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ANNOTATED EDITION
OF THE
LAND REVENUE CODE

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CONTAINING
BOMBAY ACT V OF 1879
AND THE
RULES PASSED THEREUNDER
WITH
Government Orders and High Court Decisions.

REVISED AND ENLARGED.

BY
H. V. SATHE,
*Personal Assistant to the Survey Commissioner and Director of Land
Records and Agriculture, Bombay.*

SECOND EDITION.

June 1894.

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PREFACE TO THE FIRST EDITION.

Some seven years ago, a compilation containing the Bombay Land Revenue Code and the Rules thereunder, with the orders of Government interpreting the same passed up to that date was published by me and my then Colleague Mr. Dhondo Gopal Mjumdar of Sangli. To our great satisfaction the compilation found such favor with the public that the number of copies printed was soon exhausted. With a view to avoid such a contingency and, at the same time, to add to the usefulness of the book, I took upon myself to compile all the important rulings and orders of Government passed since the passing of the Code, by inserting them in their proper places and printing the whole in the form of a handy compilation. Permission of Government to publish these orders and rulings was necessary, and I obtained the same through the kindness of W. M. Eletcher, Esquire, late Acting Survey and Settlement Commissioner.

I have accordingly compiled all the important orders of Government passed up to date, and have arranged them in chronological order, under the several Sections to which they refer in the body of the compilation; those that were passed before the passing of the Code being given as footnotes. Thus I have spared no pains to make the compilation as complete as possible; and I trust that it will, in its present form, meet the requirements of the general public—especially that class which is mostly concerned with land holding, collection of revenue, and general revenue administration of the Presidency.

I must acknowledge with thanks the assistance rendered to me in re-arranging the compilation by Mr. R. S. Barve, Head Clerk to the Collector of Thana, Mr. Sabaji Raghunath Tirodkar, clerk in the Commissioner C. D's office, and Mr. D. K. Nagarkar in the Survey Commissioner's office. My thanks are also due to Messrs. K. L. Gadre and B. W. Gokhale, clerks in the offices of the Superintendents of Survey who have helped me in a great measure to correct the proof-sheets and re-arrange the compilation. To Mr. G. B. Keskar I am indebted for acting as my amanuensis.

My thanks are due to Mr. Dhondo Gopal of Sangli for having expressed his concurrence to my compiling the book independently of him. Although Mr. Dhondo Gopal was unable to take part in this compilation owing to his absence in Sangli, his Marathi version of it has been of great assistance to me.

In conclusion I sincerely trust that the present compilation will meet with the same approval of the public as the former one did. Should any errors come to light, I will feel thankful to be made aware of them.

Poona, }
31st December 1892. }

H. V. SATHE.

PREFACE TO THE SECOND EDITION.

The rapid sale of the first Edition has clearly established the usefulness and popularity with which this compilation has been received by Government and the public. As regards its usefulness it may be mentioned that it has been recognized by Government as one of the text-books for the Departmental Examinations of Junior Civilians in Survey matters. In presenting this Edition I beg to state that I have used my best endeavours to make it as complete as possible by adding all the recent Resolutions and Decisions, and for facility of reference have appended a copious Alphabetical Index, which will, I trust, add considerably to its value. The several orders and decisions given under different Sections have been duly classified, while those coming under the same head, or referring to one and the same subject have, for convenience' sake, been given in their chronological order, with a brief note at the commencement printed in bold type, bearing on the subject-matter. I hope that the present Edition will meet with the approval of the officers connected with the revenue administration of the Presidency, as well as the general public. My best thanks are due to Mr. K. L. Gadre, Head Clerk to the Superintendent Deccan Revenue Survey, for re-arranging the work for the press and to Mr. G. N. Abhyankar, Pleader, for assisting Mr. Gadre in preparing the Index.

POONA, }
30th June 1894. }

H. V. SATHE.

TABLE OF CASES

	Page.
Baba vs. Vishwanath Joshi, s. 83 f.	95
Bai Ujam and others vs. Valij Rasulbhai, s. 121 f.	148
Bhikaji Ramchandra Oak vs. Nizam Ali Khan, s. 162 f.	180
Bhütia Dhondu vs. Ambo, s. 74 f.	87
Ganesh Hathi vs. Metha Wyankatram Harijivan, s. 87 n.	116
Gangabai, wife of Sadashiv vs. Kalp Dari Makrya, s. 84 f.	99
Ganpatram Trimbak Patwardhan vs. Ganesh Babaji Bhat, s. 83 f.	96
Kalidas Laldas vs. Bhaiji Naran, s. 83 f. ....	..
Lalu Gopal vs. Bai Motan Bibi, s. 83 f.	97
Mancharam vs. Pranshankar, s. 113 n.	140
Narayan Bhirav vs. Kashi, s. 84 f.	99
Pandurang Sakharan and others vs. Yadneshwar Shitaran Chit- 84 f. ....	..
Queen vs. Shivram, s. 111 n.	331
Queen Empress vs. Irapa, s. 125 n.	155
Radhakisan Hakumji vs. Balvant Ramji, s. 156 n.	177
Ramabai Sahab Patwardhan vs. Babaji, s. 83 f.	96
Ram Tukoji vs. Gopal Dhondi, s. 83 f. ....	..
Secretary of State for India vs. Natu, s. 83 f. ....	..
Shapurji Jivanji vs. The Collector of Bombay, s. 45 f.	44
Venkatesh Ramkrishna vs. Mhal Pai Bin Naru Pai, s. 187 n.	191
Vishnu Chintaman vs. Balaji Bin Raghujji, s. 83 f.	96
Vishwanath Bhikaji vs. Dhondappa, s. 83 f. ....	..

*General Index of contents contained in the Bombay Land
Revenue Code, and the Rules issued thereunder
by Government.*

LAND REVENUE CODE.

CHAPTER I.—PRELIMINARY.

	Sec.	Cl.
Short Title	1	...
Local extent	<i>ib.</i>	...
Commencement	<i>ib.</i>	...
Enactments repealed	2	...
Interpretation Clause	3	...
" " " Revenue Officer " "	<i>ib.</i>	1
" " " Survey Officer " "	<i>ib.</i>	2
" " " Collector " "	<i>ib.</i>	3
" " " Land " " "	<i>ib.</i>	4
" " " Estate " " "	<i>ib.</i>	5
" " " Survey Number " "	<i>ib.</i>	6
" " " Recognized Share of a Survey Number " "	<i>ib.</i>	7
" " " Building-site " " "	<i>ib.</i>	8
" " " Boundary mark " "	<i>ib.</i>	9
" " " To hold Land " "	<i>ib.</i>	10
" " " Holder " " Landholder " "	<i>ib.</i>	11
" " " Holding " " "	<i>ib.</i>	12
" " " Superior holder " "	<i>ib.</i>	13
" " " Inferior holder " "	<i>ib.</i>	14
" " " Tenant " " Landlord " "	<i>ib.</i>	15
" " " Occupant " " "	<i>ib.</i>	16
" " " Registered Occupant " "	<i>ib.</i>	17
" " " Occupancy " " "	<i>ib.</i>	18
" " " Alienated " " "	<i>ib.</i>	19
" " " Village, Town, or City " "	<i>ib.</i>	20
" " " Revenue Year " " Year " "	<i>ib.</i>	21
" " " Section " " "	<i>ib.</i>	22
" " " This Chapter " "	<i>ib.</i>	23

CHAPTER II.—CONSTITUTION AND POWERS OF REVENUE OFFICERS.

Chief controlling authority in revenue matters	4	...
Extent of territories under the Commissioners	<i>ib.</i>	...
Division	<i>ib.</i>	...
Present divisions	<i>ib.</i>	...
Appointments and duties of Commissioners, ..	5	...

II

Assistants to Commissioners	...	...	...	6	...
Division to be divided into districts	...	...	...	7	...
District : taluka	...	...	...	<i>ib.</i>	...
Present zillas and talukas	...	...	...	<i>ib.</i>	...
Collector of district	...	...	...	8	...
Assistant and Deputy Collectors	...	...	...	9	...
To be subordinate to Collector	...	...	...	<i>ib.</i>	...
Their duties and powers	...	...	...	10	...
Collector of District in case of temporary vacancy	...	...	...	11	...
The Mamlatdar, his appointment...	...	...	...	12	...
His duties and powers	...	...	...	<i>ib.</i>	...
The Mahalkari, His duties and powers	...	...	...	13	...
Mamlatdar or Mahalkari may depute subordinates to perform certain of his duties	...	...	...	14	...
Mahal	...	...	...	<i>ib.</i>	...
Mamlatdar or Mahalkari in case of temporary vacancy	...	...	...	15	...
Stipendiary Patel and Village Accountant where to be appointed	...	...	...	16	...
Saving rights of holders of alienated villages	...	...	...	<i>ib.</i>	...
Village Accountant to keep records prescribed by Collector	...	...	...	17	...
And to prepare public writings	...	...	...	<i>ib.</i>	...
Survey Officers	...	...	...	18	...
Their duties and powers...	...	...	...	<i>ib.</i>	...
Combination of offices	...	...	...	19	...
Appointments to be notified	...	...	...	20	...
Acting appointments	...	...	...	<i>ib.</i>	...
Establishment	...	...	...	21	...
Seals	...	...	...	22	...

CHAPTER III.—OF THE SECURITY TO BE FURNISHED BY CERTAIN REVENUE OFFICERS AND THE LIABILITY OF PRINCIPALS AND SURETIES.

Government to direct what officers shall furnish security and to what amount	...	...	...	23	...
Fresh or additional security	...	...	...	24	...
Demands for money, papers, &c., to be made known in writing to the person concerned...	...	...	...	25	...
Who may be arrested and confined in jail if he fail to produce them	...	...	...	<i>ib.</i>	...
Limit to confinement more than a month	...	...	...	<i>ib.</i>	...
Public moneys may also be recovered as arrears of revenue	...	...	...	26	...
And search-warrant issued for recovery of papers or property	...	...	...	<i>ib.</i>	...
Persons in possession of public moneys, &c., bound to give them up	...	...	...	<i>ib.</i>	...
Surety liable in the same manner as principal	...	...	...	27	...
Extent of liability	...	...	...	<i>ib.</i>	...
Sureties not liable to imprisonment, if penalty paid...	...	...	...	<i>ib.</i>	...

Officer or surety in jail may, by furnishing security, obtain release	...	...	...	28	...
Liability of surety not affected by death of principal or his taking different appointment	...	...	...	29	...
Liability of heirs of deceased officer	...	...	...	<i>ib.</i>	...
How surety may withdraw from further liability	...	...	...	30	...

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

Revenue officers without permission	...	...	...	31	...
Not to trade	...	...	...	<i>ib.</i>	1
Not to purchase at public sale	...	...	...	<i>ib.</i>	2
Not to be concerned in revenue	...	...	...	<i>ib.</i>	3
Not to make private use of public money or property	...	...	...	<i>ib.</i>	4
Not to make or receive undue exactions or presents	...	...	...	<i>ib.</i>	5
Powers of fining, reducing, suspending and dismissing in whom to vest	...	...	...	32	...
Officer to be fined, &c., only by order of Government.	...	...	...	<i>ib.</i>	...
Orders to be made in writing	...	...	...	33	...
Fine not to exceed two months' pay	...	...	...	34	...
How recovered	...	...	...	<i>ib.</i>	...
Appeals	...	...	...	35	...
Liability to criminal prosecution not affected	...	...	...	36	...
Officer may be suspended during trial, and subsequently suspended, reduced, or dismissed	...	...	...	<i>ib.</i>	...

CHAPTER V.—OF LAND AND LAND REVENUE.

Land.

Public roads, &c., and lands not property of others belong to Government	...	...	...	37	...
Lands may be assigned for special purposes, and, When assigned not be otherwise appropriated without sanction	...	...	...	38	...
When assigned not be otherwise appropriated without sanction	...	...	...	<i>ib.</i>	...
Regulation of use of pasturage	...	...	...	39	...

Trees.

Concession of Government rights to trees in case of settlements completed prior to Act	...	...	...	40	...
Concession in case of settlements completed after passing of Act	...	...	...	<i>ib.</i>	...
Ditto in case of land taken up after completion of settlement	...	...	...	<i>ib.</i>	...
Government trees and forests	...	...	...	41	...
Road-side trees	...	...	...	42	...
Recovery of value of trees, &c., unauthorizedly appropriated	...	...	...	43	...

IV

Regulation of supply of firewood and timber for domestic or other purposes	44	...
--	-----	-----	-----	----	-----

Land-Revenue.

All land liable to pay revenue unless specially exempted	...	...	...	45	...
Saving of right to levy revenue	...	...	...	<i>ib.</i>	...
Liability of alluvial lands to land revenue.	...	...	...	46	...
Right to remission in cases of diluvion	...	...	...	47	...
" Holding " defined	...	...	...	<i>ib.</i>	...
Land chargeable with land revenue	...	...	...	48	...
Assessment variable if purpose for which land is held is changed	...	...	...	<i>ib.</i>	...
Land held rent free for one purpose assessable if used for another	...	...	...	<i>ib.</i>	...
Appropriation of land to certain purposes may be prohibited	...	...	...	<i>ib.</i>	...
Land indirectly taxed to State or	...	...	...	49	...
Land liable to occasional assessment	...	...	...	<i>ib.</i>	...
Liable to commuted assessment	...	...	...	<i>ib.</i>	...
Superior holder may recover commuted assessment from inferior holder	...	...	...	50	...
Excess of assessment may be laid on land inadequately assessed held with it.	...	...	...	51	...
Assessment by whom to be fixed	...	...	...	52	...
Proviso	...	...	...	<i>ib.</i>	...
Register of alienated lands	...	...	...	53	...
Settlement of assessment with whom to be made	...	...	...	54	...
When to be made with under-holder	...	...	...	<i>ib.</i>	...
Rates for use of water	...	...	...	55	...
Land-revenue a paramount charge on land	...	...	...	56	...
Forfeited holdings may be taken possession of and otherwise disposed of	...	...	...	57	...
Receipts to be granted by Revenue Officers	...	...	...	58	...
And by superior holders	...	...	...	<i>ib.</i>	...
Penalty for failure to grant receipts	...	...	...	59	...

CHAPTER VI.—OF THE OCCUPATION OF UNALIENATED LAND AND THE RIGHTS OF OCCUPANTS.

Occupation.

Permission required previous to taking up unoccupied land	...	...	...	60	...
Penalties for unauthorized occupation of land	...	...	...	61	...
Occupancy right to be paid for and liable to conditions	...	...	...	62	...
Price to include price of trees	...	...	...	<i>ib.</i>	...
Occupancy of alluvial land which vests in Government	...	...	...	63	...
Temporary right to alluvial lands of small extent	...	...	...	64	...
" Holding " defined	...	...	...	<i>ib.</i>	...

Occupants's rights.

Uses to which occupant of land for purposes of agriculture may put his land	...	...	65	...
Procedure if occupant wishes to apply land to other purpose	...	...	<i>ib.</i>	...
Power to require fine	...	...	<i>ib.</i>	...
Penalty for so appropriating land without permission...	...	...	66	...
Co-occupant or tenant responsible to registered occupant in damages	...	...	<i>ib.</i>	...
Permission may be granted on terms	...	...	67	...
Occupant's rights conditional	...	...	68	...
Reservation of right of Government to mines	...	...	69	...
Proviso	...	...	<i>ib.</i>	...
Decree or order of competent courts to be given effect to	...	...	70	...
Name of heir to be registered when registered occupant dies...	...	...	71	...
When entry to be amended	...	...	<i>ib.</i>	...
Intestate occupancy or holdings to be sold.	...	...	72	...
Right of occupancy to be transferable and heritable	...	...	73	...

Relinquishment of occupancy.

Occupant may relinquish his occupancy	...	...	74	...
Relinquishment of lands paying a lump assessment	...	...	75	...
Application of Sections 74, 75	...	...	76	...
Relinquishment of land described in para. 1 of Section 49	...	...	<i>ib.</i>	(a)
Relinquishment of land described in Section 51	...	...	<i>ib.</i>	(b)
Right of way to relinquished land	...	...	77	...
Sections 75 and 76 not to affect	...	...	78	...
Responsibility of share in certain village	...	...	<i>ib.</i>	(a)
Validity of lease from Government	...	...	<i>ib.</i>	(b)
Occupant to continue liable for demands until occupancy relinquished	...	...	79	...

Remedies against Forfeiture of Occupancies.

Right of person other than occupant to pay land revenue to prevent forfeiture	...	...	80	...
Collector may assist such persons in recovering the revenue from other parties liable therefor	...	...	<i>ib.</i>	...
Proviso	...	...	<i>ib.</i>	...
When Collector may make co-occupant the registered occupant instead of selling occupancy to realize land-revenue	...	...	81	...

Suspension of certain provisions of this Chapter.

Power to suspend operation of Sections 60 or 74	82	...
---	-----	-----	----	-----

CHAPTER VII.—OF SUPERIOR AND INFERIOR HOLDERS.

Tenant's Rights.

Amount of rent payable by tenant	...	83	...
Duration of tenancy	...	<i>ib.</i>	...
Presumption as to tenure	...	<i>ib.</i>	...
Saving clause	...	<i>ib.</i>	...
Terminations of annual tenancy	... ..	84	...
Notice of termination of tenancy to be given by landlord to tenant, or <i>vice versa</i>	... ..	<i>ib.</i>	...
Superior holder's dues by whom to be collected	... ..	85	...

Recovery of Superior Holders' dues.

Superior holders entitled to assistance in recovery of dues from inferior holders, &c.	... ..	86	...
Application for assistance when to be made	...	<i>ib.</i>	...
Collector how to proceed on such application	...	87	...
Assistance may be refused or granted in part	...	<i>ib.</i>	...
Civil suit not barred	... ..	<i>ib.</i>	...

Grant of Special Powers to Holders of Alienated Lands.

Governor in Council may, by commission, confer on holders of alienated lands power	... ..	88	...
To demand security for land-revenue	...	<i>ib.</i>	(a)
To attach defaulter's property	...	<i>ib.</i>	(b)
To fix time at, and instalments, in which revenue due shall be made	... ..	<i>ib.</i>	(c)
To exercise Collector's powers	...	<i>ib.</i>	(d)
To receive notices of relinquishment	...	<i>ib.</i>	(e)
To arrange for repair of boundary marks	...	<i>ib.</i>	(f)
Proviso	... ..	<i>ib.</i>	...
Form of such commission	... ..	89	...
Reference to be made by holder of commission to Collector	...	90	...
When compulsory process shall cease	...	91	...
Penalty for continuing compulsory process	...	<i>ib.</i>	...
Arrears to which power under commission to extend	...	92	...
Holder of commission not to enforce unusual or excessive demand	... ..	93	...
Penalty for so doing	... ..	<i>ib.</i>	...
Holder of commission may establish right to enhanced rent in Civil Court	... ..	94	...

CHAPTER VIII.—OF SURVEY SETTLEMENTS AND THE PARTITION OF ESTATES.

Power to introduce revenue Survey into any part of Presidency	95	...
Control of Revenue Survey	... ..	<i>ib.</i> ...

Survey Officer may require, by general notice, or by summons, suitable service from holders of land, &c.	96	..
Assistance to be given by holders and others in measurement or classification of lands	97	..
Survey numbers not to be of less extent than minimum fixed	98	..
Exception	<i>ib.</i>	..
Provisions applicable to recognized shares of survey numbers ..	99	..
Officer in charge of Survey to fix assessments	100	..
Regard to be had to proviso to Section 52	<i>ib.</i>	..
Proviso	<i>ib.</i>	..
Assessment may be on land, or on means of irrigation, &c. ...	101	..
Assessments so made not leviable without sanction of Government	102	..
But may be fixed with or without modification for a term of years	<i>ib.</i>	..
Introduction of Survey Settlement how to be made	103	..
Excess assessment not to be levied in year in which a Survey Settlement is introduced	104	..
Nor in the following year if number resigned that year ...	<i>ib.</i>	..
Fixing of assessment under Section 102 limited to ordinary land-revenue	105	..
Government may direct fresh survey and revision of assessment	106	..
Conditions applicable to revisions of assessment	107	..
Preparation of statistical and fiscal records	108	..
Officers to correct clerical and admitted errors in Settlement Register, and	109	..
Inquire into and pass orders on applications for mutation of names	<i>ib.</i>	..
Collector to keep survey records and frame village records in accordance therewith	110	..
And to register changes, &c.	<i>ib.</i>	..
Revenue management of villages or estates not belonging to Government that may be temporarily under Government management	111	..
Maintenance of existing settlements of land-revenue	112	..
<i>Partition.</i>		
Partition of an estate paying revenue to Government... ..	113	..
Partition of certain estates by Collector on application by co-sharers	114	..
Sub-division of numbers at time of revision of survey	115	..
Separate demarcation of land appropriated under Section 65 or 67	116	..
Bombay Act V of 1862 not affected	117	..

CHAPTER IX.—THE SETTLEMENT OF BOUNDARIES AND THE
CONSTRUCTION AND MAINTENANCE OF BOUNDARY-MARKS.

Determination of village boundaries	...	...	118	...
Village boundaries may be settled by agreement	...	<i>ib.</i>	1	...
Procedure in case of disagreement or dispute	...	<i>ib.</i>	2	...
Determination of field boundaries	...	...	119	...
Settlement of boundary disputes by arbitration	...	...	120	...
When award may be remitted for reconsideration	...	<i>ib.</i>	...	...
If arbitration fail, Survey Officer to settle dispute	...	<i>ib.</i>	...	...
Effect of settlement boundary	...	...	121	...

Boundary Marks.

Construction and repair of boundary-marks of villages and survey numbers	...	...	122	...
Requisition on landholders to erect or repair boundary marks	...	...	<i>ib.</i>	...
General notification to be sufficient notice of requisition	...	...	<i>ib.</i>	...
Description of boundary marks	...	...	<i>ib.</i>	...
Responsibility for maintenance of boundary marks	...	...	123	...
Collector to have charge of boundary marks after introduction of Survey Settlement	...	...	124	...
Penalty for injuring boundary marks	...	...	125	...

CHAPTER X.—OF LANDS WITHIN THE SITES OF VILLAGES,
TOWNS AND CITIES.

Fixing of Sites.

Limits of sites of villages, towns and cities how fixed	126	...
---	-----	-----	-----	-----

Exemption from Land Revenue.

Act XI of 1852 and Bombay Acts II and VII of 1863 how far applicable to lands in such sites	...	...	127	...
Existing exemption when continued in case of certain lands	...	...	128	...
Right to exemption determined by Collector	...	...	129	...
Occupancy price payable in addition to assessment, in certain cases	...	...	130	...

Miscellaneous.

Survey of lands in such sites how to be conducted	...	...	131	...
Proviso	...	...	<i>ib.</i>	...
In certain cases a survey-fee to be charged	...	...	132	...
Sanad to be granted without extra charge	...	...	133	...
Proviso	...	...	<i>ib.</i>	...
Assessment of lands hitherto used for purpose of agriculture only, appropriated to other purposes	...	...	134	...
Limitation of certain suits	...	...	135	...

CHAPTER XL.—OF THE REALIZATION OF THE LAND-REVENUE AND OTHER REVENUE DEMANDS.

Responsibility for Land-Revenue.

Primary responsibility	...	136	..
Recovery of land-revenue if person primarily responsible fails to pay it	...	<i>ib.</i>	..
Credit allowed to inferior holder for recoveries made from him	...	<i>ib.</i>	..

Priority of Government claim for Land-Revenue.

Claims of Government to have precedence over all others	...	137	..
Liability of crop for revenue of land	...	138	..

Land Revenue when leviable.

Land-revenue may be levied at any time during revenue year	...	139	..
--	-----	-----	----

Precautionary Measures for the Securing of the Land-Revenue.

Removal of crop which has been sold, &c., may be prevented until revenue paid	...	140	..
To secure land-revenue Collector may	...	141	..
Prevent reaping of crop, or	...	<i>ib.</i>	..
Removal thereof, or	...	<i>ib.</i>	..
Place watchmen over it	...	<i>ib.</i>	..
Collector's orders under last section how made known	...	142	..
Penalty for disobedience of order	...	<i>ib.</i>	..
Reaping, &c., not to be unduly deferred	...	143	..
Crop when to be released	...	<i>ib.</i>	..
Temporary attachment and management of village or share of village	...	144	..
Powers of manager, and disposal of surplus profits	...	<i>ib.</i>	..
Precautionary measures to be relinquished on security being furnished	...	145	..

Regulation of Payment of Land-Revenue

Government to determine dates, &c., on which land revenue shall be payable	...	146	..
--	-----	-----	----

Defaulters.

Arrear-Defaulters	...	147	..
Liabilities incurred by default	...	148	..
Certified account to be evidence as to arrears	...	149	..
Collectors may realize each other's demands...	...	<i>ib.</i>	..

Recovery of Arrears.

Process for recovery of arrears	...	150	..
Revenue demands of former years how recoverable	...	151	..
Proviso	...	<i>ib.</i>	..

Notice of Demand.

When notice of demand may issue 152 ...

Forfeiture of Occupancy or Alienated Holding.

Occupancy or alienated holding for which arrear is due may be forfeited 153 ...

Sale of Defaulter's Property.

Distrain and sale of defaulter's moveable property 154 ...

By whom to be made *ib.* ...

Sale of defaulter's immoveable property 155 ...

Exemption from distraint and sale 156 ...

Arrest and Imprisonment.

Arrest and detention of defaulter 157 ...

Imprisonment in Civil Jail *ib.* ...

Limit to detention of defaulters *ib.* ...

Power to declare by whom power of arrest to be exercised ... 158 ...

Attachment of Villages.

Power to attach defaulter's village, and take it under management 159 ...

Lands of such village to revert free of incumbrances 160 ...

Powers of managers *ib.* ...

Application of surplus profits 161 ...

Restoration of village so attached 162 ...

Disposal of surplus receipts *ib.* ...

Village, &c., to vest in Government, if not redeemed within 12 years 163 ...

Stay of Proceedings.

Processes to be stayed on security being given 164 ...

Or on amount demanded being paid under protest *ib.* ...

Procedure in respect of Sales.

Procedure in effecting sales 165 ...

Proclamation of sales *ib.* ...

Notification of sales 166 ...

Sale by whom to be made 167 ...

Time when sale may be made *ib.* ...

Postponement of sale *ib.* ...

Sale of perishable articles 168 ...

When sale may be stayed 169 ...

Sales of moveable property when liable to confirmation ... 170 ...

Mode of payment for moveable property when sale is concluded at once 171 ...

Ditto when sale is subject to confirmation 172 ...

Deposit by purchaser in cases of sale of immoveable property ... 173 ...

Purchase-money when to be paid 174 ...

Effect of default	...	...	...	175	...
Liability of purchaser for loss by re-sale	...	...	...	176	...
Notification before re-sale	...	...	...	177	...
Application to set aside sale	...	...	...	178	...
Order confirming or setting aside sale	...	...	...	179	...
Refund of deposit or purchase-money when sale set aside	...	...	...	180	...
On confirmation of sale purchaser to be put in possession	...	...	...	181	...
Certificates of purchase	...	...	...	<i>ib.</i>	...
Bar of suit against certified purchaser	...	...	...	182	...
Application of proceeds of sale	...	...	...	183	...
Expenses of sale how calculated	...	...	...	<i>ib.</i>	...
Payment of surplus	...	...	...	184	...
Liability of purchaser for revenue	...	...	...	185	...
Claims to attached moveable property how disposed of	...	...	...	186	...
<i>Application of the Provisions of this Chapter.</i>					
What moneys leviable under provisions of Chapter	...	...	...	187	...
Sureties liable as revenue defaulters	...	...	...	<i>ib.</i>	...
On resumption of farm, no payment to contractor in advance admitted	...	...	...	<i>ib.</i>	...
CHAPTER XII.—PROCEDURE OF REVENUE OFFICER.					
Subordination of Revenue Officer	...	...	...	188	...
Power to summon persons to give evidence and produce documents	...	...	...	189	...
Summons to be in writing, signed and sealed	...	...	...	190	...
How to be served	...	...	...	<i>ib.</i>	...
Service in district other than that of issuer	...	...	...	<i>ib.</i>	...
Mode of serving notices	...	...	...	191	...
Notice not void for error	...	...	...	<i>ib.</i>	...
Procedure for procuring attendance of witnesses	...	...	...	192	...
<i>Formal Inquiry.</i>					
Mode of taking evidence in formal inquiries	...	...	...	193	...
Taking evidence given in English. Translation to be on record	...	...	...	<i>ib.</i>	...
Writing and explanation of decisions	...	...	...	194	...
<i>Summary Inquiry.</i>					
Summary inquiries how to be conducted	...	...	...	195	...
Formal and Summary Inquiries to be deemed judicial proceedings	...	...	...	196	...
Hearing and decisions. Notice to parties	...	...	...	<i>ib.</i>	...
Ordinary inquiries how conducted	...	...	...	197	...
Copies and translations, &c., how obtained	...	...	...	198	...
Arrest of defaulter to be made upon warrant	...	...	...	199	...
Power of Revenue Officer to enter upon lands or premises for purposes of measurement, &c.	...	...	...	200	...
Proviso	...	...	...	<i>ib.</i>	...

Power to determine language of district	...	...	201	...
Mode of evicting person wrongfully in possession of land	...	...	202	...

CHAPTER XIII.—APPEALS AND REVISION.

Appeal from order passed by Revenue Officer to his superior	...	...	203	...
Appeal to Governor in Council	...	...	204	...
Limitation of appeal	...	...	205	...
Admission of appeal after period of limitation	...	...	206	...
Provision where last day for appeal falls on Sunday or holiday	...	...	207	...
What to accompany petition of appeal	...	...	208	...
Powers of appellate authority	...	...	209	...
Power to suspend execution of order of subordinate officer	...	...	210	...
Power to call for and examine records and proceedings of subordinate officers	...	...	211	...
And to pass orders thereupon	...	...	ib.	...
Explanation as to decisions or orders expressly made final	...	...	212	...

CHAPTER XIV.—MISCELLANEOUS.

Maps, land registers and village accounts, &c., open to inspection	...	...	213	...
Extracts and copies to be given	...	...	ib.	...
Power to frame rules	...	...	214	...
Rules to be published	...	...	215	...
Power to provide for penalties	...	...	ib.	...
Chapters VIII to X how far applicable to alienated villages	...	...	216	...
Occupants in alienated villages	...	...	217	...
Construction of Act	...	...	218	...

SCHEDULES.

Enactments repealed	...	...	A
Form of Bond to be required under Section 23	...	...	B
Form of warrant to be issued by the Collector under Section 25 or 157	...	...	C
Form of Bond to be required under Section 28 or 164	...	...	D
Form of Notice to be given by Landlord to Tenant to quit	...	...	E
Form of Commission to be issued to a Holder of Alienated Lands or Villages or his Agent under Section 89	...	...	F
Form of Sanad for Building Sites	...	...	H
Form of warrant to be issued by the Collector under Section 202	...	...	I

APPENDICES TO THE CODE.

Register of landed property held by public servants	...	...	I
Table showing the altered assessment and fine leviable under certain Sections and the rules thereunder	...	...	II
Memo of conditions imposed in respect of sale by auction of the occupancy-right of Government lands	...	...	III

Form of notice to be issued under section 87 to an inferior holder or co-sharer	... ..	IV
Form of Notification extending the provisions of certain sections of the Code to alienated villages	... ..	V
Form of notification of guarantee	... ..	VI
Form of notification to be issued to occupants before commencement of survey operations	... ..	VII
Form of Notification to be issued before introduction of the settlement	... ..	VIII
Form of " Faisal Patrak " used in the Deccan and Konkan Surveys	... ..	IX (a)
Ditto Gujarat Survey	... ..	IX (b)
Form of " Akarband " used in the Deccan Survey	... ..	X (a)
Ditto Gujarat Survey.	... ..	X (b)
Form of " Sud " used in the konkan survey	... ..	XI
Forms of orders to be issued under section 141	... ..	XII
Form of security bond to be furnished under section 145	... ..	XIII
Form of certificate to be issued by the Collector of one District to the Collector of another district under Revenue Recovery Act	... ..	XIV
Form of agreements to be passed by Inamdars before the introduction of survey rates	... ..	XV

RULES UNDER THE CODE.

(A.)—UNDER SECTION 213.

I.—INSPECTION.

Inspection of documents to which the public have a legal right when and how to be permitted	... ..	1
Inspection not to be permitted without a legal right	... ..	2

II.—EXTRACTS AND COPIES.

Uncertified copies and extracts how obtainable	... ..	3
Certified copies or extracts of or from the documents described in Rule I how obtainable	... ..	4
When certified copies or extracts may be granted of or from public documents other than those described in Rule I	... ..	5
Fee-endorsement to be written on certified copies	... ..	6
Form of certificate	... ..	7

III.—SEARCHES.

Search-fee when payable	8
-------------------------	--------	---

IV.—FEES.

Table of fees to be levied	... ..	9
Fee to be paid in advance	... ..	10
Disposal of fees	... ..	11

V.—MISCELLANEOUS.

Applications under these Rules to be made in writing	...	12
Proceedings to be recorded on each application	...	13
Care to be exercised in granting inspections or copies as a matter of right	... ..	14
Saving of the provisions of the Stamp and Court Fees Acts	...	15
“Public document” defined	... ..	16
Local extent of these Rules	... ..	17

(B.)—UNDER SECTION 214.

I.—PRELIMINARY.

Interpretation	... ..	1 (a)
“Chapter”	... ..	1 (b)

II.—SECURITY TO BE FURNISHED BY REVENUE OFFICERS.

[Sections 23 and 214 (i) of the Land Revenue Code.]

By what officers and to what amounts security is to be furnished	2
Duties of heads of offices in respect of securities	4
Annual statements to be submitted to Commissioners of sufficiency of securities	5
Surety's property not to be sold without previous report to Commissioner	6

III.—DISPOSAL OF LAND, &c., THE PROPERTY OF GOVERNMENT.

[Sections 37, 62 and 214 (i).]

Collector to dispose of land, &c., only as authorized in these Rules	7
--	--------	---

(1) *Transfer of land to Railway Companies or to State Railways.*

Transfers to be regulated by orders of Government	8
---	--------	---

(2) *Alienations.*

Sale of land revenue-free	... ..	9
Revenue-free grants for religious or charitable purposes	... ..	10
Sanads to be issued when revenue-free grants are made	... ..	11
Revenue-free grants of land to be made in Dharwar District to Shetsandis	... ..	11 A
Transfer of land, &c., belonging to Government not to be made to Municipalities or Local Fund Committees without previous sanction of Government	... ..	12
Unoccupied building sites, &c., within Municipal limits to be distinguished from lands forming part of public streets.	13	
Questions of rights between Government and Municipalities how to be dealt with	... ..	ib.
Reservation of mines and minerals	... ..	14

(3.) *Grant of Occupancies.*

Occupancies are of two kinds	...	...	15
<i>(a.) Land to which a Survey Settlement has been extended.</i>			
Occupancy of survey numbers how to be disposed of	...	...	16
When special conditions may be annexed to the occupancy of a survey number	...	...	17
Survey number not already assessed to be assessed before occupancy is granted	...	...	18
When survey numbers may be given at reduced assessment	...	...	19
As a rule, no survey number to be given for less than its proper assessment	...	...	20
<i>(b.) Land to which a Survey Settlement has not been extended.</i>			
Grants of salt marsh lands for reclamations	...	...	21
Occupancy of melon-beds	...	...	22
Occupancy of building-sites	...	...	23
Auction-sales of occupancies of building-sites where to be held, and by whom to be confirmed	...	...	24
Periods for which and conditions on which occupancies of building-sites are to be disposed of	...	...	25
In certain cases lands must be marked out into lots, and maps prepared	...	...	26
Substitution of a new village-site for an old one	...	...	27
Establishment of entirely new village-sites	...	...	ib.
Proprietary right in building-sites not to be parted with	...	...	28
Disposal of occupancy of land to which foregoing Rules are inapplicable	...	...	29
<i>(c.) General Rules applicable to all Occupancies.</i>			
Upset-price to be placed on all occupancies sold by auction	...	...	30
When leases are to be granted	...	...	31
Agreement to be executed by the intending occupant, when no lease is granted	...	...	32
Village accountants to prepare agreements under Rules 27 and 32 without charge, when so desired	...	...	33
Form of written permission to occupy under Section 60	...	...	34
<i>(d.) Special Rules for Sites of certain Cities and Towns.</i>			
Special rules for the sites of Ahmedabad, Broach, Surat, Rander and Balsar	...	...	34 A
Disposal of strips of land adjacent to existing building-sites	...	...	34 B
Mode in which other lands may be disposed of	...	...	34 C
Occupancies may be granted for agricultural or non-agricultural purposes	...	...	34 D
Terms on which building-sites may be disposed of	...	...	34 E
Terms on which lands intended for future building-sites may be temporarily disposed of	...	...	34 F

XVI

Terms on which lands may be disposed of for agricultural purposes only	...	...	34 G
Upset-price fixed for certain occupancies	...	...	34 H
Method of disposing of occupancies	...	...	34 I
Form of written permission to occupy	...	...	34 J

(4.) Disposal of Minor Rights.

Sale of produce of Government trees	...	...	35
Grazing and other similar produce to be ordinarily disposed of by sale for periods of one year	...	...	36
Commissioner may sanction disposal of grazing, &c., in any other manner	...	...	37
Disposal of earth, stone, &c., by the Collector	...	...	38
Villagers may remove earth, stone, &c., for their own use without fee, with the permission of the Police Patel...	...	...	39
Removal of earth, &c., from village tanks	...	...	40
Collector may permit removal of earth, stone, &c., without charge, for works of public utility	...	...	41

(5.) Miscellaneous.

Sales under these Rules how to be conducted	42
---	-----	-----	----

IV.—ASSIGNMENT OF LAND FOR SPECIAL PURPOSES.

[Section 38.]

Cattle-stands and dhobis' and potters' grounds	43
--	-----	-----	----

V.—ALLUVION AND DILUVION. [Sections 47 and 214 (i).]

Holders of land with shifting boundaries may enjoy up to such boundaries	...	...	44
Changes in holdings from alluvion and diluvion to be ascertained and recorded	...	...	45
The officer who does the <i>jamabandi</i> to give effect to provisions of Sections 46 and 64	...	...	46
Land to which Sections 46 and 64 do not apply to be disposed of by the Collector	...	...	<i>ib.</i>
The officer who does the <i>jamabandi</i> to dispose of claims under Section 47	...	...	47

VI.—PURPOSES TO WHICH THE APPROPRIATION OF UNALIENATED LAND IS PROHIBITED.

[Sections 48 and 214 (c) and (i).]

Land occupied by a road or tank, &c., in an occupant's holding may not be cultivated	...	...	48
Occupant of an agricultural holding may not destroy or injure the land for cultivation	...	...	49
But earth, stone, &c., may be removed for the occupant's own use	...	...	<i>ib.</i>
When compounds, &c., may not be used for agriculture	...	...	50
Prohibition of growth of sugarcane in and around Poona	...	...	50 A

Excavation of unalienated land within site of village, town, or city prohibited, except for certain purposes	51
Growth of Prickly-pear on land prohibited	52

VII.—ASSESSMENT OF LAND REVENUE.

[Sections 52, 100 and 214 (d)]

(1.) *Unsurveyed Lands.*

Melon-beds not to be assessed	53
--------------------------------------	----

(2.) *Surveyed Lands.*

Assessment of compounds, &c.	54
Survey Rules	55

(3.) *General.*

Alteration of assessment when land assessed or held for agricultural purposes is appropriated to non-agricultural purposes	56
Special rate for lands within the sites of certain cities and towns	56 A.

VIII.—REGISTER OF ALIENATIONS.

[Section 53.]

Form of register	57
-------------------------	----

IX.—DISPOSAL OF FORFEITED HOLDINGS.

[Sections 56 and 214 (e) and (f).]

Holdings when to be declared forfeited	58
Forfeited alienated holdings how to be disposed of	59
Forfeited occupancies in certain cases to be sold at the desire of defaulters	59 A
Disposal of a forfeited occupancy which falls under rule 59 A and is a recognized share of a Survey No.	59 B
Forfeited occupancies when to be sold in other cases	60
Rules and orders applicable to sales and purchaser of forfeited occupancies	61
Forfeited occupancy which is not sold how to be dealt with	62
Restoration of forfeited occupancies	63
Recovery of land revenue due on forfeited holdings which are not sold	64

X.—LIMIT OF FINE TO BE LEVIED UNDER SECTION 61.

Limit of fine under Section 61 to be double what would be leviable in a similar case under Section 66	65
--	----

XI.—FINES LEVIABLE WHEN UNALIENATED LAND ORIGINALLY APPROPRIATED FOR PURPOSES OF AGRICULTURE

IS OTHERWISE APPROPRIATED,

[Sections 65 and 66.]

Villages, towns and cities to be divided by the Commissioners into classes	66
Rates of fines ordinarily to be imposed under Section 65	67

XVIII

In situations of importance enhanced rates may be prescribed by Government	...	68
Permission to appropriate land within the sites of certain cities and towns to non-agricultural purposes when to be refused	... ..	68A
Amount of fine to be levied under Section 66	... ..	69
Special cases will be separately dealt with by Government	... ..	70
Potters and brick and tile-makers exempted from last five Rules...	...	71
Rules 66 to 70 not to apply to Ratnagiri for the present	... ..	72

XII.—APPROPRIATION OF LANDS FOR PROHIBITED PURPOSES OR WITHOUT PERMISSION. [Sections 48, 66 and 214 (i).]

Procedure to be adopted for summary eviction of occupant	73
--	--------	----

XIII.—RELINQUISHMENT OF OCCUPANCIES.

[Sections 74 and 214 (i).]

Form of notice of relinquishment	... ..	74
Form of agreement to be entered into by the transferee, if any...	...	75
Endorsement as to identity required below notices and agreements	... ..	76
Notices and agreements to be preserved	... ..	77
Village accountants to prepare notices and agreements without charge when so desired	... ..	78

XIV.—SURVEY FEES IN TOWNS AND CITIES. [Section 132.]

Classification of towns and cities for the purposes of Section 132	... ..	79
Rates of survey-fees chargeable in each class	... ..	80
Rates how and by whom to be fixed	... ..	81

XV.—RECOVERY OF LAND REVENUE. [Sections 146 and 214 (i).]

Land revenue where and to whom to be paid	... ..	82
Agriculturists' instalments in Ratnagiri, Kanara and the Khoti villages of Kolaba	... ..	83
Agriculturists' instalments in other districts	... ..	84
Method of classifications under clause (b) of the last Rule	... ..	85
Instalments of land revenue to which the last three Rules are inapplicable	... ..	86
Form of notice of demand	... ..	87
Village officers to be held responsible for avoiding frequent issues of such notices	... ..	87
Village officers to report names of landholders against whom precautionary measures will be necessary	... ..	88

XIV.—ADMINISTRATION OF SURVEY SETTLEMENTS.

[Section 214 (g).]

(1.) Notification of Survey Settlement.

Notifications of settlement and of period of guarantee how to be made	89
---	--------	----

Period of guarantee in villages settled before 9th March 1868 ... 90

(2.) *Trees.*

General reservations	... ..	91
Special reservations	... ..	<i>ib.</i>
Government may reserve trees not specified in the last Rule	... ..	92
Government trees may be placed at disposal of Forest Department	... ..	93
In talukas in which forest demarcation is completed, occupancy of numbers may be granted by Collector with offer of jungle and trees therein	... ..	94
In talukas in which forest demarcation is not completed, occupancy of numbers containing jungle or valuable trees to be given on certain conditions	... ..	95
What trees should be disposed of along with an occupancy	.. ..	96
The land and the trees thereupon should vest in the same person	.. ..	97
When once trees have been cut or disposed of, Government to have no right to after-growth	... ..	98

(3.) *Entry of Co-occupant's names.*

Co-occupant's names and shares may be recorded 99

(4.) *Inspection, Maintenance, and Repair of Boundary-marks.*

Details of Boundary-marks to be furnished by the Survey Department to the Collector	... ..	100
Digging near an earthen boundary-mark prohibited	... ..	101
Boundary-marks to be usually inspected by village officers	... ..	102
Issue of notification by Collector under Section 122	... ..	103
Test-inspection by Mamlatdars karkun	... ..	104
General abstract of Inspection Registers	... ..	105
Examination of boundary-marks by superior officers	... ..	196
Duty of Commissioners	... ..	107

XVII.—APPEALS. [Section 214 (A).]

Form and contents	... ..	108
Presentation	... ..	109
Rejection of appeals without inquiry into their merits	... ..	110

XVIII.—PENALTIES. [Section 215.]

Breaches of the Rules how punishable	111
--------------------------------------	--------	-----

APPENDICES.

Form required in Rule 5	... ..	A.
Ditto Rule 11	... ..	B.
Ditto Rule 27	... ..	C.
Ditto Rules 32 and 75	... ..	D.
Ditto Rule 34	... ..	E.
Ditto Rule 57	... ..	F.
Ditto Rule 74	... ..	G.
Ditto Rule 87	... ..	H.

Form of lease on special terms, Rules 19 and 31	...	...	I.
Form required in Rule 89	...	...	J.
Form of lease of building sites, Rule 25	...	...	K.
Form of Register of lease, Rule 31	...	...	L.
Form of Proclamation under Section 165	...	...	M.
Application of the Rules to Khoti villages	...	...	N.
Water-rates in Sind, Rule 47	...	...	O.
Amount of fine in respect of land within certain limits, Rule 68	...	...	P.
Form of security bond by Revenue officers	...	...	Q.

LIST OF ABBREVIATIONS.

App.	...	...	...	Appendix
B. G. G.	...	...	...	Bombay Government Gazette.
Bo. or Bom.	...	...	...	Bombay.
C. D.	...	...	...	Central Division.
Chap.	...	...	...	Chapter.
Cl.	...	...	...	Clause.
f.	...	...	...	Footnote.
F. D.	...	...	...	Financial Department.
G. D.	...	...	...	General Department.
G. N.	...	...	...	Government Notification.
G. of I.	...	...	...	Government of India.
G. of I. L.	...	...	...	Government of India Letter.
G. R.	...	...	...	Government Resolution.
I. L. R.	...	...	...	Indian Law Report.
J. D.	...	...	...	Judicial Department.
M. W.	...	...	...	Military Works.
n.	...	...	...	Notes, i. e. Government orders.
N. D.	...	...	...	Northern Division.
No.	...	...	...	Number.
P. D.	...	...	...	Political Department.
P. W. D.	...	...	...	Public Works Department.
R.	...	...	...	Rule.
Sch.	...	...	...	Schedule.
S. D.	...	...	...	Southern Division.
Sec. or S.	...	...	...	Section.
Vol.	...	...	...	Volume.
Vs.	...	...	...	Versus.

THE LAND REVENUE CODE.

BOMBAY ACT NO. V OF 1879.

(Received the assent of the Governor of Bombay on the 26th April 1879, and of the Governor-General on the 30th June 1879, and published by the Governor of Bombay on the 17th July 1879.)

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.

Short title. 1. This Act may be cited as "The Bombay Land Revenue Code, 1879":

Local extent. It extends to the whole of the Presidency of Bombay except the Scheduled Districts,* as defined by Act XIV of 1874, and the city of Bombay.

Commencement. So much of section 2 as relates to Bombay Act I of 1866 shall come into force from such date as the Governor in Council shall, by notification in the *Bombay Government Gazette*, direct. The rest of this Act shall come into force at once.

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

1. The province of Sind.

2. Aden.

3. The villages belonging to the following Mehwassī Chiefs—

1 The Parvi of Kathi.

4 Walvi of Gaohalli.

2 The Parvi of Nal.

5 The Wassawa of Chikhli.

3 The Parvi of Singpur.

6 The Parvi of Nawalpur.

Extension of the Code to certain Districts and Native States.—

(1.) **Akalkote State.**—The provisions of the Code have been made applicable to the Akalkote State. (G. N. No. 5728, P. D., dated 9th December 1879, published in the B. G. G. Part I, page 966, 1879.)

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

(3.) **Panch Mahals.**—With the exception of section 85 and the last fifteen words of section 58 the provisions of the Code were extended to the district of Panch Mahals while it was yet a scheduled district. (G. of I. N. No. 269-R, dated 18th April 1884, published in the B. G. G. Part I, page 308, 1884.) With these exceptions the provisions of the Code together with all other Acts in force in the Kaira District have now been extended to the Panch Mahals under the Government of India Act No. VII of 1885 under which the district ceases to be a scheduled district.

(4.) **Districts in Sind.**—With the exception of section 104 the provisions of the Code have been made applicable to 80 villages (for the names of the villages see Gazette) of the Thal Taluka of the Upper Sind Frontier District in the Province of Sind. (G. of I. N. No. 433-136-2 R, dated 3rd July 1885, published in the B. G. G. Part I, page 867, 1885.)

(5.)—With the exception of section 104, Bombay Act No. V of 1879 has been made applicable to the Collectorates of Karachi, Hyderabad and Shikarpur and the Taluka of Jacobabad in the Province of Sind. (G. of I. N. No. 1256, dated 30th November 1880, published in the B. G. G. Part I, page 1072, 1880, and G. of I. N. No. 713-164-2 R, dated 17th October 1884, published in the B. G. G. Part I, page 861, 1884.)

(6.)—With the exception of section 104, Bombay Act No. V of 1879 has been made applicable to the Kashmoor Taluka of the Upper Sind Frontier District in the province of Sind, and to 29 villages (for the names of the villages see Gazette) of the Thal Taluka of the same District. (G. N. No. 4888, dated 9th July 1889, published in the B. G. G. Part I, page 592, 1889.)

2. The Regulations and Acts mentioned in the Schedule A hereto annexed are repealed. Enactments repealed. the extent specified in the third column thereof, but not so as to render invalid anything done in accordance with any of them.

All references made in any Bombay Regulation or in any Act of the Governor of Bombay in Council, or in any Act of the Governor-General in Council passed before the

coming into operation of the Indian Councils Act, 1861, to any enactment hereby repealed, shall be read as if made to the corresponding portion of this Act.

And all rules prescribed, appointments made, securities furnished, powers conferred, orders issued* and notifications published under any such enactment, 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, furnished, conferred, issued and published hereunder.

And all proceedings now pending, which have been commenced under any enactment 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. In this Act, unless there be something repugnant Interpretation clause. in 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 business of the land-revenue or of the surveys, assessment, accounts or records connected therewith;

(1.) Hereditary village officers not revenue officers.—Hereditary patels and kulkarnis are not revenue officers within the definition of the Code as they are not appointed under this Act. The provisions relating to revenue officers in this Code do not therefore apply to hereditary village officers. (G. R. No. 2083, dated 21st April 1880.)

(2.) Officers ascertaining forest rights not revenue officers.—An officer employed in ascertaining whether the forest rights in a village belong to the Government or to the Inamdar is not a revenue officer as defined in section 3, clause 2 of the Code and cannot therefore legally exercise the powers conferred by section 189 of the Code for the purpose of any such enquiry. Even were he gazetted an Assistant Collector the enquiry would not relate to the business of land revenue nor could it be held

* Orders fixing assessments issued prior to the passing of the Code, are not to be considered as issued under the Code for the purposes of section 48, clause 2. See order No. (4) printed under section 48.*

to be an enquiry which an Assistant Collector is "legally empowered" to make. (G. R. No. 4964, dated 20th June 1884.)

(2) "survey officer"* means an officer appointed under, or in the manner provided by section 18 of this Act ;
 "Survey officer."

(3) the word "collector"† means the collector of the district ;
 "Collector."

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

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

(6) "survey number"‡ means a portion of land of which the area and other particulars are separately entered, under an indicative number in the survey records of the village, town or city in which it is situated, and includes a recognized share of a survey number ;
 "Survey number."

(7) "recognized share of a survey number"‡

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

† In the Bombay General Clauses Act (III of 1886) the word "Collector" is defined to mean "the chief local officer in charge of the revenue administration of a district."

‡ (1.) It is to be noted that the Code only mentions two kinds of subdivisions of land, viz., (1) "Survey No." and (2) "recognized

“Recognized share of a survey number.” means a sub-division of a survey number separately assessed and registered ;

(8) “ 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 ;

(9) “ boundary-mark ” means any erection, whether of earth, stone or other material, and also any hedge, vacant 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;

share of a survey No.” There is besides these two, a third kind of sub-division of land which is commonly known as “ subordinate survey No. ” or “ Pot No. ” and though this kind of subdivision is largely resorted to in practice it has no separate recognition according to the Code under which it is considered as “ recognized share of survey No. ” to all intents and purposes and is dealt with accordingly. (See footnote to rule 55 of the rules framed under section 214.)

(2.) The typical survey number is a field belonging to one man just large enough to be cultivated by him with one pair of oxen. It varies in area therefore with the character of the land and of the cultivation, but in practice it has not been possible to adhere to the type, and therefore arose the necessity of clubbing several properties to form the survey No. Theoretically the survey unit is the area of land, however small, held by the registered occupant, but as the survey tenure places no restriction on subdivision of properties it became necessary to limit subdivisions for convenience of revenue administration. In 1868 a limit was recognized by Government which varied in different tracts and in different classes of land (*vide* table of minima given in the footnote to section 98). Such subdivisions below the limit are only permissible with the express sanction of the Survey Commissioner, which sanction is given only in special cases. Both the survey No. and the survey unit, though the former is still the map unit, have thus lost their typical character. (Red Letter Chapter, Administration Report of the Bombay Presidency for the year 1892-93, page 78.)

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"Land."

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"Estate."

(6) "survey number"‡ means a portion of land of which the area and other particulars are separately entered, under an indicative number in the survey records of the village, town or city in which it is situated, and includes a recognized share of a survey number ;

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(9) “ boundary-mark ” means any erection, whether of earth, stone or other material, and also any hedge, vacant 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;

share of a survey No.” There is besides these two, a third kind of sub-division of land which is commonly known as “ subordinate survey No. ” or “ Pot No. ” and though this kind of subdivision is largely resorted to in practice it has no separate recognition according to the Code under which it is considered as “ recognized share of survey No. ” to all intents and purposes and is dealt with accordingly. (See footnote to rule 55 of the rules framed under section 214.)

(2.) The typical survey number is a field belonging to one man just large enough to be cultivated by him with one pair of oxen. It varies in area therefore with the character of the land and of the cultivation, but in practice it has not been possible to adhere to the type, and therefore arose the necessity of clubbing several properties to form the survey No. Theoretically the survey unit is the area of land, however small, held by the registered occupant, but as the survey tenure places no restriction on subdivision of properties it became necessary to limit subdivisions for convenience of revenue administration. In 1868 a limit was recognized by Government which varied in different tracts and in different classes of land (vide table of minima given in the footnote to section 98). Such subdivisions below the limit are only permissible with the express sanction of the Survey Commissioner, which sanction is given only in special cases. Both the survey No. and the survey unit, though the former is still the map unit, have thus lost their typical character. (Red Letter Chapter, Administration Report of the Bombay Presidency for the year 1892-93, page 78.)

(1.) **Vacant strips of land not boundary marks under the Code.**—In Bombay Act I of 1865 no formal definition of “boundary mark” was given but by rule 37 of the rules framed under that Act “a strip of land between each mark of such width as may be prescribed for each district” was required to be kept “unploughed, and carefully preserved as forming part of the boundary mark” and by the following rule (38) such strips were considered boundary marks to all intents and purposes. The present practice with regard to strips on the outer margin of a field is in conformity to these rules, and in accordance therewith such strips are required to be left unploughed and are treated as boundary marks. These strips, however, it may be noted, are not deducted and separated from the field and cannot therefore be correctly called “vacant strips.” The strips of ground to be employed or specified by survey officers as boundary marks according to the definition of “boundary mark” in the Code must be vacant strips of ground, that is, “having no possessor, claimant, or occupier.” The strips of ground left unploughed according to the present practice are not “unoccupied” and therefore cannot under law as it at present stands, be employed or specified by survey officers as boundary marks. The present practice with regard to such strips is thus inconsistent with the law as it now stands and the latter will require alteration if it is desired that that practice should continue. The point has been noted and will be considered when the Code comes under amendment. (G. R. No. 4609, dated 31st May 1892.)

(10) “to hold land” means to be legally invested with a right to the possession and enjoyment or disposal of such land, either immediate or at the termination of tenancies legally subsisting ;

“To hold land.”

(11) “holder”* or “landholder” signifies the person in whom a right to hold land is vested, whether solely on his own account, or wholly or partly in trust for another person, or for a class of persons, or for the public. It includes a mortgagee vested with a right to possession ;

“Holder.”

“Landholder.”

* According to this definition a holder may mean any person holding land by any right or title whatsoever. It may mean a superior holder, a tenant, or an occupant whether registered or unregistered. In the Code, however, it is used with reference to alienated land throughout.

- “ Holding. ” (12) “holding”† signifies land over which such right extends ;
- (13) “superior holder ”* signifies a holder entitled to receive from other holders rent or
 “ Superior holder. ” land-revenue on account of lands held by them, whether he be accountable or not for the same, or any part thereof, to the Government ;
- (14) “inferior holder ”* signifies a holder liable to pay the rent or land-revenue to a
 “ Inferior holder. ” superior holder, whether on account of such superior holder or Government ;
- (15) “tenant ” signifies a person who holds by a right derived from a superior holder
 “Tenant.” “Landlord.” called his “landlord,” or from his landlord’s predecessor in title ;
- (16) “occupant ”† signifies a holder of unalienated land, or where there are more holders
 “ Occupant. ” than one, the holder having the highest right in respect of any such land,
 or where such highest right vests equally in more holders than one, any one of such holders ;
- (17) “ registered occupant ” signifies a sole occupant or the eldest or principal of several
 “ Registered occu- joint occupants whose name is autho-
 pant.” rizedly entered in the Government

† For the purposes of alluvion and diluvion this term has been differently defined. Vide sections 47 and 64.

* See orders printed under sections 86 and 87.

† For the purposes of article (1) of schedule (2) of Court Fees Act (VII of 1870), the survey occupants are persons holding temporarily settled land under direct engagement with Government. (G. R. No. 634, dated 28th January 1888.)

records as holding unalienated land whether in person or by his co-occupant, tenant, agent, servant or other legal representative ;

“ Occupancy.” (18) “occupancy” signifies the sum of the rights vested in an occupant as such ;

(19) “ 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.”

“ Village, town or city.” (20) the words “ village, town or city ” include all lands belonging to any village, town or city ;

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

“ Revenue year.”
“ Year.”

“ Section.” (22) * “ section ” means a section of this Act ;

“ This chapter.” (23) * the words “ this chapter ” mean the chapter of this Act in which those words occur.

CHAPTER II.

Constitution and Powers of Revenue officers.

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

* These two clauses have been repealed by the Bombay General Clauses Act (III of 1886.)

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 Commissioners.

Division. The territories under each Commissioner shall form, and be called, a division.*

Present divisions. The present divisions shall continue as they are for the purposes of this Act, until altered by the Governor in Council.

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.

Appointments and duties of Commissioners.

6. Each Commissioner shall have such number of

* There are at present three Divisional Commissioners, besides the Commissioner in Sind, each in charge of a division, there being three divisions in the Presidency proper. These divisions are (1) the Northern Division, (2) the Central Division, and (3) the Southern Division. Each of these Divisions as at present constituted comprises 6 districts as shown in the margin.

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

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

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

Division to be divided into districts. And each such district shall consist of such number of talukas, and each taluka shall consist of such number of mahals and villages, as may from time to time be prescribed in a duly published order of the Governor in Council.

District, taluka. The present zillahs or collectorates shall form districts, and the present talukas shall remain as they are, for the purposes of this Act, until altered by the Governor in Council.

8. The Governor in Council shall appoint in each district an officer who shall be the Collector ‡ of the district, 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.

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

† See footnote to Section 4.

‡ See footnote to definition No. 3.

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.

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

To be subordinate to Collector.

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.

Their duties and powers.

Any Assistant or Deputy Collector thus placed in charge shall, subject to the provisions of chapter XIII of this Act, perform all the duties and exercise all the powers conferred upon a Collector of a district 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.

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

Collector of district in case of temporary vacancy.

been made by Government, succeed temporarily to his office, and shall be held to be the Collector of the district 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.

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

His duties and powers shall be such as may be expressly imposed or conferred upon him by this 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. He shall continue to perform the duties and exercise the powers at present performed and exercised by him after the passing of this Act, until such time as he is otherwise directed by competent authority.

13. Whenever it may appear necessary to the Governor in Council, the Collector may appoint a Mahalkari to be in charge of a defined portion of a taluka; and subject to the orders of Government and of the Commissioner the Collector may assign to him 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 the purposes of section 203 of this Act, be deemed to be the Mamlatdar or the Assistant or Deputy Collector, or the Collector in charge of the taluka.

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

The portion of a taluka in charge of a Mahalkari shall be called a Mahal. The present mahals shall remain as they are, for the purposes of this Act, until altered by the Governor in Council.

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.

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 of 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; and pending the first issue of orders under this section the village accountant shall continue to keep all such registers, accounts and other records as he may hitherto have been required to keep.

Village accountant to keep records prescribed by Collector.

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.

And to prepare public writings.

18.* For the purposes of chapters VIII, IX and X of this Act, 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 Officer," and "Assistant," or otherwise as may seem requisite, and shall be subordinated the one to the other in such order as the Governor in Council may direct.

Survey officers.

* See footnote to definition No. 2.

† Since 1st April 1893 the designation of the officer holding this appointment has been changed to Survey Commissioner and Director of Land Records and Agriculture. (G. R. No. 1319, dated 16th February 1893.)

Subject to the orders of the Governor in Council the
 Their duties and powers. 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
 Combination of offices. 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.

Appointments to be notified. 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
 Acting appointments. 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 or orders made under section
 Establishment. 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, namely:—

- The Commissioners,
- „ Collectors,
- „ Commissioner of Survey,
- „ Superintendent of Survey,
- „ Survey Settlement Officer.

The appointment of all members of the establishments of all other officers mentioned in the foregoing sec-

tions 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.

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.

Pending the issue of the first orders under this section, the seals hitherto used shall continue to be used by such officers as have used them.

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 to this Act.

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.

(1.) **Bonds and Securities how long to be kept.**—Bonds deposited by a Treasurer or other official should be retained by Government for a year, and other securities for six months, after an officer has vacated his

* Rule 2 of the rules framed under section 214 of the Code enumerates the officers by whom, and the amounts up to which, security is to be furnished.

appointment and that words providing for this might for the future be introduced in bond before signature. (G. R. No. 2119, dated 17th June 1884.)

(2.) **Form of, and liabilities under, security bond.**—Section 23 of the Code provides for security being furnished by revenue officers in the form prescribed in Schedule B, and No. 2 of the rules under section 214 fixes the amount for which they have to furnish security. But whereas the form of the security bond given in Schedule B provides for binding the principal in a specified sum, it omits to do so in the case of his sureties and binds them conformably to section 27 in “such sum as shall be deemed sufficient to cover any loss or damage which Government may *actually sustain* by the default of the principal.” It is possible that the actual loss sustained by Government by the default of the principal may in certain cases exceed the amount for which he is bound down by security bond, and while under the terms of his bond he will not be liable for any sum in excess of that specified in the bond, the sureties can be called to make good the loss or damage whatever its amount may be; thus under the law as it stands, while the liabilities of the principal are restricted, those of the sureties are unlimited. This being anomalous a suggestion was made to modify the form of security subjoined to the form of principal given in Schedule B. This suggestion has been noted with a view to consideration, when the Code is amended and it has been ordered that in the meanwhile it might be generally made known that it is not the intention of Government to make securities liable for a larger amount than their principals. (G. R. No. 8725, dated 11th December 1886.)

(3.) **Present form of security bond to be retained until amended.**—The form of security to be subjoined to the bond of the principal given in Schedule B of the Land Revenue Code has not been amended by G. R. No. 8725, dated 11th December 1886. A suggestion was made for the amendment of the form but it has simply been noted with a view to consideration when the Land Revenue Code comes under amendment. The form given in the schedule referred to should therefore be used until it is amended by a legislative enactment it being in the meantime made known as required by the Resolution quoted above that it is not the intention of Government to make securities liable for a larger amount than their principal. (G. R. No. 843, dated 4th February 1887.)

(4.) **But may be modified to meet special cases**—The form of the security bond to be taken from treasurers or other officers of Government who are entrusted with the charge of public money, is only a model, and may be modified by Local Government to meet special cases. In the case of treasurers of District treasuries no modification should be made except after communication with the Government Solicitor. (G. R. No. 3496, F. D., dated 14th September 1889.)

