such application from obtaining partition of his share.

Applicability of section 160 of Bombay Act V of 1879 when an estate is taken under management by a Government officer.

29. (1) When any talukdari estate is taken under management by Government officers under any of the three last preceding sections, the provisions of section 160 of the Bombay Land-Revenue Code, 1879, shall be applicable thereto.

(2) Provided that no "transfer" [a] or agreement entered into by a Government officer managing an estate under section 26, in respect of any land in such estate, shall be for a period exceeding five years from the date thereof, and that no such "transfer" [a] or agreement by a Government officer managing an estate under section 27 shall have effect beyond the end of the revenue-year in which such officer's management determines, unless the same is ratified by the co-sharer to whose share the said land is finally allotted when the partition of the estate is completed.

[a] The word "transfer" was substituted for the original words "sale of occupancy rights" by Bom. Act IV of 1913, s. 94.

(3) All surplus receipts, if any, which accrue during such management, after defraying the costs of the management, including the payment of the current land-revenue and of all arrears thereof, and the cost of the extension to the estate of a revenue-survey, if the Governor in Council directs, or has before directed, the extension of a revenue survey thereto under section 4, shall be divided amongst the co-sharers in proportion to their respective shares, at such periods as the Talukdari Settlement-officer or other officer aforesaid shall see fit.

[a] 29A. (1) Except with the approval of the managing officer, a talukdar whose estate is taken under management by Government officers under section 26 or 28 shall be incompetent to transfer or create any charge on, or interest in, his property or any part thereof, or to enter into

Disabilities of a talukdar whose estate is taken under management.

[a] Secs. 29-A and 29-B were inserted by the Gujarat Talukdars' (Amendment) Act, 1905 (Bom. Act II of 1905), s. 4.



any contract which may involve him in pecuniary liability; and no suit shall be brought in any Civil Court whereby to charge any such talukdar upon any promise made after the determination of such management to pay any debt contracted during the period of such management, or upon any ratification, made after such determination, of any promise or contract made during the period aforesaid, whether there is or is not any new consideration for such promise or ratification.

(2) Nothing in sub-section (1) shall be deemed to affect the capacity of any such talukdar to enter into a contract of marriage :

Provided that no such talukdar shall incur, in connection with such a contract, any pecuniary liability, except such as, having regard to the personal law to which he is subject and to his rank and circumstances, the managing officer may, in writing, declare to be reasonable.

Power to continue  
management after  
death.

(j) On the death of any such talukdar,—

(a) where the succession to his property or any part thereof is disputed, the managing officer may, with the sanction of the Governor in Council, either retain the superintendence of the property until one of the claimants has established his claim to the same in a competent Civil Court, or institute a suit of interpleader against all the claimants; and

(b) where his property is still encumbered with debts and liabilities, the managing officer may, with the sanction of the Governor in Council, retain the said property under his superintendence until such debts and liabilities have been discharged.

*Ascertainment and liquidation of liabilities of talukdars whose estates are taken under management*

29-B. (1) Where any talukdari estate has been taken under management by Government officers under section 26 or 28, the managing officer may

Publication of notice  
to claimants against  
talukdar whose estate is  
taken under management.

publish in the *Bombay Government Gazette*, and in such other manner as the Governor in Council may by general or special order direct, a notice, in English and also in the vernacular, calling upon all persons having claims against such talukdar or his property, to submit the same in writing to him within six months from the date of the publication of the notice.

(2) Where the managing officer is satisfied that any claimant was unable to comply with the notice published under sub-section

(1), he may allow his claim to be submitted at any time after the date of the expiry of the period fixed therein ; but any such claim shall, notwithstanding any law, contract, decree or award to the contrary, cease to carry interest from the date of the expiry of such period until submission.

(3) Every claim against such talukdar or his property (other than a claim on the part of Government) not submitted to the managing officer in compliance with the notice published under sub-section (1) or allowed to be submitted under sub-section (2), shall, save in the cases provided for by section 29 (f), sub-section (2), clause (c), and by sections 7 and 13 of the Indian Limitation Act, 1877, be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged, unless in any suit or proceeding instituted by the claimant, or by any person claiming under him, in respect of any such claim, it is proved to the satisfaction of the Court that he was unable to comply with the notice published under sub-section (1).

[a] See foot-note under s. 29-A *supra*.

"**Unable.**"—The word "unable" in this section is not confined to physical liability on the part of the claimant (*Mamilal v. Khodabhai*, 38 Bom. 604).

**Decree against Talukdar.**—The plaintiff sued the defendant for a decree upon a mortgage ; but the Subordinate Judge granted him a personal decree and held that the mortgage was invalid under the provisions of the Act. The plaintiff filed an appeal on the 37th September 1905. On the 21st November 1905, the Talukdari Settlement Officer took over the management of the estate. He received notice of the appeal on the 24th *idem*. He issued, on the 28th December, a notice, under s. 29B of the Act, calling upon claimants to submit their claims within six months of the date of the notification. On the 14th March 1906, the District Court decided the appeal in favour of the plaintiff, holding that he had valid mortgage upon the property of the defendants. The Talukdari Settlement Officer appealed against the decree in July 1906 ; but the appeal failed in August 1907. The plaintiff thereafter applied, under s. 29B of the Act, for a certificate in order that he might proceed with the execution of the decree. The officer declined to grant the certificate on the ground that as the plaintiff had not submitted his claim within six months of the date of the publication of notice under s. 29B, his claim was deemed to have been fully discharged. The plaintiff next applied to the Court for execution. The lower Courts dismissed the application as having been barred under s. 29B (3). The plaintiff having appealed, *Held*, (1) that the plaintiff was unable to put forward his real claim at the date of the Notification, and that at the date of the notice he was unable to comply with it within the meaning of s. 29B (3); (2) that inability of the applicant having continued during the expiration of the six months from the date of the notification, the plaintiff was not barred by s. 29B from prosecuting the proceedings in Court (*Ibid*).

**Sanadia land-Talukdar.**—The *sanadia* land of a Talukdar was mortgaged by him in 1894 to B, who mortgaged his mortgage rights in the land to the plaintiffs in 1900. Subsequently, when the estate of the Talukdar came into the

possession of the Talukdari Settlement Officer as manager in 1905, that officer called on the creditors of the estate to notify their claims. Neither the plaintiffs nor the heir of B, who was a minor then and also at the date of the suit, notified the claim. The Talukdari Settlement Officer, having thereafter ejected the plaintiffs from the land, they (plaintiffs) sued to recover possession of the land. *Held*, that the plaintiffs were entitled to the possession of the land because they claimed under the mortgagee B, and as long as the mortgagee's rights were in existence the plaintiffs could sue the mortgagee for all those rights which the mortgagee would still be entitled to claim against his mortgagor and they were entitled to remain in possession as long as the mortgagee who was their mortgagor could claim mortgage rights against the Talukdar (*Harabhai v. Collector of Kaira*, 46 Bom. 239).

**Notice under this section.**—In 1893 certain Wanta land belonging to a Talukdar was usufructually mortgaged during his minority by his mother, who was appointed guardian under the Bombay Minors Act (XX of 1864), to the plaintiff without the sanction of the Court. The Talukdar's estate was taken under the management of the Talukdari Settlement Officer in 1896 under the provisions of s. 28. That officer issued in 1905 a notice under s. 29-B of the Act calling upon all persons having claims against the Talukdar or his property to submit the same within six months of its publication. The plaintiff having failed to comply with the notice, served by the Talukdari Settlement Officer in 1914 with a notice under ss. 202 and 29-A (amended by s. 33 (2) (cc) of the Bom. Land-Revenue Code, 1879, informing him that the debt was satisfied under s. 29-B (3) of the Act and that the plaintiff's possession of the land was, therefore, unlawful. The plaintiff filed the present suit to obtain a declaration that he was entitled to retain possession of the land as against the Talukdar and the Talukdari Settlement Officer and a permanent injunction restraining them from disturbing his possession. He contended, first, that it was not necessary to notify his claim under s. 29-B as it did not refer to Talukdari estate and, secondly, that the mortgage having been effected by the Talukdar's guardian without the authority of the Court, was invalid and the plaintiff had been in adverse possession for over twelve years. *Held* (1) that the words "claims against the Talukdar or his property" in s. 29-B of the Gujarat Talukdars' Act, 1888, were not limited to "claims against any Talukdari estate;" and that as according to the plain words of the section notice must be given regarding claims against any property of the individual whose estate was under management, the claim must be deemed to have been discharged when six months from the date of the notice under s. 29-B expired; (2) that the plaintiff had no claim by adverse possession, for though the mortgage which was effected by the guardian without the Court's permission was void under s. 18 of Act XX of 1864, it was only voidable under s. 80 of the Guardians and Wards Act, 1890, which applied at the date of the mortgage (*Shankarbai v. Raisingji*, 19 Bom. L. R. 855).

Although a decree had been passed against a Talukdar, which was being executed before this section was enacted, still notice of the claims is necessary after the notification under this section has been issued (*The Talukdari Settlement Officer v. Akaji Ishwarrao*, 46 Bom. 993).

[a] 29C. (1) The managing officer may by written order require that any claimant submitting his claim in compliance with the notice published under section 29B, sub-section (1), shall, within such reasonable time as he may prescribe in such order, furnish full particulars thereof, and produce all documents (including entries in books of account) on which he relies to support his claim, together with a true copy of every such document :

Provided that, where the claim relates to an amount secured by a decree or award, it shall be sufficient for the claimant to produce before the managing officer a certified copy of the decree and a certificate from the Court which passed or is executing the same declaring the amount recoverable thereunder, or a true copy of the award and a statement of the sum recoverable thereunder, as the case may be ; and, where the claim is pending adjudication in any Court or has been referred to arbitration, it shall be sufficient for the claimant to produce a certified copy of the plaint, or a true copy of the reference to arbitration, as the case may be.

(2) The managing officer shall, after marking, for the purpose of identification, every original document so produced and verifying the correctness of the copy, retain the copy and return the original to the claimant.

(3) Where any document, which is in the possession or under the control of a claimant, is not produced by him in accordance with an order under sub-section (1), the document shall not be admissible in evidence against the talukdar whose estate is taken under management, whether during the continuance of the management or afterwards, in any suit brought by such claimant or by any person claiming under him, in respect of any claim to which such document relates, unless it is proved to the satisfaction of the Court that it was not within his power to produce such document as required by such order.

[a] 29D. (1) On receipts of all claims submitted in compliance with the provisions of sections 29B and 29C, the managing officer shall proceed to investigate such claims and shall decide, subject to the provisions of sub-section (3), which of them are to be wholly or partly admitted or wholly or partly rejected, as the case may be, and shall communicate his decision in writing to each claimant concerned.

(2) Where the managing officer has admitted any claim under sub-section (1), he may make to the claimant a proposal in writing for the reduction of the claim, or of the rate of interest to be paid in future, or of both ; and in such proposal, or any modification of it, is accepted by the claimant, and his acceptance is finally recorded

[a] Sections 29C and 29D were inserted by Bom. Act II of 1905, s. 4.

and attested by the managing officer or by any Revenue-officer not below the rank of an Assistant or Deputy Collector whom the Governor in Council may, by general or special order, appoint in this behalf, it shall be conclusively binding upon the claimant :

Provided that if, when the management is withdrawn, any portion of the claim reduced as aforesaid is still unsatisfied, the claimant shall be entitled to recover a sum bearing the same proportion to the original claim admitted under sub-section (1), as the unsatisfied portion bears to the reduced claim.

(3) Subject to the provisions of sub-section (2), nothing in this section shall be construed to bar the institution of a suit in a Civil Court for the recovery of a claim, against a talukdar whose estate is taken under management or his property, which has been duly submitted to the managing officer :

provided that no decision of the managing officer under this section shall be proved in any such suit as against the defendant.

*Management of talukdar's estates by Government officers.*

[a] 29E. (1) On the publication of a notice under section 29B, sub-section (1), no proceeding in execution of any decree against the talukdar whose estate is taken under management or his property shall be instituted or continued until the decree-holder files a certificate from the managing officer that the decree-claim has been duly submitted, or until the expiration of one month from the date of receipt by the managing officer of a written application for such certificate, accompanied by a certified copy of the decree.

(2) Any person holding a decree against such talukdar or his property shall be entitled to receive from the managing officer, free of cost, the certificate required by sub-section (1).

(3) In computing the period of limitation prescribed by the Indian Limitation Act, 1877, or by section 230 of the Code of Civil Procedure for any application for the execution of a decree, proceedings in which have been stayed or temporarily barred by reason of the claim not having been duly submitted, the time from the date of the notice published under section 29B, sub-section (1), or of the decree if it was passed subsequently to the publication of the notice, to the date of due submission shall be excluded.

[a] Section 29E was inserted by the Gujarat Talukdars' (Amendment) Act, 1905 (Bom. Act 2 of 1905), s. 4.

**The two things a claimant has to do under this section before asking the Court to execute decree.**—Under this section the claimant has to do one of two things before he could ask the Court to execute the decree. He has either to produce a certificate from the talukdari Settlement-officer that the claim has been duly submitted or to apply in writing to that officer for such certi-

ificate accompanied by a certified copy of the decree and wait for the expiry of one month from the date of receipt by the officer of the application. If the officer gave no certificate within that month, the claimant's right to apply to the Court for execution revived (*Ganpatsing v. Bajibhai*, 35 Bom. 324).

**Certificate of Managing officer.**—A decree for instalments was passed against a Taluqdar on the 16th September 1910 with the proviso that on failure to pay any one instalment in time, the whole amount of the decree became payable at once. The first instalment which was payable on 1st April, 1911, was not paid. An application to execute the decree was made on the 1st April, 1914, but as it was not accompanied by a certificate from the managing officer, under s. 29E, it was rejected on the 15th June, 1914. The certificate was applied for in August 1914 and obtained on the 29th August 1914. A second application to execute the decree was made on the 28th February 1916. In answer to the contention that the application was barred by limitation, it was urged, first, that the application of 1914 was in accordance with law within the meaning of Art. 182 of the Indian Limitation Act, 1908, in spite of the absence of the certificate under s. 29E (1), and that accordingly time ran from the application of 1914, and, secondly, that under s. 29E (3) the applicant was entitled to exclude the time from the date of the decree to the date of the application for the certificate. Both lower Courts rejected the application as being time-barred. On appeal: *Held*, allowing the appeal, that the application of 1916 was in time, as by virtue of sub-section 3 of s. 29E, the applicant was entitled to exclude the time from 16th September 1910 (the date of the decree) to August 1914, the date of the due submission of the decretal claim to the managing officer, which was the date of the application for the certificate. But the Court differed as to whether the appeal ought to be allowed apart from s. 29E (3), *Shah J.*, holding that it ought, as the application of 1914 was "in accordance with law" within the meaning of Art. 182 of the Indian Limitation Act, 1908, though no certificate of the managing officer under s. 29E (1) was produced, and *Marten J.*, being of a contrary opinion. *Semble*, per *Marten J.*, that the application of 1914 was not made to "the proper Court" as defined in Expl. II to Art. 182 of the Indian Limitation Act as at its date it was the duty of no Court to execute the decree or order, there having been no certificate from the managing officer (*Hargovind v. Naja Sura*, 43 Bom. 44).