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 :

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

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

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 reovering 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 XXVII of the Criminal Procedure Code (Act X of 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.

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

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

† Now Chapter VII of Act X of 1882.

and severally in the same manner as his or their principal is liable to be proceeded against, in case of default, and notwithstanding such principal may be so proceeded against :

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

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

Sureties not liable to imprisonment, if penalty paid.

(1.) **Extent of liabilities of Sureties.**—The following opinion of the Remembrancer of Legal Affairs (No. 13, dated 5th January 1885,) on the subject of the extent of a surety's liability is given here *in extenso* as useful for reference. This opinion is concurred in by Government in their Resolution No. 563, dated 23rd January 1885 :—

"In this case V made an application on the 26th November 1881, for canal water for 5 acres of land in his Survey No. 82 in the village of P for watering a sugarcane crop. This application was granted and on the 18th January 1882 he made a further application for water for other 5 acres in the same number, which was also granted.

"2. But when the area under the sugarcane crop irrigated by V came to be measured it proved to be 15 acres 12 gunthas, for which, at the settled rate of Rs. 25 per acre the Irrigation Department had a claim against him for Rs. 382-8-0. This sum the Mamlatdar was desired to recover. In the meantime V absconded and the sale of the crop which the Mamlatdar attached realized Rs. 125 only.

"3. Below each of the two applications for water made by V there is a security-endorsement to the effect that if the applicant should fail to

* Vide orders Nos. (2) and (3) printed under section 23.

pay the water-rate or any other sum due by him on account of the water the surety would pay for him. This endorsement on the first application was signed by A, on the second by G. These two gentlemen have been called upon to pay what is due by V; but the former denies his responsibility, because on the 14th January 1882 he gave notice to the Executive Engineer for Irrigation requesting that his security might be cancelled, and the latter alleges that he is only responsible for what is due by V on the 5 acres of land in respect of which he stood surety.

" 4. I do not think that the notice given by A diminishes his responsibility. Under Section 130 of the Contract Act it is only "a continuing guarantee" which may at any time be revoked by the surety as to future transaction. A continuing guarantee is one which extends to a series of transactions (Act IX, 1872, Section 129). A guaranteed only the payment due by V in respect of his one application and this cannot be called a continuing guarantee. Having contracted with the Executive Engineer to indemnify him against any failure to pay on the part of V, the contract cannot be cancelled at his sole desire. It could only be cancelled with the concurrence of both the parties to it.

" 5. But each of the two sureties is, in my opinion, only responsible for the particular transaction to which he was a party, *i. e.*, for the dues recoverable from V in respect of the 5 acres of land to which the application related, beneath which they respectively executed a security-endorsement. And as Rs. 125 have already been realized in respect of the whole area of 15 acres 12 guntas which V irrigated, each of the sureties is entitled to credit for the portion of that amount which bears the same ratio to the whole as 5 acres does to 15 acres 12 guntas, and is only responsible for the difference between such portion and the dues recoverable on 5 acres."

(2.) **Fresh security bonds. Preservation of old ones.**—An instance having occurred in which the security bond taken from a Treasury Officer was subsequently found to be improper in form and was cancelled and destroyed, and a new bond taken instead, and with the result that the claim of Government for compensation for wrongful acts done during the currency of the old bond could not be enforced, the following opinion of the Remembrancer of Legal Affairs was circulated to the officers concerned for information and guidance:—

" The question put with reference to this gentleman's case, in paragraph 3 of the Government memo. under reply is one of a general nature, *viz.*, whether an old security bond which is superseded by a new one can, not, by some means, be kept in force. The first paragraph of section 29 and section 30 of the Land Revenue Code contains the law on this subject. A security bond continues in force *until it is cancelled*, and a surety who withdraws from his suretyship continues liable, notwithstanding his withdrawal, for any defalcation of his principal occurring up to 60 days after his giving notice of his intention to withdraw. The

answer to the question of Government is, therefore, that a security bond should not be destroyed, until so long after the principal has ceased to occupy an office in which he has to furnish security that there is no probability of its being of any use. If a fresh bond is for any reason taken, the old one should still be preserved as security against defalcations which may have occurred before the date of the new one." (G. R. No. 3449, F. D., dated 14th October 1890.)

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.

Officer or surety in jail may, by furnishing security, obtain release.

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 con-

How surety may withdraw from further liability.

* Vide order No. (2) printed under Section 27.

cerning moneys, papers or other property for which his principal may become chargeable after the expiration of such period of sixty days, but shall not cease as to any demands for which his principal may have become liable before the expiration of such period, even though the facts establishing such liability may not be discovered till afterwards.

CHAPTER IV.

Of certain Acts prohibited to Revenue Officers, and of their Punishment for Misconduct.

31. No revenue officer shall, except with the express permission of Government, or of the Revenue Officers Collector, or Superintendent of Survey without permission to whom he is subordinate,

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

(2) purchase or bid either in person or by agent, or in his own name or in the name of another, or jointly or in shares with others, for any property which may, not to purchase at public sale ; under the provisions of this Act or of any other law for the time being in force, be sold by order of any revenue or judicial authority in the district in which such officer is at the time employed ;

(3) hold directly or indirectly any farm or be 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 not to be concerned in revenue ; at the time employed ;

and no revenue officer shall

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

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

(1.) Stipendiary village accountants not to hold land other than hereditary. — The Governor in Council desires that Clauses (1) and (2) of Section 31 of the Land Revenue Code (which is the law in force and supersedes all previous orders) should be construed strictly in the case of stipendiary village accountants and that 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. His Excellency in Council does not however object to the holding of hereditary lands by stipendiary village accountants or absolutely to their holding of lands purchased otherwise than at a public sale. The Section requires that every revenue officer who holds land paying revenue to Government in the district in which he is employed should obtain permission to continue to hold it, and the Collector can give or withhold permission according to the merits of each case, taking care that his orders are not unduly harsh. If the Collector

* The Governor in Council is pleased to rule that any paid servant of Government accepting a commission for taking evidence must hand over forthwith to his superior officer or the neighbouring treasury any and every sum which he may receive as a fee for his services.

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

considers that the position of a talati as a holder of land in his own charge, Taluka, or District conflicts in any case with the proper performance of his duty as a village accountant, he can have him transferred. (G. R. No. 5635, dated 31st July 1883.)

(2.) **Civil and Military officers prohibited from entering into pecuniary arrangement.**—The Governor General in Council considers it desirable to republish for general information the orders issued by the Government of India prohibiting Civil and Military servants of the Government from entering into pecuniary arrangements with members of the service or Department to which they belong in connection with the resignation of any appointment held by them. Officers of Government are warned that any violation of these orders will be severely visited on the offender. The Notification runs as follows :—

Notification No. 216,
dated 9th September
1884.

“ It having come to the knowledge of Government that very erroneous impressions are entertained on the subject of pecuniary arrangements referable to the resignation of appointments the Hon'ble the President in Council is pleased to give notice that all such arrangements are prohibited and that on proof of any appointment, Civil or Military having been resigned under such circumstances the nomination consequent on such resignation will be cancelled and the parties concerned suspended the service under public orders pending the pleasure of the Honorable the Court of Directors.” (G. R. No. 91, dated 11th January 1884.)

Orders on the subject of connection of Government servants with land holding and commercial speculation in India.—(3.) The following paragraphs contain a brief summary of the more important orders which have been issued from time to time on the subject of the connection of Government servants with land-holding and commercial speculation in India :—

1. * * * *

2. **Covenanted Civil Servants, Military officers in Civil employ, and all persons holding Civil offices ordinarily held by Covenanted or Commissioned officers of the two classes above mentioned are prohibited from acquiring or holding land within the province in which they are employed or with the administration of which they are concerned, whether that connection be permanent or temporary. This prohibition does not extend to land occupied merely by buildings for residence and their usual appurtenances.**

3. **Natives* of India appointed under the Statutory Rules are**

* The orders in this paragraph are also applicable to Natives of India who enter the Indian Civil Service by competition in England. (Home Department Circular No. 19 Public 1161—1170, dated the 14th June 1890.)

permitted to hold any lands actually in their possession when they enter the service of Government, or which may come into their possession thereafter by inheritance, gift (i. e. *bona fide* gifts from relatives or near friends,) or devise, provided that full information in respect of such lands is given to the Local Government, which will consider in each case whether the fact of an officer holding any particular lands need be a bar to his employment in the district where these are situated. No fresh purchase of land is, however, allowed on the part of a Statutory Civil Servant without the previous sanction of the Local Government under which he is serving.

4. Uncovenanted officers exercising independent judicial or revenue functions, whether of European, Eurasian or Native descent, are not debarred from acquiring or possessing landed property in British India for agricultural purposes, provided that they must not hold landed property in the districts in which they are employed. Although uncovenanted officers are not precluded from holding land, it is inexpedient that appointments which necessarily confer a considerable amount of power and influence on their occupants, such as those of Munsif, Deputy Collector, and Tahsildar, should be filled by persons holding landed property within their jurisdiction.

5. Officers of all classes (including candidates for office) must be required to make a declaration of the fact of their being in possession of, or of their having acquired, landed property, stating the district within which it is situated, with such other particulars as may be considered necessary, of which registers* should be kept by the Local Governments concerned.

6. It is incumbent on the several Local Governments to take care that no officer who may be in possession of landed property in British India or elsewhere, to whatever branch of the service he may belong, shall apply any portion of the time and attention which ought to be devoted to his public duties, whether Civil or Military, to the management of that property, and that longer or more frequent leaves of absence are not permitted on that account.

7. Civil Servants and Military officers in the actual service of the Crown in India are prohibited from holding lands in a Native State for any purpose whatever. This prohibition does not extend to land occupied merely by buildings for residence and their usual appurtenances.

8. With regard to investments other than those in land for the profits of cultivation, officers of every rank and class in the public service are expected to abstain from any investment (though of itself unobjectionable) which interests them privately in affairs or undertakings of the kind

* The form in which these registers should be kept has been sanctioned by Government in their Resolution No. 317, dated 25th January 1886. Vide Appendix I.

with which their public duty is connected. Subject to this general proviso, there is no objection to Government servants holding shares in mining or other companies (including agricultural companies) having for their object the development of the resources of the country, provided that they must not take part in the management of any such company, and that they must not be employed in the districts where the operations of the company with which they may be connected are carried on. This latter prohibition must be held to apply sometimes with less, sometimes with greater, force to certain officers connected with the central administration, such as Members of the Local Government, Members of the Board of Revenue and their Secretaries; and to indicate the necessity of great circumspection on the part of such officers as to the undertakings with which they become connected in any part of the province in which they are employed.

9. In the matter of taking part in the management of a company, it has been decided that the prohibition was not intended to apply to the participation of Government officers in the direction of those companies only which are designed to develop the resources of the country, but also to preclude such officers from taking part in the direction of such institutions as banks. It has also been held that the prohibition against officers taking part in the management of a company applies to public servants on leave equally with those in active service, but that it does not extend to officers, who with the consent of the Government of India take service under Railway Companies working under concessions from Government, nor does it apply to the management of associations which are established *bona fide* for the purpose of mutual supply and not of trade and trade profit (provided in this latter case that the interests of Government do not suffer by the double employment of the officer concerned). Although the prohibition against taking part in the 'management' of a company cannot, taken literally, be held to debar an officer from taking part as a promoter or as one of the applicants for registration in the Memorandum of Association, the Governor General in Council has held that the danger against which the prohibition was aimed, namely, that of official influence being abused or official trust betrayed, is, under such circumstances, not much less than if the officer took part in the management after the company has been started. Government servants are therefore distinctly forbidden to take any part in the promotion or registration of companies.

10. It is a standing order that servants of Government are required to abstain from speculative investments, but no literal definition has been laid down as to the stage at which, or circumstances under which, the holding of land or other valuable property becomes speculative. It is obviously speculative to secure a grant of land supposed to be auriferous with the object of disposing of it hereafter to companies. Habitual speculation by officials has been always held to be an evil; and the Government has reserved to itself full power to deal stringently with the practice

whenever it appears to prevail. The general distinction which exists between permanent and speculative investments is sufficiently described in the extract given below :—

“The Government of India consider that there exists an essential difference between permanent and speculative investment; that the distinction is one of motive, and that the frequency of a man’s purchases and sales may be, and usually is, very good evidence of his motive in effecting them. If an officer habitually buys and sells securities of a value notoriously fluctuating, it is clear that he is addicted to speculation, and he thereby undoubtedly lays himself open to the disapproval of Government, which can be expressed in various ways, and in a degree proportionate to the nature of the dereliction. If he engages in such pursuits to an extent which attracts public notice and unfavourable remark, so that his integrity or his application to his public duties is discussed and doubted, then he has given rise to a scandal with which the Government will have to deal.” (G. of I. letter No. 21-797-806, dated 15th May 1885,—G. R. No. 2135, G. D., dated 9th June 1885.)

(4.) Orders contained in paragraph 5 of the Government of India’s letter No. 21-797-806, dated 15th May 1885, (see above order), apply to all Government officers in superior service (including candidates for office). (G. R. No. 3372, G. D., dated 4th September 1885, and G. R. No. 1497, G. D., dated 17th April 1890.)

(5.) **Object of keeping the register of landed property and the authorities to which it is to be submitted.—**

Vide order No. (3) above. The orders of the Government of India contained in paragraph 5 of their letter No. 21-797-806, dated 15th May 1885, apply to all Revenue Officers who have already been prohibited under Section 31 of the Bombay Land Revenue Code from acquiring land. As regards the question whether the register to be kept under these orders should be submitted to Government, and if so when and to what Department of the Government, it may be observed that the object of keeping the register is to prevent the appointment to posts which necessarily confer a considerable amount of power and influence on their occupants of persons holding landed property within their jurisdiction, and to take care that no officer who may be in possession of landed property in British India or elsewhere to whatever service he may belong, shall apply any portion of the time and attention which ought to be devoted to his public duties whether Civil or Military, to the management of that property and that longer or more frequent leaves of absence are not permitted on that account. It would therefore seem sufficient if the registers are submitted to Government in the Department concerned in the case of those officers only whose appointments are made by Government, the registers in the case of all other officers being kept either by the Head of the Department concerned for his own guidance or submitted to his controlling officer in cases in which the

power of making appointments, granting leave, &c. vests in the latter officer. (G. R. No. 833, dated 4th March 1886)

(6) **Orders on the subject of keeping register of landed property** :—The following questions raised in connection with the keeping of registers of landed property held by Public servants have been disposed of by the orders of Government given below :—

- (1) Whether each officer should make a formal declaration in writing in regard to landed property in his possession, and if so, before whom ?
- (2) How and to whom is the fact of subsequent acquisition of such property to be made known ?
- (3) Who is to be responsible for the preparation of the registers ?
- (4) Whether the term "public servants" includes temporary overseers and suboverseers and mustering karkoons of the P. W. D. and members of the "Works" establishment, and peons both on permanent and temporary establishments ?
- (5) Whether each "Public Works" office in the Presidency should keep the registers or one particular office, and in the latter case which office should keep a General Provincial Register ?
- (6) Whether registers should be kept in the case of all officers under the orders of His Excellency the Commander-in-Chief, or only of those holding certain appointments, and if so, what appointments ?
- (7) Whether the term "landed property" includes buildings ?

2. As regards the first, second and third queries it should be laid down that the register should be filled in and signed by each officer who has to furnish the information. The registers so prepared may either be kept by the head of the office concerned or be submitted to the controlling officer, or Government as the case may be, as directed in Government Resolution No. 833, dated 4th March 1886. The registers should be revised and resubmitted on the 1st of April in each year, all changes which have taken place during the year being shown in the revised registers. Each head of an office will be held responsible for seeing that the returns as regards himself and the officers subordinate to him are promptly rendered.

3. With reference to query 4 it should be observed that the registration of information regarding landed property in the case of those employes who are classed as "Inferior servants" under the Civil Service Regulations would be of little use and that the term "Public servants" should therefore be held to include those officers only whose service is recognised as superior within the meaning of those Regulations. All public servants falling within the latter category whether employed on permanent or temporary establishments should be required to furnish the information in the form prescribed.

4. The 5th query has been disposed of by Government Resolution No. 833, dated 4th March 1886.

5. As regards the 6th query the Adjutant General should be informed that the registers should be kept in the case of all officers under the orders of His Excellency the Commander-in-Chief.

6. With reference to the 7th query it should be observed that landed property includes buildings standing on land, but that as is mentioned in the letter from the Government of India the prohibition to acquire or hold land "does not extend to land occupied merely by buildings for residence* and their usual appurtenances." (G. R. No. 1513, G. D., dated 29th April 1886.)

(7.) **Landed property held jointly how to be shown in the register.**—When a Government servant is a member of an undivided family, the whole of the property, if any, held by the family should be shown in the register, and in the column of remarks it should be stated what approximate share of it the individual in question would be entitled to, if the family were divided, and also, whether he takes any active part in the management of the property. (G. R. No. 3452, G. D., dated 29th September 1886.)

(8.) **Acquisition, or holding, of land by sons or relatives of public servants.**—The acquisition, or holding, of land for agricultural purposes by a covenanted civil servant for a son or other relative, is prohibited under the orders of Government, but those orders do not prohibit the acquisition or holding of land by a son or other relative even although the land be acquired with money furnished by the civil servant, provided that the money was given as an absolute gift and that the civil servant has *bona fide* no interest whatever legal or equitable in the land or its produce. (G. R. No. 3143, G. D., dated 11th October 1887.)

(9.) **Landed property held by wives of Government servants to be treated as if held by themselves.**—In paragraph 5 of Home Department Circular letter No. 21-797-806, dated the 15th May 1885 (see order No. (3) above) which gives a summary of the existing rules and orders regulating the connection of public servants with land holding and commercial speculation in India, it was laid down that officers of all classes (including candidates for office) must make a declaration of the fact of their being in possession of, or of their having acquired, landed property, stating the district within which it is situated, with such other particulars as may be considered necessary, and that registers containing such particulars should be kept by the Local Government concerned.

In continuation of these orders His Excellency the Governor-General in Council is pleased to direct that in future similar particulars must be

* The expression "buildings for residence" means only the residence occupied by the officers themselves. (G. R. No. 2223, G. D., dated 23rd June 1886.)

given of property held by, and managed by, wives of officers or other members of their families living with, and in any way dependent on them; and the management of such property shall be subject to the same restrictions as that of property belonging to themselves. (G. R. No. 3404, G. D., dated 29th September 1888.)

(10.) **Government Servants prohibited from taking loans from their subordinates.**—All covenanted Civil servants, Statutory Civilians, Uncovenanted Officers, who hold gazetted appointments and Military Officers in Civil employ are prohibited under pain of dismissal from taking loans from, or otherwise placing themselves under pecuniary obligations to, persons subject to the official authority or influence of such Government officers, or residing, possessing property or carrying on business within the local limits for which such Government officers are appointed.

This prohibition does not extend to transactions in the ordinary course of business with Joint Stock Banks and British Firms. (G. R. No. 1154, G. D., dated 14th April 1888.)

(11.) **Officers not to serve as Directors of Banks or public company.**—In future, no officer holding a permanent appointment under Government, whether pensionable or not, may be permitted to serve as a Director of any Bank or public Company without previous reference to the Secretary of State. (G. R. No. 1265, G. D., dated 25th March 1889.)

(12) **But there is no objection to their having connection with Eurasian and Anglo-Indian Deposit and Loan Society.**—The Governor General in Council sees no objection to public servants taking a part in the direction of the Eurasian and Anglo-Indian Deposit and Loan Society, so long as the Government of Bombay is satisfied that the operations of this Society are carried on substantially for the purpose of mutual benefit, and subject to the condition, that the public duties of the Government servants engaged in the direction and management of this Society are not interfered with nor their time which should be given to the public service diverted to private business. (G. R. No. 4955, G. D., dated 16th December 1890.)

(13.) **Indebtedness Of Government servants.**—In their Resolution the Government of India invited the attention of all Local Governments and Heads of Departments to the imperative duty which devolves on them of taking severe notice of the conduct of clerks and other employes who allow themselves to fall into embarrassed circumstances, and it was pointed out that assistants in Government offices should clearly understand that if they voluntarily contract debts or obligations which they are unable to meet, they render themselves liable to summary dismissal.

No. 2-77-102 (public),
dated 19th January
1884; Bombay G. R.
No. 381, dated 4th
February 1884.

His Excellency the Governor General in Council has reason to fear that the tenor of these orders has not always been properly understood, and desire to supplement them by more definite instructions, as to what constitutes such a state of indebtedness as to render it undesirable that a person should be retained in the public service. The Governor-General accordingly directs that where half the salary of Government official is constantly being attached for debt, or has been continuously under detachment for more than two years, or is attached for a sum which under ordinary circumstances, it will require more than two years to repay, a full schedule of the officer's debts should be obtained by the Head of the office, and the case dealt with in the same way as if the debtor has taken advantage of the insolvency Court. In such cases it should be specially ascertained—

- (1) what is the proportion of the debt to the salary, and the extent to which they detract from the debtor's efficiency as a public servant;
- (2) whether the debtor's position is irretrievable;
- (3) whether it is desirable under the circumstances to retain him,
 - (a) in the particular post he occupies,
 - or
 - (b) in any position under Government.

It will be for Local Governments and the different departments under the Government of India to issue subsidiary directions to officers subordinate to them as to the authority to which the schedule of debts, and the report on it, should be submitted for orders. (G. R. No. 4409, G. D., dated 23rd October 1889.)

(14.) **Vindication by Officer of his character as public servant.**—It is a standing order that without obtaining the authorisation of the Government to which he is immediately subordinate no officer of Government is permitted to have recourse to the Courts for the vindication of his public acts, or of his character as a public functionary, from defamatory attacks. In giving authority to institute proceedings, the Local Government concerned will decide whether the circumstances of the case are such that the Government should bear the costs of the proceedings, civil, or criminal, or leave the officer to institute the prosecution or suit at his own expense; and in the latter case it will also determine in the event of the matter being decided by the Courts in the officer's favour, whether he should be recouped by Government the whole or any part of the costs of the action. The ruling above laid down does not affect an officer's right to defend his private dealings or behaviour in any way that he may be advised, but his official reputation is in the charge of the Government which he serves, and it is for that Government to decide in each case whether the institution of proceeding to vindicate his public acts or character is necessary or expedient. (G. R. No. 4097, G. D., dated 11th October 1890.)

32. Subject to rules or orders 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.

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.

Officer to be fined, &c., only by order of Government.

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

(2) Maximum period for which revenue Officers may be suspended.—The maximum period for which suspension from office should be awardable as a specific punishment under this section should be fixed at six months—this is the period mentioned in the Hereditary Offices Act (III of 1874), and in the Bombay Police Act. A maximum term of three months would in some instances prove sufficient, whilst the maximum term of twelve months would on the other hand seem too long. It appears hardly practicable to fix any maximum period for suspension pending or during enquiry into alleged or suspected misconduct but in cases where an officer is suspended the enquiry should be carried out as promptly and speedily as possible and no unnecessary delay should be permitted to occur. Such an enquiry would ordinarily not occupy a very long period, but when it is not completed within two months from the date of the suspension of the official concerned the Collector should

monthly report to the Commissioner the cause of delay till the case has been disposed of. (G. R. No. 9981, dated 19th December 1884.)

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

Orders to be made in writing.

* (1.) Great caution is to be used in recommending dismissal, since dismissal from the service of Government, especially where the individual has been long in that service, and therefore probably unfitted for procuring a livelihood by any other means, is a punishment of great severity, and since it tends greatly to weaken the influence of heads of offices when their decisions are not approved by superior authority. In cases, however, of well proved fraud, or misconduct, no consideration should be shown to length of service, and no commiseration for the destitute condition of the party should be allowed to save him from removal from office. Though dismissals may not require the sanction of Government, the privilege of appeal to Government in such cases has never been withheld. (G. R. No. 3876, dated 29th December 1842, & G. R. No. 793, dated 25th February 1867.)

(2) Government directed (Circular No. 796) in 1854 that except in special cases which may appear to require instructions, no separate report need be made of the dismissal of a Government servant drawing more than Rs. 10 and less than Rs. 30, but that all dismissals were to be reported in a half yearly return. These half yearly returns were dispensed with by Circular No. 87 of 1861. The rule, therefore, remains that only special cases requiring instructions are to be reported to Government, when the salary of the dismissed is over Rs. 10 and under Rs. 30. (G. R. No. 3750, dated 16th July 1879.)

(3.) In order that a dismissed servant of Government may be able to exercise his right of appeal, it is obviously necessary that the charge against him, his defence, and the order thereon, should be reduced to writing. In the case of public servants, who are dismissed in consequence of facts or inferences elicited at a Judicial trial, or in the case of persons who abscond with an accusation over their heads, this procedure may be unnecessary or impossible. But in all other cases of the dismissal of public servants, the charge against a public servant should be reduced to writing, his defence should be either taken in, or reduced to, writing, and the decision on such defence should also be in writing. In many cases (such for instance as that of a clerk at an outlying tahsil station) the officer who passes the order of dismissal may not be able to make the enquiry himself, and the proceedings leading to dismissal would be conducted by the superior officer on the spot. The record of such charge, defence and decision would then furnish sufficient information for, and should be submitted to, the superior officer or the Government, to whom the dismissed

recorded together with the reasons therefor, in writing under his signature in the language of the district or in English.

Procedure to be followed in dismissing a public servant.—(1.) In all cases of dismissal, the dismissing authority should always record in English, under his own hand-writing, a statement showing briefly but clearly the charges brought against the official, the evidence supporting those charges, the motives which are supposed to have influenced him, and the opinion of the dismissing authority on each charge. (G. R. No. 1549, dated 9th May 1883.)

(2.) In all cases of dismissal of native subordinates for misconduct the officer should make an enquiry in judicial form before passing an order, or making recommendation, for dismissal. It is not meant that the admission of the evidence should be restricted by the law of judicial evidence. All evidence which in the opinion of the enquiring officer conduces to moral conviction should be admissible, but in whatever form received it should be noted and explained to the person charged. Much evidence could be recorded simply in the form of questions to which the person charged should be required to give specific answers. The person charged should be allowed besides to place on record a full written statement of his defence. (Para 7—G. R. No. 7170, J. D., dated 16th October 1883.)

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.

servant may prefer an appeal. (G of I. L. No. 37-1389-1404, dated 29th July 1879,—vide also paras 4 to 9 of Despatch No. 42 of 1851, from the Court of Directors.)

* Vide Section 187, clause 1.

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

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

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

Liability to criminal prosecution not affected.

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

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

Any officer subjected to such prosecution may be suspended pending the trial, and at its close may, upon a consideration of the circumstances brought to light during its course, be suspended, reduced or dismissed, by any competent authority, whether he have been found guilty or not.

CHAPTER V.

Of Land and Land-revenue.

Land.

37. 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

Public roads, &c., and lands not property of others, belong to Government.

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

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

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

(2.) **Rights to public streets in Municipal limits.**—The only case in which a Municipality can sell or grant any portion of a public street to an individual house-holder is under clause 2 of section 30 of Bombay Act VI, 1873, which authorizes Municipalities for the purpose of improving the line of any public street to allow any house or building in that street to be set forward. Where there is no Municipality the public street vests under section 37 of the Land Revenue Code in Government. But they vest in Government like other lands “except in so far as any rights of any persons may be established in or over the same.” In public streets the public have a permanent right of way extending to every portion of

* Vide order No. (9) printed under section 61.

such street, and it would be an infringement of this right for Government or their officers to sell or grant any land belonging to a public street to an individual. Where therefore there is no Municipality the right to dispose of any portion of a public street is more limited than in a Municipal district, for Government have not even the legal power to allow a house to be set forward. (G. R. No. 5965, dated 20th August 1886.)

38.* Subject to the general orders of Government it shall be lawful for survey officers whilst survey operations are proceeding under Chapter VIII of this Act, and at any other time for the Commissioner, † to set apart lands, the property of Government and not in the lawful occupation of any person or aggregate of persons, in unalienated villages or unalienated portions of villages, for free pasturage for the village cattle, for forest reserves, or for any other public or municipal purpose ;

Lands may be assigned for special purposes, and, when assigned not be otherwise appropriated without sanction.

and lands assigned specially for any such purpose shall not be otherwise appropriated or assigned without the sanction of the Commissioner; and in the disposal of land under section 37 due regard shall be had to all such special assignments.

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 Col-

Regulation of use of pasturage.

* See rules 7 to 12 of the rules under section 214.

† This section gives the Commissioner instead of the Collector, the power of setting apart lands for public purposes ; but the arrangement by which that power is to be exercised by Survey officers while survey operations are proceeding, is not thereby disturbed. (Select Committee's report on the Revenue Code Bill.)

‡ 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. (I. L. R., 2 Bom. 110.)

lector 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.

Trees.

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 settlement completed before the passing of Bombay Act I of 1865, this provision shall not apply to teak, blackwood or sandalwood trees. The right of Government to such trees shall not be deemed to have been conceded, except by clear and express words to that effect.

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.

* Vide orders under Section 41.

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.

41.* The right to all trees specially reserved under the provision of the last preceding section, and to all trees, brushwood, jungle or other natural product, growing on land set apart for forest reserves under section 32 of Bombay Act I of 1865, 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.

Rights to trees of occupants—(1.) Whatever is affixed or planted in the soil becomes subject to the same rights of property as the soil itself. If a man plants a tree in Government land the tree becomes the property of Government and the planter has no right thereto or to the produce thereof. A claim to enjoy the produce cannot be maintained by custom. Prescription does not support the claim as it cannot run against the crown. No claim can be maintained unless there has been a special arrangement or agreement with Government or its officials that the claimant should take the produce. Enjoyment of the produce of trees on Government waste lands by custom or under a lax system of administration does not amount to recognition by Government of a right which must be rejected. The exception in favour of private rights in this

* Vide orders printed under rule 91.

section extends to lands set apart for Forest reserves under section 38. (G. R. No. 6550, dated 3rd November 1831.)

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

In cases where the boundaries of a field are not laid down on the banks of a stream the area of the field as recorded in the survey registers should be taken as the guide in determining how far the right of the occupant extends. The occupant should be allowed the benefit of the trees on the area recorded; all beyond it being held to be the property of Government subject to the provisions of the Land Revenue Code regarding alluvion. (G. R. No. 649, dated 30th January 1832.)

(3) **Of District hereditary officers.**—The District hereditary officers have no right to trees standing on the lands which they hold for service uncommuted and without proprietary rights. (G. R. No. 419, dated 17th January 1837.)

(4) **Of service Inamdars.**—The holders of service Inam lands have no right to the timber or forest on their lands unless they hold a title deed conferring proprietary rights in express terms. (G. R. No. 7633, dated 9th November 1837.)

(5) In an alienated village in which the grant of service land was made by Government prior to alienation of the village to the Inamdar, and was thus excluded from Inam to the latter, the right to trees in such service land would undoubtedly vest in Government, while in villages where the service grant was subsequent to the alienation of the village, such right must be considered to vest in the Inamdar. (G. R. No. 7674, dated 17th November 1838.)

(6) **Of service Inamdars and of occupants distinguished or defined.**—The distinction between a holder of service lands and an ordinary occupant is clear. Service tenure is a privileged tenure and the extent of the alienation conveyed in the privilege is governed by the general rules which do not presume cession of forest rights in the absence of proof. Government can disallow altogether the cutting of trees in service lands or can permit it subject to such conditions as they may think fit to impose. (G. R. No. 5987, dated 6th September 1838.)

(7.)—No distinction should be made between rights to trees enjoyed by occupants in return for certain amount of assessment, and those enjoyed by service Inamdars in return for service. Whatever trees are reserved in the case of ordinary occupants should be reserved also in those service lands to which a settlement converting them into private property has not been applied. (G. R. No. 9573, dated 19th December 1839.)

(8.) **Rules regarding cutting of trees in service lands.**—As regards cutting of trees in service lands the following rules have been sanctioned, *viz*:—

- (a) Occupants of service holdings may with the previous permission of the Collector, cut any trees standing in their holdings.
- (b) The Collector shall not, except for express reasons to be recorded in writing, refuse permission unless the trees be reserved at the Survey or form portion of sacred groves or are roadside or other trees useful to the community and whose destruction would be a public loss.
- (c) In the case of an application to cut isolated teak or other reserved trees, the Collector may grant them on payment of their estimated value. Where a permission to cut several of such trees is applied for, the application should be disposed of by the Conservator.

The Collector should be directed that where the custom is for the land to pass from an occupant to his natural heirs independently of the watandar who actually performs service, the permission should be given; but that where the land passes with the office and the holder enjoys only a temporary usufruct, permission should only be given for good reasons, such as that the trees are ready to fall, damage the crops, or the like. (G. R. No. 6376, dated 9th September 1890.)

42.* All road-side trees which have been planted and reared by, or under the orders of, or at the expense of Government, or at the expense of Local Funds, vest in Government. But in the event of such trees dying, or being blown down, or being cut down by order of the Collector, the timber shall become the property of the holder of the land in which they were growing; and the usufruct, including the loppings of such trees, shall also vest in the said holder; provided that the trees shall not be lopped except under the orders of the Collector.

If the holder of any land in which such trees are growing shall so desire and shall make an application to the Collector for the purpose at any time within two years from the date on which this Act shall come into operation, the Collector shall deduct the strip of land covered by the said trees from his holding, and remit thencefor-

* Vide G. R. No. 3495, dated 3rd July 1879; printed under rule 91.

ward the proportionate amount of land-revenue due upon the strip so deducted. Any strip of land so deducted shall, with the trees upon it, vest thereafter in Government.

43. Any person who shall unauthorizedly fell and appropriate any tree or any portion thereof or remove any other natural product 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.

44. In villages or lands in which the rights of Government to the trees have been reserved under section 40 subject to certain privileges of the villagers or of certain classes or persons to cut firewood or timber for domestic or other purposes, and in lands which have been set apart under section 38 for forest reserves subject to such privileges, and in all other cases 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.

Regulation of supply of firewood and timber for domestic or other purposes.

Recovery of value of trees, &c., unauthorizedly appropriated.

Land-revenue.

45.* All land, whether applied to agricultural or other purposes, and wherever situate, is liable to the payment of land-revenue to Government according to the rules hereinafter enacted except such as may be wholly exempted under the provisions of any special contract with Government or any law for the time being in force.

All land liable to pay revenue unless specially exempted.

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.

Saving of right to levy revenue.

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

Liability of alluvial lands to land-revenue.

* (1.) Strict proof must be given of any right set up in derogation of the inherent right of the sovereign to assess the land at his discretion; and the facts, that the lands in question were waste lands reclaimed from the sea which the inhabitants were invited to cultivate or that a very small rent has been paid for many years, do not show that the Government has forfeited its right to enhance the assessment in respect of such lands. (*Shapurji Jivanji vs. The Collector of Bombay*, I. L. R. Bombay Vol. IX, 1885, page 483.)

(2.) Vide order No. (9) printed under Section 61.

(3.) The resumption of Deosthan Inam by imposition of full assessment can never be legal. The only cases in which such property can become liable to full assessment, are cases in which the class of beneficiaries being wholly extinct, the property reverts to Government by a *quasi-écheat*. (G. R. No. 1604, dated 2nd March 1891.)

(4.) Vide footnote No. (2) to section 48.

† (1.) See rule 46 of the rules under section 214 of the Code.

(2.) The word 'holding' in this section is, it is believed, to be understood in the same sense in which it has been used in sections 47 and 64. This section refers to alluvion formed on alienated lands. Alluvial lands formed on Government lands are dealt with in sections 63 and 64.

‡ When the Land Revenue Code Bill was before the Local Legisla-

payment of land-revenue to the same privileges, conditions or restrictions as are applicable to the original holding in virtue of which such lands, islands or river-beds so vest in the said holder, but no revenue shall be leviable in respect of any such lands, islands or river-beds until or unless the area of the same exceeds half an acre and also exceeds one-tenth of the area of the said original holding.

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

“ The ordinary law, independent of the Land Revenue Code, is that the riparian proprietor becomes the owner of land gained from a river by gradual accretion ; and the applicability of this principle to the Bombay Presidency has been recognized in *Nasarwanji Pestonji vs. Nasarwanji Darasha* (H. B.). H. C. R. 366.* As the petitioner is the Inamdar of the adjoining land, I think he was entitled from the beginning to the possession of the newly formed land assuming of course (as I think may probably be assumed owing to the smallness of its area) that it was formed by accretion and was not transferred bodily from some other holding. The law on the subject is concisely explained in the footnote on page 268 of the volume of the High Court reports above mentioned.

“ 2. But though I do not think that Government had at any time any legal right to the land, the question of paying over to the petitioner mesne profits involves other considerations. By law he has no claim to them. He has enjoyed the land since 1882 and any right to previous profits is time-barred. The sum which is claimed, is trifling in amount

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

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

but the principle of refunding money which at the time it was collected, was levied *bona fide* under the impression that Government was entitled to it, may if admitted, constitute an inconvenient precedent.

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

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

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

It must be observed that the limits of area laid down in this section simply determine the question of liability of alluvial accretion to land revenue and have nothing to do with the question of right to hold such accretions. Under the section in question as interpreted above, alluvial accretions formed on alienated land not exceeding the limits laid down will be entirely exempt from the payment of land revenue, while those which exceed that limit will "in respect of their liability to the payment of land revenue be subject to the same privileges, conditions or restrictions as are applicable to the original holding" on which such accretions are formed.

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

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, nor less than one-tenth of the holding, is lost by diluvion.

Right to remission in cases of diluvion.

The word "holding" in this section shall be deemed to mean a survey number or any division of land on which a distinct or aggregate assessment has been fixed.

"Holding" defined.

48.† The land-revenue leviable under the provisions of this Act shall be chargeable:—

Land chargeable with land revenue.

- (a) upon land appropriated for purpose of agriculture;
- (b) upon land from which any other profit or advantage than that ordinarily acquired by agriculture is derived;
- (c) upon land appropriated for building sites.

And the assessment fixed under the provisions of this Act upon any land appropriated for any one of the above purposes, shall be liable to be altered and fixed at a different rate when such land is appropriated for

Assessment variable if purpose for which land is held is changed.

Assessment variable if purpose for which land is held is changed.

ceeds the limit will be regulated according to the terms of that settlement. In the case of the original holding being held on service tenure the newly formed land will be subject to payment of full assessment as "Bhar Judi" or "Bhar Akar Salami."

* Vide Rule 47 of the rules under section 214, and G. R. Nos. 773, dated 18th February 1880, and 2771, dated 12th April 1886, printed under that rule.

† (1.) Vide Order No. (3) printed under Section 66.

(2.) Under Section 45 and 48 all land is liable to the payment of land-revenue, no matter what purpose it is put to, unless it is exempted under a special contract or by any law for the time being in force. (G. R. No. 4344, dated 18th June 1886.)

(3.) As regards determining special assessments under this section see table given in Appendix II.

any other purpose, notwithstanding that the term, if any, for which such assessment was fixed may not have expired.

And any land allowed by Government to be held free of assessment on condition* of its being appropriated to one purpose shall become liable to assessment if at any time it is devoted to any other purpose.

Land held rent free for one purpose assessable if used for another.

It shall also be lawful for the Collector or for a survey officer, subject to rules or orders made in this behalf under Section 214, to prohibit the appropriation of any unalienated land liable to the payment of land-revenue for certain purposes, and to summarily evict any holder who may appropriate, or attempt to appropriate, the same to such prohibited purposes.

Appropriation of land to certain purposes may be prohibited.

Appropriations before 1865.—(1.) In cases in which portions of lands assessed for agricultural purposes only have, prior to the passing of Bombay Act I of 1865, been appropriated for building or other non-agricultural purposes, such portions should at the first revision survey be separately demarcated (by analogy with section 116 of the Code) and specially assessed under section 48(c) of the Code. (G. R. No. 205, dated 9th January 1885.)

(2).—It would obviously involve much expense and inconvenience to separately demarcate and assess in accordance with G. R. No. 205, dated 9th January 1885, minute plots of land which have been used for constructing huts, temples, tombs and raised platforms surrounding trees, &c. There may however be cases, such as a large building in the vicinity of an important town where it would be expedient to act on the principle approved in the above Resolution. His Excellency the Governor in Council is therefore pleased to grant to the Survey and Settlement Commissioner a discretionary power either to carry out the principle approved

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

in the Government Resolution above quoted or to apply the "Pot Kharab" Rules to such appropriations according to the circumstances of each case. (G. R. No. 3942, dated 16th May 1885.)

Extent of para. 2 of Section 48 read with Section 112.—
 (3.) Section 112 of the Code enacts that "existing survey settlements of land revenue * * * shall be and are hereby declared to be in force subject to the provisions of this Act." As regards the question whether this enactment subjects assessments fixed in any such "existing survey settlements" to the provisions of paragraph 2 of section 48 of the Code, it has to be observed that that paragraph applies in terms only to any "assessment fixed under the provisions of this Act." Assessment fixed in "existing survey and settlements" were not fixed, "under the provisions of this Act," and as section 112 does not say that they are to be deemed to have been so fixed, but merely declares that existing survey settlements are in force subject to the provisions of this Act, it appears reasonable to conclude that this latter enactment was not intended to embrace any such provisions as that of paragraph 2 of section 48, but only to such provisions of the Code as are general in their terms. Any other reading of section 112 would deprive the words "fixed under the provisions of this Act" in para 2 of section 48 of their meaning and give to that paragraph a retrospective operation. There is a strong authority against thus interpreting the intention of the legislature. (G. R. No. 10196, dated 19th December 1885.)

(4)—Paragraph 2 of section 48 does not apply to lands assessed under a survey settlement fixed before the date of the Land Revenue Code. The words of the paragraph "the assessment fixed under the provisions of the Act" are specific, and section 112 declaring existing settlements "to be in force subject to the provisions of this Act" does not make the assessments fixed under such existing settlements an assessment fixed under the provisions of the Land Revenue Code. It can neither be considered that the assessment under the existing settlement was fixed under an order or notification which by virtue of section 2 is to be deemed to have been made under the Land Revenue Code as in that case section 112 would seem to be surplusage. Legislation will be required, therefore, if paragraph 2 of section 48 is to be made applicable to assessments fixed under earlier survey settlements, i. e., those introduced prior to the passing of the Code. It is doubtful how far such legislation would be justifiable having regard to the difference between section 35 of Bombay Act I. of 1865 and paragraph 2 of this section with reference to the rate of assessment which may be levied in such a case. (G. R. No. 4758, dated 3rd July 1886.)

(5.) **Lands settled under the Code liable to altered assessment.**—In all cases in which unalienated land (whether settled under the Land Revenue Code or before it came into force) is appropriated to any purpose unconnected with agriculture, a fine under section 65 (vide

rule 66) can only be levied, but no revised assessment under section 48, which can be only imposed in the case of land settled under the Code. The procedure to be observed in cases of such appropriation of land settled before the Land Revenue Code came into force, should therefore be to recover the fine only. (G. R. No. 6306, dated 19th September 1887.)

(6.) **Appropriation of Mharki Inam land.**—In a case in which a company applied for permission to appropriate a (Mharki) watan land for building purposes, the question raised was whether if the application was granted the land appropriated for building purposes would be liable to altered assessment under paragraph 2 of section 48 of the Land Revenue Code and to a fine under section 65 of the Code. This question has been disposed of by the following orders :—

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

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

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

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,

Land indirectly taxed to State, or
 Land liable to occasional assessment,
 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 a fair equivalent of the assessment, cess, fine or tax for which it is substituted, and shall not be in excess of the assessment* to which the land would be ordinarily subject, if no right to exemption existed in respect thereof.

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.

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

51. When it has been customary to levy a larger revenue under the name of "*veta*" or any other designation, upon any portion of land than such portion would ordinarily be liable to in consideration of other land being held with it which is wholly or partially exempt from payment of revenue, the excess of revenue payable on the said portion of land may be charged upon the land hitherto held wholly or partially exempt.

52.* On all lands not wholly exempt from payment of land-revenue, and not within the local operation of an order made under section 95, the assessment of the amount to be paid as land-revenue shall be fixed at the discretion of the Collector, subject to rules or orders made in this behalf under section 214 and the amounts due according to such assessment shall be levied on all such lands :

Provido. 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.

53.† A register shall be kept by the Collector in such form as may from time to time be prescribed by the Governor in Council of all lands, the alienation of which has been established or recognized under the provisions of any law for the time being in force ; and when it shall be shown to the satisfaction of the Collector that any sanad granted in relation to any such alienated lands has been

* See rules 53 to 56 of the rules under section 214 of the Code.

† The section as it stands does not contemplate the issue of a duplicate sanad in lieu of the lost one.

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.

(1.) **Alterations in existing sanads.**—Where Government waste land is given to an Inamdar in exchange for his Inam land taken up by Government, no fresh sanad is required to be issued to replace the existing one. It will be sufficient in such cases if the existing sanad is altered, care being taken that the Inamdar's assent to the exchange is endorsed on the sanad while the alteration in the deed should be certified by the Collector's signature. (G. R. No. 7851, dated 23rd December 1881.)

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

(3.) **Form of register of alienated lands.**—The register of alienated lands required to be kept under this section is to be prepared in the form given in Appendix F to the rules under the Code. Great care should be taken in the preparation of the register as otherwise it will not only be valueless but dangerous. The register is to be a District Register. It should therefore be in English and when completed, printed and bound in the same manner as the cash alienation lists. It should in the first place be prepared in Vernacular for each taluka. The alienation of each village should be entered and disposed of before the alienation of another village is taken up and the villages should be entered in alphabetical order. These lists when duly examined and approved in the Alienation Branch should be formed into one general register for the District in English. (G. R. No. 5634, dated 31st July 1883.)

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.

Settlement of assessment with whom to be made.

If the said person be absent, and have left no known authorized agent in the district, so that the settlement of the assessment cannot be concluded with him, such settlement may be made with the person holding under him, or in occupation of the land.

When to be made with under-holder.

55.* The Governor in Council may authorize the Collector or the officer in charge of a survey or such other officer as he deems fit, to fix such rates as he may from time to time deem fit to sanction for the use, by land-

Rates for use of water.

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

(2.) In exercise of the powers given by section 55 of Bombay Act V of 1879 the Governor in Council authorises the Commissioner in Sind to fix rates for the use, by landholders and others, of water the right to which vests in Government, for the cultivation of rice on any land not assessed and entered in the survey registers as rice land.

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

Any person desiring to grow rice in land not assessed as rice land shall make an application in writing to the Mukhtyarkar or other officer duly authorized to receive such application, for permission to make use of the supply of water needful for growing rice, stating if he requires it for one year only or permanently, and if any person cultivates rice in such land without such permission he shall be charged with double the rate he would otherwise have been required to pay had he applied for and obtained permission.

All persons who now hold or may hereafter apply to take up lands assessed and recorded in the survey registers as rice lands shall as soon as possible after the publication of these rules or on application to take up such lands, be tendered a list of such rice lands then being or about to be in their occupation, and rice shall not be grown on any number not included in such lists except on payment of the extra rate. (G. N. No. 4213, dated 21st July 1881, published in the B. G. G. Part I, page 396, 1881.)

(3.) Section 55 is a new law authorizing the imposition, and the recovery as land revenue, of rates for the use of water the right to which

holders and other persons, of water the right to which vests in Government, ' and in respect of which no rate is leviable under the Bombay Irrigation Act, 1879.* 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.

56.† Arrears of land-revenue due on account of land by any landholder shall be a paramount charge on the holding and every part thereof, failure in payment of which shall make the occupancy or alienated holding, together with all rights of the occupant or holder over all trees, crops, buildings and things attached to the land, or permanently fastened to anything attached to the land, liable to forfeiture, whereupon the Collector may levy all sums in arrear by sale of the occupancy or alienated holding, freed from all tenures, incumbrances and rights created by the occupant or holder or any of his predecessors in title, or in anywise subsisting as against such occupant, or holder, or may otherwise dispose

vests in Government or which has been made available by Government works. (Select Committee's report on the Revenue Code Bill.)

(4) The words "Collector or the officer in charge of a survey" in this section appear superfluous and might as well have been omitted. The Governor in Council has under this section the power to authorize "such officer as he deems fit," to fix the rates, and this would appear sufficient to enable him to authorize "the Collector or the officer in charge of a survey" as well as any other officer.

(5.) Vide also rules regarding fixing of water assessment on land under Bandharas given under section 101.

* The words in inverted commas have been inserted in accordance with the Bombay Irrigation Act (VII of 1879).

†(1.) See G. R. No. 4891, dated 16th September 1880, printed under section 169, and also rules 58 to 64 of the rules under section 214 of the Code.

(2.) Whenever the land revenue is in arrears, Government is entitled to sell the land and realize its due whoever is the defaulter. (I. L. R. 5, Bombay 74.)

(3.) See also orders printed under sections 71 and 72.

of such occupancy or alienated holding under rules or orders made in this behalf under section 214.

(1.) **Failure in payment of land revenue.**—Failure in payment of land revenue makes the occupancy liable to forfeiture. The Collector is empowered to declare the occupancy forfeited at any time after the arrear is due. Forfeiture takes place when the Collector declares it. He can declare it at the end of the period named in the notice. (G. R. No. 4000, dated 31st July 1879.)

(2.) **Forfeited occupancy need not necessarily be sold.**—It is not obligatory on the Collector under the Code to sell a forfeited occupancy in realization of arrears. He may either sell it or otherwise dispose of it. (G. R. No. 5730, dated 27th October 1879.)

(3.) **Defaulter's holding or occupancy.**—In the following paragraphs is concisely stated what the law of the Code regarding defaulter's holdings is :—

Section 56 declares such holdings liable to forfeiture ;

Section 153 says that when default is made the Collector may declare the occupancy or alienated holding to be forfeited to Government ;

When forfeiture has been thus effected, section 57 empowers the Collector to take immediate possession of the land ;

Sections 56 and 153 next authorize the Collector to sell the holding (occupancy or alienated holding) or otherwise dispose of it under rules or orders made in this behalf by Government under section 214 (c) ;

If the forfeited holding (occupancy or alienated holding) is sold, the proceeds must be credited to the defaulters' accounts (section 153), and the surplus, if any, over and above the expenses of the sale and the amount of the arrears must be paid to him (section 183) ;

If the forfeited holding is not sold it remains, nevertheless, forfeited and can be disposed of either at once or at any subsequent time in such manner as the Collector, subject to the rules or orders of Government, thinks fit ;

Section 57 empowers the Collector to place the purchaser or other person entitled to hold the forfeited holding, in possession ;

If a forfeited holding (occupancy or alienated holding) is not put up for sale or if it is put up for sale and is not sold, so that it yields no proceeds, the arrear due by the defaulter is still recoverable by any of the means allowed by chapter XI. (G. R. No. 3796, dated 21st July 1880.)

(4.) **Grant of occupancy of land to pauper cultivators.**—Government are of opinion that it is not expedient or desirable to issue any order prohibiting absolutely the grant of the occupancy of land to pauper cultivators. In allowing land to be taken up for cultivation by persons who possess little or no capital the Collectors must exercise their discretion on consideration of the varying circumstances of different districts. In

collectorates inhabited in parts by hill men and tribes whom it is desired to wean from their wild life and induce to take to cultivation and a more settled mode of existence, it would be obviously impolitic to refuse land to applicants merely because they were destitute of capital.

With reference to the question of the grant of remission or the temporary suspension of the collection of arrears of land revenue when a Collector finds that there are special exceptional circumstances whether of season or otherwise in any year, which prevent for the time being the punctual payment of the land assessment by the rayats, and that more liberal remissions and relief than he is authorized to grant are required; he should report the facts of the case to Government for orders in place of having immediate resort to the sale of the holdings and the distraint of the property of the defaulting cultivators.

Those who have been once defaulters should not be again allowed to take up land without the special orders of the Collector. If the penalty of becoming a defaulter is absolute disqualification from again holding land under Government, the effect may be beneficial. (G. R. No. 4297, dated 25th July 1881.)

(5.) **Sale of forfeited holding or occupancy.**—When a sale of an occupancy or alienated holding is made under sections 56 and 57 the property is sold as the property of Government by reason of forfeiture, and not as the property of the defaulter. A forfeited land can be sold as unoccupied unalienated land subject to the same rules and orders as are applicable to the sale of unoccupied unalienated land, so far as they are consistent with the provisions of Chapter XI of the Code. The proclamation for the sale of unoccupied Government waste land should be used for the sale of forfeited holdings. (G. R. No. 6455, dated 29th October 1881.)

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 the land embraced within 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.

* Vide order No. (3) under section 56.

Receipts to be granted by revenue officers.

58.* Every revenue officer receiving a payment of land-revenue shall give a written receipt for the same.

And every superior holder of an alienated village, or of an alienated share of a village, shall give a written receipt for every payment of rent or land-revenue made to him by an inferior holder, and every such receipt shall be countersigned by the village accountant, if there be any.

And by superior holders.

(1.) Hereditary officers to grant receipts.—The provisions of sections 58 and 59 of the Land Revenue Code should be made applicable to hereditary officers. (G. R. No. 5430, dated 14th October 1880.)

(2.) Receipt and receipt book.—A rayat cannot be compelled to accept the charge of a receipt book, but the giving of receipts on separate pieces of paper is irregular and should not be allowed as an alternative (G. R. No. 1790, dated 27th February 1884.)

(3.) Village accountant bound to give receipt.—The village accountant receiving a payment of land revenue is bound to tender a receipt for the same in some form, and if a receipt book is not produced by a rayat the accountant has no choice but to prepare and tender it to the rayat on a separate paper. (G. R. No. 3661, dated 7th May 1884.)

(4.) Land revenue paid in kind.—Where the practice is of making payments in kind it has been decided that they should be entered in receipt books according to local measures. (G. R. No. 259, dated 12th January 1885.)

(5.) Neglect to give receipts by village officers.—Section 58 of the Land Revenue Code enacts that every revenue officer receiving a payment of land revenue shall give a written receipt for the same, and section 59 directs that any person convicted of a breach of the provisions of that section shall be liable to a fine not exceeding 3 times the amount received for which a receipt was not duly granted. In G. R. No. 2083, dated 21st April 1880,† however, Government have ruled that hereditary Patils and Kulkarnis are not revenue officers within the definition given in the Land Revenue Code. The result is therefore that when they fail to grant receipts for payments of land revenue, they cannot be punished under section 59.

To meet this and other similar difficulties it was suggested that the definition of the revenue officers given in clause I, section 3 of the Land Revenue Code should be amended. With reference to this it has been decided that no such amendment is necessary as the giving of receipts is

* Vide orders printed under section 85.

† Vide order No. (1) printed under section 3, clause (1).

well established part of the duty of village revenue officers and neglect of it can be punished like any other breach of duty. (G. R. No. 3284, dated 4th May 1889.)

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 Occupation of unalienated Land and the Rights of Occupants.

Occupation.

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.

Permission required previous to taking up unoccupied land.

61.† Any person who shall unauthorizedly occupy any land set apart for any special purpose, or any unoccupied land which has not been alienated, shall,

Penalties for unauthorized occupation of land.

* (1.) Application for leave to extend cultivation is exempt from Court Fees. (vide Para 11 of section 19 of the Court Fees Act VII of 1870.)

(2.) Application for leave to occupy land when made by a person who does not at the time of application hold any land is also exempt from Court Fees: (G. of L. N. No. 3626, dated 23rd September 1884, published in the B. G. G. Part I, page 735, 1884.)

(3.) Vide rule 34 of the rules under section 214.

† This section corresponds to sections 33 and 39 of Bombay Act I of 1865. It has been constructed so as to make the penal provisions and remedies common to the two cases of occupation without permission, and

if the land which he unauthorizedly occupies forms part of an assessed survey number, pay the assessment of the entire number for the whole period of his occupation, and

if the land so occupied by him has not been assessed such amount of assessment as would be leviable for the said period in the same village on the same extent of similar land appropriated to 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 or orders made in this behalf under section 214, if he have appropriated it to 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 a portion 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 he may have raised on the land shall be liable to forfeiture and any building or other construction he may have erected thereon shall also, if not removed by him after such written notice as the Collector may deem reasonable, be liable to forfeiture.

occupation of lands set apart for a special purpose. The section provides distinctly for (1) the levy of assessment, (2) fine of five rupees or ten times the assessment, (3) eviction and (4) forfeiture of crop. The introduction of the penalty of fine up to a fixed amount as an alternative from fine by a multiplied assessment is made to meet cases in which the extent of the unauthorized occupation is trifling, but the occupation itself mischievous, as for instance when a landholder ploughs up and incorporates in his field the strip of land dividing him from his neighbours. (Select Committee's report on the Revenue Code Bill.)

* As regards determining the amount of fine leviable under this section see table given in appendix II.

Forfeitures under this section shall be adjudged by the Collector, and any property so forfeited shall be disposed of as the Collector may direct.

(1.) **General rulings as to unauthorized occupation and appropriation**—This section applies as well as to lands in the sites of towns and villages as to other lands, and authorizes the Collector summarily to evict any person who shall unauthorizedly occupy any unoccupied land which has not been alienated. It has no retrospective effect however, and does not authorize the Collector summarily to evict a person from any land which he may have unauthorizedly occupied prior to the passing of the Code. In such cases the Collector's remedy would be by civil suits. (G. R. No. 173, dated 12th January 1880.)

(2.) **Remission of assessment chargeable on lands unauthorizedly occupied**.—The Government is pleased to authorize the Collectors and Assistant and Deputy Collectors when dealing with cases of unauthorized cultivation under this section, to remit such portion of the assessment chargeable, as may appear to them on view of the circumstances to be reasonable and desirable. It must, however, be understood that the power to grant remission hereby conferred is to be exercised only in cases where a strict enforcement of the provisions of this section would seem to be inexpedient. (G. R. No. 1625, dated 30th March 1880.)

Encroachments and appropriations effected before or after the passing of the Code.—(3.) If a person in a town has prior to the passing of the Land Revenue Code encroached on a public street by constructing a building, the Collector cannot under section 61, order the removal of the building. If, however, a person continues unauthorizedly in the occupation of land after the introduction of the Code there is no reason why the provisions of the Code should not be applied. In the one case the occupation is practically concluded when the encroachment is completed, in the other case the occupation is continued as long as the land is used for cultivation by the occupier. (G. R. No. 4404, dated 29th July 1881.)

(4)—If the land is the building-site only and the building was made prior to the passing of the Code the unauthorized occupation of the ground was concluded before the Act came into force and cannot be dealt with retrospectively. The possession of the ground by the owner of the building became adverse to Government when the building was erected.

If on the other hand the land is used, say for cultivation, every fresh use of it constitutes a case of unauthorized occupation to be dealt with under the law at the time in force. In such cases if the occupier is evicted, any building he may have erected whether prior to the passing of the Act or subsequently, will be forfeited unless removed by the owner. (G. R. No. 6067, dated 15th October 1881.)

(5.)—Section 61 has no retrospective effect, i. e., the provision can-

not be enforced in respect of anything done before the Code became law on the 17th July 1879.

But when an unauthorized occupation of land, which commenced before 17th July 1879 has been since continued, the Collector may, unless the occupier has in the meantime acquired a complete prescriptive title to the land.

- (a) require payment of assessment under paragraphs 2 and 3 of section 61 for the whole period of occupation, except for any time prior to the 17th July 1879;
- (b) summarily evict the person unauthorizedly occupying;
- (c) forfeit any crop raised on the land subsequently to the 17th July 1879;
- (d) require the removal of any building or other construction, which the person unauthorizedly occupying the land may have erected thereon;
- (e) failing obedience to the requisition under (d), forfeit the building, or construction, whether it was erected before or since the 17th July 1879.

(G. R. No. 6202, dated 1st September 1890.)

(6.)—**On unassessed public lands.**—Appeals having been made to Government against the assessment of house-sites in villages on transfer to a non-resident or non-agriculturist, and of “Wadas” used for storing agricultural produce and the like, when separated from the homesteads to which they originally belonged; and also against the dealing of Collectors with encroachment by building on land appertaining to public roads or being Government property, and as the orders of the local officers appeared to be in some respect of doubtful propriety, His Excellency in Council considering that some orders of general application should be issued and that the views of Government on the question of assessing sites should be explained, referred the subject to the Remembrancer of Legal Affairs for report.

His Excellency in Council has now received a report from the Remembrancer of Legal Affairs which should now be communicated to all Collectors for information and guidance as having the concurrence of Government. The proposal to survey and assess village-sites as a general measure was abandoned in 1880, and His Excellency in Council, without on that account surrendering the right to assess, secured under the Land-Revenue Code, recognizes the objection to exercising it in isolated cases, merely on the ground that a site or land attached to a site and long held free of assessment has changed hand. (G. R. No. 4344, dated 18th June 1886.)

(7.)—**On public roads.**—In the event of land in a village-site being encroached upon or taken up unauthorizedly, section 61 of the Code affords an adequate remedy. But this section does not apply to land

which forms part of a road. The Government of India, at the time the Code was under consideration, objected to power being conferred upon revenue officers to deal with encroachments upon roads and an express provision which had been inserted in the Bill for this purpose was, in consequence, omitted. Such encroachments can only now be dealt with by the Magistrates under the Criminal Procedure Code, or by Municipal bodies under the enactments or rules which govern their procedure. (Extract from the Legal Remembrancer's Report,—G. R. No. 4344, dated 18th June 1886.)

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

(9)†—On tanks in Municipal limits.—The word "tank" is ordinarily applied to basins in the earth constructed or adopted for the storage of water. All public tanks and also any adjacent land appertaining thereto in Municipal limits are under section 17 of Bombay Act VI of 1873 vested in and belong to the Municipality. Under this section it is clear that the bed of any such public tank belongs to the Municipality. And when once the soil has so vested there is nothing in the law to make it cease to be Municipal property on its nature being altered and its ceasing to be the bed of a tank. When the bed of a tank is Municipal property according to this view it is not liable to assessment when cultivated or otherwise used. Section 45 of the Land Revenue Code, no doubt, makes all land liable to land revenue unless wholly exempted under the provisions of any special contract or any law for the time being in force, but looking to the Municipal Act sections 17 and 18, of which the latter declares that all rent of Municipal property shall go to the Municipal fund it must be held that Municipal lands are implied by the intention of the Municipal Act exempted from land revenue and must be considered "alienated" (that is, transferred so far as the rights of Government to payment of rent or land revenue are concerned) and therefore are not liable to assessment under section 52 or to the penalties provided by section 61 of the Land Revenue Code. (G. R. No. 6111, dated 9th September 1887.)

(10.)—In Taluka towns. Mamlatdar's responsibility.—There has recently come before Government an instance of unauthorized occupa-

* Vide also order No. (2) printed under section 37.

† Vide order (1) printed under section 37.

tion of Government land by the erection of buildings thereupon by a private individual in a town which is the Head Quarter of a Taluka. His Excellency the Governor in Council considers that such cases are most discreditable to the Mamlatdars under whose personal observation it may be presumed that buildings are erected upon public property. There are Municipalities in Taluka Head-Quarter towns and the Mamlatdar was formerly the Chief Executive of the Committee and had the best opportunity of knowing of any encroachments upon public property; neglect of duty in such cases therefore was the more inexcusable. Under the present system of local Government it is more necessary than formerly that village and Taluka officials should feel their responsibility for protection of public property; and the attention of the Collectors and the Commissioners is therefore especially directed towards seeing that the duty is performed with promptitude and efficiency. (G. R. No. 3789, dated 11th June 1888.)

Section 61 not applicable to alienated villages or lands.—(11.) Section 61 is not applicable to alienated villages or lands. The Collector cannot therefore take steps under this section in cases of encroachment on Gurcharan, (or lands assigned for special purposes) in alienated villages. In such cases the Inamdar's proper remedy is a suit in the Civil Court. (G. R. No. 5205, dated 25th June 1885.)

(12.) Course to be taken by the alienee —The provisions of section 61 do not apply to alienated lands, (see above). Accordingly in a case in which the Inamdar of a village had permitted a man to build over the road passing through the village to the great inconvenience of inhabitants, the Collector declined to interfere on the ground that the village was " alienated. " The Commissioner recommended that the view held in (G. R. No. 5205, dated 25th June 1885) might be reconsidered with reference to the points —

- (1) That the Inamdar in the present instance is not the owner of the soil under the ruling at 6. B. H. C. R. A. C. J. ; and
- (2) That section 37 of the Bombay Land Revenue Code reserves the rights of Government in public roads.

This recommendation was disposed of by G. R. No. 3837, dated 3rd June 1890, by which the view held in the Resolution above referred to has been reaffirmed in the following terms :—

“ Section 61 applies only to unauthorized occupation of :—

- (a) any land set apart for any special purpose, and
- (b) any unoccupied land which has not been alienated.

“ Section 218 of the same Code renders inapplicable to alienated land such provisions of the Code as in terms apply to unalienated lands or the holders thereof.

“ It therefore follows that when land has been transferred in so far

as the rights of Government to payment of the rent or land revenue are concerned wholly or partially to the ownership of any person, the Collector cannot interfere to protect the rights of the transferee by evicting the unauthorized occupier summarily under section 61.

“ But the effect of this provision of the law is only to exclude the interference of the Collector in cases where the rights encroached upon have been transferred to an individual, who may enforce them, or make other arrangements with the trespasser.

“ The alienee must, if he wishes to enforce those rights, proceed by civil suit, for even under section 88 no power can be conferred upon him to exercise the powers of a Collector under section 61, though section 88 enables powers under sections 65 and 66 to be conferred by Commission *expressio unius est exclusio alterius*.

“ The power of summary eviction conferred by section 61 on the Collector extends not only to unalienated lands, but also to lands set apart for any special purpose, whether it be alienated or not. That is to say, the Collector cannot interfere summarily to protect the interests of an individual ; but he can do so in the interests of the public to preserve from unauthorized occupation land appropriated to special purposes.

“ Land can only be ‘ set apart ’ under the Code for certain purposes in unalienated villages, when it is the property of Government and unoccupied (section 38).

“ The wording of section 61 ‘ set apart for any special purpose ’ is not limited in its application to assignments under the Code for the special purposes enumerated in section 38, but would give the Collector power to protect against unauthorized occupation of any land lawfully set apart, whether under the Code or not, for any special purpose.

“ Land which, prior to the alienation of a village, had been dedicated by the State as a high road would certainly not pass to the alienee by a subsequent grant even of the soil of the village, but the dedication would survive for the benefit of the public. Unauthorized occupation even by the alienee of land so set apart, could be dealt with by the Collector under section 61, notwithstanding that the village including all the lands thereof were alienated.

“ But whether or no an encroachment on a road in existence prior to the alienation could be dealt with by the Collector under section 61 of the Bombay Land Revenue Code, there can be not the slightest room for doubt that it could be dealt with under section 133, Criminal Procedure Code, by the District, sub-Divisional, or other duly empowered magistrate, if it amount to an unlawful obstruction of a way, which is, or may be, lawfully used by the public.

“ A public road forming part of the general system of communication is a matter of imperial interest, and is therefore protected by imperial legislation, and no one has a right to obstruct any part of that

system. But, I think, before taking any magisterial action under the Criminal Procedure Code, it would be necessary to ascertain that the road in question was really a public road and not merely a private way, or a cart track, the use of which might be permissive only, or limited only to a section of the public resident in the neighbourhood.

"If the road is unquestionably a public road, that is dedicated to the use of the public, the date of its dedication would for the purposes of section 133, Criminal Procedure Code, be immaterial.

"If it is a road which pre-existed the grant of the village, the Collector could take action under section 61 to protect it from unauthorized occupation as land set apart.

"But if it is only a bye-way used for village traffic alone and only since the alienation of the village, then action could not be taken under section 133. of the Criminal Procedure Code and certainly not under section 61 of the Bombay Land Revenue Code.

"The mere fact that the Inandar was not owner of the soil of the village, would not preclude him, or any one with his permission from occupying, without waiting for authority under section 60 any land in the village on which the public had not a superior claim for special purposes." (G. R. No. 3837, dated 3rd June 1890.)

(13.) **Obstruction of a public road.**—It is clearly absurd to argue that an obstruction on a road is not an obstruction, because it still leaves the public room to pass. An obstruction of any part of public way is an obstruction of that way within the meaning of Chapter X of the Criminal Procedure Code. (G. R. No. 3814, dated 23rd June 1887.)

(14.) **Procedure for the summary eviction.**—The procedure to be adopted for the summary eviction of any person liable to be evicted under section 61 of the Land Revenue Code is clearly stated in section 202. In cases in which portions of public road have been unauthorizedly occupied, the Collector should after satisfying himself in each case that an encroachment has really taken place, strictly follow the procedure prescribed in section 202. In case any building has been erected on land encroached upon, the notice given under section 202 should contain a specific instruction to remove such building and vacate the land by such date as Collector might think reasonable. (Vide clause 6 of section 61 and clause 2 of section 202, and G. R. No. 1697, dated 13th March 1888.)

(15.) **Eviction of persons unauthorizedly occupying.**—The Commissioner should be informed that the ground furnished by the Revenue Code for an expulsion by the Collector of an intruder is quite strong enough to warrant the adoption of the course, in two or three clear instances as test cases. Assessment should not be levied retrospectively. When a complete prescriptive title has grown up so as to convert possession into ownership the Collector should of course abstain

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from action in the way of summary ejectment. (G. R. No. 86, dated 7th January 1889.)

(16.) **Unauthorized Occupation creating a prescriptive title.**—The questions as to what period of unauthorized occupation of Government land should be considered as creating a prescriptive title to the land, and whether when such a title is established the unauthorized occupier is to be allowed to continue in the possession of the land rent free have been decided by the following orders :—

“ Sections 35 and 36 of Regulation XVII of 1827 show that the Legislature accepted the principle of prescription creating a right of property or of fiscal exemption against the State as

L. L. R. IX. B. 227. against the individual,’ and article 149 of Schedule II of Act XV of 1879 bars a suit by the Secretary of State in Council by the lapse of sixty years from the date when the period of limitation would begin to run under that Act against a like suit by a private person, and, under section 28 at the determination of the period limited to any person for instituting a suit for possession of any property his right to such property is extinguished.

“ The right of a private person to sue for possession of immoveable property on any interest would be barred by the lapse of twelve years from the date when the possession of the defendant became adverse to him.

“ The question at what precise moment possession has become adverse must of course, depend on the circumstances of each particular case.

L. L. R. IX. M. 183. See also Savigny on possession, Sir E. Perry’s Translation, P. 275. ‘ The enjoyment necessary to create a title by prescription must not be a mere succession of independent trespasses; it must be, if not continuous, at least of such a character that an intention to assert a right as owner may be inferred from it.’

“ Sixty years of continuous possession in the open assertion of an adverse title would, therefore, be necessary to bar the Secretary of State in Council from recovery of possession.” (G. R. No. 728, dated 28th January 1891.)

(17.) **Extent of the unauthorizedly occupied land to be subjected to fine.**—It having been brought to the notice of Government that a variety of practice exists in different districts regarding the area on which fines leviable under sections 65 and 66 of the Land Revenue Code and rules 66 and 67 of the rules under the Land Revenue Code are to be imposed, the Governor in Council is pleased to direct that the opinions of the Law officers of Government given below shall be forwarded to the Commissioner in Sind, the Divisional Commissioners and all Collectors for information and guidance :—

Report by the Remembrancer of Legal Affairs No. 748, dated 29th April 1891.—

" In the opinion submitted by Mr. Batty in his No. 639 of 5th June 1890, he appears to have considered the question whether the fine should be calculated 'only on the area actually appropriated or on the entire holding of the appropriator' ; and came to the conclusion that the reported practice of calculating it on the area actually appropriated only was consistent with the law and the rules.

" 2. The point on which my opinion was given in my No. 1273 of 27th August 1890, was as to what is to be deemed to be ' the area actually appropriated ' and it does not appear to me that that opinion conflicts with Mr. Batty's.

" 3. No. 67 of the Land Revenue Code Rules lays down that the fine leviable under section 65 of the Code is to be calculated on the area of the ' land actually appropriated to any purpose unconnected with agriculture ' and I said that in the case of mill-premises I considered that this area would include the whole area of the premises, whether built upon or not.

" 4. I think that that opinion was right. It is not, as the Commissioner, N. D., puts it, a question of how much land is 'spoilt for agriculture,' but of how much land is appropriated to a non-agricultural purpose. Any land which is used for any purpose other than some purpose to which an agriculturist would put it, is, according to my view of the meaning of the words, appropriated to a purpose, unconnected with agriculture. An agriculturist does not leave ground open and unused in order to secure a view or the access of air and light to a building ; nor does he cut it up into paths and drives and garden-beds. The whole area contained in what is usually called the compound of a house should, therefore, in my opinion, be considered in calculating the fine and not merely the few square yards on which buildings are erected. "

Report by the Honourable the Advocate General No. 65, dated 26th June 1891.—

" With reference to the Memorandum No. 4226 of the Revenue Department, dated 22nd June 1891, requesting my opinion as to whether the area in respect of which the fine under section 65 of the Land Revenue Code should be the whole area of the premises whether built on or not, I am of opinion as follows :—

" I think that the fine should be levied in respect of the whole area of the land appropriated to any purpose unconnected with agriculture, whether the land so appropriated is built on or not. This area need not, necessarily, be the whole of a particular holding, nor only that portion which is covered by the sites of building. As to how much of a parti-

* Order No. (3) printed under section 66.

† Order No. (4) printed under Section 65.

cular holding is used for purposes unconnected with agriculture it must depend upon the circumstances of each case, and it is not possible to lay down a general direction which will embrace all cases. I agree with Mr. Naylor in thinking that the fine should be calculated, in the case of a mill, upon the whole of the ground forming the mill-premises, and in the case of a bungalow, upon the area contained in what is usually called the compound, and not only upon the actual sites of the buildings." (G. R. No. 5734, dated 21st August 1891.)

62. It shall be competent to the Collector, subject to such orders as may from time to time be made by the Governor in Council, to require the payment of a certain price for the occupancy, or to sell that right by auction, and to annex such conditions* to the occupancy as may seem fit, before permission to occupy is granted under section 60.

The price of an occupancy shall include the price of the Government right to all trees not specially reserved under the provisions of section 40, and shall be recoverable as an arrear of land-revenue.

63.† When it appears to the Collector that the occupancy of 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 in perpetuity, he shall offer the prior right of occupancy thereof to the occupant, if any,

* (1.) For memo of conditions to be imposed in respect of sale by auction of the occupancy right of Government lands, see Appendix III.

† (1.) This section provides for the disposal of the occupancy of such alluvial or water forsaken lands as under the provisions of the Code (section 37) vests in Government. The object of the section is to secure to the neighbouring landholder, in consideration of the river frontage he would otherwise lose, right to purchase the occupancy of the new land at a price not exceeding three times its annual assessment. (Select Committee's Report on the Revenue Code Bill.)

(2.) This and the following sections refer to alluvion formed on Government land. Alluvial lands formed on alienated lands are dealt with in section 46.

of the bank or shore on which such alluvial land has formed.

The price of an occupancy so offered shall not exceed three times the annual assessment of the land of which the occupancy is offered.

If the said occupant shall refuse such occupancy, the Collector may dispose of the same under the last preceding section without any restrictions as to the price thereof.

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 and occupation thereof, unless or until the area of the same exceeds half an acre, and also exceeds one-tenth of the area of his holding. When the area of the alluvial land exceeds the said extent, it shall be at the disposal of the Collector, subject to the provisions of the last preceding section.

The word "holding" in this section shall be deemed to mean a survey number, or any division of land on which a distinct or aggregate assessment has been fixed.

Occupants' Rights.

65.* An occupant of land appropriated for purposes of agriculture 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 occupation for the purposes aforesaid.

* (1.) As regards determining the amount of fine leviable under this section see table given in appendix II.

(2.) Vide order No. (5) printed under section 48.

(3.) Vide also order No. (3) printed under section 66.

But if any occupant wishes to appropriate his holding or any part thereof to any other purpose, the Collector's permission shall in the first place be applied for by the registered occupant. The Collector on receipt of such application shall at once furnish the applicant with a written acknowledgment of its receipt, and after inquiry may either grant or refuse the same; but if the applicant receive no answer within three months from the date of the said acknowledgment, the Collector's permission may be deemed to have been granted. Unless the Collector shall in particular instances otherwise direct, no such application shall be recognized except it be made by the registered occupant.

Procedare if occupant wishes to apply land to other purpose.

When any such land is thus appropriated to any purpose unconnected with agriculture, 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.

Power to require fine.

(1.) Section 65 not applicable to alienated lands.—Occupants as defined by section 3 clause 16 of the Code do not include holders of alienated land who therefore need not apply for permission under section 65 of the Code. (G. R. No. 4148, dated 23rd May 1885.)

(2.) Section 65 of the Land Revenue Code does not apply to alienated lands whether held on service or other tenure and therefore no permission of the Collector is required to enable the holder of such lands to erect buildings thereon. (G. R. No. 3181, dated 23rd May 1887.)

(3.) Removal of earth, stone, &c., by Occupant.—Occupants of lands assessed for purposes of agriculture are liable to payment of fine under the Land Revenue Code rules for the removal, by them, of earth stone, &c. from their lands for purposes of trade.

Such cases should be governed by paragraphs 2 and 3 of section 65 of the Code. Permission of the Collector should be applied for and may be granted on payment of the prescribed fine (section 65, para 3) and rules 66 and 67. Where an occupant takes action without obtaining the Collector's permission in the first instance, recourse might be had to section 66 of the Code. In addition to these provisions rule 73 provides that an

occupant acting as above ' shall be deemed to have committed a breach of conditions of his occupancy, and if after reasonable notice he shall fail to restore the land to its original condition he shall be deemed to have forfeited his right to the occupancy of the land and may be summarily evicted'. Compliance with such notice for restoring the land to its original condition would save the occupant from eviction but not from the payment of the fines prescribed. (G. R. No. 6883, dated 16th October 1888.)

(4.) **Lands appropriated to mill-premises.**—In a case in which land which had been assessed for purposes of agriculture only, was occupied by mill-premises the following orders were passed:—

"If land whether within or without the site of a village, town or city, which has been assessed for purposes of agriculture only, is appropriated to any non-agricultural purpose, section 65 of the Land Revenue Code is applicable to it.

"No. 67 of the Land Revenue Code rules lays down that the fine leviable under section 65 of the Code is to be calculated on the area of the land actually appropriated to any purpose unconnected with agriculture. This in the case of mill-premises, would include the whole area of the premises whether built upon or not." (G. R. No. 6412, dated 10th September 1890.)

(5.) **Houses in cultivated lands in Kanara.**—Owing to the absence of village sites throughout the greater part of Kanara the dwelling houses of the cultivators—whether occupants or tenants—are usually built on lands appropriated for purposes of agriculture. Many of these houses, partly for climate reasons and partly because the cultivators who inhabit them are of a superior class, are more substantial and commodious structures than are generally required by cultivators in other parts of the Presidency. Such houses may fairly be considered to be farm-buildings within the meaning of section 65, Land Revenue Code, so long as they are occupied and *bona fide* used as farm-buildings by occupants, or tenants, of the survey numbers on which they stand, or by servants of such occupants, or tenants, employed in the cultivation of the land aforesaid. (G. R. No. 1637, dated 3rd March 1891.)

(6.) **Permission must be express and not implied.**—The following opinion was concurred in by Government by whom it was further directed that the petitions under section 65 of the Land Revenue Code should be received and disposed of by the Collectors only and that this duty should not be delegated to Assistants or Deputy Collectors or Mamlatdars:—

"Section 65 of the Land Revenue Code 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,

"When a Statute confers a right, privilege or immunity, the regula-

Maxwell on interpretation of Statute, 453 *et seqq.*
 Noseworthy vs. Buckland, L. R. 9 C. P. P.

tions, forms or conditions which it prescribes for its acquisition are imperative in the sense that non-observance of any of them is fatal. The strictest compliance with the

conditions prescribed is required.

“ Tacit or implied permission could not be deemed to have been granted therefore, if the applicant had received any answer within the three months. If express permission were granted there would of course be no necessity for implication.

“ Section 65 does not require the Collector to grant the application within any stated period, but only limits his power to refuse in case he has given no answer within the three months, when he shall be deemed to have granted the application.

“ It is perfectly open to him to refuse before that period expires, and if he sees reason, on further information afterwards received, to grant permission either on the same or on another application.

“ An answer postponing decision on the application could neither be deemed to be ‘no answer’ at all, nor could it be deemed to grant it. It would be an answer refusing permission at least *in presenti*, but there is nothing in the Act to prevent the Collector subsequently giving the permission.” (G. R. No. 5893, dated 20th July 1893.)

66.* If any such land be so appropriated without the permission of the Collector being first obtained, or before the expiry of three months from the date of the aforesaid acknowledgment, the occupant and any tenant, or other person holding under or through him, shall be liable to be summarily evicted by the Collector from the land so appropriated, and from the entire field or survey number of which it may form a part, and the registered 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 appropriated, such fine as the Collector, may, subject to the general orders of Government, direct.

* As regards determining the amount of fine leviable under this section see table given in Appendix II.

Any co-occupant or any tenant of any occupant or any other person holding under or through an occupant, who shall without the registered occupant's consent appropriate any such land to any such purpose, and thereby render the said registered occupant liable to the penalties aforesaid, shall be responsible to the said registered occupant in damages.

Co-occupant or tenant responsible to registered occupant in damages.

(1.) Applications made subsequent to the passing of the Code.—Bombay Acts I of 1865 and IV of 1868 having been repealed by the Land Revenue Code, applications, made subsequent to the passing of that Code, for permission to appropriate land for building purposes, should be disposed of according to the provisions of that Code, and the rules framed thereunder, and not according to the provisions of, and the rules framed under, the above repealed Acts. (G. R. No. 7831, dated 8th November 1882, and No. 8486, dated 4th December 1882.)

(2.) "Occupants" and "registered occupants" when synonymous.—The word "occupant" in section 66 includes a registered occupant. If the registered occupant is the sole occupant it refers to him alone. If the registered occupant has other co-occupants it refers to him and to them also, because singular includes plural. (G. R. No. 3543, dated 2nd May 1884.)

(3.) **Precis of the law and rules on appropriations.**—The following is a brief summary of the Law and the rules on the subject of granting permission to appropriate land assessed for purposes of agriculture, to any other purpose, and of determining the amount of fine and altered assessment thereon :—

(a) Section 48 allows revision of an assessment fixed under the Code, (not of assessment fixed before the Code,—G. R. No. 4758,* dated 3rd July 1886) on appropriation.

(b) If under Government orders the specific appropriation has been prohibited, contravention, complete or attempted, entails liability to summary eviction.

(c) But appropriation may in certain cases be admissible :—

(1) For the more convenient occupation of the land for agricultural purposes as by Farm buildings, wells and the like (Section 65, paragraph 1).

(2) By the Collector's assent—

(a) express or

* Vide order No. (4) printed under section 48.

(b) implied from three months' silence after acknowledgment of application by the registered occupant for permission.

(d) That in cases where such assent is necessary and has been expressly or impliedly given, a fine is impossible whether a revised assessment may be levied or not.

(e) The amount of the fine is to be regulated by the general orders of Government.

(f) These are found in Rule 67 expressly limited to a rate calculable on the area actually appropriated alone.

(g) But the Collector is not tied down to this classification, and may, in his discretion, impose the maximum fine for the highest class in any special case. (Rule 67, final paragraph).

(h) In cases of permissive appropriation Government may however empower the Collector within certain local limits to impose fines at much higher rates than those calculable on the classified scale.

(i) When the appropriation is not permissive but contrary to, or without waiting for, the express or implied orders of the Collector, then a fine may be imposed which under Rule 69 may extend to five times the rate imposable for permissive appropriation.

(j) But this fine may be accompanied with eviction.

(k) And lastly the Collector may make his permission subject to such conditions as Government may, in any special case, require the registered occupant to agree to, as the terms on which it shall be granted. (Section 67, Bombay Land Revenue Code.)

Thus there is absolutely no limit to the terms on which permission may be granted. The only limit is to the penalty, imposable in addition to eviction for forbidden appropriations.

The Legislature and the Government in their Rules, evidently deemed that when there was no administrative objection to a proposed appropriation, then the conditions should not exceed a certain maximum, which should only be reached in special cases, of which the Collector should be the judge.

But when the circumstances are so exceptional that the Collector considers the ordinary maximum inadequate, he can refuse his permission and refer to Government, who alone can judge whether any and what special terms shall be offered to the registered occupant.

If the Collector consider that his permission would give the privilege on too easy terms, he has only to express his dissent within three months of the application. It is open to the Collector, when he thinks any appropriation would be inadequately compensated for by a fine on the ordinary graduated scale, to refuse his permission except on condition of payment of a fine calculated on the area actually appropriated at the rate of Rs. 250 per acre (the rate for land prescribed for Class 1), which under the final paragraph of Rule 65, he may in special cases at his discretion,

require). If no application is made, or if the appropriation is made either without waiting for three months after his application for permission has been acknowledged, or in defiance of the Collector's orders, the Collector can then annul the appropriation by evicting the occupant or other person holding under him.

Unless when the Collector considers the circumstances of a proposed appropriation so exceptional as to require reference to Government under section 67, no terms can be imposed in excess of the maximum allowed by Rule 65. That maximum in special cases is, as above noted, Rs. 250 per acre, on the area actually appropriated. And the Collector is under that rule, in each case, to exercise his own discretion as to what are such special cases, bearing in mind that the ordinary rate should not be the maximum prescribed for the class to which the land in question properly belongs. (G. R. No. 603, 20th August 1890.)

67.* Nothing in the last two preceding sections shall prevent the granting of the permission aforesaid in special cases on such terms as may be 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 occupancy 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 lawfully annexed to his occupancy.

69.† The right of Government to mines and mineral

* It is to be noted that under this section the Collector can, subject to Government sanction, enter into special agreements with the persons desirous of building on land appropriated to purposes of agriculture for substituting a fair building assessment liable to revision at suitable intervals for the fine leviable under section 65. (G. R. No. 4296, dated 15th June 1893.)

† The object of this section is to reserve the rights of Government to all mines, mineral products, and buried treasure with full liberty to work

Reservation of right of Government to mines. products in all unalienated land is and is hereby declared to be expressly reserved.

Provided that nothing in this section shall be deemed to affect any subsisting rights of any occupant of such land in respect of such mines or mineral products.

Proviso.

(1.) **Reservation unnecessary in Kabulayats of unalienated lands.**—This section applies to all unalienated lands. It is therefore unnecessary to make express reservation of the Government rights to mines and minerals in the leases or Kabulayats relating to such land. When however such land is transferred to the ownership of any person, so that it would come within the meaning of the term "alienated" as defined in section 3 (19) of the Code, the rights of Government and the assignees in that behalf to the minerals ought to be expressly reserved as this section would not apply in such a case. (G. R. No. 6688, dated 15th December 1879.)

70. If by a decree or order of a competent Court it shall be adjudged that the occupant is an inferior holder under another person, or that the occupancy is vested in another person, or if in the execution of such a decree or order, the interest of the occupant in the land have been transferred by sale or otherwise to another person, such other person shall, on producing a certified copy of the decree or order, or the Court's certificate of the sale, or other transfer, be deemed to be the occupant and be dealt with accordingly, and on written application being made to the Collector for the purpose, such change shall be made in the entry of the registered occupant's name as the circumstances require.

(1.) **New Khatedar, liabilities of.**—In cases in which land is transferred from one Khata to another on the authority of a Court's decree and in cases in which names are changed owing to the death of Khatedar the new registered occupant stands in the shoes of the person whose place he is made to occupy and the same liabilities attach to him as to his

and search for the same, paying to the occupant only compensation for surface damage as estimated by the Collector. (Select Committee's report on the Revenue Code Bill.)

predecessor, hence no fresh agreement in the form D* is needed from him. (G. R. No. 2600, dated 31st March 1883.)

71. On the death of a registered occupant the Collector shall cause the name of his eldest son, or other person appearing to be his heir, or the principal of his heirs, to be registered in his stead, and the said heir shall thereafter be deemed the registered occupant, and, subject to the provisions of the last preceding section, shall be dealt with accordingly.

But if at any time any person shall, by production of a certificate of heirship or of a decree or order of a competent Court, satisfy the Collector that he is entitled to be the registered occupant in preference to the person whose name the Collector has ordered to be registered, the Collector shall cause the entry in the Government records to be amended accordingly.

(1.) *Inamdar's powers.*—There appears to be no legal objection to the power of registering the name of the heir of a deceased occupant being exercised by the holder of an alienated village in such village. (G. R. No. 1014, dated 13th February 1882.)

(2.) *Mamlatdars to inquire and determine proprio motu.*—In cases in which there is sufficient proof that the person claiming to be recognized as heir to an inam or Khalsa holding is unable to pay the requisite stamp duty on a formal application for the purpose, it is not absolutely necessary that there should be an application from the person entitled to succeed as heir in order that the Mamlatdar may have authority to inquire and determine whose name ought to be substituted in his records for the name of the deceased. There would be no illegality in the Mamlatdar's starting such an inquiry *proprio motu* and taking the statement of the would-be applicant if necessary. (G. R. No. 5712, dated 2nd August 1883.)

(3.) *Cases in which registered occupants and persons in actual possession are different.*—It is to be observed that under this section the Collector cannot, on the death of a registered occupant, enter in the Government accounts, the name of any person for that of the deceased registered occupant unless such person is, or appears to the Collector to be, the registered occupant's heir or unless he produces a certificate or order of a competent court (clause 2 of this section). Ac-

* See Appendix D to the rules under the Code.

cordingly in a case in which A the registered occupant of a Survey No. died without heirs, and B who actually held the No. by right of purchase applied to have his name entered for that of A, the Collector refused to grant the application unless B produced an order from a competent court. The Collector saw the inadvisability of referring B to the Civil Court but as, under the Code as it stands, he could not otherwise proceed in the matter, he referred the case for the order of Government.

On this the Collector was directed to adopt one of the courses recommended by the Remembrancer of Legal Affairs, in disposing of the case. The Legal Remembrancer in his letter No. 1449, dated 13th November 1885, wrote:—

“Possibly the framers of the Land Revenue Code intended by the word heir in section 71 to include the term ‘legal representative.’ It seems clear that as regards this Survey No. B is the legal representative of A, and I do not think that it would create an awkward precedent if on this ground the Collector were permitted to cause B’s name to be substituted for that of A as registered occupant.

“2. There is another way in which the Collector can act, by taking advantage of the peculiarities of the present Land Revenue Code. A registered occupant must (section 3 (17)) be either a sole occupant or the eldest or principal of several joint occupants. A is neither; for he is dead and therefore he cannot be an ‘occupant’ i. e. a holder of the land, i. e. legally invested with a right to the possession &c. Therefore there is no registered occupant and the Collector is at liberty to enter the name of the actual occupant as registered occupant.

“3. There is yet another way in which the Collector can attain the desired end. I presume that B duly pays the assessment fixed on the Survey No. (section 80). Let him be advised to make default of one payment: it will then appear to the Collector (section 81) that a sale of the occupancy will operate unfairly to the prejudice of B who is interested in the continuance of the occupancy, and it will then be lawful for the Collector, instead of selling the occupancy to forfeit only A’s interest in the same and to substitute the name of B as registered occupant in the Revenue records on his payment of all sums due on account of land revenue. This will cost B a trifling sum.

“4. I agree with the Collector as to the inadvisability of calling on B to bring a civil suit.” (G. R. No. 9835, dated 5th December 1885.)

72.* If an occupant who is either a Hindu, a Mahom-

* Vide G. R. No. 5243, dated 26th June 1885, printed under section 86.

Intestate occupancy or holdings to be sold.

madan or 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, Mahommadans 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.

(1.) **Scope of the term "occupant."**—The object of section 72 is to enable the Collector to dispose of the occupancy of an occupant dying intestate, and to stay the operation of the law regarding property left by persons dying intestate, until the occupancy has been sold and any arrears due to Government secured, after which the property can be dealt with under the ordinary law applicable thereto.

If the term "occupant" in section 72 is taken invariably to mean registered occupant and if the Collector refuses to recognize any one else but the registered occupant for the purposes of section 72, it is quite clear that much hardship will often ensue.

The term "occupant" in section 72 is applicable to occupants generally and not to registered occupants only, and the intestacy of the registered occupant ought not to be considered sufficient cause for proceeding under section 72 until inquiry has shown whether the occupancy has not passed to some other person who is in lawful possession.

The term "occupant" should be taken in its general sense. There is no difficulty in so understanding it, if it is remembered that the only object of the section is that when intestate property consists of an occupancy before it is treated as intestate property under the law for the time being in force respecting such property the Collector should be able to secure the payment of any arrears due to Government and the obvious step preliminary to proceeding under that section is to ascertain that the occupancy to be dealt with is actually an intestate property whether the occupant be registered or not. (G. R. No. 2711, dated 26th April 1862.)

(2.) **Collector's obligation to recognize occupants not registered.**—Under the latter part of section 79 of the Code the Collector is not bound to recognize the deceased occupant's vendee unless his name is registered in the Revenue Record.

Section 79 was expressly inserted in the Code in order that the par-

ties to transfers of occupancies might be made to feel the absolute necessity of obtaining a mutation of names in the Collector's books, and so in time the recorded occupants would always be found to be the actual occupants. The necessity for the provision and for its being strictly enforced is so great that it should not be allowed to be unobserved unless for exceptional reasons. (G. R. No. 3102, dated 20th April 1883.)

Opinions of law officers on the subject.—(3.) The following opinion of the Remembrancer of Legal Affairs on the question whether section 72 of the Code is to be put into force in every case in which a registered occupant dies intestate and without known heirs irrespective of the fact that there are occupants who though not registered occupants have vested interests in lands, is given here in full :—

“ The ordinary law regarding the property of a person who dies intestate and without known heirs is that contained in section 10 of Regulation VIII of 1827. Under it the District Court appoints an administrator for the management of the property and after he has had charge of it for about two years, it is sold under the orders of the High Court and the proceeds are ‘ deposited in the public treasury for the eventual benefit of all concerned.’

“ 2. Section 72 of the Revenue Code excepts occupancies belonging to Hindus, Mahomedans or Buddhists from this general law, and directs that in their case ‘ the occupancy shall be disposed of by the Collector by sale subject to the provisions in force * * * for the sale of forfeited occupancies in realization of the land revenue ’ and that the net proceeds only shall be subject to the provisions of the ordinary law regarding intestate property. The effect of this is that the occupancy of a Hindu, Mahomedan or Buddhist who dies intestate and without known heirs, instead of being managed and eventually sold by the Nazir of the District Court (who is generally the administrator appointed under section 10, Regulation VIII of 1827), is sold by the Collector and the net proceeds are made over by the latter to the Nazir for credit to the deceased's estate.

“ 3. The doubt which seems to have prompted the Commissioner's (C. D.'s) letter is whether when occupancies are thus sold by the Collector, they are to be sold ‘ freed from all tenures, incumbrances and rights created by the occupant,’ like forfeited occupancies (*vide* section 56 of the Revenue Code) or whether the right, title and interest of the deceased occupant merely is to be disposed of.

“ 4. The intention of section 72 of the Code appears to be to prevent the occupancies of persons dying intestate coming under the management of the District Court's administrator. The section was inserted by the Select Committee who, in paragraph 32 of their final report on the Revenue Code Bill, dated 1st May 1877, said its purpose was ‘ to enable the Collector to dispose of the occupancy of an occupant dying intestate and to stay the operation of the law regarding property left by persons dying intestate until the occupancy has been sold and arrears due to

Government secured.' Much correspondence and trouble are saved by keeping the control of such property in the hands of the Collector, who is obviously far better able than the District Court's Nazir to manage and sell it to the advantage of the deceased's estate. It was not, I think, the intention of the Legislature to forfeit in such cases subordinate rights created by the deceased occupant. The words in section 72 'subject to the provisions * * * in force for the sale of forfeited occupancies in realization of the land revenue' may, at first sight, be thought to bear this meaning, but it ought not to be concluded that it was the intention of the Legislature thus to abrogate vested rights unless such intention is very clearly and unmistakably indicated in the language of the enactment. The words which I have quoted do not appear to me to mean more than that an intestate occupant's occupancy should be sold subject to the same rules for regulating the sale as a forfeited occupancy, and this construction of them is consistent with the apparent purpose of the section. There is no reason to think that the Legislature contemplated attaching the same penal consequences to an occupant dying intestate and without known heirs as to the failure of a living occupant to pay the land-revenue due on his occupancy. Such a provision would be unjust and whenever the language of an enactment 'admits of two constructions, according to one of which the enactment would be unjust * * * and according to the other it would be reasonable and wholesome, it is obvious, that the latter must be adopted as that which the Legislature intended. (Maxwell, interpretation of Statutes, 179.)

"5. On these grounds, I am of opinion that under section 72 of the Revenue Code, all that the Collector sells is the right, title and interest of the deceased occupant and that subordinate rights are not affected by such sale. This was also the opinion of my *locum tenens* the late Mr. Cordeaux, who wrote (*vide* paragraph 2 of his memorandum quoted in the preamble of G. R. No. 2711, dated 26th April 1882, see order No. (1) above) 'the occupancy in this case is not forfeited by Government before it is disposed of by sale. It is sold as the heritable transferable property of the deceased occupant.'

"6. But although subordinate rights are not affected by the sale, I am still of opinion, as stated in my report quoted in the preamble to G. R. No. 3102, dated 20th April 1883 (see order No. (2), above) that if the deceased was a registered occupant the Collector is not bound to recognize his vendees or other subordinate holders. If the deceased person is the registered occupant, the Collector is not bound to recognize 'any person to whom any interest in any portion of the occupancy * * * has been assigned.' (*vide* section 79 of the Revenue Code)

"7. It follows from this view of the law that I differ from the late Mr. Cordeaux in thinking it necessary that the Collector should hold an inquiry for the purpose of ascertaining 'whether the occupancy has not passed to some other person, who is in lawful possession.' The Collector, if he held any such inquiry, would not be competent to pass any order

determinative of the rights of the respective claimants and possibly many claimants would object to reveal their title to him. I agree therefore with the Commissioner that inquiry is unnecessary. The title of the deceased should be sold for what it is worth, the purchaser making his own terms with, or taking such steps as he thinks fit against, other claimants. In such a case as that which the Commissioner has stated as a representative case, it may be that the purchaser of a deceased registered occupant's right, title and interest will sometimes acquire nothing by the purchase except the right to become the registered occupant. In such cases it will usually be to the interest of the assignee or of one of the assignees of the deceased registered occupant to become the purchaser.

" 8. A fuller consideration of the subject leads me to think that the opinion submitted in the last sentence of my memorandum No. 446, dated 6th April 1883 (quoted in the preamble of G. R. No. 310² of the 20th idem) was not correct. Looking to the wording of section 79 of the Revenue Code alone, I said 'there is nothing to prevent the Collector recognizing' the deceased occupant's assignee without selling the deceased's right, title and interest. When thus writing, I overlooked the imperativeness of the words 'the Collector shall dispose of his occupancy by sale' in section 72. Those words appear to me to leave the Collector no option. The right, title and interest of the deceased must be sold for what it will fetch. The reason of this is that the Collector, so far as regards these occupancy rights of persons dying intestate, takes the place of the administrator appointed by the District Court under Regulation VIII of 1827 and just as it was formerly the duty of the administrator to sell such rights for whatever they might fetch 'for the eventual benefit of all concerned,' so is it now the Collector's duty to realize by the sale of the deceased's right, title and interest whatever he can for the benefit of the estate.

" 9. In order to complete this explanation of the meaning and intention of section 72 of the Revenue Code I agree with the late Mr. Cordeaux that the word 'occupant,' which is used in it, must be taken in its general sense, as defined in section 3, clause (16) of the Code, and not be deemed to apply to registered occupants only. If the person who has died intestate and without known heirs is an occupant but not a registered occupant his right, title and interest will be sold by the Collector without affecting in any way the title of the registered occupant." (G. R. No. 78), dated 27th January 1885.)

(4.)—The following are the opinions of the Law Officers of Government on the subject of the applicability of the provisions of section 72. These opinions have been concurred in by Government.

(a) The Advocate General's opinion —

"In the case of a registered occupant such as described in section 72 of the Land Revenue Code, dying intestate and without known heirs and of another person claiming that the occupancy has been sold to him by the deceased though not transferred in the Government books, I am of opin-

ion that the provisions of section 72 come into force, by which it is enacted that—

‘The Collector shall dispose of his occupancy by sale, subject to the provisions of this Act or of any other law at the time in force for the sale of forfeited occupancies in realization of the land revenue.’

“It is difficult not to consider the provisions of section 56 as being provisions for the sale of forfeited occupancies in realization of the land revenue within the meaning of section 72. And having regard to the provisions in section 79—

‘That the Collector shall not be bound in any case to recognize any portion to whom any interest in any portion of an occupancy or absolute holding has been assigned, unless the transfer has been recorded in the revenue records in accordance with the foregoing provisions.’

“I think that the Collector is empowered to sell the occupancy of the deceased registered occupant without regard to the rights (if any) of the alleged vendee.

“But I think that the Collector should exercise this power so as to interfere as little as possible with any right the existence of which is established to his satisfaction. In my opinion the provisions of section 81 which afford an alternative procedure in certain cases for the sale of a forfeited occupancy in realization of land revenue may properly be regarded as included among the provisions referred to in section 72. If therefore the Collector is satisfied that the occupancy has really been sold by the deceased registered occupant to the alleged vendee, and that such procedure will meet the justice of the case, I think that he may properly substitute the name of the alleged vendee in the revenue records for that of the deceased registered occupant.

“I observe that section 56 enables the Collector to dispose of a forfeited occupancy under rules or orders to be made under section 214. I am not aware whether any rules have been made in this behalf under section 214, but if such rules have been made and the Collector has power thereunder to dispose of a forfeited occupancy without prejudice to rights previously created by the occupant, it seems desirable that he should adopt such mode of procedure in cases similar to the one suggested under section 72, when the case does not seem to him to be one in which the provisions of section 81 can be properly applied. (G. R. No. 10023, dated 14th December 1885.)

(b) The Legal Remembrancer’s opinion :—

“But if there be no heir, assignee or other person claiming through the deceased intestate, the property lapses to the Crown by escheat.

“The property vests in Her Majesty not by virtue of Regulation 1 Bengal L. R. O. C. 87. VIII of 1827, but by virtue of the territorial law of British India.

“ On failure of heirs, the Collector, it appears to me, would be as much, ‘ entitled to receive charge of the property’ on behalf of Her Majesty as any other person to whom rights accrued on the death of the deceased.

“ If any heir subsequently appear, the result would be the same as if the estate had been claimed by a private person, whose right was afterwards found to be excluded by a better title.

“ In such a case Government would be responsible to such heir. But there is no necessity for a sale by the Court, nor do I think that the property could be sold, if the Collector claimed that he was entitled to receive charge of the property on behalf of Her Majesty.

“ In order, however, to avoid the risk of litigation in such cases as to claims that might afterwards be brought forward, I think the High Court might be moved to direct under section 10, clause 4, (of the said Regulation), that such property should continue under the management of an administrator, until such period had elapsed as would render the chance of any claim being preferred infinitesimally small, and Government might then through the Collector, put in their claim to the property as having passed to Her Majesty by escheat. The land could then be dealt with as proposed in (G. R. Nos. 1983, and 2935, of 1872.)*

“ The point has so far as I can ascertain, never been decided, but there are several cases on record, in which Government have claimed the right to specific property by escheat, and there is no law which requires that instead of taking the specific property Government would be entitled only to the proceeds realised by its sale. Legislation is, therefore, I would submit, unnecessary.

“ The question involved might perhaps be raised in a test case if desired, and if the High Court hold that intestate property must in all cases be sold whether the right of the Crown is put forward or no, steps might be taken to modify the law as to the procedure to be taken in such cases. But I think the rights of the Crown do not depend upon Regulation VIII of 1827, and section 10, clause 4, only prescribes the procedure when no claim whatever is preferred to the property.” (G. R. No. 8407, dated 15th December 1888.)

(5.) Collector to take the initiative. — Government having de-

G. R. No. 2711, dated 26th April 1882.

G. R. No. 783, dated 27th January 1885.

(vide orders Nos. (1) & (3) above.)

decided in their Resolutions marginally noted that the provisions of section 72 should be enforced, not only in the case of registered occupants but in the case of occupants also, it was pointed out that it would not be always possible for the Collector who must take the initiative in the matter to comply with those provisions in as much as the names of ‘ occupants ’ were not record-

* Vide footnote to order No. (6) printed under section 72.

ed in the Collector's book. The point was referred to the Legal Remembrancer who gave his opinion as follows :—

“ Section 19 of the Bombay Village Police Act (VIII of 1867) imposes upon the police patil the duty of taking charge of all unclaimed property and of reporting his proceedings to the Magistrate to whom he is subordinate. Property left by a person who dies intestate and without known heirs is ‘ unclaimed property ’ within the meaning of this section, and if, in addition to some moveable property, the intestate has left some lands, inquiry will soon enable the Magistrate to determine whether the deceased was an occupant and whether, therefore, the Collector should take action under section 72 of the Revenue Code. As a matter of practice, I believe, every case of a person dying intestate is reported by the village officers to the higher authorities, whether under the provisions of section 19 of the Village Police Act, or otherwise, and there is little probability, I should think, of any case of any importance escaping notice. The Collector can only take action in the cases which are reported to him, and I do not think there is any need for special measures to ensure every case being reported. The number of occupants, not being registered occupants, who die intestate and without known heirs is probably inconsiderable.” (G. R. No. 3813, dated 13th May 1885.)

(6.) Section 72 not applicable to alienated holdings.—The word occupant cannot be held to include a holder of alienated land and the Collector should not therefore attempt to take action under this section in the case of alienated holdings.* (G. R. No. 3812, dated 13th May 1885.)

73. The right of occupancy shall be deemed an heritable and transferable property subject to the provisions contained in section 56 or otherwise prescribed by law, and shall immediately pass to the person whose agreement to become occupant shall have been accepted by the Collector.

* It would appear that in the case of alienated lands the Collector is to proceed in accordance with the orders passed in 1872. These orders are to the following effect :—

“ When an Inamdar dies without heirs his Inam land should at once be made Khalsat and dealt with as the Collector thinks proper, subject to any order that may be made by the Civil Court under Regulation VIII of 1827, section 10, and provided that the right of occupancy in lands made Khalsat is not sold so as to disturb actual possession. Should heirs of the deceased Inamdar appear after the land has been made Khalsat the matter is to be referred for the orders of Government. (G. R. No. 1083, dated 25th April and No. 2935, dated 19th June 1872.)

Relinquishment of Occupancy.

74.* An occupant may, by giving written notice to the Mamlatdar or Mahalkari, relinquish his occupancy, either absolutely or in favour of a specified person, provided that such relinquishment apply to the entire occupancy or to whole survey numbers, or recognized shares of survey numbers. An absolute relinquishment shall be deemed to have effect from the close of the current year, and notice thereof must be given before the 31st March in such year, or before such other date as may be from time to time prescribed in this behalf for each district by the Governor in Council. A relinquishment in favour of a specified person may be made at any time.

When there are more occupants than one, the notice of relinquishment must be given by the registered occupant; and the person, if any, in whose favour an occupancy is relinquished, or, if such occupancy is relinquished in favour of more persons than one, the principal of such persons, must enter into a written agreement to become the registered occupant, and his name shall thereupon be substituted in the records for that of the previous registered occupant.

* (1.) Vide rule 74 and orders thereunder.

(2.) The first and second defendants were sub-tenants of the third defendant, who had certain land which was part of the inam village of D. In 1883 the third defendant executed a Rajinama in the following terms which he gave to the receiver who had been appointed by the Court to manage the village:—"Up to the present time my father and I have been cultivating the land, but the land belongs to the Inamdar. I have no title over it, and the Inamdar can give it for cultivation to any one he pleases". Shortly after the date of this Rajinama the Inamdar gave the land to the plaintiff, who now sued to obtain it from the defendants, who had remained in possession.

Held, that the plaintiff was entitled to the land. The Rajinama operated as a relinquishment of the tenancy by defendant No. 3 under section 74 of Bombay Act V of 1879.

Held, also, that the plaintiff was entitled to sue in ejectment, although he had not been put in possession of the land. (*Bhuttia Dhondu vs. Ambo*.—I. L. R. Bombay Vol. XIII, 1889, page 291.)

Relinquishments and agreements in alienated villages.—(1.) When a Survey Settlement has not been introduced into an alienated village, neither section 74 nor any other section which relates to the rights and responsibilities of occupants in unalienated villages has any force in it.

When a Survey Settlement has been introduced into an alienated village, then section 74 is applicable to the occupants in it, and relinquishments must of course be made to the Mamlatdar or Mahalkari until Government give the Inamdar power to receive them under section 83 (e). (G. R. No. 3459, dated 15th June 1881.)

(2.)—Government do not consider that it was the intention of the Legislature to interfere with the right of an Inamdar to give out unoccupied land in his village or holding for cultivation or to accept the relinquishment of the same from the occupant. (G. R. No. 5730, dated 1st October 1881.)

(3.)—Resolution No. 5730 of 1st October 1881 is not inconsistent with Resolution No. 3459 of 15th June 1881. No doubt when a Survey Settlement has been introduced into an alienated village, sec. 74 is made applicable to it by section 217. But section 83 (e) empowers the Governor in Council to authorize the Inamdar to receive notices of relinquishment instead of the Mamlatdar, and it was doubtless the intention of the Legislature that interference with Inamdars should ordinarily be avoided in this manner. (G. R. No. 7045, dated 23rd November 1881.)

(4.)—As regards Rajinamas and Kabulayats in alienated villages it is necessary to note that they are given in one of the three following ways:—

- 1 Absolute relinquishment (section 74).
- 2 Relinquishment in favor of another person and the agreement executed by that person (section 74).
- 3 Agreement executed by a person taking up new land (Rule 32).

As regards 1 and 2

(a) In *unsurveyed* alienated villages inamdars should continue to exercise the powers as they have hitherto been doing, section 74 not being applicable to such villages.

(b) In *surveyed* alienated villages, the inamdars should, as far as possible, under section 83, be invested where necessary with the powers contemplated by section 74.

As regards 3

Section 60 does not apply to alienated lands, and the power of the inamdars in respect of such agreement is unrestricted whether in *surveyed* or *unsurveyed* villages. (G. R. No. 959, dated 10th February 1882.)

Relinquishments of minor's lands.—(5) Friends or relatives

who are not legally constituted administrators or managers of the estates of minors or lunatics have no power to act in any way for such minors or lunatics, and the Collectors would not be justified in accepting a notice of relinquishment, or, agreement to occupy, from such friends or relatives. (G. R. No. 7074, dated 11th October 1882.)

(6.)—In the case of lands held by minors which they wish to resign absolutely, the best plan appears to be to remit the land revenue when the Collector is satisfied that the land has not been cultivated only because the occupant being a minor is not legally able to resign it himself and has no legal guardian to act for him but intends to resign it as soon as he is able. (G. R. No. 2407, dated 22nd March 1883.)

(7.)—There are certainly objections to the assessment being remitted on land which a minor is at present *unable* but intends eventually to relinquish. In cases therefore when it is obviously not for the benefit of the minor to retain the land the Collector should simply forfeit the occupancy and remit the land revenue; when it is not so obvious the Collector should apply to the Civil Court for the appointment of an administrator and if the administrator, when so appointed reports that it is for the benefit of the minor not to retain the land, he should with the consent of the Civil Court relinquish it on behalf of the minor, and then the Collector should remit any land revenue due thereon. (G. R. No. 8078, dated 5th October 1885.)

(8.)* **Registration of notices of relinquishments.**—The Collectors of the districts should be instructed not to insist on the registration of notices of relinquishment of occupancies of the value of Rs. 100 and upwards pending the contemplated amendment of the Registration Act. (G. R. No. 2367, dated 19th March 1885.)

(9.) **Applicability of sections 74, 76 and 79 to alienated villages.**—The extent, to which the provisions of sections 74 and 79, are to be held applicable to alienated lands has been explained in the following letter from the Legal Remembrancer:—

“ 2. The only sections of Revenue Code, which with reference to the point in question, it is practically necessary to consider are sections 74, 76, and 79. Section 76 says that the provisions of section 74 are to apply ‘as far as may be,’ to the holders of alienated land.

“ 3. The section does not say ‘the registered holders of alienated land’, because the Code nowhere recognizes such persons and does not clothe them with any special rights or responsibilities as it does ‘registered occupants.’

“ 4. For this I am unable to concur in the argument that in section 79, of the Code the word ‘registered’ was meant to apply to ‘holder of

* Under the Indian Registration Act as amended up to 31st December 1892 the registration of notices of relinquishments under section 74 or 76 is not obligatory; vide section 90, clause (c) of the Registration Act III of 1877.

alienated land as well as 'occupant.' The Legislature was not cognizant of the existence of 'registered holders' as distinguished from holders in general of alienated lands and for aught that appears in the Code the Collector may quite legally record in his books the name of every co-holder of such lands.

"5. But section 76 makes the provisions of section 74 applicable to holders of alienated land only 'as far as may be,' and it seems to me that the provisions of paragraph 2 of section 74 cannot apply to such holder. If there is a sole holder the provisions of the 1st paragraph of that section apply without difficulty and as also do the provisions of section 79. And if there are two or more co-holders, and they act jointly, and the Collector's records bear their joint names, both sections will also operate without trouble.

"6. If there are two or more co-holders, and the name of one only is entered in the Collector's book, the one whose name is entered, may certainly relinquish or transfer his own interest under section 74, and section 79 would apply to him; but I doubt very much whether a resignation by him would legally bind his co-holders. There is also nothing in paragraph 1 of section 74, that would prevent any one of the co-holders from relinquishing or transferring his own individual interest; but if the Collector's records do not bear his name and the Collector declines to record the relinquishment or transfer of his individual interest in the holding, section 79 cannot operate against him or his transferee.

"7. Another difficulty which militates against the construction of section 79, viz., that the word 'registered' is meant to apply to 'holder of alienated lands,' as well as 'occupant' is that the liability for the land revenue due on alienated holdings is nowhere legally imposed on the 'registered holder' alone or even in the first instance. Section 136 of the Code says that 'the superior holder shall be primarily responsible to Government, for the land revenue of alienated land.' The singular number imports the plural, and if there are two or more superior holders with equal rights, they all are primarily liable for the land revenue; to the one whose name is entered in the Collector's book no special or prior liability legally attaches; although for convenience' sake it may be the practice to look to him for payment."

The above opinion was concurred in by Government. (G. R. No. 5019, dated 19th June 1885.)

(10.) **Occupancy defined. Partial relinquishment not allowed.**—An occupancy signifies the sum of the rights vested in an occupant as such (Bombay L. R. Code, sec. 3 (18)). Amongst other rights which an occupant possesses is that of constructing wells in the land for the better cultivation thereof (ib. section 65). Section 74 of the Code authorizes an occupant to relinquish his occupancy either absolutely or in favour of a specified person. If at the time of such relinquishment a well constructed by the occupant as aforesaid still exists in the land, it too, must of necessity be included in the relinquishment. The Code does

not authorize a partial relinquishment. A well constructed in land by its occupant becomes part and parcel of the land by accession *solo cedit quod solo ineditatur*. So long as the person who constructed it remains the occupant of the land, the well continues to be his property, but if he relinquishes absolutely, that is, throws up the occupancy, all his rights in and over the land and its accessories cease and determine and he can claim no reservation. If he relinquishes in favour of another person, *i. e.*, transfers his occupancy, revenue officers will, be clearly justified in declining to recognize for the purpose of section 74 of the L. R. Code, any such transaction, which is not really a relinquishment of the occupancy, *i. e.*, a transfer of the aggregate of the rights vesting in the transfer or in virtue of his being the occupant. A transfer of a portion only of such rights is not a transaction of such a kind as the section contemplates. (G. R. No. 7152, dated 8th October 1890.)

75. When a lump assessment is fixed upon several fields or survey numbers in the aggregate, it shall not be lawful for the occupant to relinquish as aforesaid any one or more of such fields or survey numbers except with the previous consent of the Collector. It shall be competent to the Collector to grant or refuse his consent; if he grants it, the occupancy shall be divided, and the Collector shall determine the proportional amount of land-revenue to be paid by each portion of it, and the original occupant, and the person, if any, in whose favour he relinquishes a portion of his occupancy shall be held liable for the revenue severally assessed on their portions.

Application of sections 74, 75.

76.* The provisions of the two last sections shall apply, as far as may be, to the holders of alienated land: provided that—

(a) it shall not be lawful to relinquish, as aforesaid,

* (1.) See orders printed under section 74.

(2.) It would appear from No. 17 of the original Survey Rules appended to the joint report (Survey and Settlement Manual) that the custom of obliging a rayat who threw up a field, to relinquish at the same time the house attached to that field was abolished under the authority of Government letter No. 5593 of 1848, paragraph 42. (G. R. No. 5312, dated 3rd August 1886).

Relinquishment of land described in para. 1 of section 49.

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.

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

Sections 75 and 76 not to affect—

(a) the responsibility of any share in a village for the land-revenue of which the shares are all, according to law or the custom of the village, jointly responsible, or

(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.

79.* The registered occupant or the holder of alienated land shall continue liable for the land-revenue due on the occupancy or alienated holding and for all other lawful demands of Government in respect of the same, until such times as the

Occupant to continue liable for demands until occupancy relinquished.

* See orders printed under sections 73 and 74.

occupancy or alienated holding is relinquished, or transferred, under any of the provisions of this Act, to the name of any other person ; and the Collector shall not be bound in any case to recognize any person to whom any interest in any portion of an occupancy or alienated holding has been assigned, unless the transfer has been recorded in the revenue records in accordance with the foregoing provisions.

Remedies against Forfeiture of Occupancies.

50. 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 registered occupant of the land-revenue due on account thereof, it shall be lawful for any co-occupant, tenant, mortgagee or other person interested in the continuance of the occupancy to pay on behalf of such registered occupant all sums due on account of land-revenue and for the Collector to receive the same.

And in any such case the Collector may give to the person who has paid the land-revenue as aforesaid such aid for the recovery of the proportional amounts which he may consider to be properly payable by other persons in occupation of parts of a field or survey number as he might legally have given had the persons so paying been the registered occupants :

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.

81.* If it shall appear to the Collector that a regis-

* See orders printed under sections 71, 72 and 74.

When Collector may make co-occupant the registered occupant, instead of selling occupancy, to realize land-revenue. tered occupant has failed to pay land-revenue, and has thus incurred forfeiture with a view to injure or defraud his co-occupants, or other persons interested in the continuance of the occupancy, or that a sale of the occupancy will operate unfairly to the prejudice of such co-occupants or other persons, it shall be lawful for him, instead of selling the occupancy, to forfeit only the said registered-occupant's interest in the same and to substitute the name of any such co-occupant or other person as registered occupant thereof in the revenue records, on his payment of all sums due on account of land-revenue for the occupancy; and such person so becoming the registered occupant shall have the rights and remedies with respect to all other persons in occupation provided for by section 86.

Suspension of certain Provisions of this Chapter.

Power 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.

CHAPTER VII.

Of Superior and Inferior Holders.

Tenants' Rights,

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,
 Amount of rent payable by tenant.

* (1.) Where the plaintiff sued in ejectment, and the defendant set up a right as a permanent tenant

Held, that, the setting up of this right was a repudiation of the landlord's title and absolved him from the obligation which would have devolved on him of giving to the defendant a notice to quit if the defendant had set up a tenancy from year to year. (*Baba vs. Vishwanath Joshi*,—I. L. R. Bombay, Volume VIII, page 228, 1884.)

(2.) Appasaheb, the Chief of Kagvad, let certain land to the defendant for a term of twelve years by a lease, dated 12th June 1857. Appasaheb died in the same year without male issue, and his Saramjam was resumed by the British Government. In 1858 the Collector treated the defendant as occupant of the land in question for the purposes of assessment, and again in 1860 entered his name as occupant in the Government books. In January 1868, the widow of Appasaheb adopted the plaintiff as 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 Appasaheb but belonged to the State of Kagvad, which was resumed on his death by the Government and that the plaintiff's claim was barred by the law of Limitation. The Subordinate Judge allowed the plaintiff's claim, holding that the land was the private property of Appasaheb, Chief of Kagvad and that the claim was not barred. The District Judge on appeal held that the land was not the private property of the Chief, but was the property of the State, and that on the resumption of the State by the British Government the defendant's lease came to an end and the relation of landlord and tenant previously existing between the Chief and the defendant, ceased. He also held that the plaintiff's claim was barred by limitation and reversed the decree of the Subordinate Judge. On appeal to the High Court

Held, that, no distinction could be drawn between the public and the private property of an absolute Chief, which Appasaheb was.

That in the absence of a contrary intention, the resumption by the British Government of a Saramjam or Inam leaves the occupancy rights of the Saramjamdar or Inamdar untouched.

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 the circumstances of the case, shall be just and reasonable.

That a Saramjamdar or Inamdar may acquire occupancy rights during the continuance of the Saramjam or the Inam.

Held also that the fact that the revenue officers placed the defendant's name in the Government books as the occupant paying assessment, did not make the defendant's possession adverse, and could not prejudice the plaintiff's rights as landlord. (*Ganpatrao Trimbak Patwardhan vs. Ganesh Babaji Bhat*,—I. L. R. Bombay, Volume X, page 112, 1886.)

(3.) A tenant repudiating the title under which he entered becomes liable to immediate eviction at the option of the landlord. (*Vishnu Chintaman vs. Balaji Bin Raghujji*,—I. L. R. Bombay, Volume XII, page 359, 1888.)

(4.) Where the terms of a lease did not appear to create a perpetual tenancy, there being no circumstances in the evidence from which the court ought to infer that the intention of the parties was to create such a tenancy:

Held, that, the lease was not a perpetual lease. (*Ramabai Saheb Patwardhan vs. Babaji*,—I. L. R. Bombay, Volume XV, page 704, 1891.)

(5.) Section 83 of the Land Revenue Code (Bombay Act V of 1879) is applicable only when the evidence as to the commencement and duration of the tenancy is not forthcoming by reason of its antiquity, which, in the case of a tenancy at most only forty years old, there is no reason for presuming will be the case. (*Kalidas Laldas vs. Bhaiji Naran*,—I. L. R. Bombay, Volume XVI, page 647, 1892.)

(6.) A tenant is liable to pay a cess imposed by an Act passed subsequent to the lease, in addition to the rent agreed upon in that lease. (*Ram Tukoji vs. Gopal Dhondi*,—I. L. R. Bombay, Volume XVII, page 54, 1893.)

(7.) An Inamdar is a "superior holder" within the definition of Regulation XVII of 1827 and Bombay Acts I of 1865 and V of 1879. He is therefore the person primarily liable to pay the Local Fund cess under section 8 of Bombay Act III of 1869.

There is no provision of law entitling an Inamdar to charge for his expenses in collecting the cess. (*Secretary of State for India vs. Natu*,—I. L. R. Bombay, Volume XVII, page 422, 1893.)

(8.) Mirasdars in an Inam village cannot always claim to hold at a fixed rent. An Inamdar can enhance their rents within the limits of custom. (*Vishwanath Bhikaji vs. Dhondappa*,—I. L. R. Bombay, Volume XVII, page 475, 1893.)

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.

(9.) A plaintiff sued to recover possession of certain fields, &c., alleging that he was a permanent tenant of the defendant, having purchased the right of occupancy from previous occupants of the land. The lower Court held that the plaintiff's vendors were mere yearly tenants and not permanent tenants, but that the sale of their right to the plaintiff was valid, and that the plaintiff had been wrongfully dispossessed by the defendant, no notice to quit having been given.

Held, that the plaintiff could not recover. For his plaint and the conduct of his case amounted to a denial of his landlord's (defendant's) title. In his suit the plaintiff claimed to be full owner, and he could not afterwards claim to be restored to possession on the ground that he was a yearly tenant entitled to notice to quit which was not given. (Lalu Gopal vs. Bai Motan Bibi,—I. L. R. Bombay, Volume XVII, page 631, 1893.)

(1.) The terms "tenants" and "inferior holders" defined.—The term "tenant" is used in the Act (the Land Revenue Code) when it is intended to signify that such person derives his right to his holding from his landlord or his landlord's predecessors in title. Such landlord must in the sense of the Act invariably be a superior holder, which signifies a holder entitled to receive from other holders rent on account of their holdings whether on his own account or on behalf of Government.

The term "inferior holder" is used in the Act when it is intended to signify the simple fact of the payment of or liability to pay rent by a holder to a superior holder. It is in no way inconsistent with clauses 14 and 15 of section 3 to say that a tenant is an inferior holder.

Section 83 of the Act comprehends every possible kind of tenancy to which the Act can relate. The use of the word "Tenant" is essential in it because the section settles the general relationship existing between landlord and tenant for the purposes of the Act and includes certain tenancies in respect of which there is a presumption as to tenure.

There is thus really no distinction between a tenant and an inferior holder except in the use of the terms, the one to express derivatory right from the landlord the other to express a liability to pay rent to the landlord. (G. R. No. 5843, dated 30th October 1880.)

84. An annual tenancy shall, in the absence of proof to the contrary, be presumed to run from the end of one cultivating season to the end of the next. The cultivating season may be presumed to end on the 31st March.

An annual tenancy shall 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.

* (1.) Under Bombay Act I of 1865, the period of notice of termination of tenancy was 6 months. This has been reduced to three months by this section.

(2.) Where there is no positive law to the contrary, six months' notice is to be considered sufficient and reasonable as has been held in the following decisions of the High Court :—

(a) An Inamdar cannot eject a yearly tenant without six months' notice to quit, ending with the cultivating year. Nor can he eject other

(1.) **Special terms as to termination of a lease to be respected.**—When there are special terms in the counterpart on the lease on which the termination of an annual tenancy is conditional those terms should be observed as the provisions of clause 2, section 84 are not intended to interfere with the right of the landlord and tenant to make special terms but are applicable to ordinary leases.

Clause 2 of the above section should be read as follows:—"An annual tenancy shall in the absence of any special agreement to the contrary require for its termination &c." (G. R. No. 5400, dated 11th August 1881.)

(2.) **Rights lapse on resumption of Inam lands.**—The holder of Inam lands cannot convey to another person any right over those lands greater than his own. If the lands in his possession are liable to resumption on the happening of a certain contingency (such as the death of the holder) they are equally so liable in the possession of the holder's mortgagee. When the contingency happens, (i. e., when the holder dies) and the lands are resumed, the claim of the late holder's mortgagee thereto ceases to exist whatever claim he may have against the heirs, if any, of

tenants, except on the expiration of their term of years or other interest in the land. (Narayan Bhivray *vs.* Kashi,—I. L. R. Bombay, Volume VI, page 67, 1882.)

(b) Tenants cannot be ejected as mere trespassers. If they are yearly tenants, they are entitled to a clear six months' notice to quit before they can be evicted. If they are tenants for a term of years or for a life or lives, there must be proof of an expiration of the term by effluion of time or of the falling of the life or lives. (Pandurang Sakharam and others *vs.* Yedneshwar Shitaram Chitnis,—I. L. R. Bombay, Volume VI, page 70, 1882.)

(c) On the resumption of an inam the Inamdar's right to exemption from the payment of the Government assessment ceases, and the Inamdar becomes liable to pay such assessment; but all his other rights remain unaffected, and therefore, those who were his tenants before the resumption do not thereby cease to be so, and can be ejected if they are not permanent tenants or are not otherwise entitled to remain in possession.

Mere non-payment of rent to the landlord does not render possession by tenants adverse to the landlord. The assertion of an adverse title by a person claiming to be owner under a permanent lease does not save limitation, unless made to the knowledge of the landlord.

The words "you must pay every year Government dues and enjoy the fields along with the garden lands without disturbance (Sukhrup rahane), besides the fixed amount there will be no oppression on account of cesses" do not create a permanent tenancy, but only a tenancy from year to year. (Gangabai, wife of Sadashive *vs.* Kalp Dari Makrya,—I. L. R. Bombay, Volume IX, page 419, 1885.)

the deceased. On the reversion of the lands to the original grantor all subordinate rights therein created by the grantees necessarily lapse also. But resumption does not mean ousting of possession. It is always taken to mean the continuance of the land in the hands of the actual occupants thereof so long as they do not fail to pay the full assessment leviable in respect of it. (G. R. No. 5953, dated 11th August 1883.)

85. It shall be incumbent on every superior holder of an alienated village and on every superior holder of an alienated share of a village in which there exists an hereditary patel and village accountant, to receive his dues on account of rent or land-revenue from the inferior holders through the said village officers.

Superior holders' dues by whom to be collected.

Any such superior holder demanding or receiving payment from any inferior holder of any rent or land-revenue otherwise than through the said village officers shall, on conviction in a summary inquiry before the Collector, forfeit to Government three times the amount of the sum so demanded or received.

Every such hereditary patel or accountant shall be bound to receive and account to the said superior holder for all sums paid to or recovered by him on account of the said superior holder ; and on his or their failure to do the same, the superior holder shall, with the previous consent of the Collector, be entitled to recover his dues direct from the inferior holders.