**Managing officer.**—This section means that before execution of a decree can be proceeded with the Court must be satisfied that the decree claimed has been duly submitted. If the officer certifies that it has been duly submitted there is an end of the matter. If, however, he does not certify that it has been duly submitted, the Court must wait for one month from the date of the receipt by the officer of an application for a certificate, and upon being satisfied that a claim has been duly submitted in accordance with provisions of section 29B, it may then proceed with the execution. The expression "Managing Officer" is merely a compendious term used in this Act for "the Talukdari Settlement Officer or any other officer appointed by Government to take charge of the Talukdar's estate and keep the same in his management" referred to in section 28 of this Act, and where the officer who takes charge of the estate and keeps the same in his management is the Talukdari Settlement Officer, the "Managing Officer" is merely a synonym for "Talukdari Settlement Officer." Where an application relating to a claim is presented to the Subordinate Judge and it is forwarded by him to the Talukdari Settlement Officer,

it amounts to a submission of the claim in writing within the meaning of section 29B of this Act, if the Talukdari Settlement Officer is also the Managing Officer (*Purushottam v. Rajbai*, 34 Bom. 142).

[a] 29F. (1) When all claims have been investigated under section 29D, the managing officer shall submit to the Governor in Council a schedule of the debts and liabilities of the talukdar whose estate is taken under management, and the Governor in Council may, where the property appears to be involved beyond all hope of extrication, or for any other sufficient reason, by order published in the *Bombay Government Gazette*, direct that, on a date to be fixed by the order, the management of such estate shall be withdrawn.

[a] Sec. 29F was inserted by the Gujarat Talukdars' (Amendment) Act, 1905 (Bom. Act II of 1905), s. 4.

(2) On the date so fixed

(a) the management shall terminate;

(b) the owner of such estate shall be restored to the possession thereof, subject to any contracts entered into by the managing officer for the preservation or benefit thereof; and

(c) the claims referred to in section 29B, sub-section (3), shall revive.

(3) In calculating the periods of limitation applicable to suits to recover and enforce claims revived under sub-section (2), clause (c), the time during which the management has continued shall be excluded.

*Application of provisions of the Bombay Court of Wards Act, 1905.*

[a] 29G. On the issue of a notification under clause (c) of the proviso to section 3 of the Bombay Court of Wards Act, 1905, appointing the Talukdari Settlement-officer to be a Court of Wards for the whole or any part of the area to which this Act extends, the provisions of the said Bombay Court of Wards Act, 1905, shall, without prejudice to, and save so far as they may be inconsistent with, anything contained in this Act, be deemed to apply to, or in respect of, any estate, which may thereafter be taken under the management of the said Talukdari Settlement-officer under section 26 or 28, as if it were an estate under his superintendence as such Court of Wards, and the talukdar whose estate is taken under management a Government ward within the meaning of that Act.

[a] Sec. 29G was inserted by the Gujarat Talukdars' (Amendment) Act, 1905 (Bom. Act II of 1905), s. 4.

*Police-officers and establishment.*

Government to fix the number and remuneration of Police.

30. (1) The Governor in Council may from time to time determine—

(a) what Police-officers and establishment are requisite in each village in a talukdari estate;

(b) by whom and under what conditions the Police-officer and establishment shall be appointed, punished and dismissed;

(c) what remuneration shall be paid to each Police-officer and member of the Police-establishment.

(2) Charges on account of police shall be defrayed by the talukdar at such times as shall from time to time be determined by Government, and in the event of failure by the talukdar to pay, at the time when the same becomes due, any sum so payable, the said sum shall be recoverable from him, in addition to the jama as if the same were a part of the jama.

(3) If a partition has taken place and the estate is held in severalty, the said charges shall be payable by, and recoverable from, the holders of the various portions into which the estate has been divided in proportion to their respective shares in the estate.

## PART V.

## MISCELLANEOUS.

[a] 31. (1) No incumbrance on a talukdar's estate, or on any portion thereof, made by the talukdar after this Act comes into force, shall be valid as to any time beyond such talukdar's natural life, unless such incumbrance is made with the previous written consent of the talukdari Settlement-officer, or of some other officer appointed by the Governor in Council in this behalf [b] (and after the death of a talukdar no proceeding for attachment, sale or delivery of, or any other process affecting the possession or ownership of, a talukdari estate, or any portion thereof, in execution of any decree obtained against such talukdar or his legal representative, except a decree obtained in respect of an incumbrance made with such consent as aforesaid, or made before this Act comes into force, shall be instituted or continued except with the like consent.)

Bar of incumbrances on a talukdar's estates, beyond talukdar's own life,

except with consent of the Talukdari Settlement-officer;

(2) No alienation of a talukdar's estate or of any portion thereof, or of any share or interest therein, made after this Act comes into force, shall be valid, unless such alienation is made with the previous sanction of the Governor in Council,

and of all alienations except with consent of Governor in Council.



which sanction shall not be given except upon the condition that the entire responsibility for the portion of the jama and of the village expenses and police-charges due in respect of the alienated area shall thenceforward vest in the alienee and not in the talukdar.

[a] Nothing in section 31 shall be deemed to apply to any incumbrance or alienation made before the passing of the Gujarat Talukdars' (Amendment) Act, 1905 (Bom. Act II of 1905), by a mulgarneti, who holds land directly from Government, except where his estate has been taken under management by a Government officer under Bom Act VI of 1888. See s. 2 (2), proviso, of that Act.

[b] These words were added by the Gujarat Talukdars' (Amendment) Act, 1905, (Bom. Act II of 1905), s. 4.

**"Incumbrance."**—A money decree is not an incumbrance on the estate within the meaning of this section. The word "incumbrance" does not include a decree for the recovery of money from a talukdar or from the estate of a deceased talukdar in the hands of his heir. An attachment effects no transfer of ownership. It is rather a prohibition of transfer, since it is a process preparatory to sale by which intermediate transfers or charges are prevented and the title to the property kept in *statu quo* (*Shivlal v. Mulaji*, 1 Bom. L. R. 154).

**"Talukdar's estate"**—The expression "Talukdar's Estate" in this section means the estate held by the Talukdar as a Talukdar. It does not, therefore, include that which a Talukdar owns as assignee of a mortgage debt by a private investment of his money (*Khodabhai v. Chaganlal*, 9 Bom. L. R. 1122; *Bichubha v. Vela Dhanji*, 11 Bom. L. R. 763).

This expression means only the estate held by a talukdar on talukdari tenure and not property held on any ordinary tenure which is distinguishable from the former (*Bichubha v. Vela Dhanji*, 11 Bom. L. R. 763).

Lands, situated in a talukdari village, which are shown in the Government register as Sirkari Udhar Jamabandi, but which are only recently described as Vanta in the register of Inami Vanta lands kept by the Talukdar, do not thereby cease to be 'Talukdar's estate' for the purposes of this section (*Shankarlal v. Bajikhan*, 24 Bom. L. R. 700).

A Talukdar mortgaged his talukdari estate in 1883, *i. e.*, prior to the passing of this Act. In 1893 the mortgagee sued on his mortgage and, without having the sanction of the Governor in Council, obtained an order in the District Court for the sale of the mortgaged property, that Court holding that the provisions of this section did not apply to the case of a mortgage effected prior to the passing of this Act. On appeal to the High Court, *Held*, reversing the order of the District Court, that clause (2) of this section applied to the case, and that a sale in execution of a decree was such an alienation as came within the terms of the section and required the previous sanction of the Governor in Council. The Court, however, directed the District Judge to give the plaintiffs a reasonable time for the production of sanction, and ordered that, in case they produced it, the order for sale should be affirmed, otherwise the plaintiff's application for sale should be dismissed (*Chudasma v. Naras*, 22 Bom 884).

Where a money decree was passed after this Act had come into force and it was attempted to enforce it by a sale of Talukdar's estate, *Held*, that such a sale would be an "alienation" within the meaning of clause (2) (*Girdharlal v. Thakor*, P. J. 1894, p. 201).

**Adverse possession.**—A portion of the talukdari estate was granted by the original Talukdar to a cadet of his family as *jeeni*. The grantee mortgaged one of such lands with possession to the plaintiff's father on April 19, 1889. In 1894, the mortgagor died and in 1895 the mortgagee died; but the land mortgaged remained all along in mortgagee's possession. In November 1907, the Talukdari Settlement Officer sent a notice to the plaintiff under s. 202 of the Bombay Land-

Revenue Code calling upon him to vacate the land in question; and evicted him under s. 79-A of the Code as amended by s. 33 of this Act. The plaintiff sued to recover possession of the land. *Held*, that the plaintiff was entitled to succeed; for he had been in adverse possession claiming title as an incumbrancer for more than twelve years since the death of the mortgagor. *Held*, further, that assuming that the mortgage in question was an incumbrance made by a talukdar, the incumbrance which was claimed by virtue of adverse possession since the death of the Talukdar would not fall under this section, but would be an incumbrance arising from the operation of the law of limitation. *Held*, also, that the possession of the incumbrancer claiming by virtue of adverse possession would not be an occupation in contravention of any of the provisions of this Act referred to in s. 33 (2) cl. (cc) of this Act (*Talukdari Settlement Officer v. Rikhaadas*, 15 Bom. L. R. 378, s. c. 37 Bom. 380).

**Jivaidar is a Talukdar.**—A Jivaidar is a Talukdar within the meaning of this Act. A Talukdar and his son mortgaged a portion of talukdari estate and after the death of the Talukdar his son sold the property to the mortgagee. The Talukdari Settlement Officer having issued a notice, under s. 79-A of the Bom. Land Revenue Code, to summarily evict the mortgagee from possession of the property, the latter sued for a declaration that he was entitled to remain in possession. *Held*, (1) that the mortgage by the Talukdar ceased to be operative after his death; (2) that the mortgage by his son was inoperative from the start, for he was not a co-sharer with his father in the talukdari estate, and not having an interest in the property at the time, he was not competent to incumber the interest to which he might succeed on his father's death; (3) that the sale of the property by the son was an invalid alienation under sub-section (2) of this section; and (4) that the notice of eviction under s. 79-A of the Land Revenue Code was valid (*Bhaiji v. Talukdari Settlement Officer*, 22 Bom. L. R. 908, s. c. 44 Bom. 872).

**Cl. (2)—Retrospective operation.**—Where a decree directing the sale in default of payment of mortgage debt is passed before the Talukdars' Act came into force, the decree-holder acquires a vested right to have the property sold; and as this right is not intended by the Legislature to be taken away by this Act, the sanction of Government under section 31, clause (2), is not necessary to confirm the sale (*Gangabhai v. Mutubhai*, 1 Bom. L. R. 849).

**Consent of the Talukdari Settlement Officer presumed to be given to the arrangement.**—

The powers conferred on the Collector, under section 323 of the Civil Procedure Code, 1882, and those conferred on the Talukdari Settlement-officer under section 81 of the Gujarat Talukdars' Act, 1888, are both of enabling or discretionary and are not necessarily of a mutually contradictory character. Where the two officers are combined in one and the same person on grounds of public convenience or expediency, his action must be referred to the exercise of his discretionary powers under both sections, if it can be so referred. It is not that in respect of one office the action was without, and in respect of the other it was with jurisdiction (*Parshottam v. Harbhanji*, 11 Bom. L. R. 665).

**32. (1) No consent or sanction given under the last preceding**

Saving of rights of Government under section 8 of Bombay Act VII of 1863.

section shall be deemed to affect any right of Government under section 3 of Bombay Act VII of 1863 (an Act for the Summary Settlement of claims to exemption from the payment of Government land-revenue and for regulating the terms upon which such exemption shall be recognized in future, in those parts of the Bombay Presidency which are not subject to the operation of Act XI of 1852 of the Council of India).

(2) And nothing in the last preceding section shall apply to the property of any thakur to which section 28 of the Broach and Kaira Encumbered Estates Act, 1881, is applicable, or be deemed to affect the power of the manager of any thakur's immoveable property under section 24 of the said Act.

Saving of sections 28 and 24 of Act XX of 1881.

[a] 33. (1) Nothing in sections 38 to 40, both inclusive, 44, 60 to 67, both inclusive, 76, 82, 85, 116, 17A, 127 to 134, both inclusive, 136, 163, 216 and 217 of the Bombay Land-Revenue Code, 1879, shall be deemed to apply to any estate to which this Act extends.

Applicability of the Bombay Land-Revenue Code to taluqdar's estates.

(2) The provisions of the said Code when applied to any such estate shall be subject to the following modifications (namely):—

(a) in section 3, clause (1), the words “the Talukdari Settlement-officer and every officer appointed by the Governor in Council to exercise any power or perform any duty under the Gujarat Talukdars' Act, 1888, and” shall be inserted after the word “means”;

(b) in section 54, the words “or under the Gujarat Talukdars' Act, 1888,” shall be inserted after the figures “136”;

(c) in sections 46, 88, 89 and 94, the word “talukdar” shall be substituted for the words “holder of alienated lands” and the word “holder” wherever they occur;

[b] (c-c) to section 79A, clause (a), the words “which he uses or occupies in contravention of any of the provisions of the Gujarat Talukdars' Act, 1888, or”, shall be added;

(d) in section 88, the clauses (c) to (f) and proviso shall be omitted;

(e) for section III the following section shall be deemed to be substituted, *vis.*

“11. In the event of any talukdar's estate coming under the temporary management of Government officers, it shall be lawful for the Collector, Talukdari Settlement officer, or other officer appointed by Government in this behalf, subject, in any case to which it applies, to the proviso to section 29 of the Gujarat Talukdars' Act, 1888, 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

Revenue management of talukdari estates which may be temporarily under Government management.

[a] Sub-section (1) of s. 33 was substituted for the original section by Bom. Act IV of 1913, s. 94

[b] Clause (c-c) was inserted by s. 5 of the Gujarat Talukdars' (Amendment) Act, 1905 (Bom. Act II of 1905).

reasonable, and to "grant unoccupied lands by lease" [a] and otherwise to conduct the revenue management thereof under the rules for the management of unalienated lands not comprised within a talukdar's estate, so far as such rules may be applicable and for so long as the said estate shall be under the management of Government officers :

Provided, however, that any written agreements relating to the land made by the talukdar of such 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 ; and provided also that, when the estate ceases to be under the management of Government officers, the possession and enjoyment thereof shall, except as is otherwise provided in section 29 of the Gujarat Talukdars' Act, 1888, revert to the talukdar, subject to the leases, if any, granted under this section';.....[b]

(f) section 113 shall be omitted ;

(g) in section 147, the words "or under the Gujarat Talukdars' Act 1888," shall be inserted after the word "section";

(h) in section 150, clause (f), the word "alienated" shall be omitted ;

(j) in section 160, the word "be" shall be substituted for the words "revert to Government";

(k) in section 162, the words "at any time within twelve years from the first day of August next after the attachment" shall be omitted ;

(l) in section 214, clause (h) shall be omitted ;

(m) generally, the word "talukdar" shall be substituted for the word "occupant"; [b]...and the words "talukdar's holding" or such words to that effect as may be required by the context, for the word "occupancy".

And whereas it is also expedient to limit the period within which fresh estates may be subjected to the operation of Bombay Act VI of 1862 (an Act for the amelioration of the condition of Talukdars in the Ahmedabad Collectorate and for their relief from debt); It is further enacted as follows :—

[a] The words "grant unoccupied lands by lease" were substituted for the original words "sell the occupancy of unoccupied lands by auction" by Bom. Act IV of 1913, s. 94.

[b] The portion repealed by Bom. Act IV of 1913, s. 94 is omitted.

**Powers of Talukdari Settlement Officer**—A Government Officer in the temporary management of a Talukdar's estate has under this section, the same powers which the Collector has in an unalienated village, to recover arrears of revenue inclusive of rent (*Jinabhai v. The Collector*, 28 Bom. L. R. 417).

34. No new declaration shall be made under section 1 of the said Bombay Act VI of 1862 at any time after six months from the date on which this Act comes into force.

Limitation of operation of Bom. Act VI of 1862.

THE  
Broach and Kaira Incumbered  
Estates Act

—:—  
ACT No. XIV OF 1877.

[28th June, 1877.]

An Act to relieve from incumbrances the estates of Thakurs  
in Broach and Kaira.

*Preamble. Rep. Act XXI of 1881.*

1 to 38. [*Application and preliminary enquiry; Order of management; proof of debts; Scheme for liquidation; Proceedings subsequent to sanction of liquidation scheme; Appeal and revision; Miscellaneous.*] *Rep. Act XXI of 1881.*

39. † Whereas doubts have been raised as to the validity of Bombay Act No. VI of 1862 (*for the amelioration of the condition of taluqdars in the Ahmadabad Collectorate, and for their relief from debt*) so far as it purports to affect the High Court of Judicature at Bombay; for the purpose of precluding such doubts, it is hereby enacted that the said Act, so far as it purports to affect the said High Court, shall be deemed to be and to have been valid.

40. ‡ [The Taluqdari Settlement-officer mentioned in the Broach and Kaira Incumbered Estates Act, 1881, section 7,] for the time being shall, unless the Local Government in any case otherwise directs, be—

(a) deemed to be an officer appointed under section 1 of the said Bombay Act No. VI of 1862 to manage all estates with respect to which a declaration is or has been made and published under the said section;

(b) an assistant to the respective Collectors of Ahmadabad, Kaira and Broach.

41. Nothing heretofore done by any Taluqdari Settlement-officer shall be deemed to be or to have been invalid by reason only of his not having been duly appointed,—

† The words "and" in paragraph 1 and "further" in the second paragraph were repealed by the Repealing and Amending Act, 1894 (4 of 1894).

‡ These words and figures were substituted for the words "The said Taluqdari Settlement-officer" by s. 2 of the Broach and Kaira Incumbered Estates Act, 1881 (21 of 1881).

## THE BROACH &amp; KAIRA INCUMBERED ESTATES ACT.

- (a) under section 1 of the said Bombay Act No. VI of 1862 to manage any estates with respect to which a declaration has been made under the said section, or
- (b) to be a manager under § \* \* \* † Act No. XV of 1871, or
- (c) to be an assistant to the respective Collectors of Ahmadabad, Kaira and Broach.

§ The words "the said" were repealed by the Repealing and Amending Act, 1894 (4 of 1894).

† Act 15 of 1871 was repealed by s. 2 of this Act.

## ACT No. XXI of 1881. \*

[7th September 1881]

An Act to amend the law providing for the relief of Thakurs in the Districts of Broach and Kaira.

WHEREAS it is expedient to amend the law providing for the relief of Thakurs in the Districts of Broach and Kaira; It is hereby enacted as follows:—

Preamble.

## CHAPTER 1.

## PRELIMINARY.

Short title. 1. This Act may be called the Broach and Kaira Incumbered Estates Act, 1881 :  
and it shall come into force on the passing thereof.

Commencement. \* This Act is not in force in the Panch Mahals.—See the Panch Mahals Laws Act, 1885 (7 of 1885), s. 2 (1).

Partial repeal of Act XIV of 1877. 2. Act No. XIV of 1877 (*to relieve from Incumbrances the estates of Thakurs in Broach and Kaira*), except the last three sections, is repealed.

But all applications, appointments and rules made, all notices published and all other things duly done under the said Act or under [a] Act No. XV of 1871 (*to relieve from Incumbrances the estates of Thakurs in Broach*) shall be deemed to have been respectively made, published and done under this Act.

[a] Act 15 of 1871 was repealed by the Broach and Kaira Incumbered Estates Act, 1877 (14 of 1877).

In section 40 of the said Act No. XIV of 1877, for the words "the said Taluqdari Settlement-officer," the words "the Taluqdari Settlement-officer mentioned in the Broach and Kaira Incumbered Estates Act, 1881, section 7," shall be substituted.

Interpretation-clause.

3. In this Act—

"thakur" means also taluqdar, jagirdar and kasbati, and such other classes of holders of estates as the Local Government may, with the previous sanction of the Governor General in Council, [a] declare to be thakurs for the purposes of the Act.

[a] The Maliks of Thara in the District of Kaira are declared Thakurs for the purposes of this Act (B. G. G. for 1883, Pt. I, p. 504).

"heir" means the person for the time being entitled as heir to a thakur :

"Commissioner" means the Revenue Commissioner of the Northern Division of the Presidency of Bombay.

## CHAPTER II.

### OF THE APPLICATION AND PRELIMINARY INQUIRY.

4. At any time within six months after the passing of this Act, any thakur, or any person who would be sole heir or one of the heirs to such thakur if he then died intestate, may apply, in writing, to the Commissioner stating that such thakur is subject to debts or liabilities, other than debts due, or liabilities incurred, to Government, or that his immoveable property is charged with debts or liabilities other than as aforesaid, and requesting that the provisions of this Act be applied to his case.

When any thakur or other person entitled to make an application under this section is a minor, or of unsound mind, or an idiot, such application may be made on his behalf by the guardian or other legal curator of his person, or by the legally constituted administrator or manager of his estate.

5. When any such application is made by or on behalf of a thakur, or the person who would be his sole heir if he then died, the Commissioner shall direct an inquiry to be made by such officer as he thinks fit into the nature and amount of such debts and liabilities and the sufficiency of the debtor's property, whether moveable or immoveable, to discharge the same.

When such an application is made in any other case, it shall be in the discretion of the Commissioner, subject to any general rules

which may from time to time be made by the Governor of Bombay in Council in this behalf, either to reject such application or to direct an inquiry to be made as aforesaid.

6. When an inquiry has been directed under section 5, the applicant shall, within a period to be fixed by the Commissioner, submit to the officer appointed to make such inquiry a statement duly verified by the said applicant, or by some other competent person, in the manner required by law for the verification of plaints, and containing, so far as may be practicable, such details as to the debts and liabilities, and as to the sufficiency of the debtor's property, whether moveable or immovable, to meet the same, as the Commissioner, or the said officer subject to his control, may require.

If any such statement contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, such person shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code.

7. The officer so appointed, after making inquiry, shall submit a report of his proceedings to the Commissioner.

On receipt of such report, the Commissioner may--

- (a) direct a further inquiry, or
- (b) dismiss the application, or
- (c) by order published in the Bombay Government Gazette, direct that the immovable property of the debtor shall be managed, and that his debts shall be liquidated, in the manner hereinafter provided, by a manager.

The Taluqdari Settlement-officer\* for the time being shall, unless the Local Government in any case otherwise directs, be such manager.

\* As to this officer, see the Broach and Kaira Incumbered Estates Act, 1877 (14 of 1877) s. 40.

### CHAPTER III.

#### OF THE ORDER OF MANAGEMENT.

8. Such order (hereinafter called "the order of management") shall extend to all immovable property of or to which the debtor is on the date of its publication possessed or entitled in his own right or which he is entitled to redeem, or which may be acquired by or devolve on him during the continuance of the management, and t



all debts and liabilities to which he is subject or which are charged on the whole or any part of his immoveable property on the said date, and to the amount of any loan which may be received by the manager from Government in the manner hereinafter provided.

Commencement of management.

The management shall be deemed to commence from the date on which the order is published.

Effect of order of management.

9. On the publication of the order of management the following consequences shall ensue :

*first*, all proceedings then pending in any Civil Court in British India in respect to the debts and liabilities mentioned in section 8 shall be stayed ; and the operation of all processes, executions and attachments then in force for or in respect of such debts and liabilities shall be suspended ;

*secondly*, so long as the management continues, no fresh proceedings, processes, executions or attachments shall be instituted in or issued by any Civil Court in British India in respect of such debts and liabilities ;

The debtor incompetent—

*thirdly*, so long as the management continues, the debtor shall be incompetent—

to contract debts;

(a) to enter into any contract involving him in pecuniary liability, or

to incumber or alienate property.

(b) to mortgage, charge, lease or alienate the property under management or any part thereof, or

to grant receipts for rent.

(c) to grant valid receipts for the rents and profits arising or accruing therefrom :

Provided that nothing contained in this clause shall be deemed to preclude the manager from letting, and the debtor from taking, the whole or any part of such property on such terms consistent with this Act as may be agreed upon between the parties ;

*fourthly*, so long as the management continues, no person other than the manager shall be competent to mortgage, charge, lease or alienate such property or any part thereof.

Manager to have powers of owner and to receive rents and profits;

10. The manager shall, during the management of the property, have all powers which the owner thereof might, as such, have legally exercised, and shall receive and recover all rents and profits due in respect of the property under management ;

and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by a Thakur, all the powers possessed by a Collector, under the law for the time being in force, for securing and recovering land-revenue due to Government :

Provided that he shall not, before the liquidation-scheme hereinafter mentioned has been sanctioned, demise the property under management, or any part thereof, for any term exceeding two years, to take effect in possession.

Manager to pay therefrom—

11. From the sums received under section 10, the manager shall pay—

costs of management and repairs.

*first*, the costs of the management, including the costs of necessary repairs ;

Government revenue, etc.

*secondly*, the Government revenue and all debts and liabilities for the time being due or incurred to Government in respect of the property under management ;

rent due to superior holder.

*thirdly*, the rent (if any) due to any superior holder in respect of the said property ;

allowance for maintenance and expenses of debtor and family.

*fourthly*, such periodical allowance as the Commissioner may from time to time fix for the maintenance and other necessary expenses of the debtor and of such members of his family as the Commissioner directs ;

cost of improvements, etc.

*fifthly*, the cost of such improvements of the said property as he thinks necessary, and as are approved by the Commissioner.

The residue shall be retained by the manager for the liquidation, in manner hereinafter provided, or the debts and liabilities mentioned in section 8, other than those so due or incurred to Government, and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from Government by the manager under this Act.

Residue how disposed of.

## CHAPTER IV.

### PROOF OF DEBTS AND SCHEME FOR LIQUIDATION.

12. On the publication of the order of management, the manager shall publish in the Bombay Government Gazette a notice in English and Gujrati calling upon all persons having claims against

Notice to claimants against debtor.

the debtor or the property under management to notify the same in writing to such manager within six months from the date of the publication.

Copies of notice to be exhibited. He shall also cause copies of such notice to be exhibited at the Mamlatdars' kacheris in the district in which the said property lies, and at such other places as he thinks fit.

Claim to contain full particulars. 13. Every such claimant shall, along with his claim, present full particulars thereof.

Documents to be given up. Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the manager along with the claim.

Entries in books. If the document be an entry in any book, the claimant shall produce the book to the manager together with a copy of the entry on which he relies. The manager shall mark the book for the purpose of identification, and, after examining and comparing the copy with the original, shall return the book to the claimant.

Power to exclude documents not produced with claim. If any document in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

14. Every such claim (other than claims of the Government) not notified to the manager within the time and in the manner required by such notice shall, except as provided in section 19, clause (d), be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged :

Claim not duly notified to be barred. Provided that when proof is made to the manager that the claimant was unable to comply with the provisions of section 12, the manager may receive such claim within the further period of six months from the expiration of the original period of six months.

Admission of claims within further period of six months. 15. The manager shall enquire into the history and merits of every claim received under sections 12 and 14, and shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities (if any) justly due to theseveral claimants.

Determination of debts and liabilities.

16. If such amount cannot be paid at once, the manager shall then proceed to rank such debts and liabilities according to the order in which they shall be paid, and to fix the interest (if any) to be paid thereon, respectively, from the date of the final decision thereon to the date of the payment and discharge thereof.

Power to rank debts and to fix interest.

17. When the total amount of the debts and liabilities including those due and incurred to Government) has been finally determined, the manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme (hereinafter called the liquidation-scheme) showing the mode in which it is proposed to pay and discharge the same, whether from the income of the property under management, or with the aid of funds raised under the powers hereinafter conferred, or partly in one of such ways and partly in the other.

Scheme for liquidation.

Every such scheme shall further provide for the continuance of the payments to be made by the manager under section 11, and for the repayment of the money (if any) which the manager proposes to borrow from Government under this Act, and may provide for the improvement of the property under management either from the said income or with the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other.

Provisions of scheme.

18. The Commissioner may—

(a) as often as he thinks fit send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or

Proceedings of Commissioner on submission of scheme.

(b) sanction any liquidation-scheme, or any revised liquidation-scheme, submitted to him, either as it stands, or subject to such modifications as he may deem expedient.

19. At any time before he has sanctioned a liquidation-scheme, under section 18, the Commissioner may, by an order published in the Bombay Government Gazette, direct that on a date fixed by such order the management shall be relinquished.

Power to relinquish management.

On the date so fixed—

- (a) the management shall terminate ;
- (b) the owner of the property under management shall be restored to the possession thereof, subject to any leases made under section 10;
- (c) any residue of the rents and profits of the said property retained under the last clause of section 11 shall be paid to him ; and

- (d) the proceedings, processes, executions and attachments stayed and suspended under section 9, and the debts and liabilities barred by section 14 shall revive.

In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section, the time during which the management has continued shall be excluded.

## CHAPTER V.

### OF THE PROCEEDINGS SUBSEQUENT TO SANCTION OF THE LIQUIDATION-SCHEME.

20. When the Commissioner sanctions the liquidation-scheme, he shall notify the fact of such sanction at such places and in such manner as the Local Government may from time to time by rule direct; and thereupon—

*1st*, all proceedings, processes, executions and attachments stayed or suspended under section 9 shall be for ever barred; and

*2nd*, every debt or liability due or owing to any person which was provable before the manager shall be extinguished, and such person shall be entitled to receive under the liquidation-scheme the amount (if any) finally awarded to him under Chapter IV of this Act in respect of such debt or liability.