Inamdar's and subsharer's dues to be recovered through village officers.—(1.) A sub-sharer is a superior holder in accordance with the definition given in clauses 11 and 13, section 3 of the Code, and is therefore entitled to receive his dues on account of rent or land-revenue from the inferior holders through the village officers. (G. R. No. 5838, dated 6th October 1881.)

(2.)—Section 85 of the Code requires a superior holder to receive his dues on account of rent or land-revenue through the hereditary village officers, but he may receive his dues direct from the persons liable to pay them on failure of the village officers to account for the same, provided he first obtains the consent of the Collector. Although nothing in this section empowers the Collector to compel the village accountant to pay the amount claimed, the latter portion of the section clearly implies an exercise of discretion on the part of the Collector. If he has reason to doubt the claim, he may refuse his consent but if he has no

doubt at all that the claimant is a superior holder entitled to the share of the revenue of the village which has been paid by the village officers to the other superior holders he may consent to a demand being made by the claimant for payment direct from these co-sharers as inferior holders, to the extent of their obligation. If the co-sharers refuse to pay the amount thus demanded the claimant can then apply to the Collector for his assistance under section 86. In the Collector's summary inquiry which he is bound to make on the application, the nature of dispute between the superior holders will be disclosed and if the question at issue is of a complicated or difficult nature, the Collector will be justified in refusing assistance leaving the parties to settle their dispute in the Civil Court. (G. R. No. 4330, dated 5th July 1882.)

If received direct, village officers to countersign receipts.—(3.) Sections 58 and 85 of the Code must be construed so as to be mutually consistent but at the same time both must be enforced to the full extent of their meaning. Section 85 clearly prohibits the receipt of his rents direct by any Inamdar in whose village there exists an hereditary patel and village accountant. If the latter officer fail to account to the Inamdar for his dues, or if there are no such officers in his village the Code does not prohibit his making his levies direct. But whether he recovers his dues, direct or through the village officers the 2nd paragraph of section 58 requires him to give a written receipt for every payment of rent or land-revenue made to him and such receipts must be countersigned by the village accountant if any. This latter provision shows that the paragraph in question is not intended to operate only when an Inamdar recovers direct. Even when payments are received by an Inamdar through the village officers he must sign the written receipt. The village accountant must countersign it merely. (G. R. No. 5804, dated 4th August 1883.)

(4.)—This section applies to payments in kind, as well as to cash payments. Payments in kind are to be considered to have been made through the village officers as required in this section when they are made in the presence of such officers. When such payments are made the payee should pass a receipt as required in this section and the village officer should countersign it as required in clause 2 of section 58. In the case of large Inamdars, however, who customarily receive at their own houses the dues in kind there is no objection to their receiving their dues direct and giving a receipt for such payments as provided in section 58 of the Code. (G. R. No. 6020, dated 15th August 1883.)

(5.)—It does not appear to be legally necessary that an Inamdar should be present when the village officers are making the collections or that he should give an immediate receipt for each individual payment the moment it is made. What section 58 of the Code requires is that the Inamdar should give a written receipt for every payment of rent or land-revenue made to him by an inferior holder. It would suffice if all the receipts (which should be already countersigned by the village accountant)

were brought to the Inamdar to sign when the collections have been completed, or at the stated interval. There is no reason why these receipts should not be given in the rayat's receipt books whenever that would be the most convenient course. (G. R. No. 9107, dated 18th November 1884.)

Alienated share of a village explained.—(6.) A person holding an Inam No. in a Government village cannot be said to be the holder of an alienated share of a village. The expression "holder of an alienated share of a village" denotes not the holder of an isolated piece of Inam land either in a Khalsa or in an alienated village, but a holder who shares with Government either singly or jointly with other holders the revenue of an alienated village. (G. R. No. 6037, dated 26th July 1884.)

(7.)—Section 85 of the Code is only meant to apply to the holders of entire villages and shares, which have been alienated *as shares, i. e.* of definite shares such as one-half, two-thirds, &c. (G. R. No. 7484, dated 19th September 1884.)

Recovery of Superior Holders' Dues.

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 of this Act for the realization of land-revenue by Government.

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

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.

* (1.) Vide sections 87, 148 & 192 and orders printed thereunder.

(2.) A superior holder when applying for assistance to collect rent from his tenants need not make a separate application on a separate stamp for each tenant's case. He may put as many cases as he can into one paper provided the total amount of rent for the recovery of which the application is made is sufficiently covered by the stamp. (G. R. No. 2818, dated 4th June 1874.)

(1.) **Recovery of dues by adjustment in accounts.**—If a sub-sharer in a dumala village owns land which is entered in the accounts not as Inam but as the holding of an ordinary occupant in the village, and if it has been the practice for the revenue of such land to be adjusted in the accounts as a set-off against the share of such sub-sharer in the revenue of the village instead of being paid in cash the practice should not be lightly disregarded, and no assistance should be rendered by the revenue officers to the principal Dumaldars in the recovery of rent of such land in cash. When applications for such assistance are made, the revenue officers applied to, should refer the parties to the Civil Court for a decision of their respective rights; and if they obtain a settlement of their dispute, assistance may be given in accordance with the terms of the Court's final decree. (G. R. No. 2689, dated 24th May 1880.)

(2.) **Of village officer's remuneration.**—Section 17 of the Bombay Hereditary Offices Act provides for the assessment of the amount of Haks payable in alienated villages by Inamdars, &c., or others owning or occupying land therein. The Collector has power from time to time to determine the amount of such payments recoverable, provided that no larger demand shall be made than one equivalent to the amount that would be payable under the scale in force for the time being in the case of Government villages. Section 81 of the same Act provides that recoveries of emoluments under the Act may be made as provided by any law for the time being in force relating to the recovery of the land revenue.

Where, therefore, the practice is for the Kulkarni of an alienated village to receive from the cultivators, by way of remuneration, certain quantity of grain, and certain amount in cash in proportion to the area they cultivate, there can be no injustice in holding *prima facie* that the Kulkarni is entitled to the payment in question, and, on failure of the rayats to pay as usual, rendering him such assistance as the law allows to enable him to receive the same, leaving it to the Inamdar or his tenants, as the case may be, to show that the payment is a purely voluntary one, terminable at their own pleasure, and not a customary one which they have no right to discontinue. (G. R. No. 5795, dated 4th October 1881, and G. R. No. 6750, dated 11th November 1881.)

(3.) **Of arrears.**—The law (proviso to section 86), does not contemplate the grant of assistance to superior holders for the recovery of land revenue due to him from his tenants for past years. Accordingly in a case in which an application was made by an Inamdar for assistance, to recover from his tenants, the revenue due to him for the past years, he was referred to a Civil Court. The Inamdar filed a suit against one of his tenants, and eventually got a decree in his favour, and then on the strength of this decree, made an application for assistance to recover his dues from other tenants. On this the point, whether the assistance applied for by the Inamdar should be granted or not, was referred to Government. On this reference the following orders were passed;—

"His Excellency the Governor in Council is of opinion that the Collector may now give to the Inamdar the assistance he asks. A test case was taken into Court by the Inamdar and won by him on original hearing and on appeal. It is better for him and for his tenants who will eventually, if sued, have to pay the demand and will further be mulcted in costs that the arrears should be paid without further delay, and this can be effected through the intervention under the law of the local revenue officers whenever a *prima facie* case for interference appears. (G. R. No. 64, dated 5th January 1889.)

(4.)—**Of sums not sanctioned by law.**—A Jahagirdar obtained agreements from his tenants binding them to pay as local-fund cess, sums in excess of the local-fund actually payable by them in respect of their holdings. He filed suits on these agreements and obtained decrees in his favour. He then applied for assistance under section 87 to recover the sums decreed upon from his tenants. In this case it was decided that although there was nothing to prevent the Jahagirdar from enforcing the agreements in a Civil Court, they would by no means entitle him to recover from his tenants as local-fund cess, with the assistance of revenue officers, more than he could recover under the Bombay Local Fund Act (III of 1869), without such contract, that such agreements would not extend the powers of revenue officers, which were strictly limited to the recovery of sums *leviable by law*, and that it would be illegal therefore to assist the Jahagirdar in recovering more than what the law authorized by the special procedure of the Land Revenue Code, sections 86 and 87.—(G. R. No. 4013, dated 3rd June 1889.)

(5.)—**Of enhanced rents.**—Sections 86 and 87 of the Land Revenue Code do not make it compulsory on the inamdar or his assignee, to ask for the assistance of the Collector to recover enhanced rent from the tenants. If the Inamdar or his assignee had made a demand on the tenants for the enhanced rent through the hereditary patel or village accountant, as required by section 85 of the Code, and they had refused, he would have become at once entitled to his ordinary civil remedy, objection as to the absence of legal demand for enhanced rent not being taken.

Held that the suit was properly tried by the Court of first instance on the merits. The lower Appellate Court having dismissed the suit on the ground that the inamdar was not a party to the suit, a point on which no issue was raised, although it had been taken in the written statement and which was not made a ground of appeal.

Held, that the point must be considered to have been abandoned at the trial; it was, therefore, not open to the lower Appellate Court to dismiss the suit on that ground.

(GOVINDRAO KRISHNA RAIBAGKAR vs. BALA BIN MANAPA, —I. L. R. Bombay, Volume XVI, page 586, 1892.)

(6.) **Assistance to be given to joint holders.**—If a village held in Inam by more than one person is entered in the accounts in the name of only one person, and if a dispute arises between the registered holder

and the other sharer or sharers as to the right of recovering the revenue, and the Collector on the matter coming before him is satisfied that the person in whose name the village stands has all along had the sole management of it, he should consider such holder alone to be entitled to receive the rents or land-revenue due by the tenants until such time as some arrangement, for partition of the village for sharing or exercising jointly the right of management, is made by the parties either privately or by a suit between themselves. In such cases the parties applying for assistance should be referred to the Civil Court. (G. R. No. 3350, dated 29th June 1880.)

(7.)—**To Deshmukhs and Deshpandes.**—When a village is held by an Inamdar subject to the right of a Deshmukh or Deshpande or some other such Hakdar to a share in, or a charge on, the revenue of the village, the Deshmukh, Deshpande or other Hakdar stands *pro tanto* to the Inamdar in the relation of superior holder and is therefore under section 86 of the Code, entitled to assistance in the recovery of his dues from the Inamdar. The definition of "land" in the Code is so drawn as to make the terms "holder" and "superior holder" apply to persons entitled to a share in, or a charge on, the revenue as well as to persons in the possession and enjoyment of the land itself. (G. R. No. 4379, dated 20th August 1880.)

(8.)—**In villages whether surveyed or unsurveyed.**—Holders of alienated villages are entitled to have assistance for the recovery of their dues from their tenants under this section whether a survey settlement has been extended to their villages or not. (G. R. No. 4150, dated 18th July 1881.)

(9.)—**Up to what amount.**—In a case of the nature given below assistance should be given to the following extent:—

A is a registered occupant of a holding assessed at Rs. 10; one-half of it belongs to his brother B who has leased it on permanent tenure to C for Rs. 7 who in his turn has rented it to D for Rs. 10. A, B, C, each apply for assistance for the recovery of their rent by precautionary measures. In each case assistance should be given to the extent of their net profit, *i. e.*, 5 Rs. to A, 2 Rs. to B and 3 Rs. to C. (G. R. No. 7057, dated 24th November 1881.)

(10.) **Collector to refuse assistance in complicated cases.**—There is really no distinction between a tenant and an inferior holder except in the use of the terms, the one to express derivatory right from the landlord, the other to express liability to pay rent to landlord.

A tenant shall be regarded as holding land at the rent agreed on between him and the landlord if there is evidence of such agreement, and the Collector is bound to give assistance if required for the recovery of so much rent as is lawfully due. If the question what is lawfully due should be of a complicated nature or difficult to determine, it is open to the Collector to refuse assistance. (G. R. No. 5841, dated 30th October 1880, and G. R. No. 6341, dated 30th December 1880.)

(11.) Defaulter's holdings to revert to alienees.—Section 86 of

* And which obviously could not be made applicable to superior holders.

the Code expressly provides that the recovery of dues from inferior holders shall be made under the same rules and in the same manner as prescribed in Chapter XI for the realization of arrears due to Government. An exception only is made in the

case of section 137* in which the paramount right of Government to recover its land revenue over all other claims is recognized; but every other rule in Chapter XI is applicable. Accordingly, where section 153 provides that the Collector may declare the occupancy in respect of which an arrear of land revenue is due to be forfeited to Government, so he may declare a holding with which he is dealing under section 86, to have reverted to the superior holder. (G. R. No. 3089, dated 30th May 1881.)

(12.) Superior holders.—Mortgagee in possession.—A mortgagee in possession is a superior holder within the meaning of the Code and is entitled to assistance until he loses possession by due course of law. (G. R. No. 5406, dated 17th September 1881.)

(13.)—Sharers in alienated villages.—In accordance with the definitions in clauses 4, 13 & 14 of section 3 of the Code and the decision of Government in their Resolution No. 4379, of 20th August 1880 (see order No. (7) above) all the sharers in alienated villages, whether their names are entered in the accounts or not as managers, are in respect of their shares in or charges on the revenue entitled to assistance in the recovery thereof as superior holders. (G. R. No. 5454, dated 21st September 1881.)

(14.)—Occupants of Government lands.—Under the Code occupants of unalienated lands and holders of alienated lands come under the common denomination of "Superior holders" and are alike entitled to assistance, for the recovery of rent or revenue due to them, under the provisions of section 86 and the following sections of the Code. (G. R. No. 3904, dated 17th June 1882.)

(15.) Delegation of powers to Mamlatdars.—In districts where the practice still obtains the Mamlatdars may continue to exercise the powers under sections 86 and 87 of the Code which powers they previously exercised under Regulation XVII of 1827. Where however the practice has been discontinued the Collectors are authorized to delegate to the Mamlatdars in their districts the powers of receiving applications and issuing orders under sections 86 and 87 of the Code. (G. R. No. 2598, dated 31st March 1883.)

(16.)—To Mahalkaris.—G. R. No. 2598 of 31st March 1883 should be held applicable to Mahalkaris who should continue to exercise the same powers under sections 86 and 87 of the Code which they previously exercised under Regulation XVII of 1827. (G. R. No. 624, dated 15th August 1883.)

(17).—The Collectors may delegate their powers under sections 86 and 87 to Mahalkaris under section 13 of the Land Revenue Code, taking care to make the Assistant Collector in charge of the Taluka, the immediate superior of the Mahlkari for the purposes of section 203 of the Land Revenue Code, *i. e.*, for the purposes of appeals. (G. R. No. 8616, dated 12th December 1891)

(18.) **Superior holders not registered in Collector's books.**—The provisions of sections 86 and 87 of the Code contain the rent-law of this Presidency. Their object is to enable the persons entitled to receive rents to recover them summarily and inexpensively when their title is clear, but otherwise to require them to have recourse to the ordinary courts unless they can come to terms privately. Such persons may or may not be the persons whose names are registered in the Collector's books as the occupants or alienees of the land. It would have deprived our rent-law of its general applicability to all landlords and their tenants, if, in taking proceedings under it revenue officers had to pay regard to the circumstance whether the applicant's name is recorded in the Collector's books or not, because that circumstance depends upon special considerations which do not necessarily enter into the questions regarding the relation of landlord and tenant. The question whether an applicant is the superior holder of the person from whom he seeks to recover rent is one which should be determined in each case with reference to the statements of the parties and the evidence they produce.

When after enquiry it appears that there is a dispute between the two persons as to which of them is entitled to be the landlord of the tenant, the Collector is quite justified in declining to render assistance to either of them if the question raised by them appears to him to be "of a difficult or complicated nature." (G. R. No. 3778, dated 10th May 1884.)

(19.) **Opinions of law Officers on the subject.**—The following opinion of the Honorable the Advocate-General, and the reports from the Remembrancer of Legal Affairs clearly solve the question as to whether the Collector is bound to grant assistance to a superior holder whose name is not recorded in the Collector's books :—

(a) Opinion of the Honorable the Advocate-General :—

" 1. I think that a question whether an applicant for assistance in the recovery of rent or land revenue is the superior holder of the land in respect of which the rent or land revenue is claimed may be a question at issue between the parties within the meaning of section 87 of the Bombay Land Revenue Code, 1879. 'The parties' referred to in that section are the person claiming assistance as superior holder on the one side, and the person against whom the assistance is asked on the other ; and it is open to the latter unless estopped from so doing, to set up as a defence that the former is not the superior holder. If the question raised by this defence be, as it well may be, of a complicated or difficult nature, the Collector may at his discretion refuse the assistance asked for,

"2. I think the Collector is bound under section 86 of the Land Revenue Code to grant assistance to an applicant whose name is not recorded in the revenue records, but who appears from the evidence produced to be the superior holder, unless (a) such applicant is denied by the person against whom the assistance is asked to be the superior holder, and the question whether he is so or not or any other relevant question appears to the Collector to be of a complicated or difficult nature; or (b) the case falls within the latter portion of section 79. No condition of registration in the revenue records is attached to the definition of superior holder in the 13th clause of the 3rd section of the Code, and I think it impossible to imply such a condition in the other passages in the Act in which the term 'superior holder' is used. But at the same time I think that the Collector may in cases brought before him under section 86 exercise the discretion given to him by section 79 of refusing to recognize any person to whom any interest in any portion of an occupancy or alienated holding has been assigned unless, the transfer has been recorded in the revenue records, as section 79 seems to me to be of general application and not limited by the particular chapter of the Act in which it occurs. But there may be many cases in which the name of a superior holder is not recorded in the revenue records which do not fall within the words of section 79. If it be thought desirable to give the Collector power in all cases to refuse to recognize a person as superior holder unless his name is recorded in the revenue records, I think that further legislation is necessary."

(b) Memorandum from the Remembrancer or Legal Affairs, No. 452, dated 11th April 1885 :—

"1. The Remembrancer of Legal Affairs has the honour to report that he concurs in the opinion of the Honourable the Advocate-General as to the provisions and scope of section 79 of the Land Revenue Code.

"2. The undersigned's memorandum No. 446, dated 6th April 1883, quoted in the preamble of Government Resolution No. 3102 of 20th idem, indicated his opinion as to the general applicability of the section in question and further urged the desirability of its provisions being, as a rule, strictly enforced.

"3. The operation of section 79 in the case of an application under section 86 of the Code would be that if the person who makes the application bases his right to make it upon a transfer which ought, under any of the provisions of the Code, to have been recorded in the revenue records, but has not been so recorded, the Collector may decline to recognize the applicant, *i. e.*, may refuse to take any action upon his application."

(c) Memorandum from the Remembrancer of Legal Affairs, No. 535, dated 28th April 1885 :—

"1. The word 'assigned' may be taken to be equivalent to the word 'transferred.' When one person conveys or makes over property to another he transfers or assigns it to that other person,

managed her own share or Pachhabibi managed the whole had not been ascertained. Pachhabibi, however, applied for assistance for the recovery of rent from her tenants, after the lands had been entered in the Collector's records in Chhotibibi's name. Here there was no question of any interest in the alienated holding having been assigned to Pachhabibi; her interest had, apparently, remained the same, notwithstanding the mutations of names which had taken place. Pachhabibi was not, therefore, a "person to whom any interest in any portion of an * * alienated holding had been assigned," and it was not open to the Collector under section 79 of the Revenue Code to decline to recognize her." (G. R. No. 5243, dated 26th June 1885.)

(20.) Questions not governed by practice to be decided by Civil courts.—In cases, in which according to the existing practice the holders of sub-Inams do not pay rent for the land constituting their inams to the principal Inamdar, the question whether a change in the circumstances and extent of the principal inam holding warrants its owner in demanding a payment of rent from the persons who hold the sub-inams is one which it is for the civil Court and not for the Collector to decide. (G. R. No. 3727, dated 8th May 1885.)

(21.)—Other doubtful questions.—If the question whether the applicant for assistance is the superior holder or not, is at issue in the Courts, and the Collector has been made judicially cognizant of this proceeding upon the application for assistance he must refuse assistance. (G. R. No. 6476, dated 26th September 1888)

Applications for assistance.—(22.) Single application sufficient against several inferior holders—The present practice of allowing the superior holder to make a single application for assistance under section 86 against several inferior holders is correct; and that no new rule seems to be called for. (G. R. No. 8721, dated 23rd December 1887.)*

(23.)—When once struck off the file can be reentertained.—When applications for assistance under sections 86 and 87 of the Land Revenue Code are received, the Mamltdars fix a certain day for the enquiry but it sometimes happens that the applicant does not appear on the day fixed, and the result is that the application is filed. After sometime, however, the applicant puts in his appearance, adduces sufficient excuse for his non-appearance on the appointed day, and urges the proceedings may be resumed. In civil cases this is permissible under the provisions of section 99 of the Civil Procedure Code, but as applications for assistance do not appear to be of nature of civil plaints,—and the fact that they are allowed by Government to be received by post, without verification seems to support this view,—the question is whether when such applications are once struck off the file they can be re-entertained or not.

* vide foot note No. (2) to section 26.

This question has been decided by the following orders :—

“For the reasons stated in G. R. No. 840, of 1st February 1890, (see *infra* order No. (25), proceedings before revenue officers under sections 86 and 87 of the Land Revenue Code are not subject to the provisions of the Civil Procedure Code.

“It is presumed that the Legislature purposely trammelled revenue officers as little as possible with binding rules of procedure in such cases intending that they should act on equitable principles, without being bound by precise provisions.

“Applying this view of the law to the question referred to, it would appear in the circumstances above described, that the application should be re-entertained, provided that petition for re-entertaining it be made within the year prescribed in the proviso to section 86 of the Land Revenue Code. Indeed, there is nothing to prevent a landlord from making a second entirely fresh application for assistance, if his first has been ‘filed,’ owing to his failure to appear on the date fixed for the hearing, provided the 2nd application be made within the above year; and a petition to re-entertain a 1st application is tantamount to a 2nd application. But landlords ought not to be allowed to evade the proviso to section 86 by means of any such petition or 2nd application.” (G. R. No. 8720, dated 17th December 1891.)

(24.)—**Procedure in cases of death of applicant.**—In cases of applications for assistance under section 86 if the tenant against whom the assistance is applied for, die after the application is made the procedure to be followed should be that prescribed in section 368 of the Civil Procedure Code, viz., the Mamlatdar should postpone the case and call upon the applicant to specify the name of the legal representative of the deceased tenant whom he wishes to be entered in the record in lieu of the deceased and to have a fresh notice issued to such representative. (G. R. No. 632, dated 26th January 1887, and G. R. No. 4672, dated 21st July 1887.)

(25.)—**Need not be made in person, may be sent by post.**—An application by a superior holder for assistance for the recovery of rent (under section 86 of the Code) is not liable to rejection if sent by post.

The Code itself merely requires from a superior holder, an application, that is written; neither presentation in person, verification, nor examination of the applicant can be required as a condition precedent to the issue of a notice by the Collector as directed in section 87. The words of that section are imperative.—“On application being made under section 86 to the Collector he shall cause a written notice thereof to be served”

As there is nothing to require or justify verification by, or an examination of, an applicant under section 83, there seems to be no necessity for his personal attendance. The Legislature in dispensing with the verification required for a civil plaint (Civil Procedure Code, section 51), and

with the examination required on a criminal complaint (Criminal Procedure Code, section 200), seems to have regarded an application in writing as a sufficient guarantee of good faith to justify action in the first instance. Against persons who knowing they had no title, caused the Collector to harass cultivators unnecessarily, section 182 of the Indian Penal Code would afford adequate protection.

No advantage could be gained by pseudonymous application as the assistance given would be only to a *bona fide* superior holder. *Bona fide* disputes as to titles are appropriate matters for summary enquiry under section 87. But the applicant is not required to support his title by his own or other evidence before, as well as after, notice.

The object of sections 86 and 87 is as stated in G. R. No. 3778, dated 18th May 1884 (see *supra* order No. (18), to avoid delay by providing a summary and inexpensive procedure for recovery and it is probably for this reason that verification, and, personal appearance required in Civil Courts are dispensed with.

Under section 196, enquiries under sections 86 and 87 are judicial proceedings only for the purposes of sections 193, 219 and 228 of the Indian Penal Code, and on the maxim—*expressio unius est exclusio alterius* none of the formalities required by other enactments for the initiation of judicial proceedings, are necessary to such enquiries unless expressly required by the Code.

There is nothing in the Code to indicate that the making of an application involves the formal attendance of the applicant and section 65 seems to contemplate that in the instance there considered at least, an application may be made by a person not present to receive the answer.

Both departmental and public inconvenience might arise from the detention of applicants till their identity and status could be ascertained, and questions of titles are clearly to be postponed till they can be enquired into the presence of the opponent.

There can of course be no objection to an applicant's employing the post instead of a private messenger for the bare delivery of his application. (G. R. No. 8027, dated 12th November 1890.)

(26.)* **Expenses in such Cases.**—The recommendation of the Commissioners that the Bhatta payable to a karkun deputed to conduct a sale

* The general practice, with regard to levying expenses in assistance cases which is at present followed and which has been approved by Government Resolution No. 1830, dated 20th March 1888, may be summed up as follows :—

In the enquiry stage,—proceedings originate with a plaint or petition which requires a Court fee stamp of 1 anna when the amount of the claim is less than Rs. 50, and 8 annas when it is Rs. 50 or more. A process fee of 3 annas for every notice or summons issued to the defendant or a witness is also charged, and the expenses of witnesses have also to be paid

following as consequence of an application for revenue assistance should not be separately charged, is approved, except in cases in which the services of the karkun have been entirely placed at the disposal of the holder of a khotee or Inam village for any considerable time to execute assistance decrees. In such cases the pay and allowances of the karkun must be recovered from the khot or Inamdar. (G. R. No. 1880, dated 20th March 1888.)

(27.) **Persons representing superior holders need not necessarily be pleaders.**—The question whether superior holders applying under section 86 of the Code for assistance in recovery of dues from inferior holders can be represented by any person who is not a pleader, has been disposed of by the following orders :—

“The difficulty arises from section 196, Bombay Land Revenue Code which declares that all formal and summary enquiries under that Act shall be deemed judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code and that the office of any authority holding any such enquiry shall be deemed a Civil Court for the purposes of such enquiry.

“It would seem that such enquiries are judicial proceedings for the purposes only of sections 193, 219, and 228 Indian Penal Code and

at the rate of 4 annas or 6 annas per witness according to the class to which he belongs. All these expenses generally follow the decree, an exception being made only in those cases where the Court considers that the plaintiff was over-hasty in seeking its assistance, or for such similar reason.

The execution stage,—In most cases expenses end after the decree, and there is no formal execution stage. The Mamlatdar sends an order to the village officers giving particulars of the decree passed, and directing them to enforce it. As a rule the defendant pays the money due on verbal orders from these officers, and there is no further trouble. But where this is not the case, and an attachment and sale of the defendant's property is rendered necessary, expenses of sale are recovered at the following rates :—

2 annas in the case of moveable property ;

4 annas in the case of immoveable property ; or

$\frac{1}{4}$ th of the amount realized by the sale ;

whichever is the greater, (G. R. No. 2459, dated 26th March 1883.)

Where a formal notice is issued prior to the attachment and sale of the defendant's property, a notice fee is also charged at the rate of 4 annas, if the amount of the decree does not exceed Rs. 5, and 8 annas in other cases. These expenses also fall on the defendant, *i. e.* they follow the decree.

When a karkun has to be sent for conducting a sale in the rare cases in which a sale becomes necessary, it is the practice in some districts to levy the karkun's batta, or travelling allowance for the day along with the expenses of sale, and this charge also falls on the defendant.

under the maxim *expressio unius est exclusio alterius*, are not judicial proceedings for the purposes of any other enactment.

"The office of the authority making such an inquiry is a Civil Court for the purposes of the inquiry, but the proceedings are judicial only in the above limited sense and the appearances, applications and acts authorized by law to be made or done, are not made or done by parties to suits or appeal within section 36, Civil Procedure Code, and section 39 of the Civil Procedure Code would not appear therefore to apply.

"That such officers are not Civil Courts for all purposes is clear from section 87 of the Bombay Land Revenue Code, which provides for recourse to the Civil Courts as distinguished from such offices.

"Regulation II of 1827, section (1) which is still in force requires that no person shall be allowed to act in any judicial proceeding in any Court except the pleaders, the parties, or their recognized agents.

"But section 47 refers to Courts, appointed under that Act, which have jurisdiction over all suits of a civil nature of which their recognizance was not barred. It did not refer to what were then called Revenue Courts,

"The Recourse to the Civil Courts now reserved by section 87, Bombay Land Revenue Code, was, under clause (5) of section 26 of Regulation XVII of 1827 to the Collector, and when this jurisdiction was taken from him by Bombay Act XI of 1866 special provision was made by section 8 of the last mentioned Act for pleaders engaged in such suits there pending to appear in the Civil Courts. This seems to indicate that section 47 of Regulation 11 of 1827 was not deemed applicable to Revenue Courts.

"As moreover inquiries under section 87 Bombay Land Revenue Code are by section 196 judicial proceedings only within the meaning of the specified sections of the Indian Penal Code section 47 of Regulation 11 of 1827 would not apply to them." (G. R. N. 840, dated 1st February 1890.)

87.* 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. 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.

* (1.) Vide orders under section 86.
 (2.) For form of notice to be issued under this section see Appendix IV.

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 of this Act or at any survey settlement confirmed by section 112, grant assistance to the extent only of the assessment so fixed upon the said land.

Assistance may be refused or granted in part.

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 barred.

(1.) **Grounds on which Collector's decision to proceed.**—The Collector's decision under this section should proceed on the grounds indicated in the first paragraph of section 83 of the Code, viz :—

(a) If any agreement between the superior holder and the tenant is proved, the rent agreed upon between them.

(b) If there is no satisfactory evidence of such agreement, the rent payable by the usage of the locality.

(c) In the absence of any agreement or usage such rent as may under the circumstances of the case be deemed just and reasonable.

(d) If owing to the complicated and difficult nature of the dispute the Collector is unable to settle it summarily, he can refuse assistance, or where the survey assessment has been fixed, may grant assistance to the extent of such assessment. (G. R. No. 3904, dated 17th June 1882.)

(2.) **Collector not to withhold assistance.**—Para 1 of section 87, of the Code leaves the Collector no discretion as to withholding assistance for the recovery of rent or land-revenue which after a summary inquiry he finds to be lawfully due. The words are "he shall hold a summary inquiry and shall pass an order for rendering any assistance to the superior holder for the recovery of such amount, if any, as appears to him to be lawfully due." In these inquiries the Collector exercises in a summary way the jurisdiction of a Civil Court and like those Courts he has no authority to go behind the liability and listen to appeals *ad misericordiam*. (G. R. No. 8402, dated 25th October 1884.)

(3.) **Decisions in assistance cases, not decrees.**—Orders passed by a revenue officer under section 87 of the Bombay Land, Revenue Code are not decrees, or orders having the force of a decree

passed by a Revenue Court within the meaning of article 7, schedule 1 of the Court Fees Act. For the purposes of certain sections of the Penal Code a formal or a summary inquiry under the Land Revenue Code is to be deemed (section 196) a judicial proceeding and the office of the authority holding such inquiry is to be deemed a Civil Court, but the order passed by a revenue officer under section 87 of the Code is not in any way binding upon the parties like a decree and determines no question of right that may be at issue between them. To copies of such orders Article 9 and not Article 7 of the above schedule applies. (G. R. No. 5630, dated 31st July 1883.)

(4.)—**Not to bar Civil Suit.**—The concluding part of section 87 shows clearly that the Mamlatdar's order does not preclude the parties from having recourse to the Civil Court if dissatisfied with it. (*Ganesh Hathi vs. Metha Vyankatram Harijivan*,—I. L. R. Bombay, Volume VIII, page 188, 1884.)

(5.)—**No limit as to time within which to execute, necessary**—As the orders passed under section 87 of the Land Revenue Code remained in numerous cases unexecuted for many years it was suggested that a certain limit of time should be prescribed, as in the case of decrees of Civil Courts within which those orders should be executed and that any orders not so executed should be treated as time-barred. On this the following orders have been passed:—

'The orders contemplated by sections 86 and 87 of the Land Revenue Code are not in the nature of decrees for specified amounts execution of which can be taken out by the judgment creditor at his discretion, but are orders for rendering assistance towards recovery of such amount as may appear to be lawfully due on account of the current year's rent. Such orders should obviously themselves constitute the authority for the necessary action, when that action has been taken, that is when the assistance directed has been given and the final order reported the order is discharged whether the amount has been recovered in full or not. If any thing remains to be recovered after the original order has been discharged and there is a prospect of its proving realizable by repetition of process under chapter XI it is open to the superior holder to make a fresh applications on which, provided it is made within the year in respect of which the balance is due, a fresh order can be given at the discretion of the Collector'. (G. R. No. 1117, dated 12th February 1894.)

Grant of Special Powers to Holders of Alienated Lands.

88. It shall be lawful for the Governor in Council 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):—

Governor in Council may, by commission, confer on holders of alienated lands power.—

(a) to demand security for the payment of the land-revenue or rent due to him, and if the same be not furnished, to take such precautions as the Collector is authorized to take under sections 141 to 143 ;

(b) to attach the property of persons making default in the payment of such land-revenue or rent, as aforesaid ;

(c) to fix from time to time the times at which, and the instalments in which, the land-revenue or rent due to him shall be payable ;

(d) to exercise the powers of a Collector under sections 65 and 66 ;

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

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

Provided that the powers contemplated in clauses (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.

(1.) Formalities to be observed before Inamdar is invested with powers.—There is no objection to the powers contemplated in clauses (a) and (b) of section 88 of the Code being conferred upon an Inamdar at once, but none of the powers mentioned in clauses (c) to (f) of that section can be conferred until a Survey Settlement has been extended to his village under section 216 of the Code. (Vide the proviso to section 88.)

The first step, if the Inamdar is to be invested with any powers under clauses (c) to (f), is for Government, under section 216, of the Code, to

authorize the extension to the Inamdar's village (by notification)* of the provisions of chapters VIII to X of the Code which he may desire to have so extended, or of such of them as Government think fit to extend. Section 112 must, of necessity, be amongst the number of the sections to be so extended, when a Survey Settlement "made, approved and confirmed" under the authority of the Governor in Council, is already in force in the village. And when the existing assessments have not yet been declared by Government to be fixed for a term of years, sections 102 and 103 must of necessity also be included, in order that Government may have power at once to declare them to be so fixed and that the Survey Settlement may be formally introduced.

When the above notification has been issued, and when, if necessary, an order has been issued under section 102 and proceedings have been taken under section 103, the requirements of the proviso to section 88 will have been satisfied.

The powers which Government may then deem it fit to confer upon the Inamdar or upon any agent of his may be given, not by notification, but by a commission in the form of schedule F of the Code. If powers are conferred under clauses (a) and (b) of section 88 of the Code at once, without waiting for a Survey Settlement to be extended to the village under section 216 they, too, must be given by a commission. (G. R. No. 1388, dated 8th March 1881.)

(2.) **Inamdars invested with powers to take precautionary measures but cannot inflict punishment.**—Section 88 clause (a) of the Code and the Commissions issued under it empower the holders of such Commissions to take such precautions as the Collector is authorized to take under sections 141 to 143. Section 141 and the 1st and 2nd paragraphs of section 142 provide precautionary measures for the security of the land revenue and there is no objection to the holder of the Commission acting under them. The 3rd paragraph of section 142 however relates to the infliction of a penalty for disobedience of an order made by such holder and enacts that such penalty may be inflicted on conviction after a summary inquiry. This involves a quasi-judicial proceeding (vide section 195) and is obviously something quite distinct from the precautionary measures provided for securing the payment of land revenue. The holder of a Commission cannot therefore exercise this power, but if he wishes to have a penalty inflicted under section 142 on any of his inferior holders his proper course is to move the Collector to enquire into the matter, and not to inflict the penalty himself.

Section 143 enables the Collector, if the revenue is not discharged within two months after the crop has been deposited under section 141 clause (b), to take such portion thereof as he may deem fit for sale under the provisions of chapter XI applicable to sales of moveable property in

* This notification is issued in the form of appendix V.

realization of the revenue due and of all legal costs. This power also vests in the holder of a commission, but the taking of a portion of the defaulter's crop is an attachment of his property and when it is done the holder of the Commission is bound to make an immediate report thereof, under section 90, to the Collector. At this point "precautions" cease and the Collector has to step in under section 90 to determine whether the attached crop may be sold or not. (G. R. No. 106, dated 6th January 1883.)

(3.) **Grant of powers to holders of unsurveyed alienated villages.**—Powers under clauses (c) to (f) of section 88 cannot be granted to the holders of alienated lands until a Survey Settlement has been extended to those lands. Before granting a Commission under section 88 to the holders of alienated villages an agreement to pay the village officers should be required from them. (G. R. No. 9819, dated 12th December 1884.)

(4.)—The rule which His Excellency in Council desires to lay down with regard to the issue to Inamdars of Commissions conveying powers under clauses (a) and (b) of section 88 of the Land Revenue Code is that these powers will not be granted unless the tenants concerned are protected from rack-renting under section 217 of the Code. (G. R. No. 208, dated 9th January 1885.)

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

90. If the holder of any such commission attach a defaulter's property, he shall make an immediate report to the Collector of his having done so. Should the demand on account of which the attachment has been 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

Form of such commission.

Reference to be made by holder of commission to Collector.

decrees, the sale shall be conducted by him and not by the Collector and his subordinates.

(1.) **Inamdar's report exempt from Court fee-stamp.**—The report required to be made by an Inamdar under this section is not an application or petition within the meaning of article 1 clause (b) of section 2 of the Court Fees Act and therefore does not require a stamp. (G. R. No. 987, dated 11th February 1882.)

91. All compulsory process shall cease on the defaulter's paying or tendering the amount demanded of him under protest, or

When compulsory process shall cease. 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.

92. The power conferred by any such commission shall extend to the enforcement of the arrears to which power under commission to extend. 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.

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

Penalty for so doing.

94. Nothing in the last section shall be deemed to prevent a holder of alienated land from instituting a suit in any Court of competent jurisdiction for the purpose of establishing his claim to re-assess the lands or re-settle the revenue of any inferior holder paying less than the full sum to payment of which he deems him to be justly liable, or from levying the sum ascertained to be due in accordance with the decree in any such suit in the manner hereinbefore mentioned.

Holder of commission may establish right to enhanced rent in civil Court.

CHAPTER VIII.

Of Survey settlements and the Partition of Estates.

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 con-

Power to introduce revenue survey into any part of Presidency.

* (1.) The general principles and rules which form the basis of Revenue Survey operations are described in the Survey and Settlement Manual.

(2.) With a view to the settlement of the land revenue it is competent to Government if they think fit to direct under this section the survey of vacant lands in village-sites. When such an order is given, the officer in charge of the Survey will fix the assessment under section 100. In respect of lands not within the local operation of an order under this section the assessment has to be fixed under section 52 by the Collector. (G. R. No. 4344, dated 18th June 1886.)

ned 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.

Control of revenue survey.

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, suitable service from holders of land, &c. Survey officer may require, by general notice or by summons, suitable service from holders of land, &c.

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 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,

Survey numbers not to be of less extent than minimum fixed.

ber 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,

* (1.) Vide note under rule 55 of the rules under section 214.

(2.) Under the provisions of Rule 2, section 17 of Bombay Act IV of 1868 (which correspond to those of section 98 of Act V of 1879) the following scale for the regulation of sub-divisions of survey numbers was fixed. This scale is still in force and therefore given below for reference :—

Names of Collectorates.	Description of cultivation or class of land.	Minimum area to be formed into a sub-division under the Act.	
		Acres	Gunthas.
Poona and Ahmednagar...	Jirait.....	3	0
	Garden	0	20
	Rice	0	20
Thana	Rice	0	10
	Garden	0	10
	Jirait.....	3	0
Ratanagiri.....	Rice	0	5
	Garden	0	5
	Warkas.....	2	0
Khandesh	Jirait.....	4	0
	Garden	0	20
Belgaum, Dharwar and Bijapur	Dry Crop ...	6	0
	Rice	1	0
	Garden	0	20
Satara	Dry Crop ...	3	20
	Rice	0	20
	Garden	0	20
North Kanara (settled Talukas of the Below Ghat Districts)	Kumri	5	0
	Dry Crop ...	5	0
	Rice	0	5
	Garden.....	0	5
	Kumri	5	0

In Guj-rat the minimum should be one acre for jirait and half an acre for garden or rice land. (G. R. No. 2161, dated 29th May 1869.)

(3.) The scale of minimum for the below Ghat districts of North

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.

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 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 survey record shall be deemed to have been authorizedly made, whatever be its extent.

(1.) **Pardi Numbers.**—The provisions of this section are not intended to apply to Pardi Numbers. (G. R. No. 4314, dated 25th July 1881.)

99.* Recognized shares of survey numbers shall be subject to the same provisions of this Act as are applicable to entire survey numbers, except—

(a) that it shall not be obligatory to demarcate such shares separately, and

(b) that if any such share is relinquished by the occupant absolutely under the provisions of section 74, the occupancy thereof shall be offered to the occupants of the other shares of the same survey number in order of the relative largeness of the amounts payable by them respectively on account of the assessment of their said shares, and that, in the event of their all refusing the occupancy

Kanara shown above was sanctioned under G. R. No. 5594, dated 11th November 1872.

(4.) The above table does not give the minima for the Districts of Nasik, Kolaba and Sholapur as these Districts have been formed since 1869. The scale of minima in force in the several Talukas of these Districts is therefore to be understood to be the same which is prescribed in the above table for the Districts to which they originally belonged.

*See note under rule 55 of the rules under section 214.

of the said share, the assessment thereon shall, until such time as the entire number is relinquished by them, be levied from them in proportion to the amounts of assessment payable by them as aforesaid.

(1.) **Recognized shares forfeited and Sold.**—When a “recognized share” of a Survey number has been put up to auction for arrears, has not been purchased, and is not accepted by the other sharers, the latter cannot be compelled to accept the forfeited, nor can the assessment be levied from them. (G. R. No. 2235, dated 5th April 1882.)

100.* Subject to rules or orders 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

Officer in charge of survey to fix assessments.

* The following scales for eliminating fractions when fixing survey assessments, sanctioned by G. R. No. 2210, dated 18th April 1873, have been and are still in force:—

SCALE NO. 1.		
For all Collectorates except Thana, Kolaba, Ratnagiri and Kanara.		
From Rupees.	To Rupees.	Fixed as assessment.
0 0 1	0 3 0	0 2 0
0 3 1	0 6 0	0 4 0
0 6 1	0 10 0	0 8 0.
0 10 1	0 14 0	0 12 0
0 14 1	1 4 0	1 0 0
1 4 1	1 12 0	1 8 0
1 12 1	2 4 0	2 0 0
2 4 1	2 12 0	2 8 0
2 12 1	3 4 0	3 0 0
3 4 1	3 12 0	3 8 0
3 12 1	4 8 0	4 0 0
4 8 1	5 8 0	5 0 0

and so on,

SCALE NO. II.		
For use in Thana, Kolaba, Ratnagiri and Kanara.		
0 0 1	0 0 6	0 0 6
0 0 7	0 1 6	0 1 0
0 1 7	0 3 0	0 2 0

For higher figures the same scale as in the other Collectorates.

(2.) His Excellency the Governor in Council entirely approves of the proposal to settle whole Talukas as far as possible at one time instead of

to such assessment shall, subject to the provisions of section 102, be levied on all such lands.

Regard to be had to proviso to section 52. In fixing such assessment, regard shall be had to the requirements of the proviso to section 52.

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.

101.* The power to assess under the preceding section proceeding with the settlement of a group of villages as soon as the measurement and classification of them are completed. The course proposed will no doubt be more satisfactory to the people who are likely to be confused by successive settlement operations in the same Taluka and will also tend to administrative convenience. (G. R. No. 2674, dated 3rd April 1883.)

*(1.) If bandharas are erected without permission, they will be either removed, or the lands watered from them assessed as bagayet. Mamlatdars and their subordinates and village officers are to report if they find bandharas so erected without permission. (G. R. No. 3172, dated 23rd June 1874.)

(2.) The following are the rules regarding fixing water assessment on lands irrigated from Bandharas (dams) built across streams or nullas.

I. Lands under bandharas existing at the original settlement, have been assessed at garden rates, and will, at the revision, pay whatever revised rates may be determined upon.

II. Lands classed as dry crop at the original settlement, but which have been converted into garden by the use made of water from public streams beyond the limits of the occupancy of the cultivator during its currency will be assessed at the revision at garden rates modified according to the quantity of water obtainable, the number of months for which it can be depended upon, the description of cultivation which it will render practicable, the cost of providing the means for obtaining water or forming the water-courses (paths) necessary for its utilization.

III. When lands are classed at the revision settlements as drycrop, and it is desired to convert them into garden during the currency of those settlements by the construction of temporary or permanent bandharas on, or by drawing water directly from, streams not within the boundary of a cultivator's occupancy, the previous permission of the Collector must be

Assessment may be on land, or on means of irrigation, &c.

tion shall, in the case of lands used for purposes of agriculture alone include power to assess, whether directly on the land, or in the form of a rate or cess upon the means of irrigation in re-

obtained, and any person erecting a bandhara or drawing water without such permission will be liable to the penalties prescribed by law. On giving permission the Collector may couple it with such conditions as to payment of garden rates, the removal of obstructions to the stream arising from the means employed to obtain water, &c, as may be desirable. In those collectorates in which it may have been the custom to levy extra rates at once without waiting for the expiration of existing settlements, the practice will continue but where such has not been the practice, it will be left to the Collector, under the orders of the Commissioner to make such conditions as keeping channels clear and other matters relating to the use of the water, as he may consider fair and reasonable.

The Collector will, in granting such permission, pay due regard to the interests of those who may have already erected bandharas on the same stream, and will further take care to obtain from the applicant a written acknowledgment of the rights of Government to make other use of the water at any future time, if they should think fit to do so—to remove the bandhara without compensation whenever it may be desirable—and to compel the applicant to clear the stream of any obstruction caused by his neglect to keep the bandhara in proper order. (G. R. No. 3618, dated 14th July 1874.)

(3.) The following orders in respect to the revision of the assessment on lands irrigated from wells are still in force:—

1. That in the case of old wells constructed before the first settlement, all special water assessment should be abandoned, and the maximum jirait rate alone levied.

2. That in the case of new wells constructed subsequent to the first settlement, the ordinary dry crop rate should be imposed without any addition whatever on account of the new wells.

The first rule was intended in the first instance to be applicable to the drier Talukas of the Deccan Collectorates, where the rain-fall is, as a rule, light and uncertain. It is now generally adopted in the Deccan and Southern Maratha Country.

Boorkees of permanent construction are to be treated as wells. There is no objection to classing a higher rate land within a certain distance from a stream from which water can be obtained by means of a Boorkee. The same principle may be adopted in the case of land which derives benefit from its proximity to a tank. This should form part of the regular process of classification, in order that it may be tested by the Classing

spect of which no rate is 'levied under section 55 or under the Bombay Irrigation Act, 1879,* or in any other manner whatsoever that may be sanctioned by Government.

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.

Assessments so made not leviable without sanction of Government.

But may be fixed, with or without modification for a term of years.

(1.) Notification of survey settlement guarantee.—When the assessments fixed by the Survey Department have been sanctioned by Government finally a notification determining the period for which they are guaranteed is required to be published in the Government Gazette in the form prescribed in rule 89† of the rules under the Land Revenue Code. When the assessments have been sanctioned provisionally for one year only, no such notification is necessary.

If however the assessment has been revised with reference to the general considerations mentioned at the close of section 106 of the Code and sanctioned by Government the publication of the settlement even if fixed for one or two years only would be necessary. The Code does not recognize anything of the nature of a temporary or interim settlement, (G. R. No. 3299, dated 19th May 1882.)

Assistants in the same manner as other classification returns. (G. R. No. 1028, dated 25th February 1874.)

Government have given a general assurance that the above two rules will be adhered to in fixing assessment on all lands irrigated from wells in the Deccan and Southern Maratha country Districts. (G. R. No. 6682, dated 10th November 1881.)

* These words have been inserted under the Bombay Irrigation Act (VII of 1879).

† In practice however the form adopted for publishing the period of guarantee in the Government Gazette is as shown in appendix VI, and not the one prescribed in Rule 89 (see appendix J to the rules under section 214). The latter form is used for declaring the terms of the settlement to the rayats concerned, and a notification drawn up in this form is read out to the people assembled before the announcement of the rates is commenced.

(2.)—It must be fixed for a term of years.—Section 102 says that “it shall be lawful for the Governor in Council to declare such assessments (i. e., the assessments fixed by the Survey Superintendent) with any modification which he may deem necessary fixed for a term of years not exceeding thirty.” The words “it shall be lawful” are according to well established rules of interpretation imperative not optional. If new rates fixed by a Survey Superintendent are sanctioned with or without modification by Government, the Code (section 102) requires Government at the same time to decree a “Survey Settlement,” i. e., to declare that the rates sanctioned shall not be liable to increase for a term of years.

The law will not be complied with therefore if Government declare the sanctioned assessment fixed for one year only. Section 104 of the Code which contains distinct special provisions (1) for the year in which a Survey Settlement is introduced and (2) for the next following years, indicates clearly that the Legislature did not contemplate settlements for one or even two years only; for the provisions in question are such as are just and requisite at the initiation of a term of settlement. But setting aside section 104, it is a misuse of language to call a settlement for a year a settlement for a term of years. Moreover, if it would be legal for Government to sanction a term of one year once, it would be equally legal for them to do so successively year by year for an indefinite period, which would obviously be an evasion of the intention of the Legislature. (G. R. No. 784, dated 3rd February 1892.)

103. When in the case of lands used for the purposes of agriculture alone, Government shall have sanctioned the assessments fixed by the officer in charge of the survey, it shall be the duty of the said officer or of the Collector, or Assistant or Deputy Collector publicly to announce, or to cause to be announced, the assessment fixed on each survey number.

The said officer, or the Collector, or Assistant or Deputy Collector shall, at a reasonable time beforehand, cause public notice to be given, in such manner as he shall deem fit, of the time at or about which the assessments will be announced as aforesaid.

If the holder or other person interested in any holding do not appear in person or by agent, he shall be subject, nevertheless, to the same liabilities as if he had attended.

When the assessments have been announced in the

manner provided in the first clause of this section, the survey settlement shall be held to have been introduced.

(1.) **Co-operation of revenue officers in the introduction of Survey Settlement.**—It is the desire of Government that the practice should be adhered to by which the Commissioner or Collector has always been present when revised rates are given out, and has had the Assistant in charge of the Taluka with him. (G. R. No. 4839, dated 20th August 1881.)

104.* In the year in the course of which a survey settlement, whether original or revised may be introduced under the last preceding section, the difference between the old and new assessment of all lands on which the latter may be in excess of the former shall be remitted, and the revised assessment shall be levied only from the next following year.

In the year next following that in which any 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 held by him shall on resigning such number in the manner prescribed by sections 74 and 76 on or before the 31st March, receive a remission of the increase so imposed.

Excess assessment not to be levied in year in which a survey settlement is introduced.

Nor in the following year if number resigned that year.

(1.) **Application of section 104 to original settlement.**—In the 1st line of clause 2 of this section the words "original or," appear to have been inadvertently omitted before the word "revised" in the same line. Government have however decided that with reference to the portions of tract remaining to be originally settled, the clause should be beneficially constructed as if the words "original or" were inserted between the words "any" and "revised" in the 1st line thereof. (G. R. No. 31, dated 5th January 1882.)

(2.) **Remission to whom to be given.**—As a general rule the amount of remission should be disbursed to whomsoever pays the assessment into Government treasury, whether solely or partly on his own account and whether he be the Khatedar, subsharer or tenant. (G. R. No. 2108, dated 31st March 1882.)

* This section does not apply to the province of Sind. (Vide order No. (1) under section 1.)

(3.) **Announcement and introduction of rates and the first year of their levy.**—The announcement and introduction of rates are identical, for, the assessment is introduced by being announced. The revised assessment comes into force in the sense that it is levied, in and from the year after its introduction, and as the intention is that rates once fixed should be collected for thirty years, the guarantee for thirty years should run from the year in which the rates are first levied as the first year of the thirty. Accordingly in the year of introduction no enhancement is to be levied and in the year following also (see clause 2) an occupant may escape the enhancement by relinquishing his land but not otherwise. It is not enacted in this section that if the new assessment is less than the old the difference between the new and old assessment will be remitted in the year of introduction, and if the assessment is introduced after the old assessment of the year of introduction has been collected there remains nothing further to be done in that year. (G. R. No. 4559, dated 6th June 1885.)

(4.) **The year of introduction, not the year of levy.**—The Code contemplates (1) the year of introduction, and (2) the year of levy. Section 103 lays down that when assessments have been announced in the manner provided, the Survey Settlement shall be held to have been introduced. Section 104 provides that revised assessment shall be levied from the next following year. It is therefore clear that the new rates do not have effect in the year of introduction. This view is supported by the speech of the Honourable Colonel Anderson in the discussion of the Land Revenue Code Bill. He states as follows:—

“ If a settlement was introduced on the 25th August 1874, the new rates of assessment would take no effect in the year then current, and in the ensuing year 1875-76, the new rates would not be levied from any occupant who resigned his land before 31st March 1876.”

The new rates having thus no effect in the year of introduction the old rates would have to be levied, and the question whether, when the new rates are less than the old the difference between them should or should not be remitted for that year cannot therefore arise. At a later stage in the discussion this particular question was considered it being proposed that the clause in the Bill might be altered so as to bring it into accord with the then custom that where the new assessment was less than the old one, the new one, only should be levied. This suggestion was however overruled, and looking to the manifest intention of the Legislature as indicated by the discussion above referred to, His Excellency the Governor in Council cannot construe section 104 of the land Revenue Code as authorizing remissions in cases in which the new assessment is less than the old. (G. R. No. 2836, dated 7th May 1887.)

105. The fixing of the assessment under the provisions of section 102 shall be strictly limited

Fixing of assessment under section 102 limited to ordinary land-revenue.

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, " or of the Bombay Irrigation Act, 1879. " †

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. " Provided that when a general classification of the soil of any area has been made a second time, or when any original classification of any area has been approved by the Governor in Council as final no such classification shall be again made with a view to the revision of the assessment of such area. "

107.* " In revising assessments of land revenue re-

* As for instance local fund cess at present levied under Bombay Act III of 1869.

† The words in inverted commas have been inserted under the Bombay Irrigation Act (VII of 1879).

‡ Vide foot note to section 107.

§ (1.) The phrase " fresh revenue survey " is ordinarily called " Revision Survey. "

(2.) Before Revision operations are commenced in any of the collectorates, in which the term of the original settlements has not yet expired the Survey Commissioner should carefully consider and report for the orders of Government the extent to which any general revision of field work may be imperative. (G. R. No. 2516, dated 5th May 1881.)

* One of the chief principles laid down by the Bombay Government for the guidance of their Survey Officers in revising survey settlements

Conditions applicable to revisions of assessment.

gard shall be had to the value of land and, in the case of land used for the purposes of agriculture, to the profits of agriculture: Provided that if any im.

was that the assessment of land should not be enhanced in revision settle-

* Nothing in the last preceding section shall be held to prevent a revised assessment being fixed :—

(a) With reference to any improvement effected at the cost of Government, or,

(b) With reference to the value of any natural advantage when the improvement effected from private capital and resources consists only in having created the means of utilizing such advantage, or,

(c) With reference to any improvement which is the result only of the ordinary operations of husbandry.

(Act V of 1879). In this Code while section 30 of the Bombay Act I of 1865 was re-enacted with little change as section 106, another section (section 107)* was added to it, which, although it had never been so applied or interpreted as modifying the principle that the occupant should be secured in the enjoyment of the improvements effected by his labour and outlay, did reserve to Government the power to consider, in fixing a revised assessment, the increased value derived from *certain classes of improvements*. As however Government had never used nor ever intended to use this section to tax improvements, it was considered undesirable to allow it to stand in the statute book, the more so, as in its existing state it was calculated to give rise to misapprehensions and misunderstandings which might tend to discourage the application of private enterprise and capital to agriculture. It was accordingly proposed to amend this portion of the Code (Land Revenue Code, Act V of 1879) and to re-enact it in such terms as might set forth clearly, absolutely, and without qualification the two following principles :—

(1) That assessments will be revised on consideration of the value of land and the profits of agriculture, and

(2) That assessments will not be increased on revision on account of increase to such value and profits due to improvements effected on any land during the currency of any previous settlement by, or at the cost of, the holder thereof.

With this object a bill (No. VI of 1885) was introduced before the Legislative Council in the early part of the year 1885, which after a lengthy discussion was passed into law, Act IV of 1886.

The latter portion of section 106, and section 107, which are included in inverted commas are the amendments made by this Act.

provement has been effected in any land during the currency of any previous settlement made under this Act, or

By the above amendments the advantage of all improvements effected by holders, or at their cost in their holdings has now been fully assured to them.

While the above amendments were being discussed in the Legislative Council, one of the Honorable Members asked 'whether it would not be possible for Government to give an opportunity to the rayats to be heard as to enhancements before sanctioning the settlement.' The Council first objected to make any such provision as it would only delay and inconvenience the settlement operations, but subsequently at the instance of the President it was agreed that the wishes of the Honorable Member should be met by an executive order. A Government Resolution was accordingly issued to the following effect :—

" His Excellency the Governor in Council is desirous that the occupants of land should be given the fullest opportunities, while classing operations are in progress, of representing improvements and other circumstances which they consider should be taken into account fixing the values of their fields. A formal notification* should in future be issued by the Superintendent of Survey, and published in each village, not less than three months before the operations are commenced warning those concerned that they should bring to the notice of the Assistant Superintendent of Survey in charge of the party of classers, whilst the classing process is going on, any special circumstances bearing on the value of their lands and, failing due consideration from that officer, should appeal to the Superintendent of Survey.

" By the same Notification, moreover, the village communities should be advised to bring to the notice of the Survey Officers through their patel or panchayat any facts which in their opinion, entitle their village to special consideration in fixing the standard of the new rates."

The same Resolution ordered the publication of another notification* before the introduction of the settlement, with the object of acquainting the rayats of the proposed rates, and grouping. The Resolution runs :—

" The Superintendent of Survey shall as soon as he has worked out his revision of groups and rates, forward to the Collector a notification in Vernacular of the district, giving the names of the villages coming under revision according to the groups or assessment circles in which it is proposed to arrange them, and showing against each village the existing and proposed maximum rates. It shall be the duty of the Collector to cause this Notification to be published without delay by arranging to have one copy posted up in the chavdi or other conspicuous place in each village affected by the settlement. The Notification should state that for a period of two months from the date of publication thereof

*In the form of Appendix VII.

* In the form of Appendix VIII.

under Bombay Act I of 1865, by or at the cost of the holder thereof, the increase in the value of such land or in

the Collector will be prepared to receive objections made by the village community and presented in writing by the revenue patel, as their representative, to the proposed grouping of villages and maximum rates. Any objections so received shall be forwarded by the Collector to Government through the Survey and Settlement and Divisional Commissioners, with such remarks by each officer as may appear necessary, and they will be taken into consideration by Government before final sanction is accorded to the proposals." (G. R. No. 7447, dated 21st October 1886.)

The above notifications are now invariably issued in the case of every revision settlement and every objection raised by the rayat as to the groupings or rates is duly investigated and disposed of before the rates are finally introduced.

Further to obviate the least possibility of improvements effected by the occupants at the expense of their private capital being taxed, Government have laid down that—"land which though arable, was at the first survey included in a survey No. as unarable, and was left unassessed shall also be left unassessed at the Revision settlement for the benefit of the occupant." (G. R. No. 2619, dated 26th March 1884.)

In addition to the above measures Government have with a view to check the tendency of assessments being considerably increased in Revision, laid down the following limits up to which enhancement of assessment may be allowed:—

1st. The increase of revenue in the case of a taluka or group of villages brought under the same maximum dry-crop rate shall not exceed 33 per cent.

2nd. No increase exceeding 66 per cent. should be imposed on a single village without the circumstances of the case being specially reported for the orders of Government.

3rd. No increase exceeding 100 per cent. shall in like manner be imposed on an individual holding. (G. R. No. 5739, dated 29th October 1874, and G. R. No. 2619, dated 26th March 1884.)

In calculating the 33 per cent. limit the patasthal rates although imposed (section 101) and levied along with the ordinary land revenue are not to be taken into account as they form no part of the land revenue assessment proper being calculated on the average area of land actually under "pat" cultivation. (G. R. No. 3880, dated 4th June 1891, and G. R. No. 3205, dated 5th April 1892.)

With all the precautions above enumerated it is sometimes found that the increases resulting from the revised rates are, owing chiefly to the rectification of the original classification, so excessive in individual cases that their immediate collection would cause hardship to the rayats

the profit of cultivating the same, due to the said improvement, shall not be taken into account in fixing the revised assessment thereof."

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, together with the name of the registered occupant of such survey number and other records,† in accordance with such orders as may from time

Preparation of statistical and fiscal records.

concerned. With a view to obviate this hardship, as also to enable the rayats to adjust themselves to increased payments by degrees, Government have ordered that while the rent rolls should in all cases be made out according to the full sanctioned rates, it should be notified that enhancement in excess of 4 annas in the rupee (or 25 per cent) of the assessment on a holding will be remitted for the two first years of the revised settlement, enhancement in excess of 8 annas in the rupee for the 3rd and 4th years, and enhancement in excess of 12 annas in the rupee for the 5th and 6th years of the revised settlement. (G. R. No. 3541, dated 4th May 1885.)

The above system of remissions has been ordered to be extended to all revision settlements. (G. R. No. 2981, dated 20th April 1886.)

This system of remissions is not intended to be extended to alienated villages. (G. R. No. 6556, dated 16th September 1890.)

Government have now directed that a separate register should be kept of petitions against excessive individual enhancements made to the Survey and District authorities in connection with the introduction of revision settlements for ready reference and that the subject should be noticed in reporting the results of those settlements. (G. R. No. 2110, dated 20th March 1894.)

* Settlement register means Lawni Faisal Patrak. This paper is prepared by the Survey Department in the form of Appendix IX.

In addition to this another important paper prepared by the Survey Department and furnished to the Revenue Department to enable it to prepare the land register (Village form No. 1) is the " Akarband " (Appendix X). In the Konkan Survey instead of the " Akarband, " a paper called " Sud " (Appendix XI) is prepared.

†(1.) The Collector's office at head-quarters, the Mamltdars, or Mahalkaris and the village accountants should each of them be furnished with a copy of the field map and register directly the survey rates are introduced, and in the event of any one of these copies being lost or destroyed its

to time be made on this behalf by Government.

109. The survey officer, or if the survey settlement have been introduced under the provisions of section 103 by the Collector or Assistant or Deputy Collector, the Collector or Assistant or Deputy Collector shall at any time correct or cause to be corrected any clerical errors, and any errors which the parties interested admit to have been made in the settlement register ;

Officers to correct clerical and admitted errors in settlement register, and

He shall also receive and inquire into all applications made to him at any time within two years after the introduction of the survey settlement for the correction of any wrong entry of a registered occupant's name in the said register, and if satisfied that an error has been made, whether through fraud, collusion, oversight or otherwise, shall correct or cause the same to be corrected, notwithstanding that all the parties interested do not admit the error ; but he shall not receive any such application at any time after two years from the date of the introduction of the survey settlement, unless good cause be shown to his satisfaction for the delay in making such application, and no such correction of the said register shall be made in consequence of any application made after the said period of two years, except with the previous sanction of Government.

inquire into and pass orders on applications for mutation of names.

110. The Collector shall keep the settlement regis-

place should be at once supplied. (G. R. No. 5189; dated 4th July 1850.)

(2.) When village maps are destroyed by neglect, or careless usage within five years of being supplied, new copies are to be paid for by those who have caused the loss ; but in such cases the orders of Government should be taken. (G. R. No. 3292, dated 23rd May 1877.)

Collector to keep survey records and frame village records in accordance therewith ;

ter, and such other records prepared by the survey officer as Government shall direct, and shall cause the village records and accounts to be prepared in accordance therewith ;

he shall not make any alterations or corrections* in the settlement register, but shall cause to be registered in the village records and accounts all changes that may take place, and anything that may affect any of the rights or interests therein recorded.

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 to sell the occupancy of unoccupied lands by auction, 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.