**Suit in Civil Courts for partition not barred by liquidation-scheme.**—In respect of the debts and liabilities of a Thakur, this Act ousts the jurisdiction of the Civil Courts as soon as a liquidation-scheme under this section is sanctioned; but this ouster does not apply to a suit for partition among the debtor Thakurs themselves. Secs. 9, 20 and 27 show that conclusively (*Malek Jamiat Raju v. Karimkhan Mubarakkhan*, P. J. for 1896, p. 731).

21. If the property under management or any part thereof be in the possession of a mortgagee or conditional vendee, the manager, at any time after the liquidation-scheme has been sanctioned as aforesaid, may, by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue-year.

If such incumbrancer refuse or neglect to obey such order, the manager may, without resorting to a Civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation-scheme, the amount (if any) awarded to him under Chapter IV of this Act.

22. If the property under management or any part thereof be in the possession of any person claiming to hold under a lease dated within the three years immediately preceding the commencement of the management, the manager may inquire into the sufficiency of the consideration for which the lease was given ; and, if such consideration appear to him insufficient, may by order, with the consent of the Commissioner, at any time after the liquidation-scheme has been sanctioned as aforesaid, either set aside the lease or require the person so in possession to pay such consideration for the said lease as the manager thinks fit ; and, in default of such payment, the lease shall be cancelled.

23. Subject to the rules made under section 31, the manager, after the liquidation-scheme has been sanctioned as aforesaid, shall have power to demise all or any part of the property under management for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of the payment to him of any fine, or without fine, and reserving such rents, and under such conditions, as may be agreed upon.

24. At any time after the liquidation-scheme has been sanctioned as aforesaid, the manager, with the previous assent of the Commissioner, shall have power to raise any money which may be required for carrying out such scheme—

(a) by mortgaging the whole or any part of the property under management for a term not exceeding twenty years from the publication of the order of management ; or

(b) by charging the whole or any part of such property ; or

(c) by selling, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the said property as may appear expedient ; or

(d) by borrowing money from Government at such rate of interest as appears reasonable to the Local Government.

25. The manager's receipt for any moneys, rents or profits raised or received by him under this Act shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

26. When the debts and liabilities mentioned in the liquidation-scheme and the amount of any loan received from Government under clause (d) of section 24, together with the interest (if any) due

thereon, have been paid and discharged as therein provided, or in such other manner as the Commissioner thinks fit, the manager shall publish in the Bombay Government Gazette a notice fixing a date for the termination of the management.

On the date so fixed the management shall terminate, and the owner shall be restored to the possession and enjoyment of the property under management, or of such part thereof as has not been sold by the manager under the power conferred by section 24, but subject to the leases and mortgages (if any) granted and made by the manager under the powers conferred by sections 10, 23 and 24.

27. If the debtor dies after the publication of the order of management and before the management has been terminated in either of the modes hereinbefore provided,—

*1st*, the management shall continue and proceed in all respects as if such debtor were still living ;

*2ndly*, any person succeeding to the whole or any portion of the property under management shall, while such management continues, be subject in respect of such property to the disabilities imposed by clauses (b) and (c) of section 9 ; and

*3rdly*, no Civil Court in British India shall, during the continuance of the management, issue any attachment or other process against any portion of the property under management, for or in respect of any debt or liability incurred by any such person whether before or after his said succession.

Where the Thakur, whose indebtedness rendered necessary the application of this Act to his estate, dies during the management, there is nothing in the Act to bar a suit against the successor during the management in respect of his own debts, though a decree in such suit could not be executed against the family estate (*Bhikka v. Sidha*, P. J. 1880, p. 107).

28. When a Thakur has been restored under section 26 to the possession of any property, no mortgage, charge, lease or alienation of such property, or of any part thereof, made by such Thakur, shall be valid as to any time beyond his natural life [unless made or granted with the previous sanction of the Commissioner.]\*

Disability applies to successor of Thakur—The disability contained in this section applies not only to the Thakur during whose life-time the estate was taken under management under this Act, but to his successor also (*Gacrishankar v. Madharsangji*, 27 Bom. L. R. 88).

\* The words in brackets were added by Bom. Act II of 1919.

**Mortgage by Talukdar**—Where a mortgage effected by a Talukdar becomes void under this section, after the death of the Talukdar the mortgagee is not entitled to recover back the money advanced by him on the mortgage under sec. 65 of the Contract Act (*Parshottam v. Chhatrasangji*, 19 Bom. J. R. 545; s. c. 41 Bom. 546).

## CHAPTER VI.

### OF APPEAL AND REVISION.

**29.** An appeal against any decision or order under sections 14, 15, 16 and 22, or imposing a fine or imprisonment in exercise of the powers conferred by section 35, shall lie to the Commissioner, if preferred within six weeks from the date of such decision or order.

Appeal.

There shall be no appeal against the decision of the Commissioner on such appeal.

**30.** The Commissioner may, of his own motion or on the application of any person concerned, call for the proceedings in any case under this Act, and pass such order thereon consistent with the provisions of this Act as he thinks fit.

Power to call for proceedings and pass order thereon.

## CHAPTER VII.

### MISCELLANEOUS.

**31.** The Local Government may, from time to time, make rules consistent with this Act—

Power to make rules.

(a) to regulate the security to be required from Subordinate officers under this Act;

(b) to regulate the procedure in all cases under this Act;

(c) for the guidance of officers enquiring into and determining on claims under Chapter IV of this Act; and in particular as to the allowance of interest (if any) on each of the principal debts and liabilities so determined, from the date on which it was incurred down to the date of the determination, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder from Government;

(d) for investing any moneys received or raised by the manager under this Act in any Government securities of British India, and for the sale of such securities; and

(e) generally to carry out the provisions of this Act.



Such rules shall be published in the Bombay Government Gazette, and when so published shall have the force of law.

32. The Local Government may suspend or remove any manager, and may appoint any officer in the stead of any manager appointed under this Act; and thereupon the management then vested under this Act in the former manager shall become vested in the new manager.

Power to appoint new manager.

Every such new manager shall have the same powers as if he had been originally appointed.

33. Every manager appointed under this Act and every agent of such manager shall be deemed a public servant within the meaning of the Indian Penal Code.

Managers & their agents to be public servants.

34. Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

Investigation a judicial proceeding.

35. For the purposes of this Act, the manager and any officer making an inquiry under section 5 may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents by the same means and, as far as possible, in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure.

Power to summons witnesses and compel production of documents.

36. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bona fide* pursuant to this Act.

Bar of suits.

37. Nothing in this Act precludes the Courts in Broach and Kaira having jurisdiction in suits relating to the succession to any immoveable property brought under the operation of this Act from entertaining and disposing of such suits; but to all such suits the manager of such property shall be made a party.

Saving of jurisdiction of courts in Broach and Kaira in respect of certain suits.

As this section mentions succession only, it is argued that a suit for partition being not a suit relating to succession, on the principle of *unius expressio alterius exclusio*, the jurisdiction of the Civil Courts is excluded. The argument is not universally conclusive. It loses all force where one class of suits only are removed from the cognizance of the Civil Courts and no reason exists in the nature of purpose of this Act or extending the class.

This section requires the manager to be made a party. His not being so is a matter for amendment and it does not take away the jurisdiction of the Court as it is the plaintiff which determines it (*Malek Jamiat Raju v. Karimkhan Mubarakkhan*, P. J., 1896, p. 721).

38. Nothing in section 9 shall be deemed to render any of the following thakurs, namely, the hakur of Ahmod, the thakur of Sarod, the thakur of Kerwara, the thakur of Dehej, and the thakur of Janiadra, incompetent to enter into contracts involving him in pecuniary liability, nor shall anything in section 38 apply to any of the said thakurs :

Exemption of certain thakurs from certain provisions of Act.

Provided that, if any such thakur has, since the scheme for the settlement of his debts and liabilities was approved under section 11 of the said Act No XV of 1871, entered into any contract involving him in pecuniary liability exceeding the average annual income derived during the previous five years from his immoveable property after deducting therefrom the land-tax and other dues of Government, the Local Government may, by notification in the Bombay Government Gazette, declare that the exemption made by the former part of this section shall cease in his case, and thereupon such exemption shall cease accordingly.

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THE  
Ahmedabad Talukdars Act

BOMBAY ACT No. VI of 1862. 1]

[14th October 1862.]

An Act for the amelioration of the condition of taluqdars in the Ahmedabad Collectorate, and for their relief from debt.

WHEREAS the lands held in the zila of Ahmedabad in the Province of Gujarat under the title of taluqdari estates are now only held on leasehold tenure determinable at the pleasure of Government; and whereas it has been brought to the notice of Government that many of the taluqdars are in embarrassed circumstances and have borrowed money on the security of their landed estates; and whereas such of the said landed estates as are of the taluqdari tenure aforesaid could not and cannot be lawfully charged, encumbered or alienated; and whereas it is expedient to enable the said taluqdars to effect a settlement of their debts and liabilities; It is hereby enacted as follows:—

[1] As to the validity of Bombay Act 6 of 1862, so far as it purports to affect the High Court of Judicature at Bombay, see the Broach and Kaira Incumbered Estates Act, 1877 (14 of 1877), section 39.

*Operation of this Act.*—This Act did not affect taluqdari villages, the right, title, and interest of the talukdar in which had been sold before the Act came into operation, though possession of such villages had not then been obtained by the purchaser. *Quare.*—As to the right of talukdars in the Ahmedabad Zillah to alienate their taluqdari villages (*Collector of Ahmedabad v. Samaldas*, 9 Bom. 205).

*Recital, effect of.*—Such a recital as the first, *viz.*, that the lands are held at the pleasure of Government, is not conclusive and is scarcely consistent with the concluding portions of s. 7 (9 Bom. H. C. R. 215). In fact the recital is not notoriously contrary to historical truth (*Sheikh Gulam Modin v. Waghela Raisingji*, P. J., 1881, p. 101).

1. Whenever it shall appear to the Governor in Council that any taluqdar in the zila aforesaid is subject either personally or in respect of his landed estates of any description of tenure to debts or liabilities equal to or exceeding five times the average rents, profits and other annual income derived by the taluqdar from his estates aforesaid during the previous five years after deducting thereout the land tax and other dues of Government, it shall be lawful for the Governor in Council to make a declaration vesting the management of the said estates in an officer or officers who shall then be appointed by the Governor in Council in that behalf, and the said declaration shall be published in the Bombay Government Gazette.

*Comment.*—No new declaration is to be made under this section at any time after six months from the date on which Bom. Act VI of 1888 came into force (*See s. 34 of Bom. Act VI of 1888*).

*'Liabilities.'*—The 'liabilities,' which the first ten sections of this Act were intended to deal with are liabilities which, at the time of the declaration mentioned in this section, were not merely contingent, but could be made the subject of an immediate claim. The case of debt or liability to which a Talukdar has become subject during the period of management in consequence of an event which at the commencement of such period could not be foreseen with certainty, is a *casus omissus* in this Act (*Sheikh Gulam v. Waghela*, P. J., 1883, p. 68).

2. From and after the publication of said declaration as aforesaid, all suits or judicial proceedings for or in respect of debts or liabilities in the first section above mentioned, other than debts due or liabilities incurred to the Crown or Government, pending before or under appeal from any of the Civil Courts in the said Presidency, shall be, and are hereby declared to be, permanently stayed, and no further prosecution thereof shall be permitted, and all writs, processes, executions or attachments for or in respect of such debts and liabilities shall forthwith cease and be raised.

3. From and after the publication of such declaration, the said officer or officers shall have power, without resorting to any Civil Court, to remove from possession of the landed estates of the taluqdar of any description of tenure, or any part thereof, any mortgagee or other encumbrancer who may be in possession of the same, without prejudice to such mortgagee or encumbrancer bringing his claim under sections 8 and 9 before the officer or officers appointed for the management of the said estates.

4. From and after the publication of such declaration as aforesaid, the taluqdar, the subject of such declaration, shall not be liable to arrest, nor shall his personal estates of any description whatsoever be liable to seizure, attachment or sale under any process, decree, judgment or execution of the Civil Court of the Presidency of Bombay for or in respect of any debts or liabilities existing at the time of such declaration, other than debts due or liabilities incurred to the Crown or Government.

5. From and after the publication of such declaration as aforesaid, the landed estates of such taluqdar of any description of tenure and the rents, profits and income thereof shall, during the period of the management thereof by the said officer or officers, be wholly exempt from

After declaration, suits in respect of debts or liabilities in first section mentioned, other than debts to Government, to be permanently stayed.

Power to remove mortgagee or encumbrancer from possession of estate of taluqdar.

During management, estates exempt from civil process in respect of debts and liabilities aforesaid.

seizure, attachment or sale under or by virtue of any process, decree, judgment or execution of any Civil Court of the Presidency of Bombay for or in respect of the debts and liabilities aforesaid, other than debts due or liabilities incurred to the Crown or Government.

6. It shall be lawful for the Governor in Council to make rules for the purpose of carrying this Act into effect, and from time to time to alter, vary or amend such rules as necessity may arise.

Power to make and alter rules.

7. The officer or officers shall, during the continuance of his or their management of the said estates, receive the whole of the rents, profits and income thereof, and shall defray thereout land-tax and other debts due or liabilities incurred, or hereafter respectively to grow due or to be incurred, to the Crown or Government, and pay to the taluqdar such annual sum only as shall appear to the Governor in Council requisite for the decent support of the taluqdar and his family, and any balance remaining after such payment as aforesaid shall be applied in discharge of the expenses of such management as aforesaid and in liquidation or settlement of the debts and liabilities to which at the time of the publication of the said declaration the taluqdar is subject either personally or in respect of his landed estates of any description of tenure, in accordance with the rules alluded to in the last preceding section.

Managing officer to receive rents, profits and income ;

and pay for support of taluqdar and family

expenses of management; and settlement debts and liabilities, in accordance with rules.

8. The said officer or officers shall publish in the Bombay Government Gazette a notice in English and Gujarathi, calling upon all persons having claims against the said taluqdars or their said landed estates in respect of any of the debts or liabilities aforesaid, to notify the same in writing to such officer or officers

Managing officer to publish notice to claimants against taluqdar to notify claims.

within three [1] months' time from the time of such notice in the Gazette, and the said officer or officers shall, before or contemporaneously with such publications in the

Publication of copies of notice.

Gazette, cause copies of such notice to be exhibited at the mamlatdars' kachahris in the said zilla and in such place or places as to such officer or officers shall seem fit and as may be directed by the said rules.

[1] The word "calendar" was repealed by the Bombay General Clauses Act, 1886 (Bombay Act 3 of 1886), Schedule B.

9. Any debt or liability of the taluqdar other than as aforesaid, to which he is subject, either personally or in respect of the said landed estates, existing at the time of the said declaration by the

Debt or liability not notified to be barred.

4  
THE AHMEDABAD TALUKDARS ACT.

Governor in Council not duly notified to the said officer or officers within the time and in the manner in the last preceding sections specified, shall and is hereby declared to be for ever barred :

Provided always that, upon proof being given to the satisfaction of such officer or officers of the inability of the claimant to comply, claim may be admitted within further period of nine months. Upon proof of inability of claimant to comply, claim may be admitted within further period of nine months. it shall be lawful for the said officer or officers, to entertain and admit such claim within the further period of nine months from the expiration of the above-mentioned period of three months.

10. The said officer or officers shall as early as possible prepare and submit to the Governor in Council a scheme for the settlement of the taluqdar's debts and liabilities, and such scheme, when approved by the Governor in Council, shall be carried into effect.

Scheme for settlement of taluqdar's debts and liabilities. Amount of debt fixed in scheme not to be increased. The amount of any debt or liability as fixed in such approved scheme shall not be liable to increase.

Any debt or liability disallowed by such officer or officers shall, if such disallowance be approved by Government, be and it is hereby declared to be for ever barred.

Bar of debts disallowed.

*Debt or liability.*—The case of a debt or liability to which a Talukdar has become subject during such period in consequence of an event which could not be foreseen with certainty at the commencement of such period must be treated as a *casus omissus in this Act* (*Shaik Gulam v. Waghela Rajsangji*, P. J. 1883, p. 88).

11. It shall be lawful for the Governor in Council to empower the officer or officers aforesaid to raise a fund to be applied to the settlement of the debts and liabilities of the talukdar by assigning the whole or a portion of his landed estates of any description of tenure to be held and enjoyed, for a period or periods not exceeding twenty years from the publication of the declaration aforesaid, by any fit person or persons who may advance money on the security thereof, or by the sale of such outlying portion or portions of the said estates as may appear expedient; but in case of such sale the consent of the taluqdar and of his next heir, if the latter be of age, shall first be obtained.

12. Any debt or liability, except as hereinbefore excepted, which may be incurred by the taluqdar, either personally or in respect to his said landed estates or any part thereof, during the period of such management as aforesaid, shall not be enforceable in any manner whatever, either

Power to authorise raising of fund for settlement of debts and liabilities. Debt or liability incurred by taluqdar during management not enforceable against estates.

during or subsequently to such period of management, against his said landed estates or any part thereof, and it shall not be competent for the taluqdar during the said period of management to charge, encumber, sell or alienate his said landed estates or any part thereof, and such charge, encumbrance, sale or alienation shall be null and void.

*Inability of guardian to contract on behalf of infant ward so as to bind him personally.*—A guardian cannot contract in the name of a ward, so as to impose on him a personal liability. This Act is intended to deal with debts and liabilities which can possibly impose a charge upon the talukdar estate at the end of the period of management, when the estate was to be restored to the talukdar free of incumbrance, excepting the Government revenue (*Waghela v. Masludin*, 11 Bom. 551).

*"Incurred"*.—The term "incurred" in this section is used in its proper sense of "run into" and implies an act done by the Talukdar during the period of management (*Shaikh Gulam v. Waghela Raajsangji*, P. J. 1883, p. 63).

*Attachment of rent of Talukdari estate.*—The plaintiffs having obtained a decree against the late father of the minor defendant, a Talukdar, in the Ahmedabad Collectorate, both in his individual capacity and as guardian of his minor son, on a bond passed by the father while his landed estates were under the management of the Talukdari officer appointed under this Act, attached certain moneys in the hands of the Collector as administrator of the minor's estate, which had arisen from the rents of the Talukdari estate. *Held*, that the attachment was forbidden by this section. The argument that the provisions of this section only referred to the estates while they belonged to the defendants' father, and not when the defendant succeeded to them, was quite untenable, having regard to the scope and object of this Act and to the general language of the concluding portion of this section. The prohibition against "the enforcement of such a debt in any manner what ever" against the Talukdari estates included an attachment as well against the rents and produce as the corpus of the estates, and the moneys while in the hands of the Collector, and for which he was bound to account to the defendant as the produce of the rents of the estates, still retained their character as rents when they were attached (*Suba Miya v. Sha Lalchand Teja*, P. J. 1884, p. 34.)

*Maintenance grant.*—In the Thakorate of Gamph a Hindu Rajput family in the Bombay Presidency, holding an impartible estate subject to the rule of primogeniture it was customary to grant villages to junior sons of the holder of the *gaddi* for jivai or maintenance. The grant reverted to the *gadi* on failure of the grantee's male descendants, widows being excluded. One of such grantees died issueless leaving a widow who purported to adopt a son subsequently. *Held*, that the adopted son inherited the grant (*Pratap Singh Shirsingh v. Agarsinghji Raisingh*, 43 Bom. 773, P. C.).

13. It shall be lawful for every officer or officers appointed under this Act to demand and require the production of any writs, decrees, judgments, records, deeds, documents, exhibits, pleadings, books, accounts, letters, petitions, papers or

Civil Courts, to give up writs, decrees, papers etc., when required.

writings filed in any of the suits mentioned in the second section of this Act, or relating to the debts or liabilities of any taluqdar whose landed estates are brought under such management as aforesaid, in the custody or control of any Civil Court, or in the custody or control of any Judges, Judge, Assistant Judge, officer or person connected with such Court, and upon notice being given in writing by such officer or officers to such Civil Court, or to any Judges, Judge, Assistant Judge, officer or person connected therewith, such writs, decrees, judgments, records, deeds, documents, exhibits, pleadings, books, accounts, letters, petitions, papers or writings in the said notice mentioned shall be immediately given up to said officer or officers appointed under this Act, in the manner directed by the said notice, any act, usage or custom to the contrary in any wise notwithstanding.

14. It shall be lawful for every officer or officers appointed under this Act to summon witnesses and to take evidence, [1] \* \* \* \* and it shall also be lawful for the said officer or officers to compel the production of books, accounts, papers, deeds or other documents, and to inflict a fine not exceeding rupees one hundred for disobedience to any sanad or order made under this section.

[1] The words repealed by the Repealing and Amending Act, 1876 (XII of 1876), are omitted.

15. The officer or officers appointed for the management of the landed estates of any taluqdar under this Act shall have, for the purpose of the realization and recovery of the rents, profits and income of such landed estates, the same powers as a Collector possesses under the Regulations or Acts now or hereafter in force for the realization and recovery of land-revenue due to Government.

*Note.*—The talukdari Settlement Officer seized under this section some moveables in levy of rent. *Held*, that his process was “legal process” under Art. 29 of Sch. II of the Limitation Act of 1877 (*Makwana v. The Talukdari Settlement Officers*, P. J. 1892, p. 32).

16. The management of the landed estates of any taluqdar by such officer or officers as aforesaid shall not extend beyond the period of twenty years, to be calculated from the first publication of such declaration as aforesaid in the Bombay Government Gazette, and at the expiration of such management whether before or at the end of such period of twenty years, all debts and liabilities (except as hereinbefore excepted) existing at the time of such declaration, and comprised in such approved scheme as aforesaid, shall be deemed to be for all intents



and purposes whatsoever fully discharged and satisfied, and neither the taluqdar nor his heirs nor representatives, nor his heir nor their estates, whether moveable or immoveable, or any part thereof shall be subject in any manner whatsoever to such debts or liabilities (except as hereinbefore excepted) or any part thereof.

17. It shall be lawful for the Governor in Council from time to time to appoint new officers to carry this Act into effect, and all such officers shall have the same powers as the officer or officers first appointed.

18. Officers appointed under this Act shall have the same powers for enforcing the payment of fines imposed under this Act as are given to Courts [1] by section 61, Act XXV of 1861.

[1] See now s. 386 of the Code of Criminal Procedure, 1898 (Act 5 of 1898).

19. Notwithstanding anything to the contrary in this Act, it shall be lawful for the Civil Courts to entertain and dispose of suits relating to the succession to, or rights of co-parcenary in, or rights of persons claiming maintenance out of, any landed estate or estates brought under the operation of this Act :

Provided always that neither the Crown nor Government, nor any officer or officers appointed under this Act, shall be liable to any suit for or in respect of any act or acts done in good faith by such officer or officers.

20. From and after the expiration of the period of management of the estate of any taluqdar, whether such period extend to, or be less than, twenty years, the taluqdar shall be the absolute proprietor of his said landed estates as regards succession to, and possession, management and transfer of, the same, subject to such land-tax as the Governor in Council may be pleased to reserve and all usual remedies for the recovery thereof.

21. \*\*\*\* [1] In this Act, [1] \*\*\*\* unless there be something in the subject or context repugnant to such construction \*\*\*\*.

[1] The words repealed by the General Clauses Act, 1886, are omitted.

(1) the term "Civil Court" shall mean and include every Court of Civil Judicature in the Presidency of Bombay whether established by Royal Charter or not.

(2) and (3) [Rep. Bom. Act III of 1886.]

# The Khoti Settlement Act

BOMBAY ACT No. I OF 1880.

[ 6th May, 1880.

An Act to amend the law relating to the Settlement of Villages held by Khots.

WHEREAS it is expedient to make special provision for the settlement and revenue-administration of villages in the Ratnagiri District which are held by khots; It is enacted as follows :—

## PART I.

### PRELIMINARY.

Short title. 1. This Act may be cited as the Khoti Settlement Act, 1880.

Extent. It extends to all villages held by khots in the district of Ratnagiri.

The Governor in Council may from time to time, by notification in the *Bombay Government Gazette*, extend all or any of its provisions to any such village in the Kolaba District.

2. Sections 37 and 38 of the Bombay Survey and Settlement Act, 1865, are repealed so far as they apply to any village to which this Act extends, or may hereafter be extended: Provided that the said repeal shall not affect the validity of any settlement already made under the provisions of the said sections and which has been guaranteed by the Government for a fixed period under section 28 of the said Act.

Repeal of sections 37 and 38 of Bombay Act I of 1865.

Interpretation clause 3. In this Act, unless there be something repugnant in the subject or context:—

(1) "village" means a village, or a portion or share of a village, to the extent to which a khot has any right or interest in such village, or portion or share thereof:

(2) "khot" includes—

(a) a mortgagee lawfully in possession of a khotki,

(b) all co-sharers in a khotki;

(3) "khotki" means the aggregate of the rights and interests vested in a khot as such:

(4) "jama" means land-revenue payable by a khot to Government:

(5) "privileged occupant" means—

(a) a dharekari, or

(b) a quasi-dharekari, or

(c) [1] a permanent-tenant :

(6) "dharekari" means a land-holder who holds on the "dhara" tenure :

(7) "quasi-dharekari" means a land-holder of any of the denominations named in the first column of the schedule [b].

(8) "permanent tenant" [a] means a holder of khoti land who has a right of occupancy in such land :

[a] The phrase "permanent tenant" was substituted for the original phrase "an occupancy tenant" by Bom. Act V of 1913, s. 85 (4).

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

(9) "dhara land" means land held by a dharekari, or by a quasi-dharekari :

(10) "khoti land" means land in respect of which a khot has, as such, any right or interest and which is not dhara land :

[a] (11) "Recording-officer" means any officer duly empowered to make or amend entries in the settlement-register or other settlement records by or under section 108 of the Bombay Land-Revenue Code, 1879, or Part III of this Act :

[a] Clause (11) was inserted by Bom. Act III of 1904, s. 2, in the place of the former clause (11) which was repealed by Bom. Act III of 1886.

Expressions defined in the Bombay Land-Revenue Code.

(12) Any word or expression which is defined in the Bombay Land-Revenue Code, 1879, and is not hereinbefore defined, shall be deemed to have the meaning given to it by that Code.

## PART II.

### GENERAL PROVISIONS RELATING TO KHOTS AND THEIR INFERIOR HOLDERS.

#### *Khots.*

4. Khots shall continue to hold their villages conditionally on the payment of the amounts due on account of the jama of the same, according to the provisions of this Act and of the Bombay Land Revenue Code, 1879, and of any rules for the time being in force made under this Act or under the said Code, and

Continuance of Khots' villages to be subject to payment of jama.

subject to the fulfilment of any other term or liability lawfully annexed or appertaining to their tenure.

**Meanings of "Khot" and "Khoti".**—A 'Khot' means a renter of a village, a farmer of land or revenue. In some provinces he is an hereditary officer whose duty it is to collect for Government the revenue of the village, also an officer appointed for this office. The 'khoti' means the practice, business or office of a khot (Molesworth's Dictionary). In some parts, e. g., in the Satara District, the word "khoti" means contracting for a standing crop (*Ibid*).

A Khot is a farmer of land-revenue and that his office has become hereditary (*Tajubai v. Sub-Coll. ctor of Kolaba*, 3 Bom. H. C. R. A. C. J. 132). He is a superior holder with respect to all the village lands over which he exercises khoti rights. Proprietary rights are not essential to the conception of a Khotship; in the absence of an express grant of the proprietorship of the soil a khot is to be presumed not to be the proprietor of the soil (*Ibid*). That does not, however, mean that he has no interest whatever in his Khoti village, nor that he is merely an officer or agent of the Government (*Collector of Ratnagiri v. Antaji*, 12 Bom. 534).

#### *Inferior Holder.*

5. Every holder of Khoti land who has actually occupied or cultivated the same continuously from any time previous to the commencement of the revenue year 1845-46 has a right of occupancy in the land so occupied or cultivated.

What holders are to be deemed [a] permanent tenants. [a]

The occupation or cultivating of the father or other person from whom the present holder inherits, and in the case of permanent tenancies which are transferable otherwise than by inheritance, the occupation or cultivating of any former holder through whom the present holder claims, or of any mortgagee or lessee of the present or any former holder, shall be deemed to be the occupation or cultivating of the present holder within the meaning of this section ;

and, in the case of land which is periodically fallow, years of fallow shall be reckoned as years of occupation or cultivation for the purpose of this section.

**Khoti thikans—Occupancy right'—Taksim.**—The plaintiff, who was a purchaser of the 14 pies *taksim* of defendants in the *Khoti* of a village, was held entitled to eject, after due notice, those defendants from certain fields, which were *khasgi thikans* allotted to the same *taksim*. The purchaser of a *taksim* would include the *khasgi* lands allotted to that *taksim*, even though they were not expressly recited, and the mention of the *taksim* as including the lands in the village would necessarily comprise the *khasgi* lands. A *khot* can, when executing a mortgage of his share in a *khoti*, reserve a portion and not mortgage the whole. Thus he may reserve his *khasgi thikans*, and only mortgage his share in the rents received from the tenants of the *khoti nisbat* lands.

[a-a] The phrase "permanent tenants" was substituted for the original words "occupancy tenants" by Bom. Act IV of 1913, s. 85, (A).