112. † Existing survey settlements of land-revenue,

*(1) When land is alienated for the construction of dharmashallas, schools, &c, or for the performance of village service and other public purposes the Collector of the district should invariably inform the Survey Department of such alienations in view to the necessary corrections being made on the maps and other Survey records. (G. R. No. 1811 dated 21st March 1876, and G. R. No. 4107, dated 17th July 1876.)

(2.) The Survey Department does not take cognizance of any alterations other than those which relate to area, or assessment.

† Vide orders Nos. (3) and (4) printed under section 48.

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.

Maintenance of existing settlements of land-revenue.

Partition.

Partition of an estate paying revenue to Government.

113.* The following rules shall be enforced at the partition of any estate paying land-revenue to Government (namely) :—

(1) the estate shall be divided as far as possible according to survey numbers without sub-dividing any number ; but if the partition cannot be completely effected without sub-dividing a number, such sub-division may be made by the Collector, subject to the provision of section 8 ;

(2) any number, or sub-division of a number, which may remain over after the partition has been carried out, as far as possible, according to the last rule, and which is incapable of sub-division or of further sub-division owing

* (1.) When land is sub-divided by the Court, the sub-divisions may be recorded according to the Court's order as pot numbers but the parties themselves are to be left to preserve the boundaries of the new sub-divisions, for which the Government officers are in no way responsible. (G. R. No. 2595, dated 29th May 1872.)

(2.) The following are orders under which a Surveyor is appointed in each collectorate and who is generally employed in making partitions of estates under the Civil Court's decree.

In each Collectorate a competent and trustworthy Surveyor has been appointed, thoroughly acquainted with the details of all branches of the Revenue Survey, so that a Collector may not be compelled to call on the Superintendent of Survey, after the Survey establishments have left the District, to send Surveyors to do odd pieces of Survey work.

In the division of numbers under decrees of Civil Courts, in the cases of compensation for land taken for railway purposes or public works, and in the correction of Survey maps and papers consequent on these and similar alterations, and in connection with forest reserves, there is generally ample employment for a Surveyor in each Collectorate. But there is nothing to prevent a Collector from employing the Surveyor in any other way in which his services can be utilized, provided that the duty for which he is specially employed receives his first attention. It would therefore add to the value of the Surveyor if he could take levels and

to the provision of section 98, shall be made over to one of the sharers in consideration of his paying to the other sharers the value in money of their shares in the same, or shall be sold and the proceeds divided amongst all the sharers, or otherwise disposed of, as the Collector thinks fit ;

(3) the expenses necessarily and properly incurred in making such partition shall be recoverable as a revenue demand in such proportions as the Collector thinks fit from the sharers at whose request it is made, or from the persons interested in such partition.

(1.) **Recognition of rights in numbers of less than minimum extent.**—In the division of an estate paying land revenue to Government the Collector is bound by the rules laid down in section 113 of the Land Revenue Code whenever they are applicable. If a Court assigns rights in specified areas in Survey numbers of less extent than the minima prescribed under section 98 of the Code these rights cannot be registered in the Government accounts, or be otherwise recognized by Government. (G. R. No. 7052, dated 23rd November 1881.)

(2.) **Partition of Inams under Summary Settlement.**—In cases of Inam land and villages held under the Summary Settlement, the Collector shall be bound to accord separate entry, to the sharers, of their shares,

(a) in every case of partition supported by a deed of consent ;

(b) in every case supported by a decree of the Civil Court. (G. R. No. 3483, dated 5th May 1883.)

(3.)—**Of service Inams.**—Having regard to the decision of the Bombay High Court in *Mancharam vs. Praushunker* (I. L. R. Bombay, Volume VI, page 298, 1882), there seems no objection to the provisions of section 113 of the Land Revenue Code being extended to the cases of Service Inam lands paying only Judi to Government, provided that by the

make estimates of quantities, or a survey for a clear road ; but these qualifications should not be insisted on, and might perhaps be acquired sufficiently after appointment. In general it will not be required that the Surveyor should have a knowledge of English, and in any case an imperfect knowledge of English should be preferred to an imperfect knowledge of Survey work. (G. R. No. 3861, dated 19th October 1868.)

The appointment of Huzur Surveyor rests with the Collector of the district and the only condition attached to it is that the Collector's nominee should be a man on the Establishment of a Superintendent of Survey. The Collector must of course refer to the Superintendent but he can make his selection and is not bound to accept any particular individual named by that officer. (G. R. No 521, dated 23rd January 1892.)

partition effected under the above section there will be no alienation of the property out of the family by which the services for which it was granted are to be performed. (G. R. No. 2457, dated 23rd April 1887.)

(4.) Persons entrusted with partition, Travelling expenses of.—

The travelling allowances of the person entrusted with the partition, according to the scale laid down in the High Court's circulars, as also contingent expenses on account of carriage of instruments required in such partition, necessarily and properly incurred, are to be recovered under clause 3 from the parties to the partition. In the first place, however, the parties interested should be called on to provide whatever assistance in the way of carriage or labourers the person entrusted with the partition may require, and in the event of a necessity to employ hired labour, the cost thereof with other contingent expenses should be recovered from the parties concerned as a revenue demand. (G. R. No. 6280, dated 11th September 1882.)

(5.)—Scale of Bhatta to.—The scale according to which Bhatta is to be allowed to persons entrusted with the partition is as follows:—

For Clerks and Karkuns of Collectors and other officers employed by the Collectors for each day actually on tour.—

	Rs.		Rs.	Rs.
on more than	275	to	500	3 0-0
Do.	250	to	275	2 12-0
Do.	225	to	250	2 8-0
Do.	200	to	225	2 4-0
Do.	175	to	200	2 0-0
Do.	150	to	175	1 12-0
Do.	125	to	150	1 8-0
Do.	100	to	125	1 4-0
Do.	87-8	to	100	1 0-0
Do.	75	to	87-8	0 14-0
Do.	62-8	to	75	0 12-0
Do.	50	to	62-8	0 10-0
Do.	37-8	to	50	0 8-0
Do.	10	to	37-8	0 6-0

For Peons, &c,—

on more than Rs. 8-0-0.....	0 2-0
on Rs. 8 and less.....	0 1-0

(Vide Bombay Government Gazette, Part I, page 865, 1884.)

Disposal of fees paid to Government Servants entrusted with partition. (6) Classers.—When classers or other Revenue officers are deputed on a commission under Chapter XXV of the Civil Procedure Code, 1882, the Civil Courts grant them a certain fee for the execution of the said commission. (Vide rule 48 of the High Court civil circular orders published in the Bombay Government Gazette, Part I, page 865, 1884.) This fee should be recovered from the classers and the Revenue

officers deputed on commission, and credited to Government in return for the loss of their services during the time they were engaged in executing the commission. (G. R. No. 7858, dated 28th September 1885.)

(7.)—**Measurers.**—The measurers of the Revenue Survey Department employed on the work of partitioning estates and the peons under them are entitled to travelling allowances under the rules of the Civil Travelling Allowance Code (now Civil Service Regulations) for journeys performed by them in the execution of their duty and such allowances should be paid to them.

The partitions made by these officers are effected under the orders of Civil Courts equally with those effected by surveyors employed on Collector's Establishments and the fees prescribed in section 41 of the High Court Circulars as well as contingent expenses for the carriage of records, instruments, &c., should be recovered from the parties interested in the partitions. (G. R. No. 1765, F. D., dated 21st June 1886.)

(8.)—**Other Government servants.**—Government servants accepting commissions issued by Civil Courts are required to pay into the treasury sums which they may receive as fees for their services. They are, when so engaged, regarded as being on duty and are allowed travelling allowance according to the rules in the Civil Service Regulations, the allowance being drawn in the usual way by presentation of bills in the Treasury. (G. R. No. 2053, J. D., dated 17th April 1890.)

(9.)—**Recovery of fees and other expenses in partition cases.**—**(9.) Fees.**—The Collector should see that the extra fee prescribed by rule 41 at page 178 of the High Court circulars is levied in all cases in which partition of an estate is made by the Collector under section 265 of the Civil Procedure Code. (G. R. No. 7230, dated 11th December 1886.)

(10.)—The Commissioners of Divisions should be requested to impress upon the Collectors the duty of seeing that the orders conveyed in G. R. No. 7230, dated 11th December 1886 are properly carried out. (G. R. No. 140, dated 7th January 1887.)

(11.)—**Other expenses.**—The Collector should include the salaries and allowances of Surveyors and peons employed in effecting partitions in the expenses necessarily and properly incurred within the meaning of section 113 (3) of the Land Revenue Code. The charge should be for the time the above officers are actually engaged in the village in which the partition is to be effected, and for a reasonable time for going to, and returning from, that village; but a charge for one and the same day must not be made in more than one case. (G. R. No. 5894, J. D., dated 29th October 1888.)

(12.)—Charges, when incurred, in connection with partition of estates should be debited to Land Revenue, and the recoveries, when made, credited to that head by reduction of expenditure. (G. R. No. 3118, J. D., dated 27th April 1889.)

(13.)—Circular No. 83 at pages 46 and 47 of the High Court's

culars having been cancelled the Governor in Council is pleased to direct that in future the Collectors shall be left free to use their powers under the Bombay Land Revenue Code for the levy of the costs of the partition in execution of a Civil Court's decree of estates paying revenue to Government. (G. R. No. 1993, J. D., dated 14th April 1890.)

114. Whenever any one, or more co-sharers, in a Khoti estate, into which a revenue survey has been introduced, (or in a talukdari estate)* consent to a partition of the said estate, it shall be lawful for the Collector, or for any other officer duly empowered by him in this behalf, subject to the rules contained in the last preceding section, 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 the estate, and

(d) 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 under rule (3) of the last preceding section from all the co-sharers in the estate divided.

115.† At the time of a revision of survey, it shall be in the discretion of the officer in charge of the survey, subject to the provisions of section 98, and to any departmental rules or orders in this behalf at the time in force, to sub-divide any survey number into two or

* The words enclosed in brackets have been repealed by section 3 of Bombay Talukdari Act (VI of 1888).

† The object of this section is to enable the officer in charge of the Survey to make, at the Revision Survey, into separate survey Nos., portions of original survey Nos, which may have passed, by purchase, by a decree of the Civil Court or by partition, into the occupation of persons other than the holder of the original survey Nos. provided that the portions to be so made into separate survey Nos. are not of less extent than the minimum fixed under section 98.

more distinct numbers, and to enter the names and liabilities of the persons whom he shall deem entitled to be recognized as registered occupants of such sub-divisions in the settlement register separately.

116. When any portion of cultivable land is appropriated under the provisions of section 65 or 67 for any non-agricultural purpose, the portion so appropriated may, with the sanction of the Collector, be demarcated, and made into a separate number at any time, notwithstanding the provisions of section 98.

Separate demarcation of land appropriated under section 65 or 67.

117. Nothing in sections 113, 115 or 116 shall affect the provisions of Bombay Act V of 1862. *

Bombay Act V of 1862 not affected.

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 :—

Determination of village boundaries.

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

Village boundaries may be settled by agreement.

* Bhagdari and Narvadari Tenures Act.

† A Divisional Inspector of the Agricultural Department is not a survey officer and is therefore required to be specially nominated for the purpose of fixing boundaries under this section. (G. R. No. 2749, dated 18th April 1893.)

shall require the said parties to execute an agreement to that effect, and shall then mark off the boundary in the manner agreed upon. And any village boundary fixed in this manner shall be held to be finally settled, unless it shall appear to the said officer that the agreement has been obtained by fraud, intimidation or any other illegal means.

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

119. If, at the time of a survey, the boundary of a field or holding be undisputed, and its correctness be affirmed by the village officers then present, it may be laid down as pointed out by the holder or person in occupation, and if disputed, or if the said holder or person in occupation be not present, it shall be fixed by the survey officer according to the village records, and according to occupation as ascertained from the village officers and the holders of adjoining lands, or on such other evidence or information as the survey officer may be able to procure.

Determination of field boundaries.

If any dispute arise concerning the boundary of a field or holding which has not been surveyed, or if at any time after the survey records have been handed over to the Collector, a dispute arise concerning the boundary of any survey number, it shall be determined by the Collector, who shall be guided in the case of survey numbers by the survey records, if they afford satisfactory evidence of the boundary previously fixed, and if not, by such other evidence as he may be able to procure.

(1) **Boundary disputes to be decided free of cost.**—Sections 119 and 120 provide the machinery for the settlement of a boundary dispute and make it the duty of the officers mentioned therein to decide such a dispute. The sections are silent as to any charge for the performance of such duties and it is not open to Government therefore to attach any charge on account of such performance any more than on account of a judicial decision.

The cost of constructing a boundary mark is recoverable as a revenue demand (sections 122, 124 and 187) whenever it is necessary, whether it be needed in consequence of a dispute or not, but no charge can be made for the settlement of a dispute as to a boundary. (G. R. No. 2465, dated 29th March 1889.)

(2.) **Revision of boundaries.**—Section 119 does not contemplate revision of boundaries, on the ground of incorrectness in their location by the Survey. (G. R. No. 3796, dated 23rd May 1889.)

(3.) **Enquiries into complaints as to incorrect boundaries.**—The present practice of recovering cost in cases of inquiries set on foot on complaints as to the incorrectness of boundary marks fixed by the Survey should be adhered to. (G. R. No. 745, dated 29th January 1890.)

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 Superin-

Settlement of
boundary disputes by
arbitration.

tendent of Survey, by the Superintendent of Survey, shall be final :

When award may be remitted for re-consideration.

Provided that the said officer, or the Superintendent of Survey, shall have power to remit the award,* or any of the matters referred to arbitration, to the reconsideration of the same committee, for any of the causes set forth in section 520 of the Code of Civil Procedure.

If arbitration fail, survey officer to settle dispute.

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.

Effect of settlement of boundary.

121.† The settlement of a boundary under any of the foregoing provisions of this chapter shall be determinative :

*Under section 520 of the Civil Procedure Code the Court may remit the award or any matters referred to arbitration to the reconsideration of the same arbitrators, or umpire, upon such terms as it thinks fit:—

(a) Where the award has left undetermined any of the matters referred to arbitration or where it determines any matter not referred to arbitration.

(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.

† While the Land Revenue Code Bill was under discussion one of the Hon'ble Members proposed, with the object of not giving the decisions of revenue officers passed in boundary dispute cases the finality contemplated by sections 119, 120 and 121, that section 121 should be omitted altogether, and that the following clause should be added to sections 119 and 120, viz., "Provided that the determination of any boundary under these sections shall not debar any one claiming any right in the land from any legal remedy he would otherwise have for dispossession."

This amendment when put to the vote, was lost. Under the sections they now stand, therefore, the decisions passed by revenue officers

(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.

Boundary Marks.

122.* It shall be lawful for any survey officer authorised by a Superintendent of Survey or Settlement Officer, to cause to be constructed or repaired boundary marks of villages or survey numbers, whether cultivated or uncultivated, and to assess

Construction and repair of boundary marks of villages and survey numbers.

are final as will be seen from the following decision of the Bombay High Court:—

In 1877, a dispute arose between plaintiffs and defendant as to the boundaries of certain land, being Survey Nos. 88 and 87, of which the plaintiffs and the defendant were respectively occupants under Government. In 1879, the boundaries were fixed by a revenue officer under the orders of the Collector, and the piece of land in dispute was found to belong to the plaintiffs as occupants of Survey No. 88. Subsequently, the defendant having encroached upon it and dispossessed the plaintiffs, the present suit was filed. The Court of first instance awarded the plaintiffs' claim holding that the decision by the revenue officer was conclusive as to the boundary. The defendant appealed, and the lower appellate Court reversed the lower Court's decree. On appeal by the plaintiffs to the High Court,

Held, restoring the decree of the Court of first instance, that, under the provisions of section 121 of Act V of 1879, the decision of the Collector as to the boundaries was conclusive, and that the plaintiffs were entitled to possession. (Bai Ujam and another vs. Valiji Rasulbhai,—I. L. R. Bombay, Volume X, page 456, 1886.)

*(1.) The following are the general principles and orders regarding the demarcation of field boundaries. These are *mutatis mutandis* followed in the Survey Department:—

The boundary marks are to be of two kinds, viz., earthen bandhs and stones; and their dimensions should be as shown below:—

	Length.	Breadth at bottom.	Breadth at top.	Height.
Earthen bandhs	5 annas	2½ annas	1½ of an anna	1½ anna
Stones	From 1½ to 2 cubits in length, of which one half should be sunk in the ground, and not less than 2 inches thick, where thin stones are not procur-			

all charges incurred thereby on the holders or others having an interest therein.

Such officer may require landholders to construct or repair their boundary-marks, by a notification which shall be posted in the chauri or other public place in the village, to which the lands under survey belong, directing the holders of survey numbers to construct or repair, within a specified time, the boundary marks of their respective survey numbers, and on their failure to comply with the requisition so made, the survey officer shall then construct or repair them, and assess all charges incurred thereby as hereinbefore provided.

able, the stones may be thicker but must not be less under any circumstances than 1 cubit (hath) long.

Two earthen bandhs, forming an angle, (but open at the angular point) should be raised at each of the four corners of each "Number."

When the length of boundary between the corners of a "Number" is less than 25 chains, no bandhs should be raised in the interval; but in case there be bends, a stone should be fixed at each bend.

When the line of boundary between the corners of a "Number" is more than 25, but does not exceed 50 chains in length, one bandh should be raised midway, between the corners, and stones fixed at all intermediate bands. It is not necessary, however, to place the intermediate bandh exactly half way between the corners; when measuring the line of boundary, half the distance should be guessed by the measurer, and marks made there for the erection of the bandh; under no circumstances must the intermediate bandh be put within 12 chains of the corner bandh.

When the line of boundary between adjoining corner of a "Number" is more than 50 chains in length, a bandh should be raised at every 20 chains, and stones fixed at all intermediate bends.

When a hedge, an old well-defined embankment, not less than one cubit high, a river or nalla, forms the boundary of a "Number" boundary marks are not to be made according to the preceding Rules, but to those that follow.

When an old, well defined continuous embankment not less than one cubit high or hedge is the boundary of a "Number," stones of the standard size should be fixed at the corners and bends, but bandhs should not be raised along it; the corners will be defined by a stone and also by a bandh to show the direction of the line of boundary which branches off from it.

When a river or large nalla is the boundary of a "Number," instead,

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 within the limits of the lands

General notification to be sufficient notice of requisition.

of two bandhs at each corner on the river or nalla, a stone of the standard size should be fixed at each corner, and one bandh raised near the stone, to show the direction of the line of boundary which branches off from it; and as the bank of the river or nalla is to be considered the line of boundary, no bandhs should be raised between the corners on that side.

When a made road is the boundary of a "Number," two bandhs should be raised at the corners, as in other cases, and standard sized stones fixed at the bends along it; but bandhs should not be raised between these corners, as the stones at the bends will be sufficient to show the rayat what space he is to leave between the road and the boundary of his "Number."

When, in accordance with the above Rules, the place for a bandh happens to fall along or across a water course, where it would be liable to be washed away, the water course should be avoided, and the bandh raised on the line of boundary out of reach of floods; but if the water course cannot be avoided, and the bandh to be raised is not a corner one, two stones of the standard size should be fixed instead, at a distance apart equal to the length of the bandh. When, however, the bandh happens to be a corner one, one stone of the standard size should be fixed at the corner of the "Number," and another in the direction of the line of boundary, at the distance of eight annas from it. In the neighbourhood of villages, and in other places where bandhs are likely to be trodden down by cattle a stone of the standard size should be fixed at the corner of "Numbers," in addition to the earthen bandhs.

The foregoing Rules regarding boundary-marks are applicable to culturable "Numbers" only, not to "Parampok" (unculturable). The boundary lines of these when they are not also the boundaries of culturable "Numbers" but pass over hills or through jungle, should be shown by two bandhs, with an intermediate stone of the standard size fixed at each corner or large bends in the line of boundary. Stones are not to be placed at the small bends of such lines of boundary, except in places where the bends are easily recognized. And when a narrow ridge of hill, or a large nalla, is the boundary of a "Parampok Number" there is no necessity for fixing stones, or raising bandhs at any of the bends along it; all that is necessary is to fix a stone at each point where the boundary line diverges from the ridge or nalla, and to raise a bandh near the stone, to show the direction of this line.

(2.) All Boundary-mark expenditure on occupied land should be collected immediately the distribution accounts are sent to the Collector.

to which the survey extends.

The size, material and description of boundary marks shall be such as may be deemed necessary by the Superintendent of Survey, according to the requirements of soil and climate.

Superfluous boundary marks.—(1.) Circle Inspectors to cause them to be removed.—It is the duty of the village officers and Circle In-

In case of any special circumstances rendering it expedient to postpone the collection for a time, the Collector can do so with the sanction of the Commissioner of Division.

All boundary mark expenditure should remain on the Survey Books till the measurement of the village is completed and the accounts made up. In cases where the final completion of a village is delayed on account of a little work, boundary disputes or such like, sending in the accounts of the completed main bulk of the village need not be delayed; a supplementary bill being forwarded afterwards on the completion of the outstanding work. (G. R. No. 4036, dated 5th November 1866.)

(3.) Repairs to boundary mark in Khalsat unoccupied lands are to be made by the Local Officers at the expense of Government, unless the Collector is satisfied that the repairs would be as effectually and more cheaply made by the farmers, to whom the grazing of the land is annually sold, when a clause requiring this to be done should be included among the conditions of the sale. When the former course is adopted the farmers of waste should be freed from all responsibility whatever connected with the boundary-marks, as the sale of the grazing farms must be injured by laying any amount of responsibility on them.

To provide funds for the repair of boundary-marks, to Khalsat unoccupied lands the Collector may deduct from the amount for which the grazing farms may be sold, a sum not exceeding five rupees for every thousand acres of waste, and hold this amount in deposit until the 15th of July in each year when any unexpended balance of it should be brought to credit on account of the grazing farm, so as to prevent any accumulation of funds beyond the close of the revenue year.

In Talukas where the boundary-marks to unoccupied lands have been allowed to fall into great disrepair, and the sum provided by the foregoing rule would not suffice for their restoration, the Collector may expend from the collection on account of grazing farms double the amount allowed by the preceding rule, or up to ten rupees for every thousand acres of waste, on reporting his reasons for the information of the Commissioner. (G. Letter, dated 20th August 1852.)

(4) Vide G. R. No. 625, dated 26th January 1837, printed under section 123.

spectors to cause superfluous marks to be removed and the Collectors should see that this duty is properly carried out. (G. R. No. 6560, dated 14th August 1884.)

(2.)—**If not removed by occupants cost of removal charged to them.**—If landholders do not remove the superfluous marks, the expense of removing them can be recovered from them. If, as is said to be the case, deep cuttings are made in the cancelled marks, there can be no risk in letting the village officers under the supervision of Circle Inspectors or General duty karkung to take measures for their removal, and it would clearly be an useless expense depute members of the Survey establishment on this duty in places where the revision Survey is completed. In places in which the revision Survey has yet to be made, it will be preferable to the Survey Department to take measures at the time of the revision for the removal of redundant marks. (G. R. No. 4686, dated 9th June 1885.)

(3.)—**Landholders responsible for their removal.**—Under the terms of the Land Revenue Code the landholders are responsible for the removal of superfluous boundary marks and for any reasonable expenses incurred in connection therewith. The landholders should be impressed with the advantages of the speedy and entire obliteration of all superfluous marks and the village officers and Circle Inspectors should take steps for their complete demolition. (G. R. No. 3502, dated 13th May 1888.)

(4.) **Writing off boundary mark outstanding balances.**—His Excellency the Governor in Council is pleased to authorize the Commissioners of Divisions to write off outstanding balances on account of erection and repairs of boundary marks. (G. R. No. 7264, dated 13th October 1886.)

(5.) **Boundaries of free grazing lands.**—His Excellency the Governor in Council is pleased to direct that boundaries of free grazing lands inside the demarcated forest line should be repaired by the Forest Department and those of Gafran lands outside the forests should be repaired by the village communities which enjoy the privilege of free grazing. When the grazing of waste Nos. outside the forests is sold the practice of inserting in the conditions of sale a clause binding the purchasers to repair the boundary marks should be continued. (G. R. No. 3378, dated 30th May 1887.)

(6.) **Cost of correcting mistakes of revision Survey.**—His Excellency the Governor in Council concurs in the opinion expressed by the Commissioner S. D. that it would be very hard to expect an occupant to pay for a new survey of his field necessitated by the mistakes of the revised Survey. (G. R. No. 5698, dated 29th August 1887.)

(7.) **Collector to pass boundary mark expenditure.**—Expenditure incurred on account of boundary mark inspection should be passed in future on the countersignature of the Collector. (G. R. No. 7, dated 3rd January 1888.)

(8.) **Responsibility of Holders of alienated villages.**—Holders of villages which are alienated or held on similar other tenure such as "Sanadi Inam" tenure, cannot be required to maintain the Survey boundary marks, unless the provisions of Chapter IX of the Land Revenue Code have been formally extended to them. (G. R. No. 3613, dated 4th June 1888.)

(9.) **Boundary mark advances to Mamlatdars.**—It is not necessary to allow Mamlatdars permanent advances to meet charges on account of repairs to boundary marks as the Civil Account Code rules provide for the drawing of advances for this purpose which are cleared when recoveries are made from parties concerned. (G. R. No. 6528, dated 4th September 1889.)

(10.) **Rules for the demarcation of land permanently occupied for the use of Railways in India.**—1. All land permanently occupied for the purposes of a Railway shall have its boundaries defined on the ground in such a manner as to enable such boundaries to be readily ascertained and identified.

2. For this purpose the boundary of the Railway land may be defined by a continuous wall, fence or ditch, or by detached marks, posts or pillars.

3. Where the boundary mark is continuous, the boundary of the Railway land, is to be on the outer edge of the wall, fence or ditch—that is to say, the wall, fence or ditch will be situated wholly on Railway land.

4. Where detached marks, such as isolated posts or pillars, are used, the boundary of the Railway land will pass through the centres of such marks. Between the marks the boundary will in each case be taken in a straight line from the centre of one mark to the centre of the next mark.

5. Detached marks are in no case to be at a greater distance apart centre to centre than one-eighth of a mile (660 feet). They are to be of a substantial character, not easily destroyed or moved by accident or mischief, and are to be of such size and form as to be readily found and recognized.

6. Each detached boundary mark is to bear a number, and the position and corresponding number of each detached boundary mark is to be shown on the land plan.

7. Where a fence, wall or ditch is for convenience situated at some distance within the boundary, and does mark the actual limit of the Railway land, it will be necessary that in addition to such fence, wall or ditch, the actual boundary of the Railway land shall be properly marked and defined in accordance with these rules. (G. R. No. 6937, dated 1st October 1890.)

123. Every landholder shall be responsible for the

Responsibility for maintenance of boundary marks.

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.

Demarcation of Forest lands. Liability of the Forest Department to pay its cost.—(1.) The Forest Department should be required to pay only half the cost of boundary marks put up to mark the line of division between forest land and non-forest land, and as the ordinary survey boundary mark is not efficient as a forest boundary mark, the Forest Department should not be required to pay for the ordinary survey boundary marks if they undertake to put up boundary marks of their own. But it would not be convenient to leave a boundary without survey marks when the Forest Department is not ready to put up marks suitable to their purpose at once. In such cases the Forest Department will pay half the cost of the boundary marks erected by the Survey Department. (G. R. No. 5637, dated 7th August 1886.)

(2.)—G. R. No. 5637, dated 7th August 1886, was intended to rule that the Forest Department should pay the usual occupant's share of the cost of boundary marks between land in its charge and other land. But when the Forest Department prefers to put up special marks by its own agency, at its own cost, and is prepared to do so at once, the special marks will be substituted for the ordinary survey marks. (G. R. No. 7063, dated 5th October 1886.)

(3.)—The cost of boundary marks constructed by the Revenue Survey Department in forest survey Nos. should be charged to the Forest Department. A special notice, over and above that required by section 122 of the Land Revenue Code, of the intention of the Survey Department to erect boundary marks in forest Nos. should be given to the Forest Department. (G. R. No. 625, dated 26th January 1887.)

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 maintenance and repair, and for this purpose the powers conferred on survey officers by section 122 shall vest in him.

Collector to have charge of boundary marks after introduction of survey settlement.

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.

(1.) Enquiries into injuries to boundary marks.—Cases, in which it is desirable in the interests of Government to hold enquiry (as for instance cases of complaints of injury done to Survey marks) should not be dismissed through default of the parties in furnishing Court fee, batta to witnesses, &c. In such cases the best course for the Revenue Authority is to accept the petition or complaint and summon the witnesses *proprio motu*. The Government of India in their Reso. No. 3025 of 31st December 1878 (which may be found at page 180 A. of the High Courts Circulars) have sanctioned the procedure to be followed when a judge himself summons the witnesses in a suit, and this procedure may be adopted by Revenue Authority holding as such a judicial proceeding. (G. R. No. 6737, dated 11th November 1881.)

(2.) Digging of earth within 2 cubits of boundary marks.—The accused was charged before a 2nd class Magistrate with digging of earth within a space of two cubits of an earthen boundary mark in contravention of rule 101 of the rules made by Government under section 214 (g) of the Bombay Land Revenue Code (Act V of 1879). The Magistrate convicted the accused under rule 111, clause 3 (a), and sentenced him to a fine of one rupee.

Held, that the conviction and sentence were illegal. Section 125 of the Land Revenue Code does not give jurisdiction to any Magistrate to try a person accused of injuring boundary mark.

Held also, that, rule 101 is not such a rule as can be legally made under section 214 (g) of the Code. It is not a rule "for the administration of a Survey Settlement." Such a Settlement is a settlement of the land revenue, and relates only to such matters as are referred to in chapter VIII of the Code, and not to boundaries or boundary marks which are dealt with in chapter IX. (Queen Empress vs. Irappa, —I. L. R. Bombay, Volume XIII, page 291, 1889.)

CHAPTER X.

*Of Lands within the Sites of Villages, Towns and Cities.**Fixing of Sites.*

126.* It shall be lawful for the Collector or for a

* Although Government have, under the provisions of this and the following sections, the power to order the Survey and assessment of lands in the sites of towns and villages, and can in exercise of that power impose assessment on any such lands it would not be just and fair if such assessment were ordered to be imposed in isolated cases only. Accordingly in a case in which certain lands in a village site, which had been exempt from assessment under certain circumstances, were assessed by the Collector on those circumstances being changed it was held by the Legal Remembrancer that the action of the Collector was objectionable. The Legal Remembrancer stated:—

“ 1. * * *

“ 2. So far as regards the assessment of land of which the occupancy may hereafter be granted, the subject is free from difficulty. Under sections 45 and 48 of the Land Revenue Code, all land is liable to the payment of land revenue, no matter what purpose it is put to, unless it is exempted under a special contract or by any law for the time being in force. To land of which the occupancy is to be newly given no such exemption can apply. With a view to the settlement of the land revenue, it is competent to Government, if they think fit, to direct, under section 95 of the Code, the survey of vacant lands in village sites. When such an order is given, the officer in charge of the Survey will fix the assessment under section 100 of the Code. But in respect of lands not within the local operation of an order under section 95, the assessment has to be fixed under section 52 by the Collector, subject to rules or orders made in this behalf by Government. The Land Revenue Code Rules Nos. 23—28 are the existing rules prescribed by Government for the guidance of Collectors in allotting building-sites, and I believe they are found sufficient.

“ 3. * * *

“ 4. The law as to the assessment to the land-revenue of lands in village-sites already occupied is precisely the same as that applying to lands which may hereafter be given out for the occupation described in paragraph 2. Government may direct a survey of all or any of such lands under section 95, and then the assessment thereof will be made under section 100 by the officer in charge of the Survey, or if no such survey is ordered by Government, the Collector may, under section 52, fix the assessment. In either case the following limitations apply, viz.,—

(1) Land wholly exempted under the provisions of any special contract with Government or any law for the time being in force

Limits of sites of villages, towns and cities how fixed. survey officer acting under the general or special orders of Government, to determine what lands are included

must be exempted (section 45);

(2) Respect must be had to all rights legally subsisting in the case of lands partially exempt from land revenue, or the liability of which to payment of land revenue is subject to special conditions or restrictions (section 52, proviso, and section 100, paragraph 2.)

" 5. Occupied lands in village sites may be divided into three classes (namely):—

- (1) Lands granted under British rule;
- (2) Lands held from a time anterior to the British rule;
- (3) Lands unauthorizedly occupied since the introduction of the British rule.

" 6. Lands of the 1st class have, I believe, generally been granted on stated terms under a written agreement or lease or similar document and either the first or the second of the two limitations mentioned in paragraph 4 would prevent any modification of those terms now.

" 7. In the second class there would, I imagine, be few lands for which an original documentary title could be proved. But in most instances possession from time immemorial could be established, and in such circumstances the Civil Courts would presume a valid grant and recognize the claimants' proprietary right. Along with the fact of immemorial possession, the holders of these lands would, as a rule, be able to show that they have never been subject to the payment of land-revenue.

" 8. The holders of lands of the third class would, of course, have no documentary evidence of title. All that they could establish would be, at the most, about sixty years' possession and immunity all that time from payment of land revenue.

" 9. The City Survey Act (Bombay Act IV of 1868) confirmed every entire or partial exemption from land-revenue proved to have been enjoyed for five years previous to the application of that Act or of Bombay Act I of 1865 to the town or city. When the Land Revenue Code Bill was first introduced it was proposed to extend this rule to all village-sites, but after much discussion the provisions finally adopted were those set forth in paragraph 4. According to these, in the absence of a 'special contract with Government,' it has to be seen whether any land in a village-site is exempted from land revenue under 'any law for the time being in force'; if it is not so exempted it is liable to be assessed, subject to the orders of Government, either by the Collector under section 52 of the Code or by the officer in charge of a Survey under section 100.

" 10. The only Acts under which such exemption might possibly be claimed are Act X of 1852 and Bombay Acts II and VII of 1863, in the

within the site of any village, town or city, and to fix, and from time to time to vary, the limits of the same, re-

provinces to which they are respectively applicable. Government are aware that the High Court held some years ago that previous to the passing of Bombay Act IV of 1868, neither Regulation XVII of 1827, nor Bombay Act VII of 1863 applied to village-sites. By section 17 of Act X of 1876 the Legislature, however, declared that Regulation XVII of 1827 should be deemed to be and to have always been in force in the sites of villages, towns and cities. No such general declaration has been made with regard to Bombay Act VII of 1863. But section 127 of the Code enacts that Act XI of 1852 and Bombay Acts II and VII of 1863 shall be deemed to be applicable and to have always been applicable to all lands within the sites of cities and towns in which an enquiry under Bombay Act IV of 1868 has been made, which have been hitherto ordinarily used for purposes of agriculture only; but that the provisions of those Acts shall not be deemed applicable to any other lands within the limits of the sites of the said cities and towns. The effect of these two enactments, section 17, Act X of 1876 and section 127 of the Land Revenue Code is, I think, to confirm the previous decision of the High Court as to Bombay Act VII of 1863. The Judges would say that the Government of India, whilst declaring that Regulation XVII of 1827 is in force in the sites of villages, towns and cities, made no mention of Bombay Act VII of 1863 and that therefore their previous decision as regards that Act remains unaffected. Moreover the local legislature has since declared of that Act XI of 1852 and Bombay Act II of 1863 that their provisions do apply to certain lands within the sites of certain towns and cities, thus leaving it to be inferred that they do not apply within the sites of other towns and cities or of villages.

“ 11. For these reasons it appears to me that Act XI of 1852 and Bombay Acts II and VII of 1863 are not applicable to lands within the sites of villages, towns and cities, except to the extent indicated in section 127 of the Land Revenue Code. If this view is correct it follows that all such lands are liable to be assessed to the land-revenue unless they are exempted therefrom under the provisions of any express contract with Government. Therefore all lands in the second class except the few which can establish a documentary title to exemption, and all lands in third class are liable to be assessed, under the law as it now stands, to the land-revenue.

“ 12. * * * * *

“ 17. But if it is not the present intention of Government to assess occupied lands in village sites generally it seems to me impossible to justify the assessment of such holdings in isolated cases. On the principle that the greater includes the less, the Land Revenue Code, which empowers Government to direct the assessment of all such lands, may of course, be held to authorize the assessment of any one particular holding,

spect being had to all subsisting rights of landholders.

(1.) General Survey of village sites abandoned.—It having been deemed inexpedient to proceed further in the matter of the general survey of village sites contemplated in the Resolutions of Government noted in the margin, there is no objection to disposing of occupancies of building sites in accordance with the rules framed under the Land Revenue Code, 1879. (G. R. No. 4099, dated 21st May 1884.)

4305 }
5930 } of 1879.

Exemption from land-revenue.

127. Act XI of 1852 and Bombay Acts II and VII of 1863, shall be deemed to be applicable, and to have always been applicable, in the territories to which they respectively extend, to all lands within the limits of the site of any town or city in which an inquiry into titles has been made under the provisions of Bombay Act IV of 1868, which have been hitherto ordinarily used for agricultural purposes only; but the provisions of the said Acts shall not be deemed applicable to any other lands within the limits of the site of any such town or city.

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

But such laws are not enacted to enable Government or their officers to levy a tax from one person out of a thousand and to let the other nine hundred and ninety-nine go free, and I very much doubt whether the Civil Courts would uphold a levy made on such a system.

“ 18. * * *

“ 19. The old rule regarding pardi lands has been embodied in No. 54 of the Land Revenue Code Rules. It applies only to patches of open ground ‘surrounding houses.’ So long as a piece of ground is ‘pardi land’ within the above description it is subject to the same rules regarding assessment as the house-site which it surrounds. When, however, it ceases to answer to the above description, the question of assessing it or of putting fresh assessment upon it is, I think, legally open to consideration under paragraph 2, section 48 of the Land Revenue Code. But if in the village or town in which the land is situate, house-sites generally are not subject to assessment, it seems to me that it would be unreasonable for the Collector to place an assessment upon that piece of land alone.”

The above letter of the Remembrancer of Legal Affairs was disposed of by G. R. No. 4344, dated 18th June 1886 which has been printed as orders Nos. (6) and (7) under section 61.

128. The existing exemption from payment of land-revenue of lands other than lands which have hitherto been ordinarily used for purposes of agriculture only, situate within the sites of towns and cities in which an inquiry into titles has been made under the provisions of Bombay Act IV of 1868 shall be continued.

Existing exemption when continued in case of certain lands.

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 or IV of 1868 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.

129. Claims to exemption under the last preceding section shall be determined by the Collector after a summary inquiry, and his decision shall be final.

Right to exemption determined by Collector.

(1.) Assignment of power to decide claims to exemption.—It is better to assign powers (specially) under this section than to trust to section 2 as continuing the powers already conferred by the Collector upon enquiry officers under Act IV of 1868. The order passed by such officers shall be final in the sense of section 212 but they may be modified by Government or a suit brought under section 135. (G. R. No. 5728, dated 27th October 1879.)

130. In towns and cities to which section 128 ap-

Occupancy price payable in addition to assessment, in certain cases. applies, the holders of any lands other than lands which have hitherto been used for purposes of agriculture only; which have been unauthorizably occupied for a period commencing less than two years before Bombay Act I of 1865 or IV of 1868 was applied to the town or city in which the said lands are situate, shall be liable to pay the price of the occupancy of the said lands in addition to the land-revenue assessed thereupon. The said occupancy-price shall be determined according to the provisions of section 62.

Miscellaneous.

131. If the Governor in Council shall at any time deem it expedient to direct a survey of the lands other than those used ordinarily for the purposes of agriculture only within the site of any village, town or city, under the provisions of section 95, or a fresh survey thereof under the provisions of section 106, such survey shall be conducted, and all its operations shall be regulated, according to the provisions of chapters VIII and IX of this Act: provided that nothing contained in sections 96, 97, 101, 103, 104 or 118 thereof shall be considered applicable to any such survey in any town or city containing more than two thousand inhabitants.

Proviso.

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 rupees five for each survey number. The said survey-fee shall be payable

* See Rule 79 of the Rules under section 214 of the Code.

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* See Rule 79 of the Rules under section 214 of the Code.

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.

In any town or city in which Bombay Act IV of 1863 was in force before the passing of this Act, a similar public notice shall be issued by the Collector within six months after the passing of this Act, provided that in any such town or city no survey-fee shall be leviable when a fee has already been paid by a landholder for a sanad obtained by him under section 10 of the said Act.

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 specifying by plan and description the extent and conditions of his holding :

Provided that if such holder do not apply for such sanad or sanads at the time of payment of the survey-fee or thereafter within six months from the date of the public notice issued by the Collector under the last preceding section, the Collector may require him to pay an additional fee not exceeding one rupee for each sanad.

Every such sanad shall be executed on behalf of the Secretary of State for India in Council by such officer as may from time to time be lawfully empowered to execute the same.

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 provi-

Assessment of lands hitherto used for purpose of agriculture only, appropriated to other purposes.

* See Rule 53 of the Rules under section 214 and also rules under section 213.

sions of any law for the time being in force, be appropriated to any other purposes, it shall be liable to payment of one-eighth of the rate fixed for unalienated land used for similar purposes in the same locality, in addition to the quit-rent payable under the terms of such summary settlement.

135. Any suit instituted in a civil Court to set aside any order passed by the Collector under section 37 or 129, 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.

Limitation of certain suits.

CHAPTER XI.

Of the Realization of the Land-revenue and other Revenue demands.

Responsibility for Land-revenue.

136.* The registered occupant shall be primarily responsible to Government for the land-revenue of unalienated land, and the superior holder shall be primarily responsible to Government for the land-revenue of alienated land.

Primary responsibility.

On failure of the person primarily responsible to Government for the land-revenue to pay the same according to the rules legally prescribed in that behalf, it may be recovered from the co-occupant of unalienated land or the co-sharer of alienated land, or in either case from the inferior holder or person in actual occupation of the land.

Recovery of land-revenue if person primarily responsible fails to pay it.

When land revenue is recovered from any such co.

* See order No. (9) printed under section 74.

Credit allowed to inferior holder for recoveries made from him.

occupant, co-sharer, inferior holder or other person, he shall be allowed credit for all payments which he may have made to the registered occupant or superior holder, or to his landlord, at or after the prescribed or usual times of such payments, and he shall be entitled to credit in account with the registered occupant or superior holder or with his landlord for the amount recovered from him.

(1.) Can revenue be recovered from co-sharers when the principal sharer is willing to pay.—The eldest superiorholder of an Inag village maintained that no part of the revenue in respect of the shares of his co-sharers should be received by Government direct from them as he was responsible for the payment of the Revenue of the whole village under section 136 of the Land Revenue Code. The co-sharers on the other hand alleged that they were also superior holders in respect of the shares and that the revenue of those shares should be levied from the direct. In connection with this case the following questions were referred for the orders of Government:—

1. When there is more than one superior holder can Government under section 136 hold the eldest or principal superior holder primarily responsible for the payment of Government revenue?
2. If so, can they refuse to accept Government revenue from another superior holder should he be ready and willing to pay it?
3. In the event of the right of a junior superior holder to pay share being recognized, would it be open, in the case of default Government revenue to the principal sharer to say that he could not be held primarily responsible as Government had already held others to have the right of direct payment and he was no more superior holder than they were?

These questions were disposed of by Government orders to following effect:—

The Land Revenue Code does not expressly provide for the registration of the principal of the several co-holders of alienated land, for the registered holder alone being ordinarily recognized by the Collector in matters affecting the revenue of the land. It has always been practice however to register only the name of the principal holder of alienated land and for the Collector to look primarily to the registered holder for the payment of revenue. This is an arrangement necessary in the interests of Government, for it is obviously much more convenient that the Collector for the purposes of collecting the revenue should have to recognize only one registered holder in respect of each holding, than that he should have to call upon each of several co-sharers (some of whom often hold very minute shares)

pay his quota of the revenue. That the legislation of this system was intended by the Code is clear from paragraph 2 of section 136. In this it is enacted that "on failure of the person primarily responsible to Government for the land revenue," that revenue may be recovered "from the co-occupant of unalienated land or the co-sharer of alienated land." This provision places co-occupants of unalienated land and co-sharers of alienated land in corresponding positions; and the use of the words "co-sharers of alienated land" would be meaningless, if the term "the superior holder" as used in paragraph 1 of the section where he is said to be primarily responsible for the revenue of alienated land, were meant to include co-sharers as well as the principal or registered superior holder. So also section 79 shows that the registration of holders of alienated land as well as occupants of unalienated lands was in the mind of the legislature, and from a comparison of section 76 with paragraph 2 of section 74 it is clear that registration of only the principal holders of alienated land was intended.

The last of the three questions above referred to indicates one class of difficulty which may arise if the long established practice of holding registered superior holder of alienated land alone responsible primarily for the land revenue of his holding is abandoned. The only safe course therefore is for that practice to be maintained, at any rate as long as a registered holder is willing to pay the whole amount due on his holding. If he makes default, the Collector can recover, under paragraph 2 of section 136 of the Land Revenue Code, from his co-sharers.

When the Code comes under revision the opportunity will be taken of making its provisions more clearly conform to the established practice and it will be easier to do this if in the meantime no departure from the existing practice has been made. (G. R. No. 5519, dated 12th August 1891.)

Priority of Government Claim for Land-revenue.

137.* The claim of Government to any moneys recoverable under the provisions of this chapter shall have precedence over any other debt, demand or claim whatsoever, whether in respect of mortgage, judgment-decree, execution or attachment; or otherwise howsoever, against any land or the holder thereof.

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

Claims of Government to have precedence over all others.

Liability of crop for revenue of land.

* See order No. (11) printed under section 86.

all other claims, from the crop of the land subject to the same.

Land-revenue when leviable.

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 revenue year.

Precautionary Measures for the securing of the Land-revenue.

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 current year's revenue of the said land has 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 one year's revenue.

Removal of crop which has been sold, &c., may be prevented until revenue paid.

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—

To secure land revenue Collector may

(a) to require that the crop growing on any land li-

* (1.) Vide orders printed under section 86.

(2.) The forms of orders to be issued under this section have been sanctioned by Government in their Resolution No. 674, dated 27th January 1891 and are printed as appendix XII.

able 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.

(1) Inamdar's power to take precautionary measures and to attach property.—An Inamdar who holds a commission conferring upon him the power described in clause (a) of section 88 of the Land Revenue Code is entitled to take "such precautions as the Collector is authorized to take under sections 141 to 143." Referring to section 138 of the Code it appears that the Collector is only authorized to take precautions under sections 141 to 143 for the recovery of the land revenue of the current year and Inamdar's power is similarly restricted.

The power to attach property conferred upon an Inamdar under clause (a) of section 88 of the Code is not restricted by any reference to any other section or provision of that enactment, and there is no reason for holding that the Inamdar is bound to issue a notice of his demand before proceeding to attach his defaulter's property. There can be no legal objection to his sending a preliminary notice to the defaulter if he thinks fit to do so; such a course would be commendable, but it is not obligatory, and the Inamdar would not be entitled afterwards to recover as a revenue demand the cost of issuing and serving such notice. (G. R. No. 2901, dated 15th April 1886.)

142. The Collector's order under either clause (a) or clause (b) of the last preceding section may be is-

Collector's orders under last section how made known. sued generally to all the holders of land paying revenue to Government in a village, or to individual holders merely.

If the order be general, it shall be made known by public proclamation to be made by beat of drum in the village and by affixing a copy of the order in the Chauri 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.

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.

Reaping, &c., not to be unduly deferred.

Crop when to be released.

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

Temporary attachment and management of village or share of 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, subject to the orders of the Commissioner may direct.

Powers of manager, and disposal of surplus profits.

145. The precautionary measures authorized by the last five sections shall be relinquished if the person primarily responsible for the payment of revenue, or any person who would be responsible for the same if default were made by the person primarily responsible, shall pay the costs, if any, lawfully incurred by the Collector up to the time of such relinquishment, and shall furnish security* satisfactory to the Collector for the payment of the revenue, at the time at which, or in the instalments, if any, in which, it is payable under the provisions hereinafter contained.

Precautionary measures to be relinquished on security being furnished.

Regulation of payment of Land-revenue.

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

Government to determine dates, &c, in which land revenue shall be payable.

* The form of security-bond to be furnished under this section has been sanctioned by Government in their Resolution No. 674, dated 7th January 1891, and is printed as Appendix XIII.

time to time be determined by the orders of Government.

Defaulters.

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.

148. If any instalment of land-revenue be not fully paid within the prescribed time it shall be lawful for the Collector to proceed to levy at once the entire balance of land revenue due by the defaulter for the current year, in addition to such charge as a penalty or by way of interest, as may be authorized according to a scale to be fixed from time to time, under the orders of the Governor in Council.

(1.) **Maximum Penalty.**—A maximum penalty not exceeding $\frac{1}{10}$ of the amount of land-revenue over due should be fixed and resort had to the provisions of this section in the case of the rayat who is known to be able to pay but wilfully delays to do so. The penalty imposed may be remitted if the officer imposing it afterwards finds that the rayat was not able to pay punctually. (G. R. No. 2485, dated 27th March 1883.)

(2.) **Levy of penalty in alienated villages and its disposal.**—In cases where assistance is given by Revenue officers for the recovery of revenue due to holders of alienated villages, or other superior holders, if any penalty is ordered and levied under this section for default in punctual payment of revenue, it should be paid over to the superior holder. The Collector need not levy any penalty under this section except in cases where he may consider that the superior holder is entitled to something more than his bare rent. (G. R. No. 9586, dated 4th December 1884.)

149.† A statement of account, certified by the Col

* In the Revenue Recovery Act I of 1890, which extends to the whole of British India, the word "defaulter" is defined to mean "a person from whom an arrear of land-revenue is due," and to include "a person who is responsible as surety for the payment of any such arrear or sum."

† Before the passing of the Revenue Recovery Act (I of 1890) the

Certified account to be evidence as to arrears.

lector 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,

Collector of a district in the Bombay Presidency could not,* under the

* In a case where the Collector of Bellary (a district in the Madras Presidency) had requested the Collector of Dharwar to recover from certain persons in the Dharwar district arrear of land-revenue due on lands in the Bellary district. Government decided that the Land Revenue Code being applicable only to the Bombay Presidency, the Collector of Bellary was not a Collector within the meaning of section 149, nor the land-revenue due on lands in the Bellary districts the land revenue within the meaning of section 187 and that therefore the Collector of Dharwar could not proceed under the Code to recover the arrears, though he might use his influence for the recovery thereof. (G. R. No. 2877, dated 21st May 1881.)

provisions of the Code, proceed to recover an arrear of land revenue due on lands situated in a district belonging to any other Presidency. This difficulty has now been removed by the above mentioned Act. This Act extends to the whole of British India and under section 3 thereof the Collector of a district in one Presidency on lands situated in a

district can recover an arrear of land revenue due in a district belonging to any other Presidency.

Section 3 of the above-mentioned Act runs as follows:—

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

† Vide appendix XIV. 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

may be proceeded upon as if certified by the Collector of a district under this Act.

Recovery of Arrears.

Process for re-
covery of arrears.

150. An arrear of land-revenue may be recovered by the following processes:—

(a) by serving a written notice of demand on the defaulter, under section 152;

(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 holdings consisting of entire villages, or shares of villages, by attachment of the said villages, or shares of villages, under sections 159 to 163.

151. The said processes may be employed for the recovery of arrears of former years as well as of the current year, but the preferences given by sections 137 and 138 shall apply only to demands for the current year:

Revenue demands
of former years how
recoverable.

Provided that any process commenced in the current year shall be entitled to the said preferences, notwithstanding that it may

not be fully executed within that year.

Proviso.

matters thereon 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.

Notice of Demand.

When notice of demand may issue. **§52.*** A notice of demand may be issued on or after the day following that on which the arrear accrues.

* In supersession of all previous orders and rules on the same subjects the Commissioner in Sind and the Commissioners, N. D., C. D., and S. D., have, with the sanction of the Governor in Council, framed the following rules under sections 152, 158 and 183 of the Bombay Land Revenue Code, 1879 :—

I.—Notices of Demand (section 152.)

1. Notices of demand shall be issued by the Mamlatdar or Mahalkari within whose charge an arrear accrues.
2. Such notices shall not usually be issued until ten days after the arrear has accrued.
3. The costs of issuing notices of demand shall be leviable in the shape of a fixed fee of four annas for each notice, if the amount of the arrear does not exceed Rs. 5, and of eight annas in any other case.
4. The Collector, or the Assistant, or Deputy Collector in charge of a taluka may, at his discretion, remit the fee in any case if it shall appear to him that its levy will occasion undue hardship.

II.—Arrest and imprisonment of Defaulters (section 158.)

1. The powers of arrest conferred by section 157 may be exercised by Collectors and by any Assistant or Deputy Collector in charge of talukas specially empowered by the Collector in this behalf, and by subordinate officers acting in each case under the express authority of a Collector or of any such Assistant or Deputy Collector.
2. The costs of arrest shall be according to the following scale.

		Rs.	As.
If the amount for the recovery of which the ar- rest is made,	does not exceed Rs. 25	0	4
	exceeds Rs. 25 but does not exceed Rs. 100...0	8	
	,, 100	500	1 0
	,, 500	1,000	2 0
	,, 1,000	5,000	4 0
,, 5,000		8	0

3. The subsistence-money to be paid by Government to any defaulter under detention or imprisonment shall be fixed by the Collector, or by the Assistant or Deputy Collector, who orders the arrest within the following limits, viz :—

	Not less than		Not more than	
	Rs.	A.	Rs.	A.
If the defaulter is an European	1	0	1	8
If the defaulter is a Eurasian or a native of Portugues descent.....	0	8	1	0
In any other case	0	3	0	12

III.—Expenses of Sales (section 183.)

1. The expenses of a sale shall be taken to be two annas in the

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.

Forfeiture of occupancy or alienated holding.

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.

(1.) **Watan land, forfeiture of.**—Watan land is "alienated land" within the meaning of clause 19, section 3 of the Code and when an arrear of land-revenue is due in respect of any such alienated holding the Collector may under this section declare it to be forfeited to Government. (G. R. No. 3016, dated 10th June 1880.)

(2.) **Course to be followed in case of non-payment of Judi, &c, by inferior Watandar.**—In cases in which the Mahar or Jaglia being poor is unable to pay the Judi on the watan land which he holds as remuneration for his service the Collector should deduct from his land a portion equal to the Judi payable, and add it on to one of the neighbouring numbers if waste, or if occupied, to it, if the occupant should agree to take it up. If the land to be deducted is sufficiently large to form a separate survey number it should be made into a separate number.

There might be cases in which this course could not be followed owing to the occupants of neighbouring numbers declining to take it up and the area being too small to be made a separate number. In such cases the Collector should report separately and Government can then consider whether it would not be better and more economical to remit the Judi altogether, than to resume the land and have to pay a cash remuneration. (G. R. No. 4375, dated 20th August 1880.)

Sale of defaulter's property.

154. The Collector may also cause the defaulter's moveable property to be distrained and sold.

Distrain and sale of defaulter's moveable property.

case of moveable property and four annas in the case of immoveable property, or, in either case $\frac{1}{2}$ th of the amount, if any, realized by the sale whichever is the greater. (G. R. No. 2459, dated 26th March 1883.)

* Vide order No. (3) printed under section 56 and also orders under sections 169 and 185.

Such distrainments 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.

Distrainment may be made by.—(1.) Tappeddar or Munshi.—Distrainments under section 154 of the Code may be made in Sind by any Tappeddar or Munshi provided that he can read and write. (G. R. No. 3396, dated 13th June 1881.)

(2.)—Taluka Karkuns, Kulkarnis, Talatis and Patels.—Distrainments under section 154 of the Land Revenue Code should be made by Taluka Karkuns, Kulkarnis, Talatis and Patels provided that they should be executed only by persons able to read and write. In special cases, however, the Collectors and their Assistants may direct the warrant to any person whom they may consider competent to execute it. (G. R. No. 7858, dated 23rd December 1881.)

(3.) Eviction for non-payment not to be enforced in certain cases.—It is harsh and impolitic to evict an occupant who has fallen into arrears by no fault of his own but under the inevitable stress of famine as such eviction is attended by the loss of any improvements he may have made in his holding. The views of Government on this point which were set forth in their circular letter to the Commissioners, No. 4454, dated 25th August 1879, have been repeated in sections 138 to 143 of the Famine Relief Code. Section 142 of this Code which directly bears on this point is given below :—

“ In no case should the Collector apply such pressure to obtain payment as will cause an occupant to sell his plough cattle or agricultural implements, or prevent or retard the resumption of agriculture. The recovery of arrears, if any, should be from a surplus of means after sufficient is allowed for the subsistence of the occupant and his family and the restoration of his position as a revenue payer, and occupants should not be driven to borrow from Savkars in order to pay arrears.” (G. R. No. 8757, dated 6th November 1884.)

(4.) Dwelling houses not to be broken into.—Dwelling houses are not to be broken into for the purpose of distraining goods for the recovery of arrears of land-revenue. (G. R. No. 9982, dated 19th December 1884.)

(5.) Form of warrant of distrainment.—The Code does not require any standard form of warrant for distrainment nor is such a form necessary or expedient for use by revenue officers.

The order of distrainment may take the form of an ordinary order in the course of correspondence. (G. R. No. 1302, dated 15th February 1889.)

(6.) Delegation to Mamildars and Mahalkaris of the power to distrain.—His Excellency the Governor in Council is pleased to authorize the Collectors to delegate the powers exercised by them under

section 154 of the Land Revenue Code, to Mamlatdars and Mahalkari (G. R. No. 5954, dated 31st August 1891.)

155. The Collector may also cause the right, title and interest of the defaulter in any immoveable property other than the land on which the arrear is due to be sold.

156. All such property as is by the Civil Procedure Code exempted* from attachment or sale in execution of a decree, shall also be exempt from distraint or sale.

* The proviso to section 266 of the Civil Procedure Code exempts the following articles from attachment or sale:—

- (a) The necessary wearing apparel and bedding of the judgment-debtor, his wife and children ;
- (b) Tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may in the opinion of the Court be necessary to enable him to earn his livelihood as such ;
- (c) The materials of houses and other buildings belonging to and occupied by agriculturists ;
- (d) Books of account ;
- (e) Mere rights to sue for damages ;
- (f) Any right of personal service ;
- (g) Stipends and gratuities allowed to military and civil pensioners of Government, and political pensions ;
- (h) The salary of a public officer or of any servant of a Railway Company or local authority to the extent of—
 - (i) the whole of the salary where the salary does not exceed twenty rupees monthly ;
 - (ii) twenty rupees monthly where the salary exceeds twenty rupees and does not exceed forty rupees monthly ; and
 - (iii) one moiety of the salary in any other case.
- (i) The pay and allowances of persons to whom the Native articles of war apply ;
- (j) The wages of labourers and domestic servants ;
- (k) An expectancy of succession by survivorship or other merely contingent or possible right or interest ;
- (l) A right to future maintenance ;

under either of the last two preceding sections.

The Collector's decision as to what property is so entitled to exemption shall be conclusive.

Exemption from distraint.—(1.) Of houses dwelt in by agriculturist.—The expression "materials of houses and other buildings belonging to, and occupied by, agriculturists" used in section 266 clause (c) of the Code of Civil Procedure is intended to exempt, from attachment and sale, the house dwelt in by an agriculturist as such, and the farm buildings appended to such dwelling.

The exemption does not extend to other houses not in the physical occupation of an agriculturist owner, as a dwelling appropriate or convenient for his calling. The exemption extends, after the death of an agriculturist debtor, to his representative who occupies the house in good faith as an agriculturist, and who does not take it up merely with the view of defrauding his creditor. (*Radhakisan Hakumji vs. Balvant Ramji*,—I. L. R. Bombay, Volume VII, page 530, 1883.)

(2.)—Of materials of houses belonging to an agriculturist.—The materials of a house or other building belonging to an agriculturist are exempted from distraint and sale under section 156 of the Bombay Land Revenue Code, as, (except in the one case, which can never arise under the Bombay Land Revenue Code, of a decree for rent) they would be under section 266 of the Civil Procedure Code. (G. R. No. 2179, dated 26th March 1891.)

Arrest and Imprisonment.

157.* At any time after an arrear becomes due, the

(m) any allowance declared by any law passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant Governor in Council to be exempt from liability to attachment or sale in execution of a decree;

(n) Where the judgment-debtor is a person liable for the payment of land-revenue, any moveable property which under any law 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) and (m) are exempt from attachment or sale whether before or after they are actually payable:

Provided also that nothing in this section shall be deemed—

(a) To exempt the materials of houses and other buildings from attachment or sale in execution of decrees for rent; or,

(b) To affect the Army Act 1831 or any similar law for the time being in force.

* Section 342 of the Civil Procedure Code lays down that no person

Arrest and detention of defaulter. defaulter may be arrested and detained in custody for ten days in the office of the Collector or of a Mamlatdar or Mahalkari, unless the revenue due, together with the penalty or interest and the costs of arrest and of notice of demand if any, have issued, and the cost of his subsistence during detention, is sooner paid.

If, on the expiry of ten days, the amount due by the defaulter is not paid, then, or if the Collector deem fit on any earlier day, he may be sent by the Collector with a warrant, in the form of Schedule C for imprisonment in the civil jail of the district :

Imprisonment in Civil Jail. 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 (c) Civil Court for a debt equal in amount to the arrear (d) revenue due by such defaulter.

(e.) Power of arrest to be executed by Assistant or Deputy collector when specially delegated.—The power of arrest should be exercised by the Collector or the Assistant or Deputy Collector in charge of any Taluka to whom the power has been specially delegated by the Collector, it being remembered that Government are not in favor of arrest of defaulters except in extreme cases. (G. R. No. 1743, dated 1st March 1883.)

158.* The Commissioner may, with the sanction of the Governor in Council, from time to time declare by what officers, or class of 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.

shall be imprisoned in execution of a decree for a longer period than six months, or for a longer period than 6 weeks if the decree be for the payment of a sum of money not exceeding fifty rupees,

* See order printed under section 152.

Attachment of Villages.

159. If the holding in respect of which an arrear is due consists of an entire village or of a share of a village, and the adoption of any of the other processes before specified is deemed inexpedient, the Collector may, with the previous sanction of the Commissioner, cause such village or share of a village to be attached and taken under the management of himself or any agent whom he appoints for that purpose.

Power to attach defaulter's village, and take it under management.

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 ;

Lands of such village to revert free of incumbrances.

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.

Powers of managers.

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 of this Act, shall be applied in defraying the said arrear.

Application of surplus profits.

162.* The village or share of a village so attached

* 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

Restoration of vil- shall be released from attachment, and
lage so attached. the management thereof shall be restor-
ed 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
1st 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
Disposal of surplus accrued in the year in which his appli-
receipts. cation 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.

163. If no application be made for the restoration

profits, on his resuming the management of the village would be regulated
by section 162 (1) of the Revenue Code.

Under section 162 the village or share of a village so attached shall
be released from attachment and the management thereof shall be re-
stored to the superior holder on the said superior holder's making an
application to the Collector for that purpose at any time within 12 years
from 1st of August next after the attachment.

The Collector shall make over to the superior holder the surplus re-
ceipts, if any, which have accrued in the year in which his application for
restoration of the village, or share of a village, is made, after defraying all
arrears and costs ; but such surplus receipts, if any, of previous years shall
be at the disposal of Government.

But this rule does not hold good where the village attached is one
in the Kolaba district to which the Khoti Settlement Act (I of 1880)
has not been extended, unless the Khots therein are Sanadi or Vatandar
Khots. (Bhikaji Ramchandra Oak vs. Nizam Ali Khan, — I. L. R. Bom-
bay, Volume VIII, page 525, 1884.)

Village, &c., to vest in Government, if not redeemed within twelve years.

of a village or portion of a village so attached within the said period of twelve years, or if, after such application has been made, the superior holder shall fail to pay the balance, if any, still due by him within the period prescribed by the Collector in this behalf, the said village or portion of a village shall thenceforward vest in Government free from all incumbrances created by the superior holder or any of the sharers or any of his or their predecessors in title, or in any wise subsisting as against such superior holder or any of the sharers, but without prejudice to the rights of the actual occupants of the soil.

Stay of Proceedings.

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 such other person or officer.

Processes to be stayed on security being given.

Or on amount demanded being paid under protest.

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.

Procedure in respect of Sales.

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

Procedure in effecting sales.

* For form of proclamation and written notice of sale under sections 165 and 166 see appendix M to the rules issued under this Code.

vernacular language of the district, of the intended sale, specifying the time and place of sale, and in the case of moveable property, whether the sale is subject to confirmation or not, and, when land paying revenue to Government is to be sold, the revenue assessed upon it, together with any other particulars he may think necessary.

Such proclamation shall be made by beat of drum at the head-quarters of the taluka, and in the village in which the immovable property is situate, if the sale be of immovable property; if the sale be of moveable property the proclamation shall be made in the village in which such property was seized, and in such other places as the Collector may direct.

166. A written notice of the intended sale of immovable property, and of the time and place thereof, shall be affixed in each of the following places, namely, the office of the Collector of the district, the office of the Mamlatdar or Mahalkari of the taluka or mahal in which the immovable property is situate, the chauri or some other public building in the village in which it is situate, and the defaulter's dwelling place.

In the case of moveable property, the written notice shall be affixed in the Mamlatdar's or Mahalkari's office, and in the chauri 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 immovable 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.

No such sale shall take place on a Sunday or other general holiday recognized by Government nor until after the expiration of at least thirty days in the case of immo-

Proclamation of sales.

Notification of sales.

Sale by whom to be made.

Time when sale may be made.

veable property, or seven days in the case of moveable property, from the latest date on which any of the said notices shall have been affixed as required by the last preceding section.

Postponement of sale. The sale may from time to time be postponed for any sufficient reason.

168. Nothing in the last three sections applies to the sale of perishable articles. Such articles shall be sold by auction with the least possible delay, in accordance with such orders as may from time to time be made by the Collector either generally or specially in that behalf.

169.* If the defaulter, or any person on his behalf, pay the arrear in respect of which the property is to be sold and all other charges legally due by him at any time before the day fixed for the sale, to the person appointed under section 146 to receive payment of the land-revenue due, or to the officer appointed to conduct the sale or if he furnish security under section 164, the sale shall be stayed.

(1.) Giving of security not to affect forfeiture.—Although proceedings could be stayed under sections 164 and 169 if security were given or the arrear paid, the forfeiture would not thereby be cancelled. The holding of a defaulter cannot be sold unless it is first declared forfeited. (G. R. No. 4891, dated 16th September 1880.)

(2.) Date up to which defaulters to pay arrears.—Under section 169 of the Land Revenue Code a defaulter is only at liberty to pay the arrears in respect of which the land is to be sold 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.)

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

Sales of moveable property when liable to confirmation.

* See order No. (1) printed under section 183.

pecially in that behalf. In the case of sales made subject to confirmation, the Collector shall direct by whom such sales may be confirmed.

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.

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.

(1.) Purchaser shall deposit 25 per centum on purchase money —The orders contained in G. R. No. 793, dated 16th February 1876 which forbade the receiving of deposit of 25 per centum on the amount of auction bid of Rs. 5 and under, are to be considered to have been superseded by the provisions of sections 172 and 173 of the Land Revenue Code. These provisions leave no option but require that the purchaser should deposit 25 per centum on the amount of his bid, whatever that amount may be (G. R. No. 369, dated 19th January 1882.)

173. In all cases of sale of immovable property 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.

the amount of his bid, and in default of such deposit the property shall forthwith be again put up and sold.

174. The full amount of purchase-money shall be paid by the purchaser before sunset of the fifteenth day from that on which the sale of the immovable 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.

175. In default of payment within the prescribed period of the full amount of purchase-money, whether of moveable or immovable property, the deposit, after defraying thereof the expenses of the sale, shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

176. If the proceeds of the sale which is eventually made be less than the price bid by such defaulting purchaser, the difference shall be recoverable from him by the Collector as an arrear of land-revenue.

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.

(1.) Forfeiture of deposit and re-sale of property.—Certain land was put up to auction by the Collector in execution of a Civil Court's decree. It fetched a bid of Rs. 26, but the purchaser failed to make full payment. The deposit was forfeited to Government and the property again put up to sale, but no bidder appeared. The whole of the price bid at the former sale was recovered from the defaulting purchaser, and the deposit (being one-fourth of the bid) was credited to Government under section 174 of the Land Revenue Code. In this case the question raised was what was to be done with remaining three-fourths. With reference to this it was decided that as there was no bidder at the second

auction, no sale of property was effected and section 176 of the Land Revenue Code was inapplicable. The Collector was not authorized to recover the balance (three-fourths of the former bid) from the defaulting purchaser in as much as no second sale was made; the sum so recovered was therefore ordered to be refunded. (G. R. No. 4779, dated 5th July 1886.)

178. At any time within thirty days from the date of the sale of immoveable property, application may be made to the Collector to set aside the sale on the ground of some material irregularity or mistake, or fraud, in publishing or conducting it;

Application to set aside sale.

but except as is otherwise provided in the next following section, no sale shall be set aside on the ground of any such irregularity or mistake, unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof.

If the application be allowed, the Collector shall set aside the sale, and direct a fresh one.

179. On the expiration of thirty days from the date of the sale, if no such application as is mentioned in the last preceding section has been made, or if such application has been made and rejected, the Collector shall make an order confirming the sale: provided that, if he shall have reason to think that the sale ought to be set aside notwithstanding that no such application has been made or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside the sale.

Order confirming or setting aside sale.

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

On confirmation of sale, purchaser to be put in possession.

Certificate of purchase.

holding* has been confirmed in manner aforesaid, the Collector shall put the person declared to be the purchaser into possession of the land included in such occupancy or alienated holding, and shall cause his name to be entered in the revenue records 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 occupancy or alienated holding to which the certificate refers.

(1.) **Certificates of sales.**—Certificates of sale granted by the Civil Courts as well as those granted by the officers are liable to stamp duty under article 16, schedule 1 of the Stamp Act. (G. R. No. 3,009, dated 15th June 1880.)

(2.)—**Form of.**—Government Resolution No. 6905, dated 4th October 1882 directing the use of printed forms for certificates of sale granted under section 181 of the Land Revenue Code is cancelled. The certificates should be engrossed on impressed stamped papers. (G. R. No. 6023, dated 15th August 1883.)

(3.)—**Collector's obligation to grant.**—The obligation imposed upon the Collector of granting a certificate of sale can only be fulfilled by him if the purchaser produce a stamped paper of such value as the Stamp Act requires that the certificate shall be engrossed upon. Where therefore the purchaser does not produce the required stamp the obligation imposed upon the Collector by this section would be sufficiently fulfilled if he simply told the party that the certificate would be granted only after the proper stamp was produced and not otherwise. (G. R. No. 1266, dated 11th February 1885.)

182. The certificate shall state the name of the person declared at the time of sale to be the actual purchaser; and any suit brought in a Civil Court against the certified purchaser on the ground that the purchase was made on behalf of another person not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed.

183. When any sale of moveable property under

* Under rule 59 of the Rules forfeited alienated land is to be sold as unoccupied unalienated land.

- Application of proceeds of sale. this chapter has become absolute, and when any sale of immoveable property has been confirmed, the proceeds of the sale shall be applied to defraying the expenses of the sale and to the payment of any arrears due by the defaulter at the date of the confirmation of such sale, and recoverable as an arrear of land-revenue,

and the surplus (if any) shall be paid to the person whose property has been sold.

The expenses* of the sale shall be estimated at such rates and according to such rules as Expenses of sale may from time to time be sanctioned how calculated. by the Commissioner under the orders of Government.

(1.) Collector not bound to sell forfeited occupancy.—Under section 153 the Collector is not bound to sell the forfeited occupancy, but may at his discretion sell or otherwise dispose of it. If the forfeited occupancy is sold the proceeds must be credited to the defaulter's account. (G. R. No. 7285, dated 2nd December 1881.)

184. The said surplus shall not, Payment of surplus. except under an order of a Civil Court be payable to any creditor of the person whose property has been sold.

(1.) After the arrears have been recovered from the sale proceeds under section 183, the excess, if any, must be treated as a sum to the defaulter's credit and is claimable by his creditors. (G. R. No. 5730, dated 27th October 1879.)

185. The person named in the certificate of title as purchaser of any land shall be liable for all instalments of land-revenue becoming due in respect of such land subsequently to the date of the sale. Liability of purchaser for revenue.

(1.) Distribution of sale proceeds of forfeited occupancies.—The purchaser of forfeited occupancies sold at once should not be required to pay one anna in each rupee of the price realized to local funds, nor should one anna in the rupee of the wholesale proceeds be credited to local cess. But as the one anna cess is chargeable on arrears of assessment and recoverable as land revenue the sale proceeds of such lands

* As to scale of expenses of sale see rules printed under section 152.

should be credited in accordance with section 183 of the Code,

- (a) to expenses of sale
- (b) to arrears of
 - (1) land revenue
 - (2) one anna cess

the surplus if any being paid to the defaulter. (G. R. No. 2002, dated 10th March 1883.)

(2.) **Purchaser of forfeited occupancy must enter into an agreement.**—In the case of a sale of an occupancy for arrears of revenue the purchaser of a forfeited occupancy does not succeed either to the rights or liabilities of the previous occupant and in order to bind him he must enter into responsibility on his own account and for this he must enter into an agreement in the form of Appendix D to the rules. (G. R. No. 2600, dated 31st March 1883.)

(3.) **Sale proceeds of lands originally granted free of occupancy price.**—Persons to whom Government have granted lands for cultivation free of occupancy price on condition that if they did not desire to retain the lands they should resign them to Government but not transfer to any other person, are not entitled to the balance of sale proceeds of such lands, if they are put to sale for the recovery of Government revenue, after the Government demands have been satisfied. (G. R. No. 6806, dated 6th October 1887.)

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.~~

Claims to attached moveable property how disposed of.

(1.) **Delegation of the powers to Mamlatdars and Mahalkaris.**—His Excellency the Governor in Council is pleased to authorize the Collectors to delegate the powers exercised by them under section 186 of the Land Revenue Code to Mamlatdars and Mahalkaris when the adoption of such a course may appear to them desirable. (G. R. No. 8785, dated 19th November 1889.)

Application of the Provisions of this Chapter.

187.* All sums due on account of land-revenue, all

* (1.) Irrigation miscellaneous receipts are not to be regarded as

What moneys leviable under provisions of Chapter. quit-rents, nazranas, succession duties, transfer duties and forfeitures, and all cesses, profits from land, emoluments, fees, charges, penalties, fines and costs payable or leviable under this Act or under any Act or Regulation hereby repealed, or under any Act for the time being in force relating to land revenue ;

and all moneys due by any contractor for the farm of customs-duties, or of any other duty or tax, or of any other item of revenue whatsoever, and all specific pecuniary penalties to which any such contractor renders himself liable under the terms of his agreement ;

and also all sums declared by this or by any other Act or Regulation at the time being in force 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.

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.

ordinary land revenue. Local fund cess cannot therefore be levied on them. (G. R. No. 6959, dated 2nd October 1890.)

(2.) There is nothing in the Irrigation Act (Bombay VII of 1879) which would authorize the recovery, as an arrear of land revenue, of the penalty alluded to in the form of the security bond required to be executed by an applicant who is not the registered occupant of the land he wishes to irrigate.

With a view to give legal form to such bonds as also to ensure the penalty alluded to thereon being recovered as an arrear of land revenue, it is proposed to amend the provisions of section 187, when the Code comes under amendment, (G. R. Nos. 22 W. I.—105 and 23 W. I.—106,

On resumption of farm, no payments to contractor in advance 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.

(1.) Recoveries of amounts payable as remuneration.—Amounts payable by Inamdars to Watandars, on account of their remuneration, if not duly paid, are recoverable as arrears of land revenue under the provisions of section 187 of the Land Revenue Code. (G. R. No. 3378, dated 2nd May 1883.)

(2.) When moneys belonging to other Departments are recovered by Revenue Department.—In cases in which the recoveries of revenue or moneys due to other Departments are made by the officers of the Revenue Department under section 187 of the Land Revenue Code, the notice fee, cost of arrest and expenses of sale leviable under sections 152, 158 and 183 should be credited to "Land Revenue" and the penalty or interest leviable under section 148 should be credited to the Department for which the recovery is made. (G. R. No. 9587, dated 4th December 1884.)

(3.) Boundary mark charges recoverable as arrears of land revenue.—The effect of section 187 of the Bombay Land Revenue Code (Act V of 1879) is to make the provisions of sections 153 and 56 and also those of section 155, applicable to sales for the recovery of charges assessed under section 122 in connection with boundary marks.

Such charges may be recovered either by forfeiture of the occupancy in respect of which the arrear is due, or by sale of the defaulter's immovable property other than the land on which the arrear is due. In the former case the land is sold freed from all incumbrances created by the occupant. In the latter case the rights of incumbrancers are not touched. (Venkatesh Ramkrishna vs. Mhal Pai Bin Naru Pai, —I. L. R. Bombay, Volume XV, page 67, 1891)

CHAPTER XII.

Procedure of Revenue officer.

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

Subordination of revenue officer.

P. W. D., dated 19th January 1892, and G. R. No. 8382, dated 11th November 1892.)

manner of performing his duties to the direction and control of the officer to whom he is subordinate.

189. Every revenue officer not lower in rank than a Mamlatdar's first karkun, or an Assistant Superintendent of Survey, in their respective departments, shall have power to summon any person whose attendance he considers necessary either to be examined as a party, or to give evidence as a witness or to produce documents for the purposes of any inquiry which such officer is legally empowered to make. A summons to produce documents may be for the production of certain specified documents, or for the production of all documents of a certain description in the possession of the person summoned.

All persons so summoned shall be bound to attend either in person or by an authorized agent, as such officer may direct; provided that exemptions under sections* 640 and 641 of the Code of Civil Procedure shall be applicable to requisitions for attendance under this section;

and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements,

and to produce such documents and other things as may be required.

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; and shall be served by tendering or delivering a copy

Summons to be in writing, signed and sealed.

* The exemptions under these sections apply to (1) women who according to the customs and manners of the country ought not to be compelled to appear in public and to (2) persons whom the local Government by notification in the official Gazette exempt from personal appearance in Court.

How to be served. of it to the person summoned, or; if he cannot be found, by affixing a copy of it to some conspicuous part of his usual residence.

If his usual residence be in another district, the summons may be sent by post to the Collector of that district, who shall cause it to be served in accordance with the preceding clause of this section.

Service in district other than that of issuer.

191. Every notice under this Act, unless it is otherwise expressly provided, shall be served either by tendering or delivering a copy thereof to the person on whom it is to be served or to his agent, if he have any; or by affixing a copy thereof to some conspicuous place on the land, if any, to which such notice refers.

No such notice shall be deemed void on account of any error in the name or designation of any person, referred to therein, unless when such error has produced substantial injustice.

Notice not void for error.

Procedure for procuring attendance of witnesses.

192.* In any formal or summary inquiry if any party desires the attendance of witnesses, he shall follow the procedure prescribed by the Code of Civil Procedure, section 160. †

(1.) Formal, summary and other enquiries under the Code.— Revenue officers are generally empowered under chapter XII of the Code, section 189, to summon any person whose attendance may be considered necessary in any enquiry which such officers are legally empowered to make.

* See order No. (1) printed under section 125.

† The party applying for a summons shall, before the summons is granted, and within a period to be fixed by the court, pay into the court such a sum of money as appears to the court to be sufficient to defray the travelling and other expenses of the person summoned, in passing to and from the court in which he is required to attend and for one day's attendance.

If the Court be subordinate to a High Court, regard shall be had in fixing the scale of such expenses, to the rules (if any) laid down by competent authority. (Section 160 of the Civil Procedure Code.)

2. Such enquiry must either be a formal inquiry or a summary inquiry or an inquiry which the Act does not require to be either formal or summary.

3. A formal or summary inquiry is, under section 196, deemed to be a "judicial proceeding" and the officer holding it is deemed a Civil Court for the purposes of such inquiry. Section 192 provides that in any formal inquiry or summary inquiry if any party desires the attendance of witnesses he shall pay the necessary expenses of witnesses into Court.

For every notice or summons...3annas.

For every warrant of arrest issued on application of parties...6 annas.

4. As regards formal and summary inquiries, the officers holding them can be deemed to be Revenue Courts and the process fees sanctioned in the notification of Government at page 687 of the Bombay Government Gazette of 8th July 1875 are applicable to such Courts.

5. Other inquiries under the Code are not deemed to be "judicial proceedings" and the officers conducting them are not Revenue Courts. They are conducted according to general or special rules prescribed by the Governor in Council, or in the manner provided in section 197. In such inquiries no process fees are chargeable. (G. R. No. 3007, dated 27th May 1881.)

(2.) **Officer holding summary enquiry to be deemed a Civil Court.**—The officer or any authority holding a summary enquiry under the provisions of this Code is a Civil Court for the purposes of such enquiry, and such court may direct by whom the costs of each party are to be paid whether by himself or by any other party to the enquiry and whether in whole or in what part or proportions. Such costs can be levied under the provisions of Chapter XI of this Code. (G. R. No. 4468, dated 10th July 1882.)

(3.) **Serving of processes in formal and summary enquiries.**—The processes in summary and formal enquiries under the Land Revenue Code, 1879, should be served by means of persons temporarily employed and the charge incurred on account of such processes should be debited to "Land Revenue." (G. R. No. 7350, dated 21st October 1882.)

(4.) **Rules regarding subsistence allowance and travelling expenses to be paid to witnesses.**—The following are the rules laid down by the High Court, under section 160 of the Code of Civil Procedure, regarding the amount of subsistence allowance and travelling expenses to be paid to witnesses summoned to attend in Courts subordinate to the High Court.

(a) European and East Indian witnesses are to be allowed their actual expenses for carriage when the same are not in excess of six annas a mile. They are also to be allowed a sum not exceeding Rs. 2-8 a day for subsistence allowance for the time of their attendance at and journey to and from the Court, if they demand the same.

(b) Native witnesses of the better class as Patels, Pandharpeshas, Merchants, Vakils and persons of corresponding rank, are to be allowed from 8 annas to 1 rupee a day, and artizans 6 annas a day, as subsistence allowance.

(c) Native witnesses of the class of cultivators and menials who would not, under ordinary circumstances, voluntarily incur any expense on account of special lodging when away from home, are to be allowed subsistence money at the rate of 4 annas per day.

(d) The persons mentioned in clauses (b) and (c) are also to receive railway and other travelling expenses actually incurred by them provided the same be reasonable. When the journey to and from the Court is made by railway or other means of conveyance, the time for which subsistence allowance is paid, should be that actually spent on the journey. Where the journey is made on foot 15 miles per day should be reckoned as a day's journey and subsistence allowance should be paid accordingly.

(e) Peculiar cases not provided for in the above rules are to be dealt with according to their own merits, and at the discretion of the Court from which subsistence money or travelling allowance is demanded. (High Court's Circular orders,—Pages 151 and 152.)

Formal Inquiry.

193. In all formal inquiries the evidence shall be taken down in full, in writing, in the language in ordinary use in the district, by, or in the presence and hearing and under the personal superintendence and direction of, the officer making the investigation or inquiry, and shall be signed by him.

In cases in which the evidence is not taken down in full in writing by the officer making the inquiry, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by such officer with his own hand, and shall form part of the record.

If such officer is prevented from making a memorandum as above required, he shall record the reason of his inability to do so.

Taking evidence given in English.

When the evidence is given in English, such officer may take it down in that language with his own hand,

Translation to be on record. and an authenticated translation of the same in the language in ordinary use in the district shall be made and shall form part of the record.

194. Every decision, after a formal inquiry, shall be written by the officer passing the same in his own hand-writing, and shall contain a full statement of the grounds on which it is passed.

Summary Inquiry.

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 part of the evidence, the decision, and the reasons for the same :

Provided that it shall at any time be lawful for such officer to conduct an inquiry directed by this Act to be summary under all, or any, of the rules applicable to a formal inquiry, if he deem fit.

196. A formal or summary inquiry under this Act shall be deemed to be a "judicial proceeding" within the meaning of sections 193, 219 and 228 of the Indian Penal Code, and the office of any authority holding a formal or summary inquiry shall be deemed a Civil Court for the purposes of such inquiry.

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.

197.* An inquiry which this Act does not require to

* The Code requires that inquiries to be held under section 118,

Ordinary inquiries how conducted. 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.

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, &c., as may, from time to time, be authorized by Government.

(1.) Applications for return of documents filed, exempt from court fees.—In supersession of notification No. 4347, dated the 26th November 1886, and in exercise of the powers conferred by section 35 of the Court Fees Act, 1870, the Governor General in Council is pleased to remit the fee payable under the said Act on an application presented by any person for the return of a document filed by him in any Court or public office. (G. of I. N. No. 2111, dated 22nd April 1887, published in the B. G. G. Part I, page 368, 1887.)

(2.) Documents may be returned to the parties producing them on application.—Documents produced in evidence in cases under the Land Revenue Code may be returned to the parties producing them if

Rule 2, should be "formal," while those to be held under sections 85, 87, 91, 93, 125, 129, 142, 186 and 202 to be "Summary;" but under section 195, clause 2, an enquiry which the Code directs to be "Summary," may if the enquiry officer deems fit to do so, be conducted under all or any of the rules applicable to a "formal inquiry."

* Under the provision of section 198 of the Bombay Land Revenue Code, 1879, His Excellency the Governor in Council is pleased to authorize the following fees for authenticated copies and translations of deci-

they apply for their return after keeping copies thereof for Government records made at the expense of the applicants. (G. R. No. 8667, dated 21st December 1887.)

199. Whenever it is provided by this Act that a defaulter or any other person may be arrested, such arrest shall be made upon a warrant issued by any officer competent to direct such person's arrest.

Arrest of defaulter to be made upon warrant.

200. It shall be lawful for any revenue officer at any time, and from time to time, to enter, when necessary, for the purposes of measurement, fixing or inspecting boundaries, classification of soil, or assessment, or for any other purpose connected with the lawful exercise of his

Power of revenue officer to enter upon lands or premises for purposes of measurement, &c.

office under the provisions of this Act, or of any other law for the time being in force relating to land-revenue, any lands or premises, whether belonging to Government or to private individuals, and whether fully assessed to the land-revenue or partially or wholly exempt from the same:

Provided always, that no building used as a human dwelling shall be entered, unless with the consent of the occupier thereof, without a notice having been served at the said building not less than seven days before such entry; and provided also

Proviso.

sions, orders, and the reasons therefor and of exhibits in formal or summary enquiries made under the said Code, namely:—

Copying Fees.

For every 100 words or fraction of 100 words.—

- (1) $1\frac{1}{2}$ annas, in the case of English copies;
- (2) 1 anna, in the case of Vernacular copies;
- (3) Double the ordinary rates, if the original be in a tabular form, whether in English or the Vernacular.

Fees for examining and comparing.

$\frac{1}{2}$ Anna, for every 100 words or fraction of 100 words.

Translation Fees.

8 Annas, for the first 100 words or fraction of 100 words.

4 Annas, for every subsequent 100 words or fraction of 100 words.

(G. N. No. 2302, dated 31st March 1890, published in the B. G. G. Part I, page 289, 1890.)

that, in the cases of buildings of all descriptions, due regard shall be paid to the social and religious prejudices of the occupiers.

Power to determine language of district.

201. The Governor in Council may declare what shall, for the purposes of this Act, be deemed to be the language in ordinary use in any district.

202.* Whenever it is provided by this or 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, namely :—

by serving a notice on the person or persons in possession, requiring them within such time as may appear reasonable after receipt of the said notice to vacate the land, and

if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and,

if the officer removing any such person shall be resisted or obstructed by any person, the Collector shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause, and that such resistance and obstruction still continue, may, without prejudice to any proceedings to which such person may be liable under any law for the time being in force for the punishment of such resistance or obstruction, issue a warrant for the arrest of the said person, and on his appearance commit him to close custody in the office of the Collector or of any Mamlatdar or Mahalkari, or send him with a warrant, in the form of Schedule I, for imprisonment in the civil jail of the district, for such period not exceeding thirty days as may be necessary to prevent the continuance of such obstruction or resistance.

* Vide order No. (14) printed under section 61.

CHAPTER XIII.

Appeal 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.

204. An appeal shall lie to the Governor in Council from any decision or order passed by the 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.

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 the Collector or a Superintendent of Survey in their respective departments; nor after the expiration of ninety days in any other case.

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.

*See rules 108 to 110 framed under section 214 of the Code.

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 Sunday or holiday.

208. Every petition of appeal shall be accompanied by the decision or order appealed against or by an authenticated copy of the same.

What 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 Collector 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—an Assistant or

Deputy Collector, a Mamlatdar, a Mahalkari, and Assistant Superintendent of Survey, and an Assistant Settlement Officer.

If, in any case, it shall appear to the Governor in Council, or to such officer aforesaid, that any decision or order or proceedings so called for should be modified, annulled or reversed, he may pass such order thereon as he deems fit.

And to pass orders thereupon.

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.

Explanation 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 survey records,† and all village accounts and land registers shall be open to the inspection of the

Maps, land registers and village accounts, &c., open to inspection.

* Vide section 35 and the order printed thereunder.

† By "Survey records" is meant completed documents prepared under section 108 and referred to in sections 3 (6), 95 and 119 and not the field books (such as measurement and classification books) or other official Memoranda the results of which are recorded. The section gives a right of inspection only of the completed documents, and provides that certified extracts or copies should be given only in the case of "maps" registers and (village) accounts. From the position of the word "registers" after maps and before accounts it seems clear that it is intended to relate back to "survey records" and that the expression "survey records" used in this section therefore means only such records as are prepared in the form of registers, based on information supplied by preliminary papers.

public at reasonable hours, and certified extracts from such maps, registers and accounts, or certified copies thereof, shall be given to all persons applying for the same.

Extracts and copies to be given.

214. The Governor in Council may from time to time make, and from time to time vary or rescind, rules or orders not inconsistent with this Act—

Power to frame rules.

(a) determining the qualifications to be required of all members of establishments appointed under section 21 ;

(b) regulating the power of fining, reducing, suspending and dismissing revenue officers under section 32;

(c) prescribing the purposes to which land liable to the payment of land-revenue may be appropriated under section 48 ;

(d) regulating the system and manner of assessing land to the land-revenue under sections 52 and 100 ;

(e) for the disposal of forfeited occupancies or alienated holdings under section 56 ;

(f) fixing the maximum amount of fine leviable under section 61 when land which has been unauthorizably occupied is appropriated to any non-agricultural purpose ;

(g) for the administration of any survey settlement;

(h) prescribing the mode, form and manner in which appeals under chapter XIII of this Act shall be drawn up and presented ;

(i) generally for the guidance of all persons in matters connected with the enforcement of this Act, or in cases not expressly provided for therein.

Rules or orders made under any of the above clauses

(such as measurement and classification field books, Bagait, Taktas, &c). The inspection, extracts or copies, of such preliminary records cannot therefore be claimed as a matter of right. (G. R. No. 5138, dated 14th July 1893.)

(c), (d), (e), (f) or (i), may be made either generally or in any particular instance.

215. All general rules or orders made by the Governor in Council under the last preceding section shall be published, and when published shall, until cancelled or amended, have the force of law.

Rules to be published.

It shall be lawful for the Governor in Council, in making any such general rule, to attach to the breach of it, in addition to any other consequences which would ensue from such breach, a punishment, on conviction before a Magistrate, not exceeding one month's imprisonment "of either description, within the meaning of the Indian Penal Code," * or five hundred rupees' fine, or both.

Power to provide for penalties.

216.† Save as is otherwise provided in section 111 and hereinafter in this section, the provisions of chapter VIII to X of this Act shall not be applied to any alienated village except for the purposes of fixing the boundaries of any such village, and of determining any disputes relating thereto. But the provisions of the said chapter shall be applicable to—

(a) all unalienated lands situated within the limits of an alienated village;

(b) villages of which a definite share is alienated, but of which the remaining share is unalienated;

* The portion in the inverted commas has been repealed by the Bombay General Clauses Act III of 1886.

† (1.) See orders printed under section 217.

(2.) Waste Inam fields on which boundary mark charges are due are to be sold annually as grass lands if the Inamdars are not present and the charges liquidated from the proceeds.

If the Inamdars are present the payment of money should be peremptorily enforced as a revenue demand under section 6 of Act III of 1846, (now section 122 of the Code). (G. R. No. 9976, dated 17th October 1851.)

(3.) Inamdars who desire it may be allowed to pay the survey

(c) alienated villages the holders of which are entitled to a certain amount of the revenue, but of which the excess, if any, above such amount, belongs to Government.

But it shall be lawful for the Governor in Council, on an application in writing being made by the holder of

expenses in two equal instalments. (G. R. No. 543, dated 12th February 1852.)

(4.) The owners of the alienated villages which have been surveyed by virtue of their being held on service tenure; or, at the express desire of the alienee, should be requested to cause the boundary marks to be examined by the village officers, to test these examinations themselves or by their agents and to report the result to the Assistant Collector in charge of the Taluka. (G. R. No. 2581, dated 19th June 1865.)

(5.) The following rules relate to the Survey of alienated villages:—

I. The boundaries of all alienated villages to be surveyed at the expense of Government.

II. The lands of alienated villages held on hereditary tenure of which the alienee makes the annual settlement not to be subjected to the usual Revenue survey operations, excepting at the request of the alienee, and his expressing his intention to adopt the rates fixed by the Survey Department and sanctioned by Government.

III. In the event of the alienee fulfilling his intention the expense of the operations to be borne by Government, in the event of his not doing so by the alienee.

IV. Villages held on service tenure by hereditary officers to be subjected to the Revenue survey operations but the holders of such villages need not be constrained to introduce the survey rates.

V. The lands of villages which have been declared already liable to assessment on account of Government (Khalsa) but the levy of land revenue in which has been deferred as an indulgence during the life of present incumbent, are to be surveyed and classed at the same time as the lands of other Khalsa villages in the District but the new rates are not to be imposed against the will of the alienees until their decease. The occupants are however to be answerable for the maintenance of the field boundary marks. (G. R. No. 1223, dated 10th February 1851, No. 3479, dated 29th December 1855 and No. 3613, dated 28th September 1868.)

(6.) It was not the intention of Government to rescind the rules of the 13th March 1851, whereby the cost of surveying alienated villages is undertaken by Government on the condition that the alienee accepts and adheres to the terms of the settlement. Government will defray the expenses of revision operations in cases where the rules and rates have been adhered to and where a guarantee to this effect is given for the

any such village to that effect, to authorize the extension of all or any of the provisions of the said chapters to any such village.

Extension of the provisions of the Code to Inam villages settled under Act I of 1865.—(1.) Government concur in the views expressed by the Commissioner C. D. and the Legal Remembrancer that section 217 of the Code applies at once to alienated lands which have been settled by the Survey Department under Act I of 1865 and that no application from the alienee under section 216 is requisite. The application by the Inamdar contemplated by the last paragraph of section 216 is required only for future extension of the survey to an Inam village. (G. R. No. 6709, dated 16th December 1879.)

(2.)—Section 2 of the Code provides that all orders issued and notifications published under any of the enactments repealed by the Code (including Bombay Act I of 1865) shall be deemed to have been issued and published under the Code. Section 49 of Bombay Act I of 1865 provided that the Governor in Council had power to extend by notification in the Government Gazette all or any of the provisions of the Act to any alienated village on application made in writing by the holder thereof. It seems quite clear from this that existing surveys which have been thus notified or authorised by the Governor in Council are in force just as if they had been notified or authorized under the Code. Yet from section 216 of the Code it would seem that the purposeless formality of a written application must be complied with by an Inamdar before section 112 can be extended to his village. (G. R. No. 6925, dated 19th November 1881.)

(3)* **Separate sanction to survey rates in Inam villages unnecessary.**—The general sanction granted by G. R. No. 5921, dated 16th

future.

As regards Jaghirs or Estates held on political tenure, Government can no longer consent to bear the cost. (G. R. No. 373, dated 21st January 1875.)

* (1.) In future, proposals for the introduction of the survey assessment in Inam villages should always be submitted for the sanction of Government either specially or with those for the remainder of the Taluka in which they may be comprised. (G. R. No. 3504, dated 15th June 1876.)

(2.) It is the wish of Government that full details be given when proposals for assessing alienated villages are submitted. (G. R. No. 7390, dated 15th December 1876.)

(3.) The suggestion of the Survey Commissioner that the special report for Inam villages in Talukas already settled to be made under G. R. No. 3504, dated 15th June 1876 may be dispensed with and that rates sanctioned for adjacent Government villages previously settled may

November 1878 in respect to Inam villages should be deemed to be the sanction required by sections 102 and 103 of the Land Revenue Code, 1879. (G. R. No. 6386, dated 6th December 1880.)

(4.) **Inamdars to pass agreements to pay remuneration to village officers.**—Before the survey rates are introduced in an alienated village an agreement* on a stamped paper of the value of 8 annas should be taken from the alienee binding himself and his successors to pay the village officers according to the scale in force in Government villages, (G. R. No. 6401, dated 6th December 1880 and No. 7322, dated 3rd December 1881.)

5.)—**To furnish agricultural statistics.**—Agricultural statistics for alienated villages which have been surveyed and assessed may be obtained even under the present law with the co-operation of the owner. Such co-operation may be made a condition of the grant of powers under section 88. (G. R. No. 7136, dated 24th September 1883.)

(6.)† **Inamdar's consent necessary for surveying his village.**—If the survey operations are conducted in an alienated village with the Inamdar's consent merely they will have no legal value and the officers conducting them will not be able to exercise any legal authority in connection with them, unless the appropriate provisions of chapter VIII of the Code have, in the first instance, been extended to the village upon the Inamdar's written application under section 216. No survey operations will therefore be commenced in an alienated village until action has been taken by the Inamdar and the Government under the last clause of section 216. (G. R. No. 6225, dated 2nd August 1884.)

(7.)—**Not necessary in the case of a Sharakati village.**—Where a Survey Settlement was introduced into a village of which half is held in Inam without the consent of the Inamdar it was decided that the survey was quite lawful and that the Inamdar was bound by the assessment placed by the Survey Department on his holding. (G. R. No. 1243, dated 26th February 1887.)

(8.)—**Not necessary for a rough survey for the purposes of summary settlement.**—The question whether the estate of Inamdars who have not voluntarily applied for a survey can be roughly surveyed for the purpose of fixing the Judi, has been disposed of by the following opinion of the Remembrancer of Legal Affairs concurred in by Government :—

“ 2. I am of opinion that section 216 of the Land Revenue Code does not in any way affect the provisions of Bombay II of 1863 or Bom-

be held applicable to Inam villages coming under settlement at any time after the settlement of the Taluka is approved. (G. R. No. 5921, dated 16th November 1878.)

* As to form of agreement see Appendix XV.

† Vide order No. (1) printed under section 88.

bay VII of 1863.

" 3. The original draft of the Land Revenue Code incorporated the provisions of these two Acts (Bombay II and VII of 1863), which it was then proposed to repeal in schedule A appended to that bill.

" 4. Chapter VII of the original draft corresponded almost *verbatim* with these Acts, and section 156 of the original draft which corresponded with section 216 of the Land Revenue Code provided, as section 49 of Bombay I of 1865 provided, that the procedure applicable to unalienated lands should not apply except on the application of the holder to alienated villages or estates.

" 5. It therefore appears that section 216 was not intended to interfere with the provisions of Bombay II and VII of 1863, as a section to the same effect as section 216, was incorporated in an Act retaining practically the same provisions as Bombay II and VII of 1863.

" 6. Although Chapters VIII to X of the Land Revenue Code cannot apply to wholly alienated villages except subject to the provisions in section 216 the provisions of section 2, rule 1, of Bombay II of 1863 and section 6, rule 1 of Bombay VII of 1863, are unaffected.

" 7. Both the last mentioned sections provide for three classes of cases,

- (a) Those in which the assessment had already been fixed by the Survey ;
- (b) Those in which it was agreed on between the Collector and holder ;
- (c) All other cases.

" 8. In respect of classes (a) and (b) the assessment so fixed was evidently not liable to revision.

" 9. In respect of class (c) it is evident from the proviso that an attempt to obtain an amicable settlement of the assessment was to be deemed a condition precedent to the exercise of the power given to survey officers to enter upon and fix the assessment.

' But if no such arrangement can be otherwise arrived at by the Collector and the owner or holder then whether the owner or holder assent or no, the Survey officers are empowered to enter upon the lands and fix and make an assessment.'

" 10. The only effect of section 216 of the Bombay Land Revenue Code is Chapters VIII to X of that Code do not apply to any such assessment.

" 11. I think therefore that in cases in which Summary Settlement Sanads have been issued, the consent of the owner or holder is not necessary to empower Survey Officers to enter and fix and make an assessment if an attempt to effect an amicable arrangement has been made and has failed." (G. R. No. 7363, dated 6th November 1888.)

217.* When a Survey Settlement has been introduced, under the provisions of the last section or of any law for the time being in force, into an alienated village, the holders of all lands to which such settlement extends, shall have the same rights and be affected by the same responsibilities in respect of the lands in their occupation as occupants in unalienated villages have, or are affected by, under the provisions of this Act, and all the provisions of this Act relating to occupants and registered occupants shall be applicable, so far as may be, to them.

(1.) Rights of occupants in Inam villages surveyed and settled before the passing of the Code.—Section 217 was inserted in the Code for the express purpose of giving the rayats in alienated villages to which a survey settlement might be extended, the same occupancy rights which are enjoyed by holders of land in unalienated villages into which a survey settlement has been introduced. But this section cannot, of course, be construed retrospectively.

When the term for which a survey settlement introduced in an Inam village (prior to the passing of the Code) expires the mutual relations of the Inamdar and his rayats revert to the *status quo ante* and Government are powerless to insist on the Inamdar to adhere to the terms of that settlement in the absence of any agreement to that effect. (G. R. No. 3045, dated 14th April 1884.)

(2.)—After the passing of the Code.—When on the application of the holder of an alienated village made in accordance with the last clause of section 216, the Governor in Council has sanctioned the extension of the provisions of Chapters VIII to X of the Code to that village, the holder has then no option but must have the provisions of those chapters extended to, and enforced in, that village, whether the effect of any of those provisions be acceptable to him or not.

A case in point recently occurred in which, on the expiration of the original settlement introduced into an alienated village, the holder thereof made an application under section 216, to have the provisions of Chapters VIII to X of the Code extended to the village with a view to revision survey rates being introduced into it. The application was granted and after the necessary preliminary operations revised rates were proposed and sanctioned for that village. Before the formal introduction of those rates, however, the holder of the village expressed his unwillingness to accept those rates and as the original settlement lease had expired, commenced

* See orders printed under sections 74 and 216.

to levy assessment at the Mamul rates, *i. e.*, the rates prevailing before the introduction of the original settlement. In this case the following questions were referred for the orders of Government :—

- (1) Whether on the expiration of the original settlement the relations between the holder of the village and his rayats did not revert to the *status quo ante* (as held in G. R. No. 3045, dated 14th April 1884) ; and if so,
- (2) Whether it was lawful for the holder of the village to levy assessment at the Mamul rates ; and
- (3) Whether in that case the local fund cess should be levied,
 - (a) on the assessment at Mamul rates ; or
 - (b) on the assessment at rates of the original settlement lately expired ; or
 - (c) on the assessment at the revised survey rates fixed by the Survey Department and not accepted by the holder of the village.

These questions were disposed of by the following opinion of the Remembrancer of Legal Affairs, concurred in by Government :—

“ In order to ascertain how matters now stand it seems desirable to recapitulate the material facts regarding the Inam village in question.

“ 2. An original survey settlement was introduced into the village under Bombay Act I of 1865 in the year 1875-76, on the application of the Inamdar. That settlement expired in 1881-82.

“ 3. On the 2nd October 1884, the Inamdar applied to Government that the provisions of chapters VIII to X of the Land Revenue Code be extended to the village in order that revision survey operations might be introduced into it. This application was allowed by His Excellency and a notification extending the said provisions to the village was published in the Bombay Government Gazette.

“ 4. On the authority of the above notification revision survey rates were sanctioned by the Survey Commissioner for the village, but the rates have not been formally introduced into the village because the Inamdar refused to accept them.

“ 5. The Commissioner Central Division and the Survey Commissioner were asked by Government to report through this office the circumstances under which it had been thought that the Inamdar was at liberty to accept or reject the revised rates and they replied that paragraph 2 of the agreement into which the Inamdar entered before Chapters VIII and IX were extended to his village implied that he was at liberty to accept or reject the rates.

" 6. The following is a rough translation of the agreement referred to :—

To

Government

Kabulayat executed by the Inamdar of the village of * * * Taluka of * * * To wit. In 1875-76 the Survey Settlement was extended to the said village and in accordance therewith the revenue is being recovered. Now revision settlement is to be effected in the said Taluka. In accordance therewith I am willing to have revision settlement extended to my village and to keep records according to the forms applicable to Government villages as follows :—

2. The work of measurement and classification, &c., be carried out at the expense of Government and after the rates having been settled in conformity with the system in Khalsa villages, if I refuse to accept the amount which may be according to the sanctioned rates then I will pay to Government in cash all expenses of measurement, classification and of the records connected therewith and of the boundary marks. If I agree to accept the amount according to the sanctioned rates and make wahiwat as stated in paragraph 1 the said expenses should not be recovered from me. * * *

" 7. These being the circumstances connected with the village, I think it is quite clear that since Chapters VIII and IX of the Land Revenue Code have been lawfully extended to that village any revised survey rates which are duly fixed for the lands therein by the survey authorities and sanctioned by Government under section 102 and introduced in the manner provided in section 103 of the Code, must be levied by the Inamdar for the period of the guarantee, or, at least, the Inamdar must not levy rates in excess of those so fixed.

" 8. The form of the agreement taken from the Inamdar apparently dates from a time anterior to the passing of the Land Revenue Code, and it should, I think, have been reconsidered before being used for villages to which the provisions of Chapters VIII and IX of that Code have been, or are to be applied.

" 9. I do not feel able to advise that the extension of the provisions of Chapters VIII and IX of the Code to the village annulled that agreement, for there is no authority of law for such advise, and moreover when applying to Government for the extension of the above provisions to his village, the Inamdar in his written application expressly stated that he had 'duly entered into necessary agreements in order that the revision survey and survey operations should be introduced into his village,' from which it seems (as it is no doubt the case) that the local revenue authorities required the agreement from him.

"10. I think, therefore, that Government must abide by the agreement and bear the cost of the revision survey of the Inamdar's village unless the rates which are finally sanctioned are acceptable to him; but the survey rates must prevail and be enforced whether the rates are acceptable to the Inamdar or not.

"11. With reference to the question of Local fund cess I would observe that my report on which (G. R. No. 3045, dated 14th April 1884), was based applied solely to the case of an Inamdar whose village was surveyed and settled before even Bombay Act I of 1865 became law, and who on the expiry of the term if the settlement applied neither for a revision settlement nor for the application to his village of any of the provisions of the Land Revenue Code. In the present case the Inamdar entered into an agreement for a revised survey very soon after the term of the old settlement had expired and subsequently obtained the extension of the provisions of Chapters VIII and IX of the Code to his village. In his case, I am opinion, that Local fund cess should be calculated on the old survey rates until the revised settlement is introduced and thereafter on the new rates." (G. R. No. 3600, dated 26th May 1891.)

Fixing of survey rates for—(3.)—Inam villages.—Under section 217 of the Code an Inamdar is bound to levy only the Survey rates introduced into his village by the Survey Department whatever they may be. It may be the case that the effect of insisting that Inamdar's should adhere to the ordinary survey rates would be to deter them from applying for the extension of the survey settlement to their villages under section 216 of the Code, but His Excellency in Council does not consider this to be a sufficient reason for the adoption in the case of Inam villages of a principle different from that followed in the case of Government villages. The Survey Department should in the case of Inam villages, determine what are the survey rates as fixed according to general rules to be levied, but should not increase those rates without the special sanction of Government under section 102 of the Land Revenue Code. When the maximum dry crop and garden rates to be imposed in any alienated villages are determined according to the usual method of the Survey Department, Government can, if they think proper, sanction an addition to them in any particular case, but Survey Department should not introduce rates which produce a revenue equal to the Inamdar's demand, (if such demand is in excess of the survey assessment) without fully explaining the grounds for the adoption of such rates and without obtaining the sanction of Government to their introduction. (G. R. No. 3436, dated 12th May 1886.)

(4.)—Native States.—It is the desire of Government that no pressure should be put on Native Chiefs to adopt British Survey rates, but every encouragement should be given to them to adopt the methods of classification and survey followed in British territory. The important matter in the case of Native States is not so much low rates as equality of rating. For higher rates than those prevailing in British territory, Government

must not assume any responsibility and this should be made clear in cases where the technical operations are carried out by British Officers. (G. R. No. 4280, dated 9th July 1887.)

(5.) **Consent of all the sharers necessary for the introduction of survey settlement.**—The view, that the assent of a co-sharer in an Inam village is not necessary to the introduction of survey rates into that village, is not correct. Under section 217 the holders of all lands in a village into which a Survey settlement has been introduced, acquire thereby the same rights, and are affected by the same responsibilities as occupants in unalienated villages have or are affected by. Among other results the introduction of the survey settlement would bar the right of the Inamdars to enhance the rayat's rents above the survey assessment.

It does not appear that the subsharer's rights in this and other respects could be limited without his assent.

Section 216, Bombay Land Revenue Code, requires as the conditions on which Chapters VIII to X can be extended to alienated villages that there should be an application in writing, made by the holder of the village.

"Holder"—is defined in section 3 (11) of the Bombay Land Revenue Code, as the person in whom a right to hold land is vested whether solely on his own account, or wholly or partially in trust for another person, or for a class of persons, or for the public.

"Village"—Under section 3 (20) includes all lands belonging to the village.

It does not appear that one of two or more sharers can be said to be vested with a right to hold all the lands in his village either solely on his own account, or wholly or partially in trust for the other sharers.

Until therefore the assent of all those in whom such right is vested has been obtained no extension of Chapters VIII to X of the Bombay Land Revenue Code can, it appears, be legally authorized under section 216. (G. R. No. 3346, dated 7th May 1889.)

(6) **When settlement is once introduced no consent of new coming shareholders necessary.**—When the provisions of Chapters VIII and IX of the code have once been extended to an Inam village with the assent of all the then existing co-sharers and on their application in writing under section 216, it is not necessary to again extend those provisions to the village in case the number of co sharers increases. A subsequent increase in the number of co-sharers in the village will not affect in any way the rights and responsibilities which on the introduction of a survey settlement attach to all the holders therein under section 217. Among these rights and responsibilities must be included the rights and responsibilities of the holders arising on a fresh revenue survey and revision being directed under section 106 in Chapter IX of the code.

It is only in the case of Survey Settlements introduced into an Inam village prior to the passing of the Code that on the expiry of the term fixed for the same, the mutual relations of the Inamdar and his rayats revert to the *status quo ante*. But when a survey settlement has once been introduced under section 216 into an alienated village, all the provisions of the Act relating to occupants and registered occupants become applicable to the holders of all lands therein and the subsequent dissent on their part or on the part of their successors cannot annul the operation of the law. (G. R. No. 693, dated 26th January 1893.)

(7.) **Standard form of agreement to be passed by Inamdars.**

—The form of agreement which it was usual to take from the Inamdars before the introduction of the survey rates into their villages having been declared inconsistent with the provisions of the Code, (*vide* G. R. No. 3600, dated 26th May 1891) it was suggested that a standard form of agreement to be taken from the Inamdars should be authoritatively laid down for future use. In accordance with this suggestion the form of agreement printed as Appendix XV has been sanctioned by Government. (G. R. No. 4011, dated 9th May 1892.)

(8.)—**Should not be departed from.**—In a case in which the holder of an alienated village objected to pass an agreement in the form prescribed by G. R. No. 4011, dated 9th May 1892, a suggestion was made to make certain modifications in that form. This suggestion has been negatived by Government by whom it has further been directed that the form above referred to having been approved after a full consideration, should not be departed from. (G. R. No. 9381, dated 29th November 1892.)

218. Nothing in this Act, which applies in terms to unalienated land or to the holders of unalienated land only, shall be deemed to affect alienated land, or the holders of alienated land, or of Government, in respect of any such land, and no presumption shall be deemed to arise either in favour, or to the prejudice, of any holder of alienated land from any provision of this Act in terms relating to unalienated land only.

Construction of Act.

SCHEDULES.

SCHEDULE A.

(See Section 2.)

Number and year.	Subject.	Extent of repeal.
BOMBAY REGULATIONS.		
IV of 1827 ...	Forms of proceeding of the Courts of Law.	Clauses 2 and 3 of section 69.
XVI of 1827 ...	Duties and powers of the Collector and subordinate Revenue officers.	So much as has not already been repealed.
XVII of 1827 ...	Assessment and realizations of the Land-revenue.	Ditto
V of 1830 ...	Revenue Commissioners and Sub-Collectors.	Ditto.
XV of 1831 ...	Punishment of Patels falsifying revenue records.	Ditto.
II of 1832 ...	Realization of Revenue from Farmers.	Ditto.
V of 1833 ...	Embazzlement Hereditary District and Village officers.	Ditto.
ACTS OF THE GOVERNOR GENERAL IN COUNCIL.		
XVIII of 1838...	Security	The whole Act.
XIII of 1842...	Collection of Inamdar's Revenues...	Ditto.
XVII of 1842...	Revenue Commissioners	So much as has not already been repealed.
III of 1846 ...	Boundary-marks	Ditto.
XII of 1850 ...	Public Accountants	The whole Act so far as it applies to revenue officers in the Presidency of Bombay.
XXI of 1852 ...	Deputy Collectors	So much as has not already been repealed.
ACTS OF THE GOVERNOR OF BOMBAY IN COUNCIL.		
VII of 1863 ...	Summary Settlement	Sections 4 and 5.
I of 1865 ...	Survey	The whole Act, except sections 37 and 38.
I of 1866 ...	Extending Bombay Act I of 1865...	The whole Act.
I of 1868 ...	Powers and Duties of Assistant and Deputy Collectors	Ditto.
IV of 1868 ...	City Surveys... ..	Ditto.
I of 1875 ...	Amendment of (Bombay) Act I of 1865	Ditto.

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 section 23 of the Bombay Land Revenue Code for the due discharge the trusts of the said office, or of any other office to which I may hereafter appointed, and for the due account of all moneys, papers & 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 India in Council, the amount of any loss or defalcation in my account and to deliver up any papers or other property within such time, and 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 the office or place of residence, and in case of my making default therein, bind myself to forfeit to the Secretary of State for India in Council the sum of _____ Rupees.

*(The above bond will be retained by Government for one year after the said _____ has vacated his appointment.)

Dated _____

(Signature)

Form of Security to be subjoined to the bond of the Principal.

We

hereby declare ourselves sureties for the abovesaid _____ that he shall do and perform all that he has above undertaken to do and perform, and in case of his making default therein, we hereby bind ourselves to forfeit to the Secretary of State for India in Council such sum _____ shall be deemed sufficient by the

_____ to cover any loss or damage which the Government may sustain by reason of such default.

Dated _____

(Signature.)

SCHEDULE C.

Form of Warrant to be issued by the Collector under Section 157.



To

The Officer in charge of the Civil Jail at _____
Whereas A. B. of _____ was on the _____ day of _____ 18____
ordered by _____ to (here state the substance of the demand made)

* The words enclosed in brackets have been ordered to be added to the form of bond under G. R. No. 6920, dated 28th August 1884.

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

18 .

(Signature of Collector.)

SCHEDULE D.

Form of Bond to be required under Section 28 or 164.

Whereas I, _____, have been ordered by _____ to (*here state the nature of the demand*) _____, and whereas I dispute the right of the said _____ to make the said order, I hereby bind myself to file a suit within fifteen days from the date of this bond in the District Court of _____ to contest the justice of the demand, and do agree that, in the event of a decree being passed against me, I will fulfil the same and will pay all amounts, including costs and interests, that may be due by me, or that if I fail to institute a suit as aforesaid, I will, when required, pay the abovementioned amount of _____ Rupees (*or will deliver up the abovementioned papers or property, as the case may be*) and in the case of my making default therein, I hereby bind myself to forfeit to the Secretary of State for India in Council the sum of _____ Rupees.

Dated

(Signature.)

Form of Security to be subjoined to the Bond of the Principal.

We _____ hereby declare ourselves securities for the abovesaid _____ and 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 18

(Signed) C. D.

Dated this day of 18

II.—Form of Notice to be given by Tenant to Landlord of his intention to quit.

To

C. D.

I do hereby give you notice that I shall quit and deliver up to you at the end of this current year terminating on the of 18 ,
the land (*here give the description*) which I hold from you.

(Signed) A. B.

Dated this day of 18

SCHEDULE F.

Form of Commission to be issued to a Holder of Alienated Lands or Villages or his Agent, under Section 89.



The Governor in Council of Bombay, by virtue of the powers vested in him by the Bombay Land Revenue Code, is pleased to confer on you

(Jahgirdar, &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 Governor in Council.

(Signed)

SCHEDULE H.

(See Section 133.)

Form of Sanad for Building Sites.

(Royal Arms.)

THE SECRETARY OF STATE IN COUNCIL.

To _____

Whereas His Excellency the Governor of Bombay in Council, with a view to the settlement of the land-revenue, and the record and preservation of proprietary and other rights connected with the soil, has, under the provisions of the Bombay Land Revenue Code, directed a survey of the lands within the of and ordered the necessary inquiries connected therewith to be made, this sanad is issued under section 133 of the said Code to the effect that—

There is a certain plot of ground occupied by you in the division of the of register No. in the map marked sheet No. and facing towards the the road leading from to , containing about square yards, and of the following shape and about the following dimensions :—

You are hereby confirmed in the occupancy of the above described ground, exempt from all land-revenue (or subject to the payment of Rs. per annum to the land-revenue.)

The terms of your tenure are such that your occupancy is both transferable and heritable, and will be continued by the British Government, without any objection or question as to title, to whosoever shall from time to time be its lawful holder (subject only to the condition of

the payment annually of the above land-revenue according to the provisions of the Bombay Land Revenue Code or of any other law for the time being in force, and to the liability to have the said rate of assessment revised at the expiration of a term of _____ years reckoned from the _____, and thereafter at successive periods of _____ years in perpetuity, and to the necessity for compliance with the provisions of the law from time to time in force as to the time and manner of payment of the said assessment, and to the liability of forfeiture of the said occupancy and of all rights and interests connected therewith in case of your failure to pay the said assessment as required by law.)

This Sanad is executed on behalf of the Secretary of State for India in Council by order of the Governor in Council of Bombay, by and under the hand and seal of _____ this _____ day of _____ one thousand eight hundred and _____ A. D.

(Signed).

SCHEDULE I.

Form of Warrant to be issued by the Collector under Section 202.



To the Officer in charge of the Civil Jail at _____

Whereas *A. B.* of _____

has resisted (or obstructed) *C. D.* in removing *E. F.* (or himself, that is the said *A. B.*;) from certain land in the village of _____, in the _____ taluka, and whereas it is necessary, in order to prevent the continuance of such obstruction (or resistance), to commit the said *A. B.* to close custody. You are hereby required under the provisions of section 202 of the Bombay Land Revenue Code to receive the said *A. B.* into the jail under your charge, and there to keep him in safe custody for _____ days.

Dated this _____ day of _____ 18 _____.

(Signature of Collector.)

APPENDICES TO THE CODE.

APPENDIX I.

(Referred to in footnote on page 26.)

Register of landed property held by public servants.

District.	Name of officer or candidate for office.	Appoint-ment held or sought.	Landed property in possession.						Remarks.	
			Nature of pro-erty.	The approximate value of the property.	Where situated.	How acquired.	When acquired	Extent in Acres.		Assessment.

APPENDIX II.

(Referred to in footnotes on pages 47, 60, 70 and 73.)

The subjoined table shows how the altered assessment and fine leviable under sections 41, 61, 65 and 66 and the rules framed there- under, on account of unauthorized occupation and appropriation of un-

alienated land as also of authorized appropriation of any unalienated land assessed for agricultural purposes to any non-agricultural purpose :—

When any unalienated land assessed or held for purposes of agriculture only is appropriated to any purpose unconnected with agriculture by the occupant of the land.	Without per- mission.	Any person who shall unauthorizably occupy any land set apart for any special purpose or any unoccupied land which has not been alienated, shall,
With permission.		
Fine leviable under Section 65 of the Code.		
Under the provisions of para 2, section 48 the assessment of the land so appropriated shall be altered in accordance with the rates fixed in rule 56 viz. —whichever be the greater of the following.	No. of times the assessment for agricultural purposes.	at Rs. per acre.
Classes into which villages, towns and cities in their respective divisions are divided by the Commissioners under rule 66 for the purpose of determining the amount of fine.	I..... II..... III..... IV..... V.....	<p>Under rule 56 the amount of fine leviable shall ordinarily be at the following rates (vide rule 67). In special cases the Collector may require the payment of a fine not exceeding the rate fixed for the last class.</p> <p>discretion but shall not exceed five times the amount imposed by him under section 65 of the Code (vide rule 69) viz. not exceeding the following sums.</p>
Be liable to pay a fine equal to double the amount that would be leviable under section 66 of the Code, viz. double the amount shown in column 5. Vide rule 65.	Rs. 2,500 1,500 1,000	Be liable to pay the assessment of the entire No. for the whole period of his occupation if the land forms part of an assessed survey No. or, Be liable to pay such amount of assessment as would be leviable for the said period in the same village on the same extent of similar land appropriated to the same purpose, if the land has not been assessed.
Be liable to pay a fine equal to double the amount shown in column 5. Vide rule 65.	Rs. 2,500 1,500 1,000	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.

APPENDIX III.

(Referred to in footnote on page 69.)

The following Memo. of conditions imposed in respect of sale by auction of the occupancy-right of Government lands has the approval of Government in their Resolution No. 1189, dated 13th February 1886:—

Memo. of the conditions of sale of the occupancy-right of the following unoccupied land to be held at _____ on the

day of	189	viz :—	
Survey No.		, area about	
Acres,	Gunthas,	Assessment Rs.	in the
village of		Taluka.	
and bounded			
on the North by			
on the South by			
on the East by			and
on the West by			

1. The sale shall be subject to confirmation by the Collector, or by some other revenue officer duly authorized to confirm the same.
2. It shall be in the discretion of the Collector or other officer aforesaid, to accept or not to accept, the highest bid.
3. The highest bidder shall have no ground for complaint if the sale be not confirmed, or if there be delay in the confirmation of the sale.
4. The party who is declared, subject to confirmation of the sale as aforesaid, to be the purchaser shall be required to deposit immediately 25 per centam on the amount of his bid, and, in default of such deposit, the occupancy right shall forthwith again be put up and sold.
5. 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.
6. The full amount of the purchase-money shall be paid by the purchaser before sunset of the fifteenth day from that on which the auction takes place, or if the said fifteenth day be a Sunday or other authorized holiday, then before sunset of the first office day after such fifteenth day.
7. In default of payment within the said period of the full amount of the purchase-money, the deposit, after defraying thereout the expenses of the sale, shall be forfeited to Government and occupancy-right shall be resold, and the defaulting purchaser shall forfeit all claim to the occupancy-right, or to any part of the sum for which it may be subsequently sold.
8. If the sale is not confirmed, the purchaser shall be entitled to receive back his deposit or his purchase-money, as the case may be.

9. The purchaser shall, previously to entering upon occupation of the land, obtain the permission in writing of the Mamlatdar or Mahalkari under Section 60 of the Land Revenue Code. Such permission will only be accorded on the purchaser's paying local-fund cess at the rate of one anna in the Rupee on the amount of the purchase-money, and on his executing an agreement (which should be executed within thirty days of the receipt of intimation by him of the confirmation of the sale) in the form of Appendix B to the rules framed under the Land Revenue Code. If the land is occupied without such permission being first obtained, the occupation will be liable to be treated as unauthorized under Section 61 of the Land Revenue Code.

10. The purchaser will have to pay the assessment of the land and local-fund cess thereon commencing with the year.

Provided that, if without his own fault, he does not obtain possession of the land in due time to make use of it that year, he shall not be chargeable with the assessment and local-fund cess thereof till the next following year.

11. The sale is subject to the right of Government to the following trees standing in the land, which have been specially reserved (namely):—

(Here enter the number and description of trees, to be reserved.)

The trees, other than the reserved ones, are sold along with the occupancy-right.

(Where there are toddy and other juice producing trees the following conditions should be inserted.)

12. Government reserves to itself the right of prohibiting the extraction of the juice of all cocoa-nut, toddy, pherlimad, shindi, or other trees growing in the land, and of permitting any person to extract it on certain conditions. The purchaser must afford all reasonable facilities and conveniences to any person licensed by, or under the authority of Government to extract the juice from any such tree.

(Signed)

*Collector (or Mamlatdar or Mahalkari,
as the case may be.)*

APPENDIX IV.

(Referred to in footnote on page 114.)

The following form of notice to be issued under section 87 to an interior holder or co-sharer has been sanctioned by Government in their Resolution No. 5126, dated 5th September 1881 :—

No.

Application under section 86 of Bombay Act V of 1879 to the Collector of

A. B. Applicant superior holder.

vs.

C. D. inferior holder (co-sharer.)

To,

Claim Rs.

C. D. resident of in Taluka District.

Whereas the superior holder above named has made an application for the recovery of (land-revenue) rent on account of Survey No. situated in the village of Taluka , from you the (co-sharer) inferior holder above named, which (land-revenue) rent has become payable during the current (revenue year) year of your tenancy;

You are hereby required to attend before me either in person or by recognized agent at o'clock of the noon at my office (camp at) in the Taluka on the day of 18. at which time and place enquiry into the said application will be made. And you are hereby required to produce before me at the above named time and place any evidence you may wish to be heard and further to show cause why the said application should not be granted.

If you fail to attend either in person or by recognized agent in pursuance of this notice, the above mentioned matter will be decided upon in your absence and you will not afterwards be entitled to be heard with respect thereto. Dated this day of 18. .

(Signed.)

Designation of officer.

APPENDIX V.

(Referred to in footnote on page 118.)

In exercise of the power conferred by section 216 of the Bombay Land Revenue Code, 1879, the Governor in Council is pleased to authorize the extension of the provisions of sections of the said Code to the village of in the Taluka of the district.

By order &c.

Chief Secretary to Government, Revenue Department.

APPENDIX VI.

(Referred to in footnote on page 128.)

A Survey Settlement (or revised Survey Settlement as the case may be) having been introduced under the provisions of Bombay Act No. V of 1879, into the below mentioned village (or villages as the case may be)

of the Taluka of the District it is hereby notified for general information that in exercise of the powers conferred by section 102 of Bombay Act V of 1879, His Excellency the Governor in Council has been pleased to declare the assessments imposed under the said settlement fixed for a period of years commencing with the Revenue year and ending with the Revenue year

Chief Secretary to Government, Revenue Department.

APPENDIX VII.

(Referred to in footnote on page 134.)

It is hereby made known to the occupants and landholders of village of Taluka of Zilla that the classification of the lands is about to be carried out by the Survey Officers, and they are warned that while the classing process is going on, those who are concerned therein, should bring to the notice of the Assistant Superintendent of Survey, who is in charge of the party of classers any improvements or other circumstances bearing on the value of their land which they consider should be taken into account in fixing the values of their fields. If dissatisfied with the manner in which their representation is dealt with by that officer they may appeal to the Superintendent of Survey. Moreover they are hereby advised to make known in writing to the Survey Officers through their revenue patel or "panchayat," while the classing operations are in progress, any facts which they consider entitle their village to special consideration in fixing the standard of the new rates.

Superintendent of Revenue Survey.

APPENDIX VIII.

(Referred to in footnote on page 134.)

It is hereby made known to the people of the undermentioned villages of Taluka of Zillah that the revision of the survey assessment of the lands of the said villages is about to be effected and that it is proposed to divide the said villages into the following groups, the existing and proposed maximum rates of each village being as shown against its name in the list. (Here enter list of villages according to groups, showing the existing and proposed maximum rates against each village).

For a period of two months from the date of the publication of this notification the Collector will be prepared to receive objections made by any village community to the proposed grouping of their village and the maximum rate thereof, which objections must be presented in writing by the revenue patel of the village as the representative of such village community.

Superintendent of Revenue Survey.

APPENDIX XI.

(Referred to in footnote on page 136.)

Taluka

District

2	Name of land.
3	Government or alienated.
4	Description of land.
5	Pot No.
6	Phalni No.
7	Total area.
8	Deduct unculturable area.
9	Remaining culturable area.
10	Assessment Rs.
11	Judi.
12	Assessment on Inam land minus Judi.

APPENDIX XII.

(Referred in footnote on page 166.)

The following forms of orders to be issued under section 141 have been sanctioned by Government in their Resolution No. 674, dated 27th January 1891.