In a *khoti* village, the land is all *khoti*, the division being *khazgi* lands, held by the *khots* themselves (heir "home-farm" as it has been called), and the *khoti nisbat* lands, *viz.*, lands held by cultivators, most of whom have occupancy and some also transferable rights. In a purely *khoti* village there cannot be such a thing as *kulargi lands* in as much as a *kulargi* village is one held by *dharekharis* in opposition to a *khoti* village and, in a purely *khoti* village there can be no *dharekharis*. If a *khoti* *khazgi* field is acquired quite apart from the *khoti*, there cannot be a *khoti* *khazgi* field. If it was acquired before the acquisition of the *khoti*, then it would apparently be *dhara*. If it was acquired by transfer from the occupancy tenant thereof after the acquisition of the *khoti*, then it would still remain *khoti nisbat* (as it must have been when held by the occupancy tenant) and it would require the assent of the whole body of the *khoti* sharers to change it from *khoti nisbat* to *khoti-khazgi*. If a *khot* owning the whole interest in a *khoti watan* brings waste lands of his village into cultivation, he can treat them as *khoti khazgi*; if they lapse to him from any occupancy tenant, he can equally treat them as *khoti khazgi*. If the *khotship* were abolished and the village treated by Government as an ordinary ryotwari village, the *khot* would hold such lands as an ordinary survey occupant. "Occupancy right" is a right established by a tenant against his superior holder to hold his land in perpetuity conditionally on the payment of the rent from time to time lawfully due by him to the superior holder. There can be no occupancy rights in *khoti khazgi* lands. Section 5 does not sanction the acquisition by *khots* of occupancy rights in their own *khazgi* lands. It applies only to inferior holders and even in their case, a doubt is expressed, whether the Settlement Officer would be empowered to decide their rights. To the question whether a *khoti* sharer has with reference to a *khoti khazgi* thikan allotted to his share an "occupancy right" against the body of *khoti* sharers, so that if he parts with his share in the *khoti*, the *khoti khazgi* lands which had been allotted to his share, at once pass from *khoti khazgi* to *khoti nisbat*, the obvious answer is that if the nature of the land is thus changed, then the purchaser by his purchase does not acquire the full interests of his vendor. The vendor had the right of doing what he liked with those lands; he could cultivate them himself one year; he could let them to a tenant the next. He paid nothing to his co-sharers in respect of those lands, except the survey assessment. But the vendee's position would be quite different; and as regards the co-sharers in the *watan* the proportion of the *khoti nisbat* and *khoti khazgi* fields would be entirely changed. (*Itaghnathrao v. Vasudev*, 1 Bom. L. R. 436; s. c. 23 Bom. 769).

6. If a permanent tenancy which is not transferable otherwise than by inheritance, has been so transferred, the actual holder of the land shall be deemed to be the tenant thereof, and if he, or his father or other person from whom he inherits, has occupied or cultivated the land continuously from any time previous to the commencement of the revenue year 1845-46, he shall have a permanent tenancy therein :

Permanent tenancy when land has been wrongfully transferred.

Provided that, if the actual holder is in possession of the land as mortgagee, or lessee merely, his occupation or cultivating shall for the purpose of this section and of section 5 be deemed to be the

occupation or cultivating of the mortgagor or lessor, and that if such mortgagor or lessor has a permanent tenancy in the land such permanent tenancy shall, notwithstanding the provisions of section 9, be subject to the mortgage lien or lease of the said mortgagee or lessee until the same is duly discharged or determined.

**Occupancy tenant.**—There is no authority for saying that an occupancy tenant, whose tenancy is not determined, forfeits his tenancy by parting temporarily with the possession of his land to another without resigning the land as completely as would be necessary, in the case of privileged occupants of another sub-class, to place the land at the disposal of the khot. And so long as his tenancy is not determined, the land is not at the disposal of the khot. And the khot cannot claim to treat the person in possession under a right derived from the occupancy tenant either as a trespasser even as a yearly tenant, so long as the privileged occupant's rights remain undetermined by resignation, lapse or duly certified forfeiture (*Pesa v. Sakharam*, 30 Bom. 290. ; s. c. 30 Bom. 290).

Continuance of privileged occupants' tenures.

7. Privileged occupants shall continue to hold their lands conditionally on the payment of the rent from time to time lawfully due by them to the khot or other person entitled to receive payment of the same.

8. Tenants other than permanent tenants shall continue to hold their lands subject to such terms and conditions as may have been, or may hereafter be, agreed upon between the khot and themselves, and in the absence of any such specific agreement shall be held to be yearly tenants liable to pay rent to the khot at the same rates as are paid by permanent tenants in the village in which the lands held by them are situate : Provided that the said rate shall not exceed the maxima prescribed in section 33, clause (c).

*Ris ts payable by other tenants in absence of agreement with the Khot.*—

Where in a khoti village the Settlement Officer has determined the share of that with regard to the occupancy tenancies, and the tenants other than the occupancy tenants do not appear to hold their lands on any terms agreed upon between the khot and themselves, such tenants are entitled, under this section, to pay rent to the khot at the same rates as are paid by occupancy tenants (*Krishnova v. Keshav*, 27 Bom. 71).

*Nota.*—*Tkai'* means the portion of produce due from an under-tenant to the landlord.

#### TRANSFER &c., OF RIGHTS

What rights are transferable.

9 The rights of khots, dharekaris and quasi-dharekaris shall be heritable and transferable.

Permanent-tenancies shall be heritable, but shall not be otherwise transferable without the consent of the khot, unless in any case the tenant proves that such right of transfer has been exercised in

respect of the land in his occupancy, independently of the consent of the khot, at some time within the period of thirty years next previous to the commencement of the revenue year 1865-66, or unless, in the case of a permanent tenancy conferred by the khot under section 11, the khot grants such right of transfer of the same :

Provided that a permanent tenant may without the consent of the khot grant a lease for a term not exceeding one year.

*Note.*—This section was substituted for the original section by Bom. Act VIII of 1912, s. 2.

*Transfer of occupancy tenancy without consent.*—Defendants Nos. 2 to 4, occupancy tenants of khoti lands, transferred, without the consent of the khot, their occupancy rights to defendant No. 1. The plaintiff khot claimed that the defendants had thereby forfeited their occupancy rights, and sued to recover possession of the khoti lands, *Held*, that the transfer having taken place before the amendment of this Act in 1912, the occupancy rights had not been forfeited owing to the transfer but that the transfer was null and void as against the khot and the defendants Nos. 2 to 4 still remained his occupancy tenants. (*Damodar v. Vasudev*, 44 Bom. 267).

*Tenant resigning occupancy rights for consideration.*—Defendant purported to resign his occupancy rights in a khoti for consideration to the plaintiff who was one of the khots. At the same time a lease for five years was executed by the defendant. Plaintiff sued defendant on the expiry of the lease and the latter impugned plaintiff's title. *Held*, that the alleged resignation was in effect a transfer and there was no valid transfer under this section as the consent of the other khots was not obtained. Both the plaintiffs being in *pario delicto* defendant was not estopped from showing the illegality of the title under s. 116 of the Evidence Act.—(*Shridhar v. Babaji*, 38 Bom. 769).

**Mortgage—Estoppel.**—In 1871, B mortgaged his property which was an occupancy tenancy in a khoti village. In a suit by the mortgagee to recover the mortgage money by sale of the property, B contended that under this section the mortgage was illegal unless the mortgagee proved that there was a right of transfer at any time within 30 years next previous to the revenue year 1865-66. *Held*, (1) that this section is not retrospective; (2) that the principle of estoppel applied to the cause and the mortgagor could not have questioned his own right to mortgage the property in dispute; (3) that according to the contract between the parties the property was liable to be brought to sale (*Jayaram v. Narayam*, 5 Bom. L. R. 652).

**Occupancy tenant's right.**—Under this section the managing khot is entitled to give consent to the transfer of a permanent tenancy (*Ibrahim v. Krishnaji*, 26 Bom. L. R. 421).

\*10. If the land held by a privileged occupant lapses for failure of heirs or is forfeited on the occupant's failing to pay the rent due in respect thereof, or if any permanent tenant resigns his land or any portion of his land or does any act

*Note.*—This section was substituted for the original section by Bom. Act VIII of 1912, s. 2.

purporting to transfer his land or any portion thereof or any interest therein without the consent of the khot (except in the cases provided for in section 9), such land shall be at the disposal of the khot as khoti land free of all encumbrances, other than liens or charges created or existing in favour of Government.

But it shall not be competent to a privileged occupant at any time to resign a portion only of his entire holding except with the consent of the khot; and no privileged occupant shall be deemed to have forfeited his land on failure to pay rent unless such forfeiture is certified by the Collector.

**Adverse possession against the privileged occupant.**—On the death of an occupancy tenant in 1898 his Khoti land was taken possession of by the defendant who was his mother's brother's son, and who held it adversely for over twelve years to a first cousin of the deceased. The latter relinquished the holding to the plaintiff Khot in 1914. The plaintiff having sued to recover possession of the land, *Hold*, (1) that the defendant's adverse possession against the heir of the occupancy tenant only operated to extinguish the heir's right to the actual possession of the land and did not operate to annihilate his occupancy tenant's right, which he could, therefore, transfer to the plaintiff Khot; and that, consequently, the defendant's adverse possession for over twelve years did not give him the occupancy right; (2) that owing to the resignation by the rightful occupancy tenant, the defendant must, in absence of any specific agreement between himself and the Khot, be held to be a yearly tenant liable to pay rent to the Khot at the rates prescribed, and that he was entitled to the notice prescribed in the case of yearly tenants under s. 84 of the Land Revenue Code, 1879 (*Vishnu v. Bala*, 23 Bom. L. R. 411; s. c. 45 Bom. 1001).

**Temporary attachment by Government.**—The temporary attachment of a village by Government does not affect the rights which the khot has independently of the right of management, such as the giving of consent to alienation of khoti Nisbat lands by tenants. There is a presumption that the khot's permission to an alienation of khoti nisbat lands is necessary in any khoti village in the Kolaba District. The onus of proving that there is a custom of unrestricted alienation of such lands is on him who asserts it (*Purshottam, v. Ganpati*, 50 Bom. 306).

**Khot's powers over lapsed lands.**—As long as a khot's power of permanent disposal rests with him and has not been alienated to a tenant with privileged occupancy rights, the land must be regarded for all purposes as undistinguishable from ordinary *Khoti Khaasi*, the right remaining with the khot at pleasure to recover the land on the determination of any yearly or short term tenancy (*Gajanan v. Nilo*, 6 Bom. L. R. 864).

**Occupancy tenants.**—An occupancy tenant by transferring his land on sale, does not resign it within the meaning of this section so as to place the land at the disposal of the khot (*Ramchandra v. Dattatraya*, 31 Bom. 261).

When an occupancy tenant transfers land to another on a sale deed he cannot, according to the ordinary usage of language, be said to have resigned the land. Though the consent of the khot is not neces-



sary to a resignation still the resignation must be made to the khot, and it is only to the khot that the resignation can be made. As to whether or not a particular transaction is a resignation to the khot must depend upon the circumstances of such case (*Budeshah v. Narayan*, 9 Bom. L. R. 829).

Where the manager of a joint Hindu family mortgages the interest of the family in property held under Khoti tenure, the Khot can, under this section, forfeit the interest of the manager alone in the property. The forfeiture does not affect the interest of the remaining co-parceners in the family property (*Krishnaji v. Gangaji*, 50 Bom. 189).

Under this section the occupancy tenant's right cannot be sold, either at a private sale or a sale in execution of a decree. To this bar there are two exceptions: first, where the right of transfer is created by custom under the conditions specified in this section; and, secondly, where the Khot has in granting lease conferred upon the lessee the right of occupancy at the time of creating the tenancy.

Hence, where after the occupancy has been created the Khot consents to the transfer of his rights by the tenant, such consent has no place whatever in this section (*MAHADEV v. MAHADJI*, 13 Bom. L. R. 1157).

**Khoti land.**—Where the permanent tenant of khoti lands transfers a portion thereof without the consent of the Khot, only the portion so transferred, and not the entire holding, is at the disposal of the khot, under this section (*Madhavrao v. Krishnaji*, 46 Bom. 470).

A simple mortgage of Khoti land by its occupant amounts to a transfer of his interest in the land, within the meaning of this section. The mortgage itself gives the khot a right to claim that the land is at his disposal; the fact that the mortgage is satisfied before the date of the suit is no answer to the claim (*Vasu v. Madhavrao*, 24 Bom. L. R. 1160).

#### *Grant of Privileged Occupant's Rights by Khots.*

11. It shall be competent to the khot at any time to confer on any tenant the right of a privileged occupant of any class, or on a privileged occupant of one class, the right of a privileged occupant of a superior class: Provided that the grant by the khot of any such right shall not affect any right of Government in respect of the land which is the subject of such grant or of the trees or other forest-produce of such land.

12. On receipt of a written application from the khot, in such form as shall be prescribed in rules to be framed under section 40, the Collector shall cause an entry to be made, in such record as may from time to time be prescribed by Government in this behalf, of any right conferred by the khot under the last preceding section, and an entry thus duly made and authenticated by the Collector's signature shall be conclusive proof of the facts therein recorded.

Nothing in this section or in section 11 shall be deemed to apply to a mortgagee lawfully in possession of a khotki unless such mortgagee shall have been expressly authorized by his mortgagor to exercise the powers conferred by the said sections.

*Recovery of Rents.*

13. [*Repealed by Bom. Act III of 1904, s. 3.*]

14. If a permanent tenant neglect to raise a crop on any land in his holding on account of the rent of which he would, if he raised a crop, be liable to pay the khot a share of the produce, the khot shall be entitled to receive from him the same amount of rent as if he had raised a crop.

Rent of land which a permanent tenant neglects to cultivate.

In the event of a dispute as to the amount of rent due under this section, such amount shall be determined by the Collector, but no such rent shall be recoverable by the khot if the tenant shall satisfy the Collector that in the year for which such rent is claimed it was proper, having regard to the custom of the village in respect of lands of the same class, or to the nature and requirements of the soil, that the land should be left fallow.

*Accounts.*

15. The khot shall—

- (a) keep, or cause to be kept, such accounts as may from time to time be required by the Collector under the orders of Government: and
  - (b) produce such accounts whenever required, to the Collector or to any officer subordinate to the Collector not lower in rank than a mahalkari; and
  - (c) give a written receipt for every payment of rent or land-revenue made to him whether by a privileged occupant or tenant, or by a co-sharer in his khotki.
- Khota to keep accounts;
- and to produce them when required;
- and to give written receipts.

For disobedience of any order duly made under this section, or for any infraction of the provisions of this section, the khot shall, on conviction before the Collector or the Assistant or Deputy Collector in charge of the taluka in which such khot's village is situate, be liable to a fine not exceeding one hundred rupees, which shall be recoverable as an arrear of jama.

Penalty.