(a) Form of order preventing the reaping of the crop—

It is hereby directed under section 141 (a) that no crop growing on the lands following (that is to say) Survey No. in the village of shall be reaped until notice in writing given to has been returned to endorsed with acknowledgment of its receipt.

Notice of the above order is hereby given to (all the holders of land paying revenue to Government in the village of or to you A. B. holder of the lands aforesaid in the village of, as the case may be).

Given under my hand and the seal of the office dated the day of 18 .

Mamlatdar.

(b) Form of order preventing the removal of the crop—

It is hereby directed that no crop reaped on the following lands (that is to say) Survey No. in the village of shall without the written permission of be removed from the said lands or from any other place wherein it may have been deposited.

Notice of the above is hereby given to (all the holders of land paying revenue to Government in the village of or to you A. B. holder of the lands aforesaid in the village of as the case may be).

Given under my hand and the seal of the office dated the day of 18 .

Mamlatdar.

APPENDIX XIII.

(Referred to in footnote on page 169.)

The following is the form of security-bond sanctioned by G. R. No. 674, dated 27th January 1891:—

Whereas A. B. residing at in the Taluka of the district is responsible to Government for the payment of revenue or in the instalments following, viz.

on the day of
on the day of

I residing at _____ village in the _____ Taluka of the _____ district hereby declare myself surety for the said A. B. and do hereby bind myself and all my heirs and executors that the said A. B. shall duly and punctually pay to the _____ the said sums on the dates on which they are respectively hereinbefore stated to be payable by him and in case of the said A. B. making any default in any of the instalments, in respect of any of the said sums or any part thereof, I do hereby bind myself and all my heirs and executors to pay to the _____ the whole of the said sums or such part thereof as the said A. B. may have failed duly and punctually to pay as aforesaid.

Signature of surety

In the presence of

APPENDIX XIV.

(Referred to in footnote on page 171.)

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.

2. Subject to the provisions of the Revenue recovery Act 1890, the said sum is recoverable by you as if it were an arrear of land-revenue which had accrued in your own district, and you are hereby desired so to recover it and to remit it to my office at _____

A. B.

Collector of _____

APPENDIX XV.

(Referred to in footnotes on page 207 and in order No. (7) on page 214.)

Agreement made by A. B., inamdar of the village of _____ in the _____ Taluka of the _____ District.

Whereas I am making an application to Government that under section 216 of the Bombay Land Revenue Code, 1879, the provisions of

Chapter VIII to X of that Code may be extended to my aforesaid village of _____; and whereas, in the event of my said application being granted, Government undertakes, on condition of my agreeing to the stipulations hereinafter contained, to bear the costs of the survey and settlement of my said village, as well on the first occasion of the same being effected after the date of this agreement as also hereafter whenever any revision survey or settlement is introduced by order of Government according to law into my said village; I do hereby, for myself my heirs, executors and administrators agree as follows, viz :—

1. That I will pay the salaries and perquisites of the village officers of the said village according to the scale which may from time to time be in force for the payment of village officers of Government villages in the district;

2. That I will remunerate the said village officers for the collection of local fund cess from the rayats of the said village according to the scale which may from time to time be in force for the payment of village officers of Government villages in the said district for the collection of the said cess from the rayats of those villages;

3. That the salaries, perquisites and remuneration of the village officers according to the foregoing clauses 1 and 2 shall be a first charge on my revenue and may from time to time be deducted by the village officers from the said revenue before making payment thereof to me, in accordance with such directions as the Collector of _____ shall from time to time think fit to issue in this behalf;

4. That I will from time to time, at my own expense, cause to be prepared and to be furnished with punctuality such periodical or other agricultural and vital statistics concerning the said village as may be required by the Collector, and that in the event of my failure at any time to discharge this obligation to the satisfaction of the Collector, the Collector may make such arrangements as he deems fit for obtaining such statistics as aforesaid and the costs which he incurs in so doing shall be a first charge on my revenue recoverable as provided in clause 3 of this agreement.

Executed at
this _____ of _____ 189 .

Signed by A. B.
in the presence of

(Signed)
A. B.

RULES UNDER THE LAND REVENUE CODE, 1879.

(1.) UNDER SECTION 213.*

I.—INSPECTION.†

1.‡ The documents, maps, registers, accounts and records, the right of inspection of which is provided for in

* (1.) The rules under Section 213 for the inspection, search and furnishing of copies or extracts, &c., do not apply to municipal records. These rules are framed by Government and they are therefore only applicable to those public officers who are subject in such matters, to the orders of Government. Municipal Corporations and their officers are not so subject to Government and the rules in question do not affect them or any documents in their charge or control. (G. R. No. 1579, G. D., dated 13th May 1884.)

(2.) These rules (Nos. 1 @ 17) were made (1) under section 91 of the Registration Act, (2) under section 213 of the Land Revenue Code and (3) in exercise of all other powers possessed by the Governor in Council in this behalf. They are therefore applicable to Survey and village documents as well as to all other documents which are public documents within the meaning of section 74 of the Indian Evidence Act. (G. R. No. 7065, dated 6th October 1890.)

† It is the wish of Government that no needless restrictions should be placed on the right of inspection of public documents, which are applied for by parties to suits. It would not be possible to define precisely what particular class of documents should be allowed to be inspected and copied, but in withholding permission the officer in charge of the records should be guided mainly by the consideration whether or not the public interests would suffer by the disclosure. Under section 162 of the Evidence Act, the head of the department and not the Court, is made the judge, whether a public document is to be withheld on the ground that it relates to affairs of State. The Collector should therefore be careful, before allowing inspection or granting copies of documents from his records, to ascertain that the public interests are not likely to suffer by the disclosure. And in cases in which, though compelled to bring a document into Court he considers it would be detrimental to the public service to produce it, he should attend personally to state his objection. (G. R. No. 5487, dated 23rd October 1873.)

‡ (1.) See footnote to section 213 on page 202.

(2.) Sanads being documents which Government give into the hands of the persons whose title they evidence they do not form part of the records

section 91 of the Indian Registration Act, (III of 1877),* and in section 213 of the Bombay Land Revenue Code, 1879, and all public documents which any person has, under the provisions of any law for the time being in force, a right to inspect, shall be open to inspection in the office of the officer in charge of the same during the usual office-hours every day, except Sundays and public holidays, on payment of the fee hereinafter prescribed in this behalf: Provided always that no fee shall be levied by any village officer for allowing inspection of any such document, map, register, account or other public document as aforesaid which is in his charge.

2. Except in the cases named in the last preceding Rule, no inspection of any public document will be allowed.

II.—EXTRACTS AND COPIES.

3. No uncertified copy or extract shall be obtainable of or from any document other than those described in Rule 1, nor otherwise than under this Rule.

Any person entitled to inspect any public document under Rule 1 may himself make a copy, or employ his own agent to make a copy, of any public document, or of any portion of any public document of which he has duly obtained inspection, but no copy so made shall be certified by any public officer.

4. The officer in charge of any public document de-
 of any Government office. The only record kept of them is a register. Hence the law provides for extracts being given from these registers when applied for but not for the grant of copies of the Sanads themselves.

In cases in which it is found necessary to make out a sanad in the names of several sharers, a copy may be given gratis to each, but each of such copies should be signed and executed by the same officer and treated as an original document. In no other case can a copy of a sanad, but an extract from the register of sanad, may be given on payment of the fees prescribed in the rules under section 213 of the Land Revenue Code, and section 91 of the Registration Act. (G. R. No. 4180, dated 2nd June 1883.)

* Amended by Act VII of 1886, section 6.

scribed in Rule 1 shall cause to be prepared, and give a certified copy of the same, or of any portion thereof under his own signature, to any person applying for such copy, on payment of the fee hereinafter prescribed in this behalf: Provided that every application for a certified copy of any public document in the charge of a village officer shall be made to the Mamlatdar or Mahalkari to whom such officer is subordinate, who shall cause the copy to be prepared by the village accountant. Every such copy, after being compared by the village accountant with the original, shall be signed by him in token of its being correct, and shall be sent by him to the Mamlatdar or Mahalkari for the purpose of being certified and made over to the applicant. No village officer shall himself certify a copy to be a true copy, or receive or grant an application for any such copy.

5. Subject to the proviso contained in the last preceding Rule, certified copies of public documents, or of portions of public documents, other than those described in Rule 1, may be granted by the officer in charge thereof to any person applying for the same, on payment of the fee hereinafter prescribed in this behalf: Provided—

- (a) that in disposing of any such application the officer to whom the same is made shall be guided by the orders of Government and of any officer to whom he is subordinate, and in case of doubt shall, before disposing of the same, refer to his immediate superior for instructions;
- (b) that no copy of any official correspondence or of any opinion of a Government law officer, or of any order or resolution embodying any such opinion, shall be given by any officer subordinate to a Collector without the Collector's previous permission, or by any survey officer without the previous permission of the Survey Commissioner;
- (c) that no copy shall be granted of any record, map or plan which has been printed or lithograph-

ed and published under the authority of Government;

- (d) that no copy of any document is to be given in any case in which it is obvious that such a course would be prejudicial to Government.

6. On every certified copy or extract granted under these Rules there shall be endorsed, by the officer who receives the fee for the same, a receipt in the following form (namely):—

"Received Rs. a. , being the fee for this certified copy.
Dated the of 189 .

(Signed) A. B."

7. The certificate on all certified copies or extracts granted under these Rules shall be in the form prescribed by section 76* of the Indian Evidence Act (1 of 1872).

III.—SEARCHES.

8. When an application is made for an inspection or copy of any public document, or of any portion of a public document, and such application does not distinctly describe the number, date and nature of the document required; or if the description given in such application is incorrect, and it shall in consequence be necessary for the officer in charge of the document to search his records in order to find it, a fee, at the rate hereinafter prescribed, shall be payable by the applicant for such search, whether the inspection or copy for which he applies shall, on examination of the said

* This section requires the Officer granting copy of any document to certify below such copy that it is a true copy of such document or part thereof as the case may be, and to date and subscribe such certificate with his name and official title.

document by the said officer, be granted or not: Provided that no such fee shall be levied by a village officer.

IV.—FEES.*

9. The following fees shall be levied in cash, under these Rules (namely) :—

- (1) For every inspection granted under Rule 1 by any officer other than a village officer. 8 annas.
- (2) for every certified copy of a public document not falling under Article (3) of this table :—
 - (a) if the original be in English, for every 100 words or fraction of 100 words. 2 annas.
 - (b) if the original be in the vernacular, for every 100 words or fraction of 100 words. 1½ annas.
 - (c) if the original be in a tabular form, whether in English or the vernacular. } twice the rates respectively named in clauses (a) and (b).

* (1.) Non-Official copyists should be paid at a rate varying from two thirds to the full amount of the fees leviable under Rule 9. (G. R. No. 7669, dated 26th September 1884.)

(2.) Kulkarnis and Talatis are to be permitted to take fees for making copies of maps and plans. (G. R. No. 4106, dated 21st May 1885.)

(3.) In calculating the fees for copying figures are to be counted as if written in words.

(3) For every certified extract from a Register of Alienations granted under section 53 of the Bombay Land Revenue Code.

1 anna for every rupee of the amount of alienated revenue, (or, if the sanad* lost or destroyed had been granted under Bombay Act IV of 1863 or under Section 133 of the Bombay Land Revenue Code 1879 a sum equal to one half of the Survey fee which the holder of the building-site included in the sanad would be liable to pay under Section 132 of the said Code if not exempted by the second paragraph of that section)† Provided that the fee shall in no case exceed Rs. 10 or be less than 8 annas.

(4) For every certified copy of a map of a survey number, or of a recognized share of a survey number, or of a field, or of any ordinary (uncoloured) map, or plan of any immoveable property.

1 rupee.

* (1.) See G. R. No. 4180, dated 2nd June 1883, printed as order No. (2) under Section 53 of the Code.

(2.) The law does not provide for copies of Sanads being granted. Notification No. 3410 published at page 333 of the Bombay Government Gazette of 3rd May 1883 provides for the levy of special fees for certified extracts from registers of Sanads granted under Bombay Act IV of 1863 or under section 133 of the Bombay Land Revenue Code and it is intended that that Notification should remain in force. (G. R. No. 6307, dated 25th August 1883.)

† The portion enclosed in brackets has been inserted under G. N. No. 3410, dated 2nd May 1883, published in the B. G. G. Part I, page 333, 1883.

(5) For every certified copy of a map or plan, or of any portion of a map or plan not falling under Article (4) of this Table.

such fee not exceeding fifteen rupees,* and not less than one rupee, as the officer who certifies the copy shall determine: Provided that no fee exceeding Rs. 5 shall be charged by any officer subordinate to a Collector except with the permission of the Collector, or by a survey officer except with the permission of the Survey Commissioner.

(6) For every search made by any officer other than a village officer.

1 rupee for each year of which the records shall be searched.

10. Every fee payable in accordance with the foregoing Table shall be paid in advance.

11. The amount of all fees so received shall be entered in a separate book to be kept for this purpose by the officer in charge of the records, and shall be remitted before the close of each month to the nearest Government Treasury after deducting the amount paid, in the case of certified copies and extracts, to section-writers† under Government Resolution No. 3356, dated 11th

* The maximum fee chargeable for a copy of a map or plan under Rule 9 is Rs. 15. When a map or a plan is printed and printed copies are available the applicant should be allowed copies thereof at the usual fixed price. In such case no certified copies need be issued.

† Save with the special sanction of the Local Government, no person in the receipt of a salary from the Government may receive payment for section-writing. This applies to section-writing paid for by Government and after office hours clerks may copy for private persons at section rates. (G. of I. R. No. 4018, dated 5th November 1872, and No. 2030, dated 31st March 1875.)

November 1874, Financial Department, or under any other orders of Government that may be hereafter issued.

Fees for copying, &c.—(1.)—By Government Servants.—The fees for comparing and examining a copy which is the proper duty of establishment should be credited to Government. One-fourth of the fee levied for translation should however be credited to Government and the remainder paid to the translator. There is no objection to pay the translation fee to a clerk who translates for private persons, beyond office hours on the same principle on which he is allowed fee for section writing under G. R. No. 1287, dated 17th April 1875, and No. 1076, F.D., dated 28th March 1879. If however the establishment is sufficient to examine these translations within office hours the whole fee should be credited to Government. (G. R. No. 3101, dated 20th April 1883.)

(2.)—By others who are not Government Servants.—The proposal that only copyists and draftsmen who are not Government servants should be paid for preparing copies of maps and plans at a rate varying according to the nature of the work, from 2/3rds to the full amount leviable under Rule 9 of the Rules under Section 213 of the Land Revenue Code is approved. (G. R. No. 7669, dated 26th September 1884.)

(3.) Examination of certified copies.—Copies of papers which have to be certified should be examined and compared by Government servants who are not entitled to any fees for that duty, it is not considered necessary to prescribe what portion of the fees leviable under the rules (published in Government Notification No. 7368, dated 6th December 1881) is intended to be a payment for the examination and comparison of the copies. (G. R. No. 1935, dated 6th March 1885.)

(4.) Village officers not Government servants for the purposes of copying, &c.—The Village Accountants (whether stipendiary or watan-dar) are not to be considered as Government servants for the purposes of the above Resolution; they are permitted to take fees for making copies of maps, &c. (G. R. No. 4106, dated 21st May 1885.)

(5.) Scale of fees for section-writing.—The Governor in Council considers that one anna for hundred words is a sufficient rate of payment for section-writing in English and the scale of payment to section-writers for English copies should be limited to this rate. (G. R. No. 3933, F. D., dated 21st December 1888.)

V.—MISCELLANEOUS.

12. Every application under these Rules, except an application under Rule I to a village officer, must be made in writing.

13. Every such application shall be numbered and filed by the officer to whom it is presented, and shall be

endorsed with a memorandum, under his signature, stating the date on which it was presented, the amount of fees, if any, received either at the time of presentation thereof or subsequently at any time, and the date and manner in which the application was disposed of.

14. In considering any application purporting to be made under sections 90 and 91 of the Indian Registration Act, 1877, or under section 213 of the Bombay Land Revenue Code, 1879, or under any other law which grants to any person a right of inspection, special care must be taken to see that the public document, with respect to which such application is made, is one to which the law relied upon is applicable, and that the applicant is a person entitled to inspection (and, therefore, if he requires it under section 76 of the Indian Evidence Act, to a copy) before granting the application as a matter of right.

15. Nothing in these Rules is to be deemed to affect the provisions of the Stamp Act* or Court Fees Act.† The stamp-duty or court-fee with which any application, copy or extract made or furnished under these Rules may be chargeable, is to be deemed to be in addition to the fees prescribed by Rule 9, and care is to be taken that the requirements of the Stamp Act and Court Fees Act are properly fulfilled in respect of every such application, copy or extract.

16. In these Rules the words "public document" are to be deemed to have the same meaning as in the Indian Evidence Act I of 1872 (see section 74 of that Act).

17. Nothing in these Rules applies to the city of Bombay or to any Civil or Criminal Court.

* Act No. L of 1879 (India).

† Act No. VII of 1870 (India).

(2.) UNDER SECTION 214.*

I.—PRELIMINARY.

1. In these Rules and Orders :

- (a) words and expressions which are defined in the Code have the same meaning as in the Code;
 (b) "chapter" means a chapter of the Code.

II.—SECURITY TO BE FURNISHED BY REVENUE OFFICERS.

[Sections 23 and 214 (i) of the Land Revenue Code, 1879.]

2.† The revenue officers hereinbelow mentioned shall, previously to entering upon their office, furnish security to the amounts respectively entered against their names:—

	Rs.
Head Accountants	} 5,000
Mamlatdars	
First Karkuns to Mamlatdars	1,000
Second ditto	500
Mahalkari with Treasury	1,500
First Karkun to ditto	500
Mahalkari without Treasury	500
Treasurer at Poona	80,000
Ditto at Kanara, Kolaba and Ratnagiri	20,000
All other Treasurers	40,000
First Karkun to Treasurers of Kanara and Ratnagiri	1,000
All other First Karkuns to Treasurers...	2,000
Second Karkun to Poona Treasurer ...	2,000
Karkuns other than any of the foregoing employ- ed in Huzur or Mamlatdars' offices on shroff's work	1,000
Ditto in Mahalkaris' offices	500

* As to the extent to which these rules are applicable to khoti villages see G. N. No. 6794, dated 11th September 1889, printed as Appendix N.

† Instruments executed by Government officers and their sureties to secure the due accounting for property received by such officers by virtue of their office, are exempt from stamp duty. (G. of I. N. No. 2778, dated 2nd September 1881, published in the B. G. G. Part I, page 493, 1881, and G. of I. N. No. 5855, dated 22nd November 1889, published in the B. G. G. Part I, page 1008, 1889.)

Stipendiary Patels or Village Accountants* appointed under section 16 of the Code, whose annual emoluments exceed Rs. 50. } Rs. 200, or the amount of one year's emoluments of such officer, whichever sum be the smaller. •

2 (a)†—Every person who has furnished no security whatever, shall on being appointed to officiate in any office such as is referred to in Rule 2, whatever the probable duration of his tenure thereof, furnish before entering thereon security to the amount required in respect of such office by the said rule or to such smaller amount as the collector in the particular case may deem reasonable and sufficient.

2 (b)—An officer who has furnished security to any amount required by Rule 2, shall not ordinarily, on being temporarily appointed to officiate in any office for which security to a greater amount is required by Rule 2, be required to furnish additional security unless his tenure of such office is in the opinion of the Collector likely to last more than three months.

2 (c)—Every officer appointed to officiate in any office such as is referred to in Rule 2, shall, if his tenure thereof is in the opinion of the Collector likely to last more than three months, furnish before entering thereon the full security required by Rule 2 in respect thereof.

3. It shall be at the option of the officer required to furnish security to deposit Government paper or to execute a bond for the amount of his security.

* No security is to be taken from Patels or Kulkarnies who hold office hereditarily, or who are members of the watan nor from any whose emoluments are less than Rs. 10 a month. (G. R. No. 2036, dated 20th May 1869.)

† Rules 2 (a) to 2 (c) have been sanctioned by Government. (G. R. No. 2406, dated 7th April 1891, and G. N. No. 4582, dated 7th July 1891, published in the B. G. G. Part I, page 568, 1891.)

If he executes a bond, the number of sureties shall be one or more, at his option, if the amount of security does not exceed Rs. 1,000, and, if the amount of the security exceeds that sum, shall be not less than two.

(1.) **Form of security bond under section 23 when to be used.**—In cases in which Government paper is deposited under section 23 a bond should be executed in the form prescribed in G. R. No. 3739, dated 2nd October 1879, but the form prescribed by section 23 must continue to be used in other cases. (G. R. No. 4486, dated 22nd November 1882.)

(2.) **Option to be exercised with Government sanction.**—The option of executing bonds in places of depositing Government paper is in future to be exercised with the special sanction of Government in each case. (G. R. No. 829, dated 28th February 1883.)

(3.) **It is optional either to execute bonds or to deposit Government paper.**—It is optional with the subordinate revenue officers who are entrusted with the charge of public money either to deposit Government promissory notes or to execute a bond in the form contained in schedule B of the Land Revenue Code. (G. R. No. 3031, dated 17th August 1883.)

(4.) **Securities and sureties to be given by Treasurers.**—The Government of India originally ordered that Treasurers' security should consist of a deposit of Government paper but in supersession of that order, sanctioned in their Resolution No. 2232, dated 25th July 1883, the proposal of the Bombay Government that an option should be given to Treasurers and certain other officers of either depositing Government paper or giving security according to schedule B of the Land Revenue Code. This option is also allowed under Rule 3 of the Rules under Section 214 of the Code.

When security is given according to schedule B of the Land Revenue Code the Treasurer binds himself in a certain sum named in Rule 2 of the Rules under the Land Revenue Code (214) which varies according to the Treasuries. He also gives sureties. These do not bind themselves in any specific sum, but agree to make good all losses caused to Government by their principals' default. What precautions should be taken to ensure the ability of a surety to fulfil should occasion arise, the obligation thus undertaken by him is an executive not a legal question. It appears to Government that in as much as they have fixed the amounts of the securities to be given by the various Treasurers in consideration of the responsibilities undertaken at their respective Treasuries, those amounts may be held to sufficiently accurately represent the sums which the principals might possibly have to make good, and which, therefore each surety may possibly have to make, should the principal and the other surety fail to do so. Before accepting a man as surety for a Treasurer therefore he should be ascertained to be worth the amount fixed for the Treasury in

question. In Rule 2 of the Rules under the Land Revenue Code, 214, it is not sufficient to ascertain that two sureties combined are worth that sum, for the very object of requiring two sureties of one is to ensure that even if the principal and one surety are not in a position to pay anything the other surety may be called upon, and may be able to pay the full amount.

When Government paper is deposited, it is necessary also under Chapter 17, Rule 4, Civil Account Code, that a bond should be given in the form in Schedule C Civil Account Code Volume I by the principal and his sureties. As by this bond they are bound severally as well as jointly it is necessary to ascertain that each surety is worth the amount of the bond. It has not apparently been expressly decided hitherto what the amount of this bond should be, but it may be considered to be the amount fixed as the security to be given by each Treasurer under Rule 2 of the Land Revenue Code Rules, 214.

It is observed that in both cases the principals' personal bond is for the same amount, and in both cases also, two sureties, each worth that amount are provided. The obligations are therefore practically the same in the two cases, except that in the second case (mentioned in the last preceding paragraph) the Treasurer has the additional obligation of depositing 40,000 worth of Government paper. He gets no advantage, but additional and serious disadvantage by adopting the second course. Consequently it is highly probable that any Treasurer with a knowledge of the Rules, would adopt the second course and the rule allowing him an option must be superfluous. It seems to the Governor in Council simpler, and therefore of more practical use to require surety in all cases according to Schedule B of the Land Revenue Code. (G. R. No. 3687, F. D., dated 7th November 1890.)

4. Heads of offices under whom 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 afterwards, until such time as the officer leaves the office or is transferred to an appointment in which security is not required.

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.

Care must be taken that no one person's security is

accepted in behalf of a disproportionately large number of officers, whether such officers belong to the same office or department or not.

5. The Collector, after obtaining similar returns from all heads of offices subordinate to him, shall submit annually to the Commissioner, on or before the 30th June, a statement, in the form of Appendix A, showing the results of inquiries as to the sufficiency of the security of each officer in his district required by Rule 2 to furnish security.

6. In the event of any surety being proceeded against under section 187 of the Land Revenue Code, for recovery of the amount, or of any portion of the amount, for which he has become liable, a report shall be submitted to the Commissioner before the sale of any property of such surety is commenced.

III.—DISPOSAL OF LAND & C., THE PROPERTY OF GOVERNMENT

[Sections 37, 62 and 214 (i)]

7.* Land and all rights in or over the same or appertaining thereto, which are the property of Government, may be disposed of by the Collector in any manner authorized by the following Rules, but not otherwise, except with the previous express sanction of Government.

(A) The occupancy of salt lands, or of lands occasionally overflowed by salt water should not ordinarily be disposed of, without first ascertaining by reference to the Salt Department whether they are wanted or likely to be wanted for salt manufacture.

(B) On receiving an intimation from the Collector of Salt Revenue that any unoccupied land at the disposal of the Collector of the District is wanted or likely to be wanted for salt manufacture, the Collector of the District may, if he sees no objection to its appropriation for that

* Clauses (A) to (C) to this Rule have been sanctioned by Government. (G. R. No. 1794, dated 5th March 1890, and G. N. No. 3318, dated 13th May 1890, published in the B. G. G. Part I, page 465, 1890.)

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 village Register, and shall also cause to be cancelled any entry in that Register as to any assessment fixed on it as land appropriated for purposes of agriculture.

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.

(C) If an occupant of unalienated land wishes to appropriate the same or any part thereof to the manufacture of salt or the construction of salt pans, he shall apply to the Collector of the District for permission to do so. The Collector of the District, if he sees no objection to such appropriation, shall consult the Collector of Salt Revenue as to the terms on which such appropriation should be allowed, and may then either—

- (a) require the applicant to relinquish his occupancy rights and to enter into an agreement that such land shall be placed at the disposal of the Salt Department, subject to a lease in favour of the applicant, on such terms and for such period as the Collector of Salt Revenue under the general orders of Government, may require, *or* may
- (b) permit the appropriation applied for, without requiring the occupant to relinquish his occupancy rights either—
 - (1) on payment of the fine leviable under Section 65 and the new assessment, which may be leviable under Section 48, *or*
 - (2) on such terms as may be specially agreed on under Section 67 of the Land Revenue Code.

(1) *Transfer of land to Railway Companies or to State Railways.*

8.* The transfers of land, whether permanently or temporarily, to Railway Companies or to State Railways shall be regulated by the orders of the Government of India and of the Governor of Bombay in Council from time to time issued in this behalf.

(2) *Alienations.*

9.† No land may be sold revenue-free in perpetuity without the previous sanction of the Government of India, excepting, subject to the previous sanction of the Governor of Bombay in Council, small plots of unoccupied waste land not exceeding ten acres in extent as may be required for building or gardens; and, except as is otherwise provided in these Rules no land of any description may be sold revenue-free for a term without the sanction of the Governor of Bombay in Council.

10. Revenue-free grants may be made by the Collector, with the previous sanction of the Commissioner, of land not exceeding in each instance a quarter of an acre in area for the purposes of religious or charitable edifices or institutions, but exemption from assessment shall only be granted for sufficient reasons and not invariably as a matter of course. Land in the neighbourhood of railway-stations shall only be granted revenue-free for dharmshalas, if such dharmshalas, when erected, are to be in the charge of the Local Fund Committee.

(1) **Redemption of Local Fund cess.**—In future the payment or the redemption of the Local fund cess should as a rule be made a condition of the transfer of lands on redemption of assessment, except in the case of Railway Companies. (G. R. No. 2452, dated 23rd April 1887.)

11. In order to provide against abuse of any grant

* The rules and orders relating to acquisition of land for Railways are given in Part II of the Compilation of General Rules by Mr. Cordeaux.

† The redemption of land tax is not permissible under the orders of the Government of India. (G. R. No. 7432, dated 18th December 1876.)

made under the preceding Rule, a sanad * in one of the forms prescribed in Appendix B, shall be issued to the grantee by the Collector. If a revenue-free grant is made with the sanction of Government for any purpose not mentioned in the preceding Rule, the form or sanad to be issued by the Collector will be specially prescribed by Government.

Every sanad issued under this Rule shall be registered in the Register prescribed by Rule 57.

The Collector and all revenue officers subordinate to him shall exercise due vigilance to prevent the terms of such sanads being either exceeded or evaded.

11 A.† In the District of Dharwar, whenever unoccupied waste land is available for the purpose, the Collector may make a revenue-free grant of land bearing an annual assessment not exceeding rupees thirty to any Shetsandi who is willing to hold the same in lieu of the usual annual cash remuneration : provided that no such grant shall be made of land of which the value exceeds five hundred rupees.

In the case of a grant made under this Rule no sanad need be issued to the grantee, but it is to be distinctly understood that the revenue-free tenure is granted in consideration of the Shetsandi's service only and that the land will be resumable at the pleasure of Government.

12. No revenue-free grant of land and no right in, or over, or appertaining to, any land belonging to Government, may be made to or exercised by a Municipality or a Local Fund Committee without the previous sanction of Government. When any such transfer or exercise

* In the case of a religious endowment or public institution no sanad is necessary as has been decided by the High Court in the printed judgment in the case of Manohar Ganesh vs. Laxmiram. In the case of a grant of land for such a purpose it will be sufficient if a clear entry to that effect is made in the Government Register. (G. R. No. 2023, dated 28th March 1888.)

† This Rule has been inserted under G. N. No. 4771, dated 11th June 1885, published in the B. G. G. Part I, page 760, 1885.

of right is sanctioned, it will be made subject to such conditions as Government shall think fit in each case to prescribe.

But nothing in this Rule shall be deemed to prevent the grant of occupancies to Municipalities or Local Fund Committees on the same terms as are applicable to such grants to other persons.

(1.) **Alienation of land revenue to Municipalities not permissible.**—Municipalities have no claim to the assignment of land revenue assessed upon lands within their limits, which, like all land revenues, is an imperial asset. The Governor General in Council is wholly opposed to the alienation of this revenue to Municipalities and no such alienation should be made hereafter. (G. R. No. 132, dated 15th January 1880.)

(2.) **Commissioner to sanction appropriation of lands for roads.**—The Commissioners of Divisions are authorized to sanction the appropriation of lands for roads whether Provincial or Local Fund when no compensation has to be paid by Government for the lands taken up. (G. R. No. 6884, dated 4th October 1882.)

(3.) **For schools and Dharmshalas.**—The Commissioners are empowered to sanction appropriations of lands for roads, schools, Dharmshalas and other public works subject to the limitation that the market value of the unassessed land appropriated does not exceed Rs. 100 in each case. (G. R. No. 720, F. D., dated 8th March 1887.)

(4.) **For other public purposes.**—The Commissioners have also power to sanction appropriation for any public purpose other than roads of Government assessed land provided that the assessment of the land appropriated does not exceed Rs. 5 per annum and provided also that half yearly returns are furnished to Government showing the number of sanctions given, the area and assessment of land in each instance, and the purpose for which it is appropriated. (G. R. No. 8558, dated 6th December 1882.)

(5.) **When there is sufficient reason for transfer.**—The Commissioners should be careful when sanctioning appropriation of land paying assessment under the powers delegated to them (by G. R. No. 6884, dated 4th October 1882; vide order No. (2) above) to assure themselves that the sacrifice is unavoidable and that the object is of sufficient public importance to justify the loss of revenue which the transfer of the land will occasion. (G. R. No. 3621, dated 12th May 1883.)

(6.) **Revenue of lands transferred to Municipality or other public company.**—Where land is taken up under the Land Acquisition Act for a Municipality or a Company, such Municipality or Company should be held liable for the revenue but might be allowed to compound for it. (G. of I. letter No. 446, dated 12th September 1879, quoted in G. R. No. 4390, dated 2nd June 1884.)

(7.) **Demarcation of lands taken up for roads.**—The principle that the land required for road purposes shall be demarcated at the expense of the road and by the officer entrusted with its construction is approved and should be given effect to in the case of all new roads. The most satisfactory method of demarcation is, by means of continuous catch water drain and this system should be adopted where suitable, elsewhere the demarcation must be by stones or earthen mounds as may be most convenient. A record of the area so demarcated and deducted from each survey holding as "Pot kharab" should be kept in the office of the Executive Engineer of the District. (G. R. No. 692—C. W. 1783, P. W. D., dated 21st November 1883.)

(8.) **Disposal of strips cut off by roads.**—Government further approve of the recommendation that when a line of road cuts off a portion of a survey No. so small or so irregularly shaped as to render its cultivation unprofitable to the occupant such portion should be acquired at the expense of the road. The disposal of the plots so acquired must be left to the discretion of the Executive Engineer of the District or of the Local Boards concerned in the case of local roads. In some instances they may be useful for stacking material or for barrow pits for murum for road repairs, in some they may with advantage be disposed of to the owners of neighbouring fields which should be arranged for through the Collector, and in others the best method of treating them will be to hand them over to the Revenue Department for tree plantation. (*Ibid.*)

(9.) **By canals.**—In future portions of Survey Nos. cut off by canals which the occupant cannot cultivate or dispose of should be taken over by the Irrigation Department and planted with trees. (G. R. No. 221—W. I. 538, P. W. D., dated 15th December 1885.)

(10.) **Demarcation of roads constructed before the original Survey**—Where a road is found at revision survey to have been constructed since the original survey and that the usual demarcation has not been carried out, the area occupied by the road having simply been deducted as "Pot Kharab" the officer in charge of the survey establishment should not compel the "rayats" to put up marks to define the road, but should call the attention of the Executive Engineer or the President, Local Funds Committee, to the fact, and the demarcation should be undertaken as soon as possible by the agency, by which the road has been constructed. (G. R. No. 84—C. W. 26., P. W. D., dated 18th February 1836.)

(11.) **Lands Intersected by Railways.**—In the case of lands intersected by railways the procedure should be that hitherto followed, viz. to acquire the odd corners and then to make them over to the adjacent cultivators on easy terms. (G. R. No. 100, P. W. D., dated, 13th January 1886.)

(12.) **Exemption from stamp duty of instrument relating to exchange lands for public purposes.**—In exercise of the powers conferred by section 8 of the Indian Stamp Act, 1879, the Governor General in

Council is pleased to remit the stamp duty payable by private persons under section 29 (f) of the Act on instruments of exchange executed by them when lands are given by them for public purposes in exchange for other land granted to them by Government. (G. of I. N. 6501, dated 8th December 1887, published in the B. G. G. Part I, page 970, 1887.)

(13.) **Free grant of lands to Local Boards and Municipalities.**—Under Rule 12 of the Rules under the Land Revenue Code free grant of lands to Local Boards and Municipalities only can be made with sanction of the Government. (G. R. No. 3191, dated 19th May 1888.)

(14.)—**Principle to be observed in such grants.**—His Excellency the Governor in Council has come to the conclusion that the principle which should be observed in dealing with questions of land required for Municipal purposes, is that Government land should only be granted free or at reduced rates to Municipalities in very special and exceptional circumstances, which must be clearly established before any such grant can be authorized. In cases in which no such circumstances are shown to exist no Government land should be granted to Municipalities for any purpose save on payment of a reasonable price representing approximately its market value. (G. R. No. 4678, dated 14th July 1888.)

(15.) **Placing of Government building at the disposal of Municipalities.**—The placing of any Government building at the disposal of Municipality without the consent of the Executive Engineer of the District and the sanction of Government in the P. W. D. is forbidden. (G. R. No. 2211, dated 22nd March 1889.)

(16.) **Abatement of assessment on lands taken up by the Public Works Department.**—His Excellency the Governor in Council is pleased to direct that the authority of sanctioning abatement of assessments on lands taken up by the Public Works Department for Irrigation works should, in future, be exercised by the Commissioners of Divisions. The Public Works Department should obtain any statements required by it direct from those officers. (G. R. No. 5627, dated 3rd August 1889.)

(17.) **Conditions on which free grants of land to be made to public bodies.**—In future, when any immoveable public property is made over to a local authority for public purposes, the grant shall be made expressly on the condition, in addition to any others that may be settled, that, should the property be at any time resumed by Government, the compensation payable therefor shall in no case exceed the amount (if any) paid to the Government for the grant, together with the cost or their present value, whichever shall be the less, of any buildings erected or other works executed on the land by the Local authority. (G. of I. R. No. 4374, dated 23rd October 1891, and G. R. No. 8167, dated 28th November 1891.)

(18.)—**Need not be insisted on when land is sold.**—In cases in which the land is sold to a local body for its full market value as a business transaction and no concession to the local body is involved in the transfer

the condition prescribed in the Resolution of the 23rd October 1891 need not be insisted upon. The Government of India has however no objection to the Local Government imposing the condition if considered desirable and if the local body is willing to take the land subject to such a condition. (G. of L. letter No. 848, dated 29th February 1892; quoted in G. R. No. 1849, dated 17th March 1892.)

(19.) Appropriation of lands held for Military purposes and within Cantonment limits.—The Governor-General in Council has decided that, in supersession of all previous orders on the subject, no land whether,

- (I) within Cantonment limits,
- (II) forming part of a military encamping ground, or,
- (III) otherwise held for military purposes;

shall be entered upon or occupied for constructing a railway, erecting buildings, or for any other purpose, either by private persons or person acting under the orders of any Department of the State, until the sanction of the Government of India in the Military Department to the occupation or use of the land has first been obtained and Communicated to the General Officer Commanding the District by the Quarter-master General in India, or by the Quarter-master General of the Madras or Bombay Army, as the case may be. (G. of I. R. No. 2407-M, W., dated 22nd August 1892, and G. R. No. 9085, dated 18th November 1892.)

13.* “Public streets” within municipal limits, “not being portions of provincial high roads or trunk roads, specially reserved by Government,” vest under Section 17, clause (f) of the Bombay District Municipal Act in the municipality. The word “streets” must be understood with reference to the definition of that word in Section 3 of the Act. It does not include building-sites and plots of open ground which have not been dedicated to public use. Such sites and plots, unless they have already been transferred to the municipality, vest in Government.

In an irregular street or road of varying width, small pieces of ground between the houses and the roadway should be recognized as forming part of the street and therefore vesting in the municipality, unless private individuals have rights thereto. But separate vacant sites

* This rule has been substituted under Government Notification No. 7609, dated 27th October 1886, published in the B. G. G. Part I, page 930, 1886.

between the houses do not vest in the municipality even though they be unenclosed, unless they have been transferred to the municipality by Government.

When the right to any piece of ground is in dispute between a municipality and the Government, the Collector shall endeavour to decide the dispute in accordance with the foregoing principles. If the Collector is in doubt, or if the municipality does not accept his decision, the case shall be referred through the Commissioner for the orders of Government.

14.* The right of Government to mines and mineral products in all unalienated land having been expressly reserved by section 69 of the Land Revenue Code, the same reservation should be made in every alienation that may hereafter be made in the following terms, or in terms to the same effect (namely) :

“This grant is made subject to the reservation of the right of the Secretary of State for India in Council to all mines and mineral products, and of full liberty of access for the purpose of working and searching for the same with all reasonable conveniences.”

(3) *Grant of Occupancies.*

15.† Occupancies are of two classes, viz., (a) occupancies of land to which a survey settlement has been extended, and (b) occupancies of land to which a survey settlement has not been extended. The Rules concerning each of these classes are given below separately, but are followed by some (c) general Rules applicable to both :

(a) *Land to which a Survey Settlement has been extended.*

16.‡ The occupancy of any unoccupied survey num-

* Royalties on mines and quarries must be credited to Imperial revenue, but this does not apply to stone quarries nor to sand removed from the sea shore or from beds of rivers. (G. of I. No. 5108, dated 12th October 1872, and No. 4914, dated 12th August 1874.)

† Vide order No. (2) printed under section 74.

‡ Vide order No. (4) printed under section 56.

ber not assigned for special purposes may, at the Collector's discretion, be granted to such person as the Collector deems fit either upon payment of a price fixed by the Collector, or without charge, or be put up to public auction and sold, subject to his confirmation, to the highest bidder.

When the final bid at any such auction is for a sum not exceeding Rs. 50, the power of confirming the sale may be delegated by the Collector, in his discretion, under section 12 of the Land Revenue Code, to the Mamlatdar.

(1.) Delegation of power to Mamlatdar to confirm sale of occupancies.—His Excellency the Governor in Council is pleased to authorize Collectors to delegate to Mahalkaris in their Districts the power of confirming the sales of occupancies of surveyed lands when the final bid is for a sum not exceeding Rs. 50. (G. R. No. 468, dated 19th January 1887.)

17. If the survey number is to be appropriated for purposes of agriculture, the Collector shall not annex any special condition to the occupancy without the previous sanction of the Commissioner.* In any other case the Collector shall annex such conditions thereto as may be directed by Government, or, in the absence of any order of Government, may annex such conditions thereto as he shall think fit, subject to the control of the Commissioner.

18. If the survey number has not already been assessed, it shall be assessed by the Collector (after reference to the Survey Department, if survey operations are still in progress in the district,) at the rates placed on similar soils in the same or neighbouring villages; and the assessment so fixed shall hold good pending the period for which the current survey settlement for the village in which the land is situated has been guaranteed, and shall be liable thereafter to revision at every general survey settlement of the said village.

* The words "the Commissioner" have been substituted for the word "Government." (G. N. No. 4892, dated 27th July 1887, published in the B. G. G. Part I, page 651, 1887.)

19.* If it shall appear that the bringing of any survey number under cultivation will be attended with large expense, or if for other special reasons it shall seem desirable, it shall be competent to the Collector, with the previous sanction of the Commissioner, to give the number revenue-free or at a reduced assessment for a certain term, or revenue-free for a certain term and at a reduced assessment for a further term, and to annex such special conditions to the occupancy as the outlay or other reasons aforesaid may seem to him to warrant: Provided always that, on the expiry of the term or terms so agreed upon, the land shall be liable to full assessment under the rules then in force for lands to which a survey settlement has been extended.

20. Except under the provisions of the last preceding Rule, or, in places in which special rules for the encouragement of the cultivation of waste lands may be sanctioned by Government, under the provisions of such rules, no survey number on which the assessment has been fixed is to be let for less than the amount of such assessment, in consequence of its having been long waste or for any other reason whatever.

(1) **Rules regarding grant of occupancies to Kolis and other wild tribes.**—The following Special Rules, for grant of occupancy to Kolis and other wild tribes in Government lands in the jungle tracts of Khandesh, Nasik, Surat, Ahmedabad and the Konkan Districts have been sanctioned by Government.

1. The right of occupancy to any survey field will not be put up to auction unless more than one person apply for the same number, in which case the land will be sold.

2. As lands are not taken up for permanent occupancy, Government reserves the right to all trees in fields in the Dangs, unless the occupant wish to purchase them at a valuation. This reservation is to apply to trees only, not to scrub jungle of corinda bushes, &c.

3. An annual inspection will be made during the cold season of all lands relinquished and newly taken up to see that they have been correctly reported, and that the orders regarding trees have been attended to.

4. The grantees cannot transfer their lands, and can only resign

* For form of lease on special terms to be granted under this rule see G. R. No. 7033, dated 3rd September 1884, printed as Appendix I.

them to Government. (G. R. No. 1044, dated 19th February 1875; No. 6210, dated 22nd August 1883, and No. 6807, dated 6th October 1887.)

{b)* *Land to which a Survey Settlement has not been extended.*

21. The reclamation of salt land or land occasionally overflowed by salt water "provided it is not required or likely to be required for salt manufacture" † should be encouraged whenever there is a reasonable prospect of success, and the occupancy of such land may be granted by

* (1.) The expression "*Survey Settlement*" which is used in the heading (b) of Rules 21-29 was intended to include the survey extended to lands within the sites of villages, towns and cities under Bombay Act IV of 1868 or section 131 of the Revenue Code for the purpose of the settlement of land revenue, and therefore the rules relating to the disposal of the occupancy of building-sites under that heading are not applicable to land to which such Survey has been extended within the site of any village, town or city.

The only rules which appear to be applicable to the disposal of the occupancy of such building sites are rule 16 and the latter half of rule 17 under the heading (a) of Part III (3) of the abovementioned rules. The former rule relates to the disposal of the occupancy of any unoccupied Survey No. not assigned for the special purposes mentioned in section 38 of the Code, so that it is applicable to land whether appropriated for purposes of agriculture or for building-sites; while the latter portion of rule 17 provides for cases other than those in which the land is appropriated for purposes of agriculture, and is therefore applicable to building-sites. (G. R. No. 8619, dated 9th December 1882.)

(2.) The general rules and orders prescribed by Government under section 214 of the Revenue Code, were made in supersession of all existing orders on the same subjects. Anything contained in those general rules and orders which is applicable to City Surveys and the lands affected by them must, therefore, be deemed to supersede previous rules or orders on the same subjects, but except to such extent as they may have been thus superseded the old rules and orders are still in force.

So much of Nos. 16-20 and 30-34 of the general rules and orders framed under section 214 of the Code as is applicable to such lands as come under a city survey must be deemed to apply to them and to supersede any previous rules in consistent therewith. (G. R. No. 2218, dated 17th March 1883.)

† The words in the inverted commas have been inserted under G. N. No. 3318 A, dated 13th May 1890, published in the B. G. G. Part I, page 465, 1890.

the Collector, subject to the confirmation of the Commissioner, on the following maximum terms, and with such modifications in particular cases as may be deemed fit:—

- (1) no revenue to be charged for the first ten years;
- (2) revenue at the rate of four annas per acre to be levied for the next twenty years on the whole area granted, whether reclaimed or not;
- (3) at the end of thirty years the land to be assessed to the land revenue and to be continued under the rules then in force for land to which a survey settlement has been extended;
- (4) any portion of the land appropriated for public roads to be exempt from revenue;
- (5) if half the area is not reclaimed at the end of five years, and the whole at the end of ten years, or if the reclamation is not carried on with due diligence within one year, the grant to be cancelled, but may be re-granted at the discretion of the Collector.

22. The occupancy of land in the beds of rivers used for growing melons shall be sold annually by auction to the highest bidder for the term of one year or such further period as the Collector thinks fit, the bidders being informed that under rule 53 such land will not be held liable for land revenue.

(1.) Suggestion to modify the rule regarding disposal of melon lands, &c.—The word “shall” in this rule is imperative and leaves no option to the Collector to stop the sales in cases in which he considers it expedient, on grounds of public health and convenience to prohibit the cultivation of melons in particular localities. A modification of the rule was therefore suggested, but Government have ruled that the Collector might exercise his discretion in dealing with such cases and should put off the sale in cases in which he thinks that the cultivation of melons would be injurious to public health. (G. R. No. 8931, dated 21st December 1886.)

23. The occupancy of building-sites shall ordinarily be sold by auction to the highest bidder whenever the Collector shall be of opinion that there is a demand for such sites; but the Collector may, in his discretion, dispose of

the occupancies of such sites by private arrangement, either upon payment of a price fixed by him, or without charge as he shall deem fit.

24. Auctions held under the last preceding Rule shall ordinarily be conducted in the town or village in which the land of which the occupancy is to be disposed of is situated, and the power of confirming the sales shall ordinarily be delegated by the Collector, under section 12 of the Land Revenue Code, to the Mamlatdar or Mahalkari, but on these points the Collector may in special cases give such directions as he shall deem fit.

25.* Occupancies of building-sites shall ordinarily be disposed of for ninety-nine years, but subject to an annual ground-rent, the amount of which should be regulated by the value of the site, provided that—

- (1) when, as in the case of building-sites at hill-stations, Government have sanctioned special rules, such rules shall be followed;
- (2) the occupancy of land near a railway-station or in any situation where it is likely to become valuable or to be required for any public purpose, shall not be disposed of for long periods; and the occupancy of land near a railway-station shall not be disposed of without the previous sanction of the Commissioner† nor while the line is under construction without first consulting the railway authorities;
- (3) the occupancy of land of the nature described in the last clause or of land in towns and other places of considerable size or of increasing importance shall be disposed of subject to such

* For form of lease of building-sites to be ordinarily granted by the Collector when no special conditions have been prescribed in respect of the disposal of such sites under this rule, see appendix K.

† The words "the Commissioner" have been substituted for the word "Government." (G. N. No. 4892, dated 27th July 1887, published in the B. G. G Part I, page 651, 1887.)

conditions as to the style and size of the buildings to be erected thereupon as Government shall in any case direct ;

- (4)* In any case the ground-rent instead of being rendered annually may, with the consent of the Collector, be paid by the occupant at the time of the grant of the occupancy, or at any subsequent time in a lump sum at once for the whole period of the lease or for the whole of the still unexpired period of the lease, as the case may be, a note of such payment being made at the foot of the lease or agreement which shall be executed in respect of the occupancy under rule 31 or 32.

(1.) **Disposal of culturable land, and of building sites.**—If the ground is a building-site and not cultivated or culturable it should be disposed of under rule 25 of the rules under Section 214.

If the land is assessed culturable or cultivated occupied land it must be reassessed under section 48 in the manner prescribed in rule 56 and must pay also the fine under Section 65. (G. R. No. 7831, dated 8th November 1882.)

(2.) **Ground-rent on building-sites and the term for which it is to be fixed.**—Building-sites which have been surveyed and assessed can under Section 102 be settled for a term not exceeding .99 years. (G. R. No. 8486, dated 4th December 1882.)

(3.) **Option of compounding ground-rent.**—The words “for the whole period of the lease or for the whole of the still unexpired period of the lease” contained in Rule 25, clause 4 do not contemplate the ground-rent being compounded at a certain No. of years’ purchase. The option which the rules seem to allow is that of paying down the entire amount at once instead of paying it in annual instalments. It is for the party who chooses either of the two alternatives to consider which course is more convenient to him. Neither the Collector nor the Commissioner has any authority to accept payments for a less number of years. (G. R. No. 1135, dated 15th February 1892.)

26. When the occupancy of land, such as is described in clauses (2) and (3) of the last preceding Rule is to be disposed of, the land should in the first instance be marked

* This clause has been added under G. N. No. 4667, dated 20th June 1883, published in the B. G. G. Part I, page 433, 1883.

out in convenient lots and mapped in such a manner that persons desirous of becoming occupants may clearly know what plots are available.

Due provision should be made in the plans for roads and approaches and access of air and light, and careful regard should be had to sanitary requirements.

27.* Whenever a new village-site is established in lieu of a former one, which it is determined for any reason to abandon, the new site shall be carefully marked out and mapped in the manner prescribed in the last preceding section, and an agreement shall be taken, in the form of Appendix C, from each registered occupant previous to his being permitted, under section 60 of the Land Revenue Code, to enter upon occupation of any lot.

When an entirely new village-site is established, or an addition is made to an existing site, the same provisions shall be observed for demarcating such new or additional site, but the disposal of the lots therein will be made under the rules ordinarily applicable to the disposal of building-sites.

(1.) **Grant of lands for new sites.**—Persons who obtain new sites on resigning old ones are to sign the form of agreement (Appendix C) that is to say they resign their old sites and become occupants of the new sites free of land revenue until Government may be pleased to impose any under the Land Revenue Code. There is no hardship in this because the old sites are not exempt from assessment to the land revenue unless exemption can be proved under any special contract with Government or any law for the time being in force. (G. R. No. 3042, dated 18th April 1883.)

(2.) **Power of Government to assess building-sites.**—Land Revenue is by law chargeable on building-sites unless Government has alienated the right to charge revenue, and His Excellency the Governor in Council is not prepared to abandon the power of assessing such sites when circumstances may require the adoption of this course, as in the case of a village growing into an important town. Even when the villagers pay the price of the right of occupancy of the village-site in whole or part, they are liberally treated when allowed to hold the site free of

* Vide G. R. No. 9021, dated 6th November 1885, printed as footnote to Appendix C.

revenue during the pleasure of Government. (G. R. No. 4333, dated 29th May 1885.)

28. In every case of the disposal of a building-site the occupancy only and not full proprietary right in the soil is to be granted.

29. The occupancy of land to which none of the foregoing Rules is applicable, and concerning which no special orders have been passed by Government, shall be disposed of in such manner, for such period and subject to such special conditions, if any, as the Collector, subject to the control of the Commissioner, shall deem fit.

(c) General Rules applicable to all Occupancies.

30. Whenever an occupancy is sold by public auction, an upset-price shall, if the Collector thinks fit, be placed thereon in order to guard the revenue against loss and to prevent applications being made for such occupancies when they are not really wanted.

31.* Whenever the occupancy of land is granted on special terms, whether as to the amount of assessment or as to the conditions of the tenure, a written lease shall be

* (1.) For form of register of lease executed under this rule see G. R. No. 8959, dated 6th December 1883, printed as Appendix L.

(2.) For form of lease on special terms vide G. R. No. 7033, dated 3rd September 1884, printed as Appendix I.

(3.) Under Section 8 of the Indian Stamp Act, 1879, the Governor General in Council has exempted both prospectively and retrospectively all agreements executed and leases granted regarding the occupancy of land under the Land Revenue Code, and this, and other rules thereunder from the payment of Stamp duty. (G. N. No. 1798, dated 23rd March 1887, published in the B. G. G. Part I, page 254, 1887, and G. N. No. 8988, dated 27th November 1889, published in the B. G. G. Part I, page 1007, 1889.)

(4.) As regards the questions whether a Kabulayat accepting the lease need be taken from the lessee, and whether such a Kabulayat is required to be registered under the Registration Act it has been decided that if the signature of the lessee were simply taken in a register acknowledging that he had received a lease in the prescribed form but containing no promise to abide by its terms, it would for all practical purposes afford sufficient proof of his acceptance of the lease and avoid all difficulties about registration. (G. R. N. 1309, dated 24th February 1888.)

executed by the Collector clearly setting forth the terms of the grant.

Every such lease shall be in a form* sanctioned by Government, and, if no suitable form has been already so sanctioned, reference shall be made and a sanctioned form obtained before the lease is executed.

A duplicate shall be kept of every lease executed under this Rule.

(1.) Procedure to be adopted on the expiration of lease.—In the case of those tenants, whose leases have already expired without being renewed the proper course to adopt would be, for the Collector, to serve each one with a notice reminding him that his lease has expired and that as he is holding over he is liable to be ejected at the close of the current year on receipt of 6 months' notice, that he should consider the said notice to be a notice to quit at the end of the current year (care being taken that six months of the current year shall have still to run when it is served) and that the notice will be enforced unless in the meantime he applies for a renewal of the expired lease when such his application will be considered. If an application for a renewed lease is made there will be no objection to its being granted. (G. R. No. 2028, dated 10th March 1883.)

(2.) Terms specified in leases to be respected.—Rules 23, 49 and 51 apply only to leases, and grants of occupancies which have been made since they were passed and have no retrospective effect. The rights of a lessee or grantee of a land leased or granted before the passing of the rules must be ascertained from, and regulated by, the conditions specified in his lease or deed of grant. (G. R. No. 3482, dated 5th May 1883.)

(3.) Form of Register of leases.—There is nothing in the form of register of leases (vide form printed in Appendix L), which is inconsistent with the conditions under which the alluvial lands in Sind are disposed of and there is therefore no objection to the form being adopted in Sind. (G. R. No. 4578, dated 6th June 1884.)

(4.) Persons temporarily cultivating alluvial lands not occupants.—The persons who are permitted to cultivate temporarily have no right in the land and are not occupants as defined in the Land Revenue Code. The rules 31 and 32 do not apply to them and the form of agreement in Appendix D is not suitable to their case. In such cases the Collector may take from them a simple agreement to pay the assessment fixed and to refrain from injuring trees which it is desirable to preserve. (G. R. No. 9194, dated 20th November 1884.)

* Leases which require alterations in, or additions of special clauses to, the sanctioned form should be prepared by the Solicitor to Government at the expense of the Lessee. (G. R. No. 3208, dated 16th May 1882.)

(5.) Awalkarkuns may accept relinquishment and agreements. — His Excellency the Governor in Council is pleased to direct that Awalkarkuns may during the absence of Mamlatdars from head-quarters accept on their behalf notices of relinquishment under Section 74 of the Land Revenue Code and agreements under rules 32 and 75 of the rules framed thereunder. Whenever Mamlatdars accept, without further inquiry, notices of relinquishments and agreements executed and duly endorsed by an Awalkarkun they will be held by Government to have exercised the due care enjoined by rule 76 of the rules framed under Section 214 of the Land Revenue Code. (G. R. No. 1743, dated 2nd March 1889.)

32.* In every case in which a lease is not executed under the last preceding Rule, an agreement, in the form of Appendix D, shall be taken from the person who is to become the registered occupant, and every such agreement shall be endorsed by two respectable witnesses and by the patel and village accountant of the village in which the land to which it relates is situate, to the effect prescribed below the said form; and the Mamlatdar or Mahalkari who takes the said agreements will be held responsible for exercising due care in ascertaining the identity of the persons signing the same, and their fitness to be accepted as occupants responsible for the payment of land revenue, notwithstanding that the agreements have been duly endorsed as hereinbefore required: Provided always that no such agreement shall be necessary when an agreement, in the form of Appendix C, is taken under Rule 27.

All agreements taken under this Rule or under Rule 27 shall be kept in separate files in the records of the Mamlatdar or Mahalkari.

33. It shall be the duty of every village accountant, if so desired by any occupant in his village or by any person about to become an occupant of land in his village, to prepare any agreement that may be necessary under

* (1.) All agreements entered into under rule 32 of the Rules under the Land Revenue Code, whether the same relate to cultivated land or to village-sites, should be registered in Taluka Form No. 31. (G. R. No. 4782, dated 11th June 1885.)

(2.) As to alienated villages, see order No. (4) printed under Section 74 of the Code.

either Rule 27 or Rule 32 without fee or charge of any kind.

A village accountant who prepares any such agreement shall affix his signature beneath the words "written by" on the lower left-hand corner of such agreement.

34. The permission in writing to be given by a Mamlatdar or Mahalkari under section 60 of the Land Revenue Code to enable an intending occupant to enter upon occupation shall be in the form of Appendix E.

No such permission shall be given until either a lease or an agreement has been duly executed and delivered under either Rule 31, or Rule 32 or under Rule 27, as the case may be.

(d)* *Special Rules for Sites of certain Cities and Towns.*

34 A. Except as is otherwise provided in Rule 34G, nothing in Rules 15 to 34, both inclusive, shall be applicable to the grant of occupancies of lands within the sites^s of the cities and towns of Ahmedabad (inclusive of the suburb of Saraspur), Broach, Surat, Rander and Bulsar.

To the said lands the provisions of the next following Rules 34B to 34J, both inclusive, shall apply.

34 B. Whenever the holder of a building-site within any of the said sites desires to acquire any small strip of ground belonging to Government which is adjacent to his site and which could not reasonably be disposed of by the Collector as a separate site, the Collector may, if he thinks fit and notwithstanding anything contained in Rule 9 to the contrary, dispose of such strip to the said holder by sale, subject to the same tenure and to payment of ground-rent or assessment at the same rate, if any, on which he holds the said site.

34 C. Except as provided in the last preceding rule, the Collector shall not :

* Rules 34A to 34J have been inserted under G. N. No. 8325, dated 14th October 1885, published in the B. G. G. Part I, page 1203, 1885.

- (a) dispose of the proprietary right in the soil of any land, within the site of any of the said towns or cities, or
- (b) grant the occupancy of any land therein for any greater period than is prescribed in Rules 34 E, 34 F and 34 G, respectively.

34 D. The occupancy of any unoccupied land within the site of any of the said towns or cities not assigned for special purposes may, at the Collector's discretion, be granted to such person as the Collector deems fit either for purposes of agriculture only or for other purposes.

34 E. The occupancy of land for building-sites shall be granted under written lease at a ground-rent of two pies per square yard per annum on such terms and in such form as shall from time to time be approved by Government, for terms expiring on the date fixed in this behalf by Government for each city or town.

34 F. The occupancy of land eventually intended for building-sites, but of which the immediate disposal for the said purpose appears to the Collector to be undesirable, may be let, under written leases in a form approved by Government, for short terms not exceeding in any case seven years, at a ground-rent of one anna per square yard per annum. It will be a condition of such leases that no permanent building shall be erected upon the land, or, which amounts to the same thing, that at the end of the term the land shall be restored by the lessee in the same condition in which he takes it.

34 G. The occupancy of land granted by the Collector for purposes of agriculture only shall be granted for terms of one year only.

An agreement in the form of Appendix D shall be taken from every person who is to become a registered occupant of land under this section, and the provisions of Rule 32 shall be applicable to every agreement so taken.

This rule shall not be deemed to apply to agricultural lands which, though situated within the site of any of the

towns or cities aforesaid, are subjected to a survey settlement similar to that applied to lands of the same description outside the said sites. Such lands shall be subject to the same rules as those last named.

34 H. Except under special circumstances, no sale of an occupancy under Rule 34E, shall be made by the Collector for less than one rupee per square yard.

34 I. The occupancy of lands, within the sites of the towns and cities aforesaid, shall ordinarily be sold by auction to the highest bidder; but the Collector may in his discretion sell the same by private arrangement.

34 J. The permission in writing to be given by a Mamlatdar or Mahalkari under Section 60 to enable an intending occupant to enter upon occupation shall be in the form of Appendix E.

No such permission shall be given until either a lease or an agreement has been duly executed and delivered under Rule 34 E or 34 F or 34 G, as the case may be.

In each of the cities of Ahmedabad, Surat and Broach the power of a Mamlatdar under section 60 is hereby conferred, under Section 19, on the Deputy Collectors in charge of the City Survey.

(4) *Disposal of minor rights.*

35.* The produce of trees belonging to Government may be sold by auction annually. When any such trees are sold under Section 41 of the Land Revenue Code, the sale shall be by auction or otherwise as the Collector may direct.

Disposal of grass and produce of trees in Government buildings—(1.) In the case of Government Buildings, Hospitals, Asylums, &c., the Public Works Department is the custodian of the property, but the disposal of the produce of the compounds may be left to the head of the establishment occupying the premises, subject to the conditions, that the proceeds are credited to Public Works Provincial Revenues, and that no trees are felled without the previous consent of the Executive Engineer. (G. R. No. 178A—1187, P. W. D., dated 4th July 1888.)

(2.)—The proceeds of the sale of all trees, fruit and grass in the com.

* This is an amended rule sanctioned under G. N. No. 1239, dated 22nd February 1888, published in the B. G. G. Part I, page 149, 1888.

pounds of Government buildings used as offices, Hospitals, &c., should be credited to Public Works Provincial Revenues, the disposal of the timber being in the hands of the Executive Engineer, and that of the other products in those of the Head of the Establishment occupying the premises.

The proceeds of the sale of all trees in Government buildings occupied as residences will be paid in to the Executive Engineer, without whose sanction no trees should be cut down, to be credited to the Public Works Provincial Revenues. The produce of all fruit, trees, grass, &c., will be the property of the tenant for the time being and the value of the same should be taken into consideration, when fixing the rents of such buildings. (G. R. No. 364A—1964, P. W. D., dated 6th December 1887, and G. R. No. 139A—686, P. W. D., dated 6th April 1889.)

36. The grazing or other produce of all unoccupied land vesting in Government, whether a survey settlement has been extended to such land or not, and whether the same be assessed or not, and of all land especially reserved for grass or for grazing (except land assigned to villages for free pasturage) may be sold by public auction year by year, either field by field or in tracts, and at such time as the Collector shall determine : Provided that the purchaser's rights over such land shall entirely cease on the dates respectively fixed for the several districts and provinces in the following table, unless under special circumstances, the Collector shall deem it necessary to extend the time so fixed for any period not exceeding one month :—

Collectorate.	Waste assessed Dry-crop Land.	Waste assessed Rice Land.	Reserved Kurans and unassessed Waste.
Bijapur	31st March ...	31st March ...	1st May.
Satara	Do. ..	Do. ...	Do.
Belgaum	Do. ...	1st December.	Do.
Dharwar	Do. ...	Do. ...	Do.
Kanara	Do. ...	1st October ...	Do.
Other Deccan Collectorates	Do. ...	31st March ...	Do.
Konkan Collectorates	Do. ...	Do. ...	31st December for cutting, and up to the monsoon for grazing.
Gujarat Collectorates	Do. ...	Do. ...	1st May.

(1.) **Mahalkaris empowered to grant occupancies of waste lands.**—His Excellency the Governor in Council is pleased to authorize the Collectors of Satara, Poona and Khandesh to assign to the Mahalkaris in their respective Districts the power to sell by auction the grazing of all unoccupied lands vested in Government within their charges and to confirm the sale when the sum finally bid is below Rs. 50. (G. R. No. 5430, dated 3rd July 1885.)