## PART III.

## SURVEY AND SETTLEMENT.

*Settlement-records.*

16. Whenever a survey-settlement of the land-revenue of any village to which this Act extends is made or revised under the provisions of Chapter VIII of the Bombay Land-Revenue Code, 1879, the settlement-register prepared under section 108 of the said Code shall show the area and assessment of each survey-number and also whether such survey number is held by a privileged occupant or not.

Preparation of settlement register of khoti villages.

\* If a survey-number is held by one or more privileged occupants, the said register shall further specify the tenure on which such number is held, the names of the occupants thereof, and, in the case of a survey-number held by a permanent-tenant, whether his interest therein is transferable otherwise than by inheritance or not.

\* This para. was substituted for the original one by Bom. Act IV of 1913, s. 88.

Survey-numbers which are not held by privileged occupants shall be entered in the said register in the name of the khot, or, if a partition of the khotki has taken place, of the co-sharers to whose shares they respectively belong.

The said register shall also contain a list of all the co-sharers of the khotki, if the village be not held by one khot in his own sole right, and shall specify the extent of each such co-sharer's interest in the khotki.

A mortgagee of a co-sharer of a khotki is not a co-sharer within the meaning of this section, and cannot claim to have his name entered in the register, though a mortgagee of a whole khotki may claim to be so registered (*Vithal v. Sitabai*, 3 Bom. L. R. 181).

Khot does not include mortgagee of a co-sharer in the khotki.—The word "Khot" as used in this Act does not include a mortgagee of a co-sharer in the khotki. This Act does not give the Survey Officer, when preparing the settlement register, any authority to investigate and determine the title of persons who claim as mortgagees only of a share in the khotki, still less to determine whether an alleged mortgage of a share has been redeemed or is still subsisting (*Dattatraya v. Ramchandra*, 24 Bom. 533.)

Revision of order by survey officer making it or his successor.—A Survey officer has no power to revise an order made by himself or his predecessor in office in accordance with the provisions of this section or the next section. (*Bhikaji v. Sakaram*, F. J., 1897, p. 119).

[a] 17. The other records prepared under the said section shall specify—

(a) the description and amount of rent, if any, payable to the privileged occupants' khot by each privileged occupant according to the provisions of section 33; and

and, when the khotki is undivided, the co-sharers' respective rights;

(b) if the khotki is undivided,—

(i) the survey-numbers in the possession of each co-sharer and the rent payable by such co-sharer on account of the same; and

(ii) the terms and particulars of any written agreement which the co-sharers or any of them, have entered into, or may at the time of the framing of the said record enter into, determining their respective responsibility; and

(iii) the order of rotation in which the said co-sharers agree in writing, if they do so agree, to take the management of the village under the provisions of section 27; or

or when the khotki is divided, each share treated separately, (c) if a partition has been effected and the co-sharers of the khotki hold their respective shares in severalty,—

(i) the extent and limits of each separate share; and

(ii) the same particulars in respect of the several sub-sharers, if any, of each such share as are required by clause (b) to be given concerning all the co-sharers when a khotki is undivided.

[a] Sections 17 to 22, both inclusive, were substituted for the original sections 17 to 22, both inclusive, by Bom. Act III of 1904, s. 4.

*Custody and Amendment of Records : Determination of Disputes.*

Collector to keep records after survey-settlement completed.

18. (1) When the survey-settlement of any village to which this Act extends is completed, the settlement-register and other records thereof shall be kept by the Collector.

(2) So long as

Power of Recording-officer to amend records with written consent of parties;

the settlement-register and other records are in the charge of the Survey-officer, the said officer, and afterwards the Collector or any other officer whom the Governor in Council from time to time empowers in this behalf, may, in the cases specified in sub section (3), but not

otherwise save with the consent of the parties affected thereby given in writing before the Recording-officer, at any time amend, or cause to be amended, any entry in such register or records, whether by addition thereto, insertion therein, cancellation or other alteration thereof, as may be required; and unless and until so amended, every entry made shall, as long as the survey settlement for which it was made remains in force, continue to be applicable to the land referred to.

and in certain other cases.

(3) The cases referred to in sub-section (2) are the following, namely:—

(a) any clerical error, or any error which all the parties affected thereby admit to have been made in the same, may be corrected;

(b) any entry which the Recording-officer is satisfied has been caused by mistake or obtained by means of fraud, misrepresentation or personation, or by other means amounting to an offence under the Indian Penal Code, may be cancelled, and such other entry (if any) substituted therefor as the Recording-officer shall determine;

(c) any entry which is rendered inapplicable or incorrect by any change of circumstances or transfer of rights or interests relating thereto may be cancelled or corrected, as the Recording-officer may deem fit;

(d) an entry of the description and amount of the rent payable by a permanent tenant may be inserted or altered in accordance with any of the provisions of rules IV and V under clause (c) of section 33; and

(e) subject to the provisions of section 20, any entry in respect of which the parties affected thereby may have obtained *inter se* a final decree of a Court of competent jurisdiction under section 21, shall be amended in accordance therewith, on an application, accompanied by a certified copy of such decree, being duly made to the Recording-officer for that purpose.

19. (1) If it appears to the Recording-officer that there exists any dispute as to any matter which he is bound to record, or as to any amendment proposed to be made under section 18, he may, either on the application of any of the disputant parties, or of his own motion, investigate and decide such dispute, and frame or amend the settlement-register or other record accordingly.

(2) No such decision and no amendment of any entry in the settlement-register or other records shall be made until after due notice to the parties affected thereby, and without giving them an opportunity of being heard in respect thereto:

Provided that no such decision or amendment of an entry shall be deemed invalid merely for want of such notice or opportunity as aforesaid.

(3) But any person affected by any such decision or amendment, to whom such notice or opportunity as aforesaid has not been given, may apply to the Recording-officer to have such decision or amendment cancelled or altered, as the circumstances of the case may require, and, subject to the provisions of sub-section (2), the Recording-officer shall re-investigate the matter and may, if he thinks fit, cancel or alter such decision or amendment accordingly.

20. (1) Subject to such orders as may be passed on appeal under sub-section (2) and to the provisions of sub-section (3), every entry in the settlement-register or other records made by the Recording-officer under section 16, 17 or 18, and purporting to record—

Recording-officer's decision final in certain matters;

(a) the fact that the interest of any permanent tenant is or is not transferable otherwise than by inheritance, or

(b) the liability of each privileged occupant to pay rent of the description and amount entered,

shall, subject to the provisions of section 18, be conclusive and final evidence of the fact or liability so recorded.

(2) Any person aggrieved by any such entry may, within one year of the making of the entry, appeal to the Governor in Council to have the entry altered, and the entry shall be altered if the orders passed on the appeal so direct, and the entry so altered in accordance with such orders shall be conclusive and final evidence in the manner and to the extent specified in sub-section (1).

Saving of pending civil proceedings.

(3) Nothing in this section shall affect proceedings pending in any Civil Court at the time when this section comes into force.

**Entry in settlement register.**—The rule of evidence laid down in this section that the entry in the settlement register purporting to record the fact that the interest of any occupancy tenant is not transferable shall be conclusive evidence, cannot apply where according to a judgment *inter partes* the person relying on the section is not an occupancy tenant, for the fact of the tenancy of the individual is not conclusively settled by the entry (*Chinto v. Madhar*, 43 Bom. 565).

**Recording Officer's decision, finality of.**—This Act nowhere provides that the mere entry in the settlement register of the name of a particular person as the occupant of a survey number is either final and conclusive, or that it is binding upon all parties concerned unless and until it is reversed or modified by a decree of Civil Court. What is made binding by the provisions of s. 21 is the *decision* of the Recording Officer and not a mere *entry* of a person's name in the Settlement Register (*Rijaram v. Jagannath*, 24 Bom. L. R. 323).

**Notice.**—A landlord can sue in ejectment his yearly tenants who have attempted to deny his title, and in such case it is not necessary to give any notice to them prior to suit. It is a disclaimer on the part of a yearly tenant to claim to be a *miran* or permanent tenant. Where under a plea of ownership a party has succeeded in obtaining a possessory order in a suit before a Mamlatdar, it is not necessary for the evicted party to give notice to qui before suing in ejectment on his title. It may, however, be otherwise when the possessory order is sought on the plea of a disturbance of an existing easement (*Mahipat v. Lakshman*, 24 Bom. 420).

**Cause of action.**—This section and the following section do not constitute a fresh cause of action in a case where there has been a denial of title prior to the proceedings before the survey officey ( *Vithal v. Sitabai*, 3 Bom. L. R. 181 ).

Recording-officer's decision when not final to be set aside only by a decree of Court.

21. In any other matter the decision of the said Recording-officer shall not be open to appeal or revision, and shall be binding upon all the parties affected thereby until reversed or modified by a final decree of a competent Court:

tent Court:

Provided that—

(a) no person shall be permitted in any Civil Court, as a defendant or otherwise, to plead, whether directly or indirectly, that such decision or entry is erroneous or is not binding upon him, if such person is, at the date of the institution of the suit in which the question arises, debarred by the law of limitation for the time being in force from instituting a suit for, or with a view to, the reversal or modification of such decision or entry; and

(b) no fresh cause of action shall accrue in respect of

(i) a decision or entry made for the purpose of, or in the course of, a revised survey-settlement, or

(ii) an amendment of an entry made under any of the provisions of section 18,

which makes no alteration affecting the substance of the previous decision or entry relating to the same subject-matter.

**Entry in revenue records not conclusive.**—The mere entry of the name of some particular person as occupant is not a decision of the recording officer which is final. Decisions to the class of tenure and as to the complicated rights of the khots are conclusive ( *Bhiva v. Babu*, 43 Bom. 469 ).

**Entry in Bot-khat—Decision of officer.**—This section nowhere provides that the mere entry in the settlement register of the name of a particular person as the occupant of a survey number is either final and conclusive, or that it is binding upon all parties concerned unless and until it is reversed or modified by a decree of the Civil Court. What is made binding by the provisions of this section is the decision of the Recording Officer and not a mere entry of a person's name in the settlement register ( *Rajuram, v. Jagannath* 46 Bom. 966 ).

**Limitation.**—The period of limitation for a suit, contemplated by this section is six years under Art. 120, Sch. II, Limitation Act *Gopal v. Krishna*, 3 Bom. L. R. 420 ).

22. No suit shall lie against Government or against any officer of Government set aside any decision or order of a Survey-officer or other Recording-officer under this Part.

Bar of suits against Government or Government officers.

## PART IV.

## ADMINISTRATION OF SURVEY-SETTLEMENTS MADE UNDER THIS ACT.

23. The provisions of this Part shall not apply to any village to which this Act extends until such time as the Governor in Council first after the passing of this Act sanctions a survey-settlement or a revised survey-settlement of such village and declares the assessments settled thereunder fixed for a period of years, in accordance with section 102 of the Bombay Land-Revenue Code, 1879.

Until such time, the rights and responsibilities of all parties so far as regards the matters treated of in this Part shall continue to be such as they would be if this Part had not been enacted.

*Khots' Jama.*

24. The jama payable to Government by the khot shall be the aggregate of the survey-assessments of the lands of the village minus such percentage of deduction, if any, as Government may in each case direct.

Jama how to be calculated.

The amount of the said jama shall be from time to time fixed for the same period for which the survey-assessments are fixed.

*Managing Khots.*

25. The annual kabulayats hitherto executed by khots shall no longer be required from them: Provided that nothing herein contained shall be deemed to affect the liability of khots to perform any condition of their tenure, or to do any act which they are now bound to perform or to do, or their obligation to refrain from doing anything which they are now bound not to do.

26. When a village is held by two or more co-sharers jointly, the said sharers shall be jointly and severally responsible for the jama, but one of their number shall be nominated every year to receive the inferior holders' rents, to pay the Government dues, and generally to perform all acts required by this Act or by any other law or rule having the force of law, to be performed by the khot.

The sharer so nominated shall be called "the managing khot".\*

\* *Note.*—The words repealed by Bom. Act IV of 1913, s. 89, are omitted.

27. If the co-sharers have, at the time of the framing of the survey settlement records or at any subsequent period, agreed in writing as to the order of rotation, the nomination of the managing khot shall be made by the Collector in the order so agreed upon.

Managing khot how to be nominated,



In the absence of any such agreement, [a] or if the sharer whose turn it is to be nominated is for any reason unable to serve as managing khot, and fails to delegate his duties and powers under section 31-A within such time as may be prescribed by the Collector in this behalf, [a] the co-sharers shall be called upon to nominate one of their number year by year, [b] or for the year, as the case may be, [b] and in the event of their failing so to do within such time as may be prescribed by the Collector in this behalf, or if they are not unanimous as to the nomination, the Collector shall either select the managing khot for the year, or cause the village to be attached and taken under the management of himself or any agent whom he appoints for that purpose in the manner provided in section 144 of the Bombay Land-Revenue Code, 1879.

[a-a] These words were inserted by Bom. Act III of 1904, s. 5, cl. (a).

[b-b] These words were inserted by Bom. Act III of 1904, s. 5, cl. (b).

28. [a] The Collector's nomination or selection under section 27 shall be made by a written order, which shall not be open to appeal, and no suit shall lie against Government or against any officer of Government in respect of any such nomination or selection [a].

But it shall be lawful for any of the co-sharers at any time to sue for a decree *inter se* to declare which of them is entitled to the management, or the order in which they should respectively have the management, if more than one of them be entitled to the same; and from the commencement of the revenue year next after an application (accompanied by a certified copy of any such decree) is duly made to him for the purpose, the Collector shall nominate the managing khot in accordance with such decree.

[a-a] This paragraph was substituted for the original paragraph 1 by Bom Act III of 1904, s. 6.

29. [a] The namlatdar shall furnish every managing khot [b] nominated or selected under section 27 [b] with a certificate under his hand and seal to the effect that the holder thereof is the recognized managing khot for the year to which such certificate relates, and a certificate so signed and sealed shall be conclusive evidence of the right of the khot therein named to manage the village to which it relates for the year therein specified.

[a] Words repealed by Bom. Act III of 1904, s. 7, are omitted.

[b-b] These words were inserted by Bom. Act III of 1904, s. 7.

30. When a village is held by a khot in his own sole right, he shall be deemed to be the managing khot thereof for all the purposes of this Act, and it shall not be necessary to furnish him with any such certificate as is described in the last preceding section.

Managing khot when there are no co-sharers.

31. When a managing khot has been duly appointed under any of the foregoing provisions, he alone shall be entitled to assistance for the recovery of rent from privileged occupants under sections 86 and 87 of the Bombay Land-Revenue Code, 1879.

Exclusive power of managing khot.

[a] 31-A. It shall be lawful for the managing khot to delegate, subject to the approval of the Collector, the performance and exercise of all duties and powers, imposed or conferred upon him either by section 15 or by section 31, to any person duly empowered in writing by him in this behalf; and the person so appointed shall, in respect of the performance of the duties prescribed in section 15, be subject to all the liabilities to which the khot is subject under the said section.

Delegation of duties and powers by managing khot.

[a] Section 31-A was inserted by Bom. Act III of 1904, s. 8.

*Separated Sharers.*

32. When the khots have divided their khotki or a partition thereof has been effected by the Civil Court, or otherwise, and the co-sharers hold their respective shares in severalty, the Collector shall determine the amount of jama payable in respect of each separate share, and the holders of the said shares shall be held severally liable for the portions of the jama so fixed on their respective shares, and all the provisions of this Act shall apply to them respectively as if they were independent holders of entire khotkis.

Separated sharers to be severally responsible for their respective shares.

*Privileged Occupant's Rents.*

33. The rent payable to the khot by privileged occupants shall be as follows (namely):—

(a) by a dharekari : the survey-assessment of his land ;  
 (b) by a quasi-dharekari : the survey-assessment of his land and in addition thereto the amounts of grain or money respectively set forth in the schedule [a] ;

[c] (c) by any permanent-tenant : in each case according to the terms of the entry in the survey-record made in respect thereof, and for the time being applicable thereto, under the following rules :—

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

[b] Clause (c) was substituted for the original clause by Bom. Act III of 1904, s. 9.

**Liability to payment.**—The liability of occupancy tenant to pay rent to khoti, as laid down by cl. (c) of this section, i. e., a fixed proportion of gross annual produce of land and fruit trees, if any (*Vinayak v. Sitaram*, 37 Bom. 284.)

Entry to show form of payment.

*Rule I.* Every such entry shall show whether any rent is payable and, if so, whether it is payable as

(a) an amount fixed: that is to say, a certain amount, irrespective of the crop, payable in money or kind, or both; or

(b) a crop-share: that is to say, a fixed proportion of the gross annual produce of the land, and of the produce of fruit-trees (if any).

How and what entries are to be entered as determined by agreement.

*Rule II.* (1) Amounts fixed shall be entered as determined by agreement of the parties—

(a) at the time of framing the survey-record, if the Recording-officer is satisfied that they have then or at any time previous agreed that such amounts shall be the rent payable during any period subsequent to the introduction of the survey; or

(b) at any other time, on the parties appearing in person or by duly authorized agent before the Recording-officer and consenting to such entry.

No crop-share to be entered as determined by agreement.

(2) No crop-share shall at any time be entered as determined by agreement.

Meaning of the word 'parties.'

(3) In this rule the word 'parties' means, with reference to an agreement, the tenant and the person who at the time of the agreement is the managing khot:

Provided that if any sharer in a khotki whose interest, or any number of such sharers the aggregate of whose interests, exceeds three-eighths of the entire khotki, shall declare in writing delivered to the Recording-officer at the time of the nomination or appointment of a managing khot, or at any time during the tenure of his office by such managing khot, that the managing khot shall have no power to bind such sharer or sharers by an agreement with any tenant specified in such writing, no agreement entered into after the delivery of such declaration, between such managing khot and such tenant, shall be binding on such sharer or sharers, unless—

(a) such sharer or sharers shall appear before the Recording-officer and assent thereto, or

(b) written notice of an intention to execute such an agreement has been sent at the cost of such managing khot or tenant through

the Recording-officer by post in a registered cover addressed to such sharer or sharers, and such sharer or sharers shall, for a period of not less than three months after such notice has been sent as aforesaid, fail to appear before the Recording-officer and object to such agreement.

How entries other than those of amounts fixed by agreement are to be determined.

*Rule III.* If at the framing of the survey-record there appears to be no amount fixed by agreement of the parties, the Recording-officer shall,

(a) if he finds that a crop-share has theretofore been paid in accordance with the general custom of the village in respect of similar lands,

enter such crop-share ; or,

(b) if he finds in any case that the rent theretofore paid has been different in description or amount from that payable under the general custom of the village in respect of similar land therein, or that no such general custom is ascertainable,

enter the rent theretofore paid in such case, or, if such rent has not been uniform, the average of the rent paid or payable for such land during the twelve years last preceding his enquiry ; or,

(c) if he finds that a commuted-value of a crop-share has become payable under sub-rule (1) of rule V,

enter the commuted-value payable under sub-rule (3) of the same rule :

Provided that no crop-share shall in any case be entered exceeding in the case of rice land one-half and in the case of warkas land one-third.

Limits of crop-shares.

*Rule IV.* (1) If in any case—

Power to make or alter entries in case of omission of entry at settlement or on account of entry ceasing to be applicable ;

(a) no entry has been made at the introduction of a survey-settlement, or :

(b) the entry made has, by reason of a decree of a competent Court or of any change in the tenant's mode of cultivation or otherwise, ceased to be applicable, wholly or in part,

to the land in respect of which it was made,

and no amount fixed by agreement has been subsequently entered,

the Recording-officer may determine and enter, or alter the entry already made in respect of, the rent payable, as if he were acting under rule III.

(2) If any land is held wholly or partly in consideration of services to be rendered by the tenant to the khot or to the village community, or for the benefit of any class thereof, the Recording officer shall, upon proof that such services are no longer rendered, determine and enter the

or when tenant holding on special conditions of service ceases to render such service :

rent which would have been leviable, but for such total or partial exemption.

(3) If in respect of any land, other than land which is entered as held rent-free, the amount fixed, or in the case of crop-shares the commuted-value which has been, or might be, under rule V entered as payable, is less than the total sum representing the survey-assessment and local fund cess recoverable from the khot in respect thereof, together with twenty-five per centum of such assessment and local fund cess (hereinafter called "the percentage"), the Recording-officer shall, on the application of either of the parties, raise such amount fixed or commuted-value to such total sum or the equivalent thereof in kind, and shall alter the entry accordingly :

Provided that the Governor in Council may, during the period of the survey-settlement in force at the commencement of the Khoti Settlement Act Amendment Act, 1904, by general or special orders in this behalf, direct that the whole or part of the percentage shall during the remainder of such period be defrayed by Government; and so long as such defrayal continues, the rent payable by the tenant to the khot under the provisions of this sub-rule shall be reduced to the extent of the amount so defrayed, and a note shall be inserted by the Recording-officer in the altered entry accordingly.

(4) If the survey-assessment fixed on any survey-number has been reduced or struck off on account of dilution, deterioration by floods or other cause beyond the control of the permanent-tenant, the Recording-officer shall reduce the total amount fixed, or in the case of crop-shares the total commuted-value (if any), which has been entered as payable for the portion of that number in such tenant's occupation, by an amount bearing to that total amount or commuted-value the same proportion as the amount of assessment remitted or struck off bears to the total assessment for the entire area in his occupation and shall make an entry in the record specifying—

(a) the reduced amount, and  
 (b) the limit of time for which it is without further entry to hold good.

*Rule V.* (1) On an application made on or before the first day of May in any year by any tenant, whose rent is payable wholly or partly as a crop-share, the Recording officer shall fix and enter the commuted-value of the whole of such crop-share, and such commuted-value shall thenceforth,

When entry of commuted-value of crop-share may be made, and effect of such entry.

subject to the provisions of sub-rule (3), be payable, with effect from the commencement of the next ensuing revenue-year, by the tenant in lieu of the whole crop-share hitherto payable by him.

(2) In this rule 'commuted-value' means the average money-value of the produce payable, and the Recording-officer shall, in the absence of any satisfactory evidence to the contrary, take, as a standard for estimating such money-value, a half crop-share as equivalent to three multiples of the survey-assessment fixed on the land, a third crop-share as equivalent to two multiples of such assessment, and any other crop-share as equivalent to a proportional multiple of such assessment:

provided that the commuted-value of the produce payable on any warkas land entered in the records existing on the day when this rule comes into operation, as land actually used for the purpose of rab manure in connection with rice cultivation, shall not exceed an amount equal to the survey-assessment on such land.

(3) Where a commuted-value has become payable under sub-rule (1), the Recording-officer shall at a revised survey-settlement revise the commuted-value in accordance with the provisions of sub-rule (2) with reference to the revised survey-assessment fixed on the land, but shall not alter the description of the rent so payable.

*Thal to be determined by Survey officer and not by Civil Court*—Under this section it is the duty of the Survey officer to determine the thal or customary rent payable to a khot by an occupancy-tenant. Until a new determination has been made by the Survey officer under this section of the rent payable to the khot, a Civil Court must award rent to the old rate legally fixed (*Bapujirao v. Ganu*, 24 Bom. 489).

*Appeal*.—Under this section an appeal lies from a decision, and the decision can be revised under s. 211 of the Land Revenue Code by the authorities therein mentioned (*Gopal v. Dasrathshet*, 21 Bom. 244).

34. The rents due by privileged occupants shall be payable on such dates, in such instalments and subject to such rules not inconsistent with the provisions of this Act as may from time to time be prescribed in this behalf by the Governor in Council.

*Cesses, etc.*

35. It shall not be lawful for any khot to levy *phaski*, *veth*, *nangarveth*, *wartala*, or any other cess, rate, tax or service of any description or denomination whatsoever, from any privileged occupant other than the rent lawfully leviable under the provisions of this Act.

*Local Fund Cess.*

36. Local fund cess at such rate as shall from time to time be fixed by Government under section 6 of the Bombay Local Funds Act, 1869, shall be leviable by Government from the khot on every rupee of his jama.

The khot shall be entitled to assistance under sections 86 and 87 of the Bombay Land-Revenue Code, 1879, for recovery of the said cess at the said rate from dshrekaris and quasi-dshrekaris on every rupee of the survey-assessment of.....  
 .....\* their respective holdings.

Note.—The words “the lands in” repealed by Bom. Act IV of 1913, s. 91, are omitted.

Inferior holders of khoti lands shall not be liable to local fund cess, anything contained in section 8 of the Bombay Local Funds Act, 1869, to the contrary notwithstanding.

## PART V.

## MISCELLANEOUS.

37. Existing survey-settlements of the land-revenue of any village to which this Act extends, made, approved and confirmed under the authority of the Governor in Council, shall be deemed to have been lawfully made, and, except as is hereinafter otherwise provided, shall continue in force for the terms for which they have been respectively guaranteed, subject to all the provisions of law which would be applicable thereto if this Act had not been passed, and anything in this Act which is inconsistent with any of the said provisions shall be deemed not to apply to such settlements.

38. Upon the expiry of the period of any such guarantee, or, if it shall appear to the Governor in Council that a majority of the land-holders affected by any such guarantee so desire, at any time previous to the expiry of the said period (such time being fixed by the Governor in Council), a new survey-settlement shall be introduced into the village in which such guarantee was in force, and the provisions of this Act shall thenceforward apply to the said settlement, anything in any other law to the contrary notwithstanding.

[a] 39. Nothing in sections 68, 72, 73, 74, the second paragraph of section 104, sections 112, 117A, 117B, clause (b) of sections 150, or section 153 of the Bombay Land Revenue Code, 1879, shall be deemed to apply to any village to which this Act extends. [a]

Bombay Land Revenue Code, 1879, how far inapplicable to khoti villages.

*Notes.*—The 1st paragraph of this section was substituted for the original section by Bom. Act IV of 1913, s. 92 (a).

The provisions of the said Code when applied to any such village shall be subject to the following modifications (namely):—

(a) Repealed by B.m. Act IV of 1913, section 92 (b).

(b) sections 118, 119 and 123 shall be read and understood as if the word “khots” were substituted for the words “patels and other village-officers”, and the words “village-officers” and the words “village-officers and servants”, wherever they occur;

(c) the khot shall for the purposes of section 136 be deemed to be the person primarily responsible to Government for the jama of his village;

(d) the word “alienated” in clause (f) of section 150 shall be deemed to be omitted; and,

(e) if such village is under attachment at the date of this Act coming into force, applications may be made under section 162 for the restoration thereof at any time within twelve years from the first day of August next after such date.

40. The Governor in Council may, by notification in the *Bombay Government Gazette*, from time to time, frame, and from time to time vary or rescind, Rules to be made by Governor in Council, rules not inconsistent with the provisions of this Act --

(a) for the inspection and appraisal of crops when the rent payable to a khot consists of a share of the produce of a privileged occupant's land;

(b) for determining what land is dhara land;

(c) for allotting to each privileged occupant, when the exact limits of his warkas holding are not ascertainable, such portion of the entire warkas land of the village or such rights or privileges in respect of any warkas land, or both a portion of the entire warkas land and such rights or privileges in respect of any other such land as may be fair and reasonable;

(d) determining to what extent, if any, any rule, or order made under section 214 of the Bombay Land-Revenue Code, 1879, shall be applicable to villages to which this Act extends;

(e) for the furtherance of the objects of this Act in matters not expressly provided for therein;

(f) generally for the guidance of all persons in matters connected with the enforcement of this Act.

41. And whereas it is necessary in the general interests of the people to enable Government to promote the extension of forests in villages held by khots; it is hereby enacted that Government may at any time constitute any uncultivated land in any village to which this Act extends, or may constitute uncultivated land a reserved forest.



hereafter be extended, a reserved forest [a] in accordance with the procedure enacted in Chapter II of the Indian Forest Act, 1878 [a]. But nothing in this section contained shall derogate from any rights conferred by any sanad or other grant made by any lawful authority.

*Explanation.*—For the purposes of this section “uncultivated land” means land which has not been tilled for a period of twenty years next before the 1st June, 1879, or the date of the order constituting such reserved forest.

[a-] These words were inserted by Bom. Act III of 1904, s. 11, with retrospective effect from the date of the commencement of this Act.

Reserved forest constituted under last preceding section to be subject to provisions of Indian Forest Act

42. Every reserved forest constituted under the last preceding section shall be subject to all the provisions of the Indian Forest Act, 1878, and of any other law relating to forests for the time being in force: provided—

(1) that, upon the condition of duly performing such service connected with such forest as shall from time to time be prescribed by Government, the khot shall be entitled to a share of one-third of the net profits derived by Government from such forest after deducting the cost of management;

(2) that, in the event of the service prescribed by Government as aforesaid not being duly performed by the khot, the provisions of section 80 of the Indian Forest Act, 1878, shall be applicable.

#### SCHEDULE.

( See section 3, clause 7, and section 33.)

Denomination of quasi-dharekaris.	Excess amount of rent payable for every Rupee and proportionately for every fraction of a Rupee of the Survey-Assessment in respect of		
	Rice lands	Warkas lands.	Bagayat or Rahi lands.
Daspatkari ...	2 annas ...	2 annas ...	2 annas.
Dupatkari ...	½ maund of rice in the husk.	5 ½ pails of grain (half <i>nachani</i> and half <i>vari</i> ).	8 annas.
Didpatkari or Didiwala	3 pails of rice in the husk.	3 pails of grain (half <i>nachani</i> and half <i>vari</i> ).	3 annas.
Faune dupatkari	6 pails of rice in the husk.	4 pails of grain (half <i>nachani</i> and half <i>vari</i> ).	6 annas.