37. The Commissioner may, if he thinks fit, sanction the disposal of the grazing or other produce of any land, specified in the last preceding Rule, otherwise than by sale in public auction and for any term not exceeding five years.

38.* The Collector may, at his discretion, sell by public auction, or otherwise dispose of the right to remove earth, stone, kankar, sand, muram or any other material which is the property of Government for such periods in such quantities and on such terms as he thinks fit: Provided that such sale or other disposal be made subject to the privileges conceded by the two next following Rules.

The rate charged by the Collector under this Rule, when the right in question is not put up for sale by public auction, may be either a lump sum, or so much per cubic foot of excavation, or, in the case of a Railway Company requiring land for excavating ballast, so much per mile of the Railway line for which ballast is obtained, or otherwise as the Collector thinks fit.

Removal of sand, muram, &c.—(1.) **Within municipal limits.**—The proceeds of sand, gravel and stone gathered or quarried within Municipal limits should be credited to Municipal Funds. (G. R. No. 1026, dated 28th March 1884.)

(2.)—**In creeks.**—The right to collect and remove sand in creeks is sold by Government. The right to collect and remove shells from the bed of a creek is equally saleable. (G. R. No. 2143, dated 18th March 1886.)

(3.)—**Scale of fees for.**—Fees to be levied for the removal of earth, kankar, &c., from Government lands under rule 38 of the Rules under

* Fees levied on quarries, stone, sand, &c., have been assigned to Local Funds. (G. R. No. 4550, dated 25th August 1874.)

the Land Revenue Code are shown in the table given below :—

Material.	Royalty to be paid per 100 cubic feet.	Method of measurement.
	R. a. p.	
Stones " building."	0 8 0	Actual quantity of stone in a building as per actual measurement.
Surplus	0 8 0	Actual quantity of surplus building stone on hand and removed from the quarry, 125 cubic feet to be taken as equal to 100 cubic feet on which royalty is to be charged.
Ballast	0 2 0	Actual measurement of ballast as delivered alongside the line or at a depot.
Concrete	0 2 0	Actual measurement of concrete.
Used for any special purpose as pitching.....	0 2 0	Method of measurement to be arranged between the Railway and Civil Officers at the time of commencing work.
Kankar taken from cultivated land.....	0 4 0	Actual measurement of amount delivered to Railway.
Sand	0 1 0	Actual measurement of amount delivered.

NOTE.—The above rates are for materials only. In addition to this it will generally be found that compensation will have to be paid for damage done to grass or cultivation in quarrying stone. Stone is very often found in grass tracts that are annually let by auction for grazing, and as cartmen employed in carrying away quarried stone graze their cattle, disputes constantly occur which can be avoided by having previously settled what compensation the grass owner is to get.

It is also important if disputes are to be avoided that the Railway officer should always consult the Civil Officer in whose charge the land is

that he proposes to get stone from. He should obtain this officer's permission to quarry and give him full information as to what contractors are working for Railway and where. (G. R. No. 6262, dated 2nd September 1886.)

(4.)—G. R. No. 6262, dated 2nd September 1886 should not be held applicable to the G. I. P. & B. B. & C. I. Railway Companies and to the Railways in Sind. (G. R. No. 844, dated 4th February 1887.)

(5.)—The rates proposed by the Collector of Poona for

(i) Boulder stones removed from the surface of the ground	} per 100 cubic feet,	Rs. 0-2-6.
(ii) Kankar taken from unoccupied unassessed land		

are sanctioned. The rate for muram or white earth should be one anna per 100 cubic feet, as suggested by the Chief Engineer, S. M. Railway Company.

As regards the date from which the orders passed in G. R. No. 6262, dated 2nd September 1886 shall have effect, the Collector should be informed that all claims not settled prior to the issue of the Resolution should be paid at the rates fixed by the Resolution and that claims already settled and paid should not be re-opened. (G. R. No. 1041, dated 14th February 1887.)

(6.) Right of Municipalities to levy fees for quarrying.—Municipalities are not entitled to levy fees from the public for quarrying in assessed lands within Municipal limits. (G. R. No. 4225, G. D., dated 30th November 1888.)

(7.) Revenue realised from quarries in Government Forests.—The revenue realized from quarries and from minor mineral products in Government forests and lands which are under the management of the Forest Department, should be credited to Forest and where such forests and lands are not under the management of that Department, to Land Revenue (miscellaneous). (G. of I. Letter No. 65, dated 24th January 1889, and G. R. No. 1253, dated 14th February 1889.)

(8.) Miscellaneous revenue from forests.—The miscellaneous revenue realized from forests and lands, not under the management of the Forest Department, is to be continued to be credited to the Local Funds as heretofore. (G. R. No 5042, dated 15th July 1889.)

(9.) Abatement of assessment on lands taken up by Public Works Department.—His Excellency the Governor in Council is pleased to direct that the authority of sanctioning abatement of assessments on lands taken up by the Public Works Department for Irrigation Works should in future be exercised by the Commissioners of Divisions. The Public Works Department should obtain any statements required by it direct from those officers. (G. R. No. 5627, dated 3rd August 1889.)

(10.) Credit of quarrying fees to Municipalities or Local Funds.—The Commissioner C. D.'s proposal that all fees for quarrying stone,

muram, &c., levied in respect of land outside the Municipal limits should be credited to Local Funds, and that within Municipal limits they should be credited to Local Funds, or to Municipalities according as the property in the land vests in Government or the Municipality, is sanctioned in supersession of all previous orders on the subject, and should be adopted.

It should be clearly understood that the permission given to Local Funds to appropriate the fees derived from quarrying or delving in waste lands is not to prejudice in any way, the proprietary rights of Government as to its power of disposal over the lands in question. (G. R. No. 1057, dated 8th February 1890.)

39.* Any person may, within the limits of the village in which he resides, remove earth, stone, kankar, sand, muram or other material from the bed of the sea or from the beds of creeks, rivers and nalas, or from any unassessed waste land not assigned for special purposes, for his own *bona fide* domestic or agricultural purposes, without payment of fee, on obtaining the written permission of the Police Patel.

Potters and brick and tile-makers shall be entitled to the same privilege for the *bona fide* purposes of their trade as well as for domestic and agricultural purposes; but they must first obtain sanction of the Mamlatdar in all cases where an extensive trade is carried on and where excavation of the soil is likely to destroy valuable buildings or land required for public purposes.

If the Police Patel shall refuse permission when the same is applied for under this Rule, an appeal shall lie to the Mamlatdar. But, in such cases as he shall think fit, the Collector may prohibit the Mamlatdar, or the Police Patel, from giving permission without obtaining his previous sanction.

(1) "Pot Kharab" is not unassessed waste.—The expression "any unassessed waste land not assigned for special purposes" (in clause 1 of this rule) does not include "Pot Kharab" or unculturable land included in an assessed Survey No. for, although no assessment is charged in respect of such "Pot Kharab" it forms a part of an assessed Survey No. and is held by the occupant of the No. along with the rest of the land therein for the purpose of cultivation. It is not therefore waste land within the meaning of this rule. An occupant cannot there-

* Vide G. N. No. 6111, dated 9th September 1887, printed as order No. (9) under section 61 of the Code.

fore allow any person being fellow-resident of his village to take stone from a quarry lying within the "Pot Kharab" of his land without payment of fees to Government. (G. R. No. 3291, dated 23rd April 1885.)

(2.) **Removal of loose stones by occupants.**—The Collector need not, under this rule, interfere in any way with an occupant who merely gathers loose surface stones off his field, whether he sells them or not. (G. R. No. 4788, dated 11th June 1885.)

(3.) **Removal of earth from village-sites not permissible.**—It would be inadvisable as injurious to sanitation to permit villagers to remove earth from village-sites or from localities in the vicinity of villages. No modification of this rule is therefore required. (G. R. No. 14, dated 5th January 1886.)

40. Any person may, with the sanction of the Police Patel, take free of all charge from village tanks as much earth, stone, kankar, sand, muram or other material as he requires, provided that no stones shall be removed that may have fallen in from the banks of built tanks, and that no excavation shall be made within ten cubits of the foot of the embankment of any such tank.

41. The Local Funds, Public Works, and other public Departments and Municipalities may, with the permission of the Collector, and subject to his supervision, remove earth, stone, kankar, sand, muram and any other material from the bed of the sea or from the beds of rivers, creeks, nalas or public tanks, or from any unassessed land, or any unoccupied assessed land not assigned for special purposes, for works of public utility without payment, whether such works be constructed departmentally or by contract.

(1.) **Mamlatdars empowered to grant permission to remove earth, &c.**—The power contemplated in rule 41 of the rules under the Code *vis.* of granting permission for the removal of earth, stone, sand and kankar from unassessed waste land may be delegated to Mamlatdars. (G. R. No. 4191, dated 23rd May 1884.)

(2.) **Collector not bound to grant permission to remove earth, &c.**—The Collector is not bound to give the permission required under Rule 41 in every case. (G. R. No. 7562, dated 13th November 1888.)

(3.) **Material taken for State Railways exempt from fees.**—It has been decided that no fees should be charged on material taken from beds of nalas, &c., for use of State Railway works. (G. R. No. 3170, dated 8th May 1891.)

(5) *Miscellaneous.*

42.* Every sale by auction under these rules, or in pursuance of any of the provisions of the Land Revenue Code, shall be conducted, so far as may be, in accordance with Sections 165, 166, 170 to 177, both inclusive, and 180 of the said Code.

Provided that in conducting the following sales—

(a) Sales of the right of grazing and of the right to take or cut grass in waste lands,

(b) Sales of the right to take the fruit of specified Government trees for a specified period, and

(c) Sales of dead wood,

the procedure shall be in accordance with such orders as may from time to time be made by the Collector either generally or specially in this behalf, instead of the procedure prescribed in Sections 165 and 166 of the Bombay Land Revenue Code.

The proclamation and written notice of sale required to be issued under Section 165 and 166 of the said Code shall be in one of the forms contained in Appendix M, or as near thereto as may be.

IV.—ASSIGNMENT OF LAND FOR SPECIAL PURPOSES.

[Section 38.]

43. Burial and burning grounds, spots near villages on which the village cattle† stand, and lands for the use of village dhobis and potters should be assigned for these purposes respectively, according to the reasonable requirements of the villagers without charge.

* This is an amended rule sanctioned under the following Government Notifications :—

No. 4297,	dated 28th May 1884,	published in the B. G. G. Part I,	page 417,	1884.
„ 1239,	„ 22nd February 1888,	„ „ „	„	149, 1888.
„ 150,	„ 9th January 1889,	„ „ „	„	21, 1889.

† Vide footnote to the words "cattle of the village" in section 39 of the Code.

V.—ALLUVION AND DILUVION.

[Sections 47 and 214 (i).]

44. When a holding is bounded on any side by the bank or shore of a river,* creek or nala, or of the sea,† the holder will be permitted, subject in the case of unalienated holdings to such orders as may be legally passed under Rule 46. to occupy and use the land up to such bank or shore, notwithstanding that its position may shift from time to time.

45. It shall be the duty of the village officers, subject to the orders of the Mamlatdar or Mahalkari and of the Collector or of the Assistant or Deputy Collector in charge of the taluka, to ascertain from time to time and to record the changes caused by alluvion and diluvion in every holding subject to such changes.

46. The village officers shall report to the Mamlatdar when the area of any newly formed alluvial land or island, or of any abandoned river-bed, to which the provi-

* Whatever may be the nature of the tenancy, the occupants of the land abutting on the stream, and not the Government, are entitled to the enjoyment and benefit of the water as it flows past. No doubt, all the occupants of land on the banks being equally entitled, each occupant or set of occupants is bound to use his right so as not materially to interfere with an equally beneficial enjoyment of it by the other occupants. An action will lie where the use by any of the occupants of the common right is unreasonable. But Government cannot arbitrarily curtail or interfere with, at any time during the occupancy, the enjoyment of the water by each occupant as it existed at the commencement of his occupancy and which must have constituted a most important consideration in fixing the amount of land assessment which each occupant agreed to pay. (Printed Judgments of 1882, p. 58, and L. L. R. 7 Bombay 209.)

† The right of the public to fish in the sea, whether it and its subjacent soil be or be not vested in the Crown, is common, and is not the subject of property. This right in certain portions of the sea may be regulated by local custom. Members of the public exercising the common right to fish in the sea, are bound to exercise that right in a fair and reasonable manner, and not so as to impede others from doing the same; and conduct which prevents another from a fair exercise of his equal right, if special injury thereby results to him, is actionable. (L. L. R. 2 Bombay 19.)

sions of section 46 or of section 64 of the Land Revenue Code apply, exceeds the limit prescribed in those sections, and the Mamlatdar shall deal with it under the orders of the Collector or Assistant Collector in the manner prescribed in the said sections respectively.

Newly-formed alluvial lands, and islands, and abandoned river-beds to which the provisions of the said sections do not apply, may be disposed of by the Collector under the rules and orders applicable to unoccupied land belonging to Government.

47.* Claims to decrease of assessment on account of diluvion under section 47 of the Land Revenue Code shall be heard and disposed of by the officer who makes the annual *jamabandi* settlement.

In order to provide against undue loss of revenue, care must be taken, whenever such claims are allowed, to trace out and assess the corresponding accretions of alluvial land, if any, in the same or in some other village.

(1.) Decrease of assessment on lands lost by diluvion.—A decrease of assessment can only be granted under this section if the portion of the holding *i. e.*, of "a Survey No. or any division of land on which a distinct or aggregate assessment has been fixed," lost by diluvion amounts to not less than half an acre *and* to one-tenth or more of the holding. Both conditions must be fulfilled to entitle the holder of the land to a *decrease* of assessment. (G. R. No. 773, dated 13th February 1880.)

(2.)—In all cases in which the area of a holding is less than half an acre, only the one condition should be required of the loss by diluvion exceeding one-tenth of the holding affected. (G. R. No. 2771, dated 12th April 1886.)

VI.—PURPOSES TO WHICH THE APPROPRIATION OF UNALIENATED LAND IS PROHIBITED.

[Sections 48 and 214 (c) and (i).]

48. Land included as unarable in a survey number assessed for purposes of agriculture only may ordinarily be

* For rules regarding alluvion and diluvion owing to changes in the course of the river Indus, or other waters, in the Province of Sind, see Appendix O.

brought under cultivation without extra charge by the occupant of such number, or by any one claiming under him, but such cultivation is prohibited in the following cases (viz) :—

- (a) when the land is occupied by a road or by a tank used for irrigation or for drinking or domestic purposes ;
- (b) when the land is used as a burial-ground ;
- (c) when the land has been assigned for the use of the village potters, or other public purposes :

Provided that this prohibition shall not apply in the case of a tank, when such tank is used for irrigation only and waters only land which is in the sole occupation of the occupant, or when the privilege of cultivating the dry bed of the tank has been specially conceded to the occupant.

(1) "Pot Kharab" how to be dealt with at Revision Surveys.—Lands classed as unarable and included in a survey No. is called "Pot Kharab." "Pot Kharab," is of two kinds:—

1st. Pot Kharab over which the occupant of the No. in which it is included has the sole occupancy rights such as patches unfit to bear assessment, farm buildings, threshing floors, &c.

2nd. "Pot Kharab" over which the occupant of the No. in which it is included has not the sole occupancy rights, but which being devoted to public purposes is the common property of the village community such as tanks, burial grounds, places assigned to village potters to dig earth from, &c.

At the Revision Survey it is the practice to exclude the 2nd kind of Pot Kharab from the Survey No. in which it

was included at the original Survey and to make it into a separate Survey, or Pot No. This practice

though in conformity with the law and the orders of Government on the subject is calculated to affect the rights of the occupant from whose No.

the Pot Kharab is excluded, and to put him to a disadvantage inasmuch as by the separation of the Pot Kharab he is deprived of the prospective right to cultivate it, should the Kharab at some future time cease to be used for the purpose to which it is at present devoted,—an advantage to which he would be entitled if the Kharab were allowed to remain in his number. In such cases therefore with a view to save the occupants from this disadvantage it has been decided to enter the Pot Kharab in the name of the occupant from whose number it has been excluded, and to record a note against it describing the purpose for which it is used by the village community, and prohibiting the cultivation thereof without the permission of the Collector. (G. R. No. 696, dated 27th January 1891.)

49.* No occupant of land assessed or held for purposes of agriculture only and no person claiming under any such occupant may make any use of the land so as, in the opinion of the Collector, thereby to destroy or materially injure the land for cultivation.

But, provided this Rule be not infringed, the occupant and any person lawfully in possession of any such land may remove earth, stone, kankar, sand, muram or any other material of the soil thereof for his own *bona fide* domestic or agricultural purposes without previous permission and without payment of fee.

50. Compounds to bungalows and patches of open ground surrounding houses, not assessed for purposes of agriculture, may not, if the Collector shall on sanitary grounds think fit in any case so to direct, be appropriated to purposes of agriculture, but the grass shall be kept, cut or grazed by cattle.

50 A.† No occupant of any land within the limits of the city or suburban municipality of Poona or of the cantonment of Poona or within one mile from the said limits may grow sugarcane therein, if the Collector, having regard to the situation and extent of such land or to any other material consideration affecting the same, and after consulting the Sanitary Commissioner, shall be satisfied that the growth of sugarcane in such land is dangerous to the health of residents within the area to which this rule extends, and shall, on this ground, by order in writing addressed to the occupant of the land, prohibit the cultivation of the said crop therein :

Provided that no order issued by the Collector under this rule in respect of any land in which a sugarcane crop is growing at the date of such order, shall come into effect until two years after the time when the said crop was shown.

*Vide G. R. No. 4788, dated 11th June 1885, printed as order No. (2) under Rule 39.

† This rule has been inserted under G. N. No. 4230, dated 27th June 1888, published in the B. G. G. Part I, page 544, 1888.

(1).—Lands irrigated by wells to continue growing sugarcane.—The Collector is authorized to exempt the occupants of lands irrigated from old wells from the operation of this rule. (G. R. No. 3038, dated 2nd May 1890.)

51. No unalienated land within the site of any city, town, or village may be excavated, without the previous permission, in writing, of the Collector, for any purpose except the laying of foundations for buildings, the sinking of wells and the making of grain pits. When permission is granted by the Collector to excavate any such land as aforesaid for any purposes other than those above mentioned, such excavation may not be made otherwise than in accordance with such terms as the Collector shall in each case think fit to prescribe.

52. No occupant of any land may suffer such land to be or to become overgrown with prickly-pear or rank grass so as to become dangerous to the health or safety of the neighbourhood,

VII.—ASSESSMENT OF LAND REVENUE. [Sections 52, 100 and 214 (*d*).]

(1) *Unsurveyed Lands.*

53. No assessment shall be placed on land in the beds of rivers used for growing melons. The land revenue chargeable on such land shall be deemed to be included in the price of the occupancy thereof obtained in auction under Rule 22.

(2) *Surveyed Lands.*

54.* Compounds surrounding bungalows and patches of open ground surrounding houses up to such limit† of area as government may from time to time fix

* Vide G. R. No. 6111, dated 9th September 1887, printed as order No. (9) under section 61 of the Code.

† No. 54 of the Land Revenue Code Rules gives effect to G. R. No. 4314, dated 25th July 1881 (Vide order No. (1) printed under section 98 of the Code). The ground on which *Pardi* lands were exempted from assessment, if they did not exceed a quarter of an acre, was that they were "considered to form part of the village-site." The area in excess of a quarter of an acre was assessed as agricultural land. In the above rule, therefore, drafted by the Committee appointed by Government to prepare a body of rules under the Code, it was laid down

for each district shall be subject, as regards their assessment to the land revenue, to the same rules as are applicable to the land on which the bungalows or houses stand.

(1.) **Pardi lands.**—maximum area to be allowed free of assessment.—The maximum admissible area of unassessed Pardi land may be taken to be one-eighth of an acre in the Konkan and one-fourth of an acre elsewhere but the maximum need not necessarily be allowed and regard should be had to local custom. When a larger area has been sanctioned by adequate authority it may be continued subject to future revision. (G. R. No. 8293, dated 12th November 1883.)

55.† The following Rules, unless otherwise directed by Government, shall be observed in the conduct of revenue surveys of lands used, or which may be used, for the purposes of agriculture..

- (1) (a) Every occupancy separately recognized in the village accounts, if not less in extent than the minimum for survey numbers fixed in relation to such land under Section 98, shall be separately

that such lands "shall be subject, as regards their assessment to the land-revenue, to the same rules as are applicable to the land on which the houses stand." If the latter land is free from assessment, so will also the Pardi land be up to such limit as Government fixed for each district. The provision that the limit should be fixed by Government for each district was inserted because it was understood that the limit of a quarter of an acre had not been universally adopted. (G. R. No. 3171, dated 23rd April 1883.)

† 1. Please see footnote No. (1) to Section 3, Clauses (6) and (7). In that note it has been stated that the Code does not separately recognize the sub-division of land which is commonly known by the term "Pot number." According to the definitions of "Survey number" and "recognized share of a Survey number" as given in the Code this sub-division (Pot number) could be considered either as "Survey number" or as "recognized share of a Survey number." It could be considered as a "Survey number" because it was a portion of land of which the area and other particulars were separately entered under an indicative number in the survey records of the village, town or city in which it was situated. It could be considered as a "recognized share of a Survey number" because it was a sub-division of a Survey number separately assessed and registered.

2. When the rules under the Code were framed the term "Subordinate Survey number" was first defined in rule 55. This rule ran as follows :—

- (1) Every separate occupancy recognized in the village accounts shall

measured, classified and assessed, and defined by boundary marks, and shall be made a survey number.

- (b) Every occupancy separately recognized in the village accounts which is less in extent than the minimum for survey numbers fixed under Sec-

be separately measured, classed, assessed and defined by boundary marks and shall be comprised in a Survey number or in a Subordinate Survey number.

By "subordinate survey number" is meant a portion of survey number bearing a subordinate survey number and separately demarcated and assessed.

3. The rules under the Code having the force of law, the legal status of a "Pot number" comprising as it did, a separately recognized occupancy was the same as that of a survey number, although in practice it was, being a portion of a survey number, considered and treated as a recognized share of a survey number. (Vide section 3, clauses (6) and (7) of the Code.)

4. Shortly after the above rules were framed a case occurred in which the question raised was whether in the case of a Survey number containing 2 or more Pot numbers if one was relinquished, the holders of others would be held responsible for the assessment thereon until they relinquished their shares as required by the provisions of Section 99 (b) of the Code. The officer by whom this question was raised, observed:—

"In village forms Nos. 1 and 3 these (Pot Nos.) are shown under the head "number," area and assessment being separately given, and in the field they are denoted by separate boundary marks. They are virtually separate fields but I believe they are not so recognized by the Survey Department, and they would seem to fall under exception (b) of Section 99 of the Land Revenue Code."

5. This question was referred to (1) the Survey Commissioner, and (2) the Remembrancer of Legal Affairs for opinion.

(1) The Survey Commissioner observed:—

"6. In the early days of the Survey in the Bombay Presidency there was no such thing as a Pot or Subordinate Survey number. Several occupancies were frequently found clubbed together into one Survey number without any Subordinate measurements being made. Subsequently the custom of making recognized sub-divisions of fields of a certain area into Pot numbers was adopted and has continued up to the present time with a few modifications and variations. When, however, such sub-divisions in the field have not been made by the Survey it has been customary at the field inspection (Pot Pahani) made by the Mamlatdars previous to

tion 98, in relation to such land, shall, unless the Survey Commissioner otherwise directs, be separately measured, classified and assessed and defined by boundary marks, and the Survey Commissioner may, at any time either by general order or in any particular case or class of cases, direct

settlement, to fix and register after rough measurement if necessary, the share of assessment to be paid by each sharer in the field who has a separate Khata in the village accounts. Sub-divisions so made in this way at Pot Pahani correspond with the definition of recognized share of a Survey number as given in the Land Revenue Code."

"7. If the above opinion be correct a Pot number can be resigned without the liability of the other Pot sharers being enforced as in clause (b) of Section 99 of the Code, but a share of a Survey number made previous to the settlement by agencies other than the Survey for account purposes cannot. There exists at present a great variety in practice in different collectorates on this point and it is necessary that one uniform system should be introduced. It might be well that Government should obtain a formal opinion on the subject from the Legal Remembrancer with a view to an authoritative interpretation being issued.

"8. If it be conceded that the law is ambiguous and capable of interpretation as shown above the Survey and Settlement Commissioner hopes that it may be made clear that a Subordinate or Pot Nos. cannot be relinquished without the liability of the holders of other Pot Nos. in the main survey No. being enforced. It is necessary for simplicity of revenue administration that only the Survey unit proper *i. e.* the Survey No. should be capable of unconditional relinquishment. In the Konkan and even in parts of the Deccan many Survey Nos. contain from 30 to 50 Pot Nos. some of very small area and the confusion which would occur, if one or more of these plots were to be permitted to be unconditionally relinquished, may be readily imagined. Not only would there arise confusion in the accounts, but it would be a matter of some difficulty for the village Accountant without the assistance of the holders of other Pot Nos. to identify the Pot Nos. relinquished when carrying out the inspection of waste lands with a view to the sale of the grazing and the same difficulty would be experienced by an applicant who desired to take up the relinquished land. Subordinate Survey Nos. are demarcated by the Survey Department as required by the rules, but the demarcation is done as inexpensively as possible to save the pockets of the cultivators and where, as often happens in rice lands, there exist well defined embankments it is considered sufficient to indicate the boundaries of each plot by one or two small stones. * * * *"

(2) The Legal Remembrancer observed :—

"The Survey and Settlement Commissioner, I think, takes a perfectly correct view of the law. * * * *"

that such operations shall not be proceeded with unless and until an application accompanied with prepayment of all the costs of such operations, or such portion thereof as the Survey Commissioner may direct, has been presented by the parties interested.

" 3. As the law now stands, a Subordinate Survey No. falls within the definition of a Survey No. and must I think, be treated in all respects as if it were an entirely distinct Survey No.

" 4. When an opportunity occurs, the law may, of course, be amended in any manner that Government think expedient. But looking to the fact that each Subordinate Survey No. marks a 'separate occupancy recognized in the village accounts' (Rule 55, clause 1), it would seem that however inconvenient and troublesome it may be for administrative purposes to be obliged to recognize the separate existence of such small holdings, it is only fair to the holders that they should not be burdened with the responsibility for their neighbour's affairs which the Survey and Settlement Commissioner proposes in his para : 8. If their occupancies are separately recognized in the village accounts and each of them therefore has, or may have, I presume a separate Khata, it seems to be in the highest degree unreasonable to say that if one or more of these small holdings should be relinquished the responsibility for their assessment shall be thrown upon the holders of *all the other* Subordinate Nos. in the main Survey No. * * * "

6. On receiving these opinions Government passed orders on the question referred to in their Resolution No. 898, dated 2nd February 1883. The Resolution ran as follows :—

" * * * * *
 " 2. Cases of the kind referred to * * are not of rare occurrence, and if the liability in respect of the * * relinquished shares cannot be enforced upon the other sharers in the main Survey number loss of revenue to Government may not unfrequently occur, and the only way to avoid it would be to amend the law as it stands on the subject, and the sooner this is done the better. * * * * "

7. The question was then referred to the Divisional Commissioners who were asked to state their opinions in the matter after consulting the Survey and Settlement Commissioner.

8. The Commissioners discussed the question in Committee and submitted a joint report after consulting the Survey Commissioner in the matter. This report was disposed of by Government in their Resolution No. 1542, dated 19th February 1884, which ran as follows :—

" * * * * *
 " 3. It is to be inferred that the cultivation of a field by a number of

Recognized shares of survey numbers so defined by boundary marks shall be called "Subordinate Survey numbers" but shall be regarded for all purposes as recognized shares of survey numbers.

(2) When an occupancy is held by two or more co-sharers as an undivided occupancy is and has always been a common practice. In Sind for instance, it is said to be convenient and popular 'because joint action is necessary in making and clearing branch canals, water-courses, &c.' It is recognized in various sections of the Land Revenue Code, such as Sections 80, 81, 136. Joint responsibility is established in case of relinquishment of shares by Section 99 (b) and the Legal Remembrancer recognizes this responsibility as equitable when the shares are undivided and the sharers have separate accounts, and concurs in its extension to the case of a share being forfeited, in which Government have concurred.

"4. This kind of holding, where the undivided occupancy is not large, is convenient to the executive and therefore in such cases the practice has been not to demarcate the shares on the ground but to parcel out the assessment into shares by annas and enter the payers and the sum due from each in the village records.

"5. Now this practice points to a minimum of area, below which Government will not consent to demarcate the land into separate survey numbers. This regulation is reasonable and is not contrary to the principles of the rayatwari tenure. It has accordingly been confirmed by law, Land Revenue Code, Section 98. Government do not intend to abandon the right to refuse to subdivide land below a fixed minimum area. On the other hand His Excellency in Council considers that obstruction should not be offered to the recognition as survey numbers of shares which have been defined by partition and are above the minimum area, or not so much below it as to make their recognition inexpedient.

"6. This being so, Government should not be compelled to recognize a share of a field below the minimum as a separate survey number, merely because for administrative convenience, it may have been roughly marked off from other similar shares in the field. Rule 99 (2) provides for this.

"7. On the other hand it is held that when part of a survey number has been separately demarcated and assessed in a formal way, it becomes under the Act and rules in force to all intents and purposes a survey number and that Section 99 (b) is no longer applicable to it and the other subordinate numbers similarly demarcated which are comprised in a survey number.

"8. Moreover under the proviso to Section 98, any subordinate numbers which have up to this date become survey numbers, by being recognized as such although of less than the minimum area, must be

occupants in shares, and each of the said occupants has a separate account to which he pays his quota of the land-revenue due in respect of the occupancy separately, but the proper share of each occupant has not been permanently divided from the rest, the entire occupancy shall be comprised in a survey number; and each co-occupant's share

held exempt from Section 99 (b). No holding need be recognized as a survey number if it is less than the minimum, but if it has once been recognized as such it is 'deemed to have been authorizedly made whatever its extent.'

" 9. There are then only two classes to consider (1) survey numbers whether integral or subordinate and (2) recognized shares. And the important point is to maintain the minimum, and not to recognize as survey numbers holdings of smaller size except with due deliberation and forethought. This rests with the Survey Commissioner under Section 98, Clause 2.

" 10. Rule 55 therefore appears to be somewhat too wide and to need the addition of a proviso that a 'separate occupancy recognized in the village accounts' shall not, merely because it is separately defined by boundary marks for administrative convenience, become a survey number under the Act, if its area is less than the minimum area fixed for the district.

" 11. The necessity of this proviso may have been overlooked. On the other hand it may have been considered that, as rules framed under Section 214 must be consistent with the Act, Subordinate survey numbers under Rule 55 (1) are subject to the provisions of Section 98. It is certain that the Survey Commissioner had no intention to lower the minimum and recognize *all* subordinate survey numbers as integral survey numbers, and it is a question whether *Pot* numbers have been recognized in the sense of Section 98, Clause 2. The intention of Rule 55 seems to have been that every 'separate occupancy recognized in the village accounts' should be separately demarcated, whatever its area. Now the Act does not lay down that a recognized share shall in no case be demarcated, or that if it is demarcated it shall become a survey number exempt from Section 99 (b). On the contrary Section 99 (a), by enacting that it shall not be obligatory to demarcate recognized shares separately, seems to imply that they may be demarcated without ceasing to be recognized shares under that section.

" 12. While therefore it may be very proper to recognize any holding of a certain size as a survey number, it does not appear clear that the Act at any rate makes it obligatory on Government to abandon Section 99 (b) in every case where a holding has been defined by boundary-marks and entered in the record under a subsidiary number. What the minimum size of recognized survey numbers should be in any case rests

therein shall be recorded as a recognized share of such survey number, together with the proportion, reckoned in annas, which such share bears to the whole survey number and the assessment of such share.

(3) All measurements shall be recorded in a book; to

with the Commissioner of Survey under Section 98, and this discretion should in the opinion of His Excellency in Council be used with reference to the views stated in paragraphs 3—6 of this Resolution.

“13. The principle to be followed being thus laid down, it is for consideration how far concessions beyond it have already been made under the existing Act and Rules, and what changes in them are necessary to give effect to it.

“14. It is not clear to His Excellency in Council that it is necessary to alter the Act for this purpose, though an amendment of Section 99 is necessary to extend clause (b) to forfeitures, also the force of the words ‘and includes a recognized share of survey number’ at the end of Section 3 (6) is doubtful. Rule 55 and perhaps some others should be recast. The rules under Section 214 may be varied or rescinded at discretion, but the effect of any rule or proceedings taken while it is in force must be considered.

“15. His Excellency in Council thinks it advisable to refer the subject back at this stage to the Legal Remembrancer and Commissioner of Survey in turn for further consideration of the views stated in this Resolution and the best way of giving effect to them.”

9. The opinions called for in para : 15 of the above resolution were submitted to Government who in their Resolution No. 4892, dated 18th June 1884 stated their conclusion on this difficult question in the following terms :—

“ * * * * *

“2. First to revert to Bombay Act I of 1865. This Act and the rules framed under it recognized only (1) the field or number and (2) the recognized share of a field. The latter was defined to be a portion of a field entered in the name of any one in the survey papers or other public accounts, and this definition included what are now known as subordinate survey numbers as well as recognized shares of survey numbers. Rule No. 15 under Act I of 1865 enforced therefore in both cases the liability of all the other sharers of a survey number when one sharer relinquished his share.

“3. It is stated in these papers that ‘the provision regarding the liability of the other holders of subordinate survey numbers in the case of relinquishment of a subordinate survey number is one to which the cultivators have become accustomed from the earliest days of the survey.’ Again the Commissioners of Divisions say :—‘The practice against which Mr. Nay-

Survey and Settlement Commissioner's memorandum No. 443 of February 24th, 1883, paragraph 11.

be kept in such form as shall be prescribed by the Survey Commissioner for each survey. The said books when prepared shall be preserved as a record of the survey.

(4) The original measurements made by the subordinate survey officers employed for the purpose shall be tested by the officers in charge of measuring establishment in

for argues of enforcing a responsibility of co-sharers in a survey field when one of the occupants of a subordinate share relinquishes his occupancy, is one which has prevailed since the earliest days of the survey.'

Joint report No. R. 357, dated 17th July 1883, paragraph 5.

The Legal Remembrancer himself writes :—

'I readily own that the recognition of shares of survey numbers when the shares are undivided and the sharers have separate accounts is a convenience to the sharers themselves and a necessity for the purpose of facilitating the village account-keeping, and I do not think that the sharers have anything to complain of, in its being laid down that when one sharer relinquishes his share the rest of them must be responsible for its assessment, and I agree with the Commissioners of Divisions that the same liability might legitimately be imposed if a share is forfeited.'

But he argues that these liabilities should be confined to those who form a body of co-sharers each entitled to a certain portion of the field, and that the survey system before the Land Revenue Code unjustly extended the liabilities to subordinate survey numbers, the holder of any one of which has no connection with the holder of any other.

"4. The question is whether the Land Revenue Code of 1879 altered the previous law on this subject and if so, to what extent. Act V of 1879 speaks only of 'survey numbers' and 'recognized shares of survey numbers.' The expression 'survey numbers' includes 'a recognized share of a survey number' and the latter is 'subject to the same provisions of this Act as are applicable to entire survey numbers' except that (99 (a)) it need not be demarcated and (99 (b)) recognized sharers are subject to the joint liability above described. 'Recognized share' is defined (Section 3 (7)) to be 'a sub-division of a survey number separately assessed and registered,' but it is not said whether by the Survey Department or by the Mamlatdar.

"5. It is clear then that the Act of 1879 equally with the Act of 1865 contemplated only two divisions of land, viz., the survey unit and its recognized part. Section 99 (b) of the Act of 1879 attached to the latter the same liability as Rule 15 under the Act of 1865.

"6. The condition of a survey number or unit is laid down in Section 93, viz., that it shall not be less than a fixed minimum. This condition is carefully upheld in other sections. Thus in Section 113 a

such manner and to such extent as the Survey Commissioner shall deem sufficient.

(5) Village maps shall be prepared under the orders of the Survey Commissioner showing each survey number. The positions of the boundary marks of each survey number shall also be shown on the said maps.

partition which would sub-divide land in a way to make survey numbers below the minimum is not permitted. In Section 115 the survey officer in revision is not to sub-divide a survey number into two or more distinct numbers if the latter would fall below the minimum area. It is clear that in these cases there may be a plot of land the holder of which has no joint interest with the holders of other plots comprised in the same survey number, except as regards the liability imposed by Section 99 (b), yet such plots remain recognized shares subject to that liability, because they are below the minimum area of a survey number.

"7. Now by Section 98 the minimum of area is, with an exception to be noticed below, to be fixed by the Survey Commissioner with the sanction of Government. Rule 55 is a rule purporting not to be inconsistent with the Act, and made for the guidance of the Survey Commissioner. Rule 55 (1), as it is construed by the Legal Remembrancer, lays down that 'every separate occupancy recognized in the village accounts' shall in fact be a distinct survey number with either a principal or subordinate number. But the 'recognized share' is an occupancy see Section 99 (b) and it is 'separately assessed and registered' in the village accounts. The Survey Commissioner says that 'if a piece of land in the occupancy of an individual is found with an area exceeding the minimum area prescribed for a survey number, it is made into a survey number and never into a subordinate survey number. Only those occupancies found to be of less area than the prescribed minimum are made into subordinate survey numbers.' It is obvious that a rule which requires the Survey Commissioner to make into a survey number every area which is a separate occupancy though less than the minimum area, is not consistent with Section 98 which enacts that no survey number shall be less than the fixed minimum, or with the exercise by the Survey Commissioner of the power given to him by Section 98 of fixing the minimum with the sanction of Government, or with Section 113 (2) or Section 115.

"8. Again, Rule 55 (1) is inconsistent with the spirit of Rule 99 which entitles a co-occupant to have his name and 'the share in fractional parts of a rupee of each such co-occupant in the occupancy' entered in the village records. But in such cases the provisoes to Rule 99 (1) still maintain the liability of Section 99 (b) and (2) forbid the constitution of such a share into a distinct survey number if it is below the minimum area.

"9. Government have already * * * * *
accepted the general principle advocated by the Legal Remembrancer, viz.,

(6) For the purposes of assessments all land shall be classed with respect to its productive qualities. The number of classes and their relative value reckoned in annas shall be fixed under the orders of the Survey Commissioner with reference to the circumstances of the different tracts

that the revenue law should not inflict hardship which can be avoided, and the Act (Section 98, Clause 2) gives the Survey Commissioner authority either generally or in any particular instance to make a survey number of an occupancy which is of less than the minimum area. This clause provides for cases such as that * * * from which the present correspondence arose. If a Collector meets with any case in which extreme hardship would in his opinion result from enforcing the liability under Section 99 (b) he should move the Survey Commissioner to recognize any subordinate survey number affected as a distinct survey number and in this matter Government desire that as much consideration as is practicable should be shown to occupants of shares. But Government cannot admit the propriety of altering the Act by a rule which compels the Survey Commissioner to make every separate occupancy into a survey number whatever its area may be. As the object of Section 98 is to prevent extreme sub-division, it is evidently frustrated by a rule which transfers the power of deciding what the area of survey number shall be, from Government and the Survey Commissioner to the occupants.

" 10. If on the other hand Rule 55 (1) is interpreted to mean merely that, whereas under Section 99 (a) it is not obligatory to demarcate recognized shares, the Survey Commissioner shall nevertheless separately measure, class, assess, and define by boundary marks every recognized share which is a separate occupancy recognized in the village accounts, it is not open to the same exception. But, as already remarked, a proviso is necessary to make this clear, and rule 55 (1) should be amended by striking out the last sentence 'and shall be comprised in a survey number or in a subordinate survey number' and substituting the words 'and shall, if not deemed entitled to be made a survey number under any of the provisions of Section 98, be constituted a subordinate survey number.' And a third clause should be added—'Subordinate survey numbers are recognized shares of survey numbers for the purposes of Section 99, clause (b).' Rule 55 clause (2) is unnecessary and may be rescinded.

" 11. Rule 55, has been in force as law only since the date of its publication, viz., 6th December 1881, and Clause (1) affects only subordinate survey numbers treated under it since that date, if any. Even in regard to these the rule is not valid where the subordinate number is not qualified to be a survey number under Section 98.

" 12. With regard to the other exceptions of Section 98, Clause 2, the Governor in Council of course does not dispute them. They meet the

of country to which the survey extends and to the nature of the cultivation.

(7) Every classer shall keep a field-book and record therein the particulars of his classification of each survey number and subordinate survey number and the reason which led him to place it in the particular class to which

case of old survey numbers accepted because existing as distinct numbers at the time of survey and settlement. But with regard to the last sentence of the clause, it cannot be held that a 'Pot' number separately measured and defined by boundary marks at the original settlement is therefore a survey number, seeing that it is *ex hypothesi* a portion of a survey number and the whole cannot be the same thing as its part. A sub-division of a survey number separately assessed and registered is by definition a recognized share of a survey number, and though its demarcation is not obligatory it is by inference permissible and does not *ipso facto* make it a distinct survey number."

10. In accordance with the above orders clauses (1) and (2) of Rule 55 and Rule 99 (2) of the Revenue Code Rules were amended by G. N. No. 5546, dated 8th July 1885, published in the B. G. G. Part I, page 867, 1885, as shown below :—

Rule 55—(1) Every separate occupancy recognized in the village accounts shall be separately measured, classified and assessed and defined by boundary marks and shall be comprised in a survey number or, if the area of the occupancy does not entitle it, under the provisions of section 98, to be made into a survey number, in a recognized share of a survey number.

Recognized 'shares of survey numbers so defined by boundary marks shall be called subordinate survey numbers' but shall be regarded for all purposes as recognized shares of survey numbers.

(2) When an occupancy is held by two or more co-occupants in shares and each of the said occupants has a separate account to which he pays his quota of the land revenue due in respect of the occupancy separately, but the proper share of each occupant has not been permanently divided from the rest, the entire occupancy shall be comprised in a survey number and each co-occupant's share therein shall be recorded as a recognized share of such survey number, together with the proportion, reckoned in annas, which such share bears to the whole survey number and the assessment of such share.

Rule 99—(2) be deemed to constitute the share to which it relates a recognized share of the survey number.

11. The above rules were in force until amended in accordance with the orders contained in G. R. No. 357, dated 15th January 1889. This Resolution was passed on the Survey Commissioner's report explaining

in his estimation it should be deemed to belong. Such field-books shall be preserved as permanent records of the survey.

(8) A test of the original classification made by the subordinate officers employed for this purpose shall be taken by the officers in charge of classing establishments,

the rules and principles followed in the Survey Department in the demarcation of subdivisions of Survey Nos.

12. Government said :—

"Section 98 of the Land Revenue Code provides that as a rule no survey number shall be made of less extent than a minimum to be fixed from time to time. The minimum size of survey numbers was prescribed under the old Act IV of 1868. Rule 2, Section 17, which corresponds with Section 98 of the Land Revenue Code, and under section 2 of the latter the orders prescribing those areas are in force until revised.

"2. Section 99 of the Land Revenue Code authorises the treatment of recognized shares of survey numbers in the same manner as entire numbers and subjects them to the provisions of the Act. They are therefore for purposes of separate demarcation governed by the rules prescribing minimum areas.

"3. Section 115 of the Land Revenue Code gives survey officers power to subdivide any survey number into two or more distinct numbers. This power of course includes that of making recognized shares into subordinate survey numbers, but the power is again subject to the provisions of section 98, and the rules having force under it, regarding minimum areas. These rules are even held binding in the case of partitions under decree of a Civil Court. * * * *

"4. It must be noted that section 99, dealing with the recognition of shares, provides that it shall not be obligatory to demarcate them separately.

"5. There can be no doubt that it was the original design that survey numbers should be made of such size as would meet the convenience of cultivators without reference to the partition of property within each number the assessment representing, not a tax on individual properties, but a share in the produce of such an area as might be conveniently held to one kind of cultivation each year by one person, or such as might be determined by the limits incidental to particular classes of cultivation, rice land, gardens, &c.

"6. Such being the theory and the law, the practice of the Survey Department is described by the Survey and Settlement Commissioner as follows :—

"2. As Regards survey numbers Government are right in their supposition that any separate recognized occupancy which is above the

in such manner and to such extent as may be directed by the Survey Commissioner. The said test shall be an independent test, that is to say, it shall be made by the testing officer in entire ignorance of the original classer's proceedings or records until it has been completed and its results have been finally determined, when only the ori-

minimum prescribed by the Commissioner of Survey, under section 98 of the Land Revenue Code, is at revision survey made into a new survey number regularly demarcated and assessed. But as regards recognized occupancies of a smaller area than the minimum prescribed for a survey number there appears to be some misapprehension, the opinion of Government apparently being that the rules laid down under Act IV of 1868 are designed to prescribe the minimum size for subordinate or pot numbers. The scale, however, laid down under Clause 2, section 17 of that Act, referred to the making of new 'survey numbers' out of existing 'survey numbers' and the minima fixed related to cases of such sub-division only. The scale could have had no reference to subordinate (Pot) numbers, as in 1868, when the Act was passed, the system of sub-dividing survey numbers into subordinate numbers did not exist in the Gujarat, Deccan and Southern Maratha Country Surveys, while in the Konkan, where the system had been introduced in the case of rice, rabi and garden lands only, there was from the very first no minimum limit to the area of the subordinate number. The plan of sub-dividing into subordinate numbers elsewhere dates from the first revision surveys only and it has gradually developed until it has been given the force of law by rule 55, Clause I of the rules issued under the Land Revenue Code. Under this rule every separate occupancy recognized in the village accounts is required to be made into a survey number or a subordinate survey number and to be measured, demarcated, classified and assessed on its own individual merits. The only exception is in the case of the warkas lands of the Konkan, which are not sub-divided into subordinate numbers but are broken up into subdivisions called 'phalni tukras,' the technical difference being that the occupants are spared the legal necessity of demarcating their holdings by boundary marks. It must be understood that whereas survey numbers are fully defined by boundary marks according to the rules in force, subordinate survey numbers are comparatively roughly demarcated, four stones, one at each main corner, being usually considered sufficient.

3. The present rules for sub-division of lands have been gradually adopted after prolonged experience gained in all parts of the presidency. Commencing with a system of somewhat arbitrary division of lands into survey numbers the survey has now become virtually a survey of holdings. But all that is done now in the matter of sub-division is done in the interests of good revenue administration only, and not for the convenience of the cultivators. Any sub-division over and above that required by the rules is ply undertaken at the expense of the occupants. * * *

ginal classing valuation and the test valuation shall be compared and their separate results recorded.

(9) When rates of assessment have been sanctioned by Government, the assessment to be imposed on each survey number or subordinate survey number shall be

"It is clear that the practice is in accordance with (substituted) Clause (1) under Rule 55 of the 'Land Revenue Code' rules, but it apparently would have been well in order to bring the distinction made in that rule between 'subordinate numbers' and ordinary survey numbers more into accord with section 99 of the Land Revenue Code, if it had been distinctly ruled that the orders under Section 98 prescribing minimum areas for survey numbers should not apply to the demarcation of recognized shares now called 'subordinate numbers.'

"7. Considering also the limited degree of the public interest in the sub-division of numbers according to property and the fact that the shares existing at any given date are necessarily liable to change from increase or decrease of population, transfers, &c., it may be questioned whether the discretion as to demarcation of shares allowed in Section 99 Land Revenue Code (a) should have been altogether abrogated by the rules without a provision that some part at least of the cost of demarcation should be borne by the occupant. Doubtless there are many cases in which the separate demarcation and classification of recognized shares has been well worth the cost incurred, secured, securing not only a more equitable adjustment of demand, but a better revenue than under the system of proportioning demand on each sharer to his interest, such as is prescribed for occupancies held in common; but it is difficult to believe that in tracts of a homogeneous character of in the warkas areas of the Konkan there are any such public advantages in demarcation of shares as to warrant the entire cost of the operations necessary being borne by Government.

"8. No general rule is possible but His Excellency the Governor in Council thinks that it may be left to the discretion of the Commissioner to sanction the refusal by the Superintendent of Survey, in any class of cases of the separate demarcation of recognized shares, without payment of the cost or a portion thereof. This would require an addition to rule 55 and the Survey and Settlement Commissioner should be requested to put himself in communication with the Remembrancer of Legal Affairs on the subject of this addition and of the alteration, suggested in paragraph 6 above, and to report the result of his consultation as to the best method of giving effect to the views above stated."

13. In accordance with the above orders the first portion of clause (1) of Rule 55 was cancelled and clauses (a) and (b) as now printed were substituted for it under G. N. No. 4062, dated 4th June 1889, published in the B. G. G. Part I, page 509, 1839, and are now in force.

14. Thus in accordance with the principles and orders set forth in

determined according to the relative classification value of the land comprised therein.

(10) Matters of detail not provided for in the foregoing Survey Rules shall be determined in each survey in accordance with such general or special orders as the Survey Commissioner acting under the general control of Government shall from time to time deem fit to issue.

(3) *General.*

56.* When unalienated land assessed or held for purposes of agriculture only is subsequently appropriated to any purpose unconnected with agriculture, the assessment upon the land actually so appropriated shall be altered in accordance with the provisions of paragraph 2 of section 48 of the Land Revenue Code and fixed at the following rates :—

If the village, town or city in which			
the land is situated is classed, under			
	Rule 66, in Class I ...Rs. 10 per acre,	or ten times	the assessment for
		agricultural pur-	poses, whichever be
		the greater.	
"	"	II ...Rs. 5 or five times do.	
"	"	III ...Rs. 2 or three times do.	
"	"	IV ...Re. 1 or double the assess-	ment.

If the village, town or city in which the land is situated is classed, under Rule 66, in Class V, no alteration in assessment shall ordinarily be made.

the above summary it is clear that when the area of a Pot No (*i. e.* a sub-division of land separately assessed and demarcated) exceeds the limit prescribed in Section 98, it becomes a survey number to all intents and purposes, and is to be dealt with accordingly. If the area of such sub-division is less it is to be considered a recognized share and is to be dealt with accordingly irrespective of whether it comprises a separately recognized occupancy and whether it is separately assessed and demarcated or not.

* As regards determining special assessments see table given in Appendix II to the Code.

(1.) **Defaulter's holding not to be forfeited as a matter of course.**—It is not the wish of Government that holdings in respect of which arrears of land revenue are due should *ipso facto* be declared forfeited, but that the provisions regarding forfeiture are to be held to apply only to those cases in which the Collector deems it necessary to have recourse to them for the recovery of arrears.

Where there is reason to think that if the people have time given them they will not fail to discharge their liabilities. It would be hard to treat them as contumacious defaulters or as hopelessly insolvent. In such cases it is not the wish of Government that the power of forfeiture should be enforced to the risk of the outstanding revenue. (G. R. No. 4949, dated 18th September 1880.)

56 A.* Nothing in the last preceding rule shall be applicable to lands within the sites of the cities and towns of Ahmedabad, Broach, Surat, Rander and Bulsar.

In the said sites the rate to be imposed upon land appropriated as aforesaid shall be two pies per square yard.

VIII.—REGISTER OF ALIENATIONS. [Section 53.]

57. The Register of Alienations to be kept under section 53 of the Land Revenue Code shall be in the form of Appendix F.

IX.—DISPOSAL OF FORFEITED HOLDINGS. [Sections 56 and 214 (e) and (i).]

58.† Whenever it shall appear to the Collector that an arrear of land revenue cannot be readily recovered by any of the means provided in Chapter XI of the Land Revenue Code other than the forfeiture of the holding in respect of which the arrear is due, he shall declare such holding to be forfeited to Government. But care should be taken that such declaration is not made except in cases of necessity.

Under special circumstances the forfeiture of holding under this Rule may be postponed by the Collector for one or more years.

* This rule has been inserted under G. N. No. 8325, dated 14th October 1885, published in the B. G. G. Part I, page 1203, 1885.

† (1.) Vide G. R. No. 4297, dated 25th July 1881, printed as order No. (4) under section 56 of the Code.

(2.) Vide also G. R. No. 8757, dated 6th November 1884, printed as order No. (3) under section 154 of the Code.

If the holding in respect of which the arrear is due consists of two or more survey numbers, or of two or more portions of land, or estates separately assessed, and the Collector shall be of opinion that the whole amount of such arrear could be realized by the sale of some one or more only of such numbers, portions or estates, he may, in his discretion, restrict the forfeiture to such one or more of the said numbers, portions or estates.

(1.) Rules regarding suspension and remissions of land revenue :—

When a Collector has clearly ascertained that an abnormal failure of the harvest, causing total or almost total destruction of the crops over a considerable area, is certain, he is authorized to suspend the collection of the next ensuing instalment of land revenue in such area and any subsequent instalment or instalments falling due while the failure continues. The Collector shall forthwith report his proceedings, stating fully the reasons for his order and the extent of its application, with all other particulars, to the Commissioner for the information of Government.

The Collector will cause the occupants, whose land revenue is suspended, distinctly to understand that such suspension is provisional only, and that it will be decided after subsequent investigation whether the land revenue suspended will be ultimately remitted or collected.

As soon as possible after the failure of the harvest has ceased, the Collector will conduct a careful investigation into the loss of crops sustained by each occupant whose land revenue payment has been suspended and its effect on his ability to pay suspended instalments and will submit to Government through the Commissioner his recommendations for the remission or collection, or partial remission and collection, of the suspended land revenue.

In framing his recommendations the Collector will consider whether the loss of harvest in each case has been total or partial, whether the occupant has been left without means or possesses a reserve of means or capital, whether he has lost or preserved his plough cattle and agricultural stock. If the occupant has sub-tenants the Collector should ascertain whether he has recovered his rents from them or remitted them. On these and similar considerations the Collector will decide whether total, partial or no remission should be recommended.

In no case should the Collector apply such pressure to obtain payment as will cause an occupant to sell his plough cattle or agricultural implements, or prevent or retard the resumption of agriculture. The recovery of arrears, if any, should be from a surplus of means after sufficient is allowed for the subsistence of the occupant and his family and the res-

toration of his position as a revenue payer, and occupants should not be driven to borrow from savkars in order to pay arrears.

For the payment of arrears of suspended revenue, if ordered, the Collector may fix such instalments, extending over such period, as the circumstances of the occupant may require. (Draft Famine Code,—G. R. No. 2619, dated 26th March 1884.)

(2.) Government of India to be informed of the probable effect of suspension and remissions.—Under the orders conveyed in paragraph

58—R, dated 12th October 1882 of the Government of India, Revenue and Agriculture Department.

27 of the Resolution noted in the margin, proposals for suspensions and remissions of revenue are sanctioned by Commissioners of divisions and their orders subject to revision of Local Government or administration are final. The Governor General in Council has no desire to interfere with the discretionary powers thus conferred on the local authorities but request that in future when suspensions or remissions of revenue are sanctioned the Government of India may be informed without delay of the probable effect of such suspensions or remissions upon land revenue collections. (G. R. No. 8601, dated 17th December 1887.)

(3.)—Of the proposed changes in the dates of instalments.—In framing any rules which are to govern the regulation of instalments of revenue, it may be borne in mind that any material and sudden changes which will affect the Treasury balances are likely to embarrass the financial arrangements of the State; and are especially liable to disarrange the financial equilibrium if the changes made have any marked influence on the cash balances of November and December. As a general rule, the resource operations of Government are regulated with a view to securing a certain minimum cash balance in those months, when the balances are lowest. Any measure which has the effect of postponing a considerable receipt of revenue from before December till a later date, may, if introduced without notice, embarrass the Government in dealing with the balances, and would require to be met by the establishment of a permanently enhanced balance during the rest of the year. It is, therefore, very important that the Government of India in Revenue Department should have the opportunity of studying the effect of any proposals which may influence the cash balances for November and December in the manner indicated before they are carried out. His Excellency the Governor in Council will therefore be so good as to direct that a reference may be made to the Government of India before a decision is arrived at in regard to such proposals, except in cases where the revenue, the collection of which it is proposed to postpone is inconsiderable in amount. (G. of I. letter No. 1337, dated 14th March 1888, and G. R. No. 2205, dated 11th April 1888.)

(4.) Remission and suspension of trifling amount.—It seems to His Excellency the Governor in Council unnecessary to report remissions or suspension when the sum involved is trifling but any order which would

involve a loss or delay in receipt of revenue of a sum exceeding Rs. twenty thousand should be reported at once on its issue to the Government of India. (G. R. No. 2585, dated 27th April 1888.)

59.* The Collector shall cause the land comprised in any forfeited alienated holding to be entered in the records as unoccupied unalienated land, and may dispose of it forthwith, or at any subsequent time, in accordance with the rules and orders in force relating to land of that description: Provided that if the forfeited alienated holding was held for service, and the Collector is satisfied that the failure to pay the land revenue due thereupon arose solely from the inability of the watandar to meet the demand, he may deduct from the forfeited holding a portion of land of which the occupancy-price would be likely to equal the amount of the arrearrecoverable, and deal with such portion in accordance with the rules and orders aforesaid, and restore the remainder of the forfeited holding to the watandar, or, with the previous permission of Government, may restore the entire forfeited holding to the watandar, and either remit the arrear of land revenue due, or make such arrangements for its being paid in the future as Government shall in each case sanction.

59 A.† If a defaulter shall desire that his forfeited occupancy be put up for sale on the ground—

- (1) that he obtained it on payment of consideration for the same to Government or to the previous occupant; or
- (2) that the land comprised in the occupancy has been

* All lapses of alienated property must be reported to Government immediately. Each report will show the name of the last incumbent, the date of lapse, the nature of the lapsed holdings, their annual value, the cause of the lapse, and the authority on which the grant was enjoyed. When the lapse is partial a portion being continuable to heirs or others, this should be clearly and fully stated. (G. R. No. 1545, dated 25th April 1859.)

† Rules 59A and 59B have been inserted under G. N. No. 7436, dated 20th October 1886, published in the B. G. G. Part I, page 905, 1886.

improved since the occupancy was last granted by Government ;
 the Collector shall inquire into the circumstances, and if the defaulter's request appears to him to be reasonable, shall put up the occupancy for sale :

Provided that the Collector shall not be bound to confirm the sale of any such occupancy, if he has reason to believe that the bidding thereat has not been *bona fide* or that there has been collusion to recover the occupancy without payment in full of the arrears and charges due to Government, or if in the opinion of the Collector there has been some material irregularity in publishing or conducting the sale, which is likely to have affected the amount of the highest bid or otherwise to have caused injury to any person.

59 B. If a forfeited occupancy which falls under Rule 59A is a recognized share of a survey number, it shall first be offered by the Collector at such price as it seems to him worth, to the occupants of the other recognized shares in the survey number in the order prescribed in Section 99 (b). If none of them buys it the Collector will then deal with the occupancy as is prescribed in Rule 59A.

60.* In cases not falling under the last preceding rules forfeited occupancies shall be put up for sale for recovery of the arrears due, except when the Collector thinks—

- (a) that owing to the badness of the times, or to the want of demand for land of the description comprised in the occupancy, or to a combination of the neighbouring landholders, or for any other special cause, there will be no bidders at the sale, or that the highest amount bid will be considerably below the upset price of the occupancy : or
- (b) that the land comprised in the occupancy is likely

* This is an amended rule sanctioned under G. N. No. 7436, dated 20th October 1886, published in the B. G. G. Part I, page 905, 1886.

to be required either immediately, or within such time as the Collector deems reasonable for any such purpose as is described in Section 38 of the Land Revenue Code.

61. Every sale* of a forfeited occupancy, as such, shall be made subject to the same rules and orders as are applicable to the sale of unoccupied unalienated land so far as the same are consistent with the provisions of Chapter XI of the Land Revenue Code; and the provisions of Rules 31 to 33, both inclusive, shall apply to the case of every such sale.

62.† If, for any reason, a forfeited occupancy is not sold, the Collector shall either cause the land comprised therein to be entered in the records as unoccupied and direct that it be dealt with under the rules and orders in force relating to land of that description, or take steps for having it at once lawfully assigned for any such purpose as is described in Section 38 of the Land Revenue Code.

63. It shall be in the discretion of the Collector to restore any forfeited occupancy at any time on payment of the arrear in respect of which the forfeiture was incurred, together with all costs and charges lawfully due by the defaulter, or, on security being given to his satisfaction for the payment of the said arrear, costs and charges within a reasonable period.

No forfeited alienated holding shall be restored without the previous sanction of Government.

64. When a holding which has been forfeited for default in payment of the land revenue due thereupon is not

* (1.) Vide G. R. No. 2459, dated 26th March 1883, printed as footnote to Section 152 of the Code.

(2.) His Excellency the Governor in Council is pleased to direct that the rates sanctioned by G. R. No. 2459, dated 26th March 1883, for expenses of completed sales should be extended to sales which have not been completed owing to the arrears due having been paid up on the day fixed for the sale. (G. R. No. 9482, dated 3rd December 1892.)

† This is an amended rule sanctioned under G. N. No. 7436, dated 20th October 1886, published in the B. G. G. part 1, page 905, 1886.

sold the arrear payable by the defaulter shall ordinarily be remitted without having recourse to further compulsory process against him. But it is not intended that the right of recovering arrears from defaulters by other means, notwithstanding that their holdings have been forfeited and disposed of without being sold, should be altogether relinquished; in special cases the Collector may, with the sanction of the Commissioner, enforce that right.

X.—LIMIT OF FINES TO BE LEVIED UNDER SECTION 61.

65.* The limit of fine to be levied under section 61 of the Land Revenue Code, when land is unauthorizably occupied and appropriated to any non-agricultural purpose, shall be double the amount of the fine that would be leviable under Section 48† and Section 66 of the Land Revenue Code, if the same land being in the lawful occupation of the trespasser had been appropriated by him to the same purpose without the permission of the Collector.

XI.—FINES LEVIABLE WHEN UNALIENATED LAND ORIGINALLY APPROPRIATED FOR PURPOSES OF AGRICULTURE IS OTHERWISE APPROPRIATED. [Sections 65 and 66.]

66.* For the purpose of determining the amounts of the fines leviable under Section 65 of the Land Revenue Code the Commissioners shall divide the villages, towns and cities in their respective divisions into five classes. As soon as possible after the issue of these Rules, the Commissioners shall publish notifications in the *Bombay Government Gazette*,‡ specifying by name what villages in each district are placed in the first four of the said five classes; the fifth class comprising "all other villages in the taluka" not entered in the first four classes, and which need not

* As regards determining the amount of fine see table given in Appendix II to the Code.

† No fine is leviable under section 48 and it appears that the reference to that section in this Rule is uncalled for.

‡ Lists showing the classes into which the Villages in the several Districts comprised in the N., C. and S. Divisions have been divided by the Commissioners of those Divisions for the purposes of this rule will be

be specified by name. The Commissioners may by similar notifications from time to time alter the said classification.

67.* In villages, towns and cities included in the first four classes by the said notifications, the fines leviable under section 65 of the Land Revenue Code shall ordinarily be at the following rates :—

Class I	Rs. 250	per acre	} of the land actually appropriated to any purpose unconnected with agriculture, and at the same rate in proportion for fractions of an acre.
" II.	" 150	"	
" III.	" 100	"	
" IV.	" 50	"	

In villages, towns and cities included in Class V by the said notifications no fine shall ordinarily be levied.

Notwithstanding any thing hereinbefore contained, the Collector may, in his discretion, require the payment of a fine not exceeding the rate prescribed for Class I in any village, town or city in any of the other classes in any special case.

68.† Notwithstanding anything contained in the last two preceding Rules the amount of fine imposable under section 65 of the Land Revenue Code in respect of lands within certain limits to be from time to time defined by Government by notification in the *Bombay Government Gazette* in the neighbourhood of railway stations, large towns, military cantonments, and wherever else Government may deem fit, shall be fixed by the Collector, in his

found on the following pages of the B. G. G. part I :—

Sind.	Pages	508 to 587 and 1239 of 1884.
N. D.	Pages	{ 661 to 679 of 1882. & 513 of 1883.
C. D.	Pages	{ 312 to 314 of 1883. 317 to 221 of 1884.
S. D.	Pages	800 to 1038 of 1882.

* As regards determining the amount of fine see table given in Appendix II to the Code.

† As to the amount of fine in respect of lands within certain limits under this Rule see appendix P.

discretion, at rates not exceeding Rs. 500 or Rs. 1,000 per acre, as may be directed by Government in the said notification.

63A.* No application under Section 65 for permission to appropriate land within the sites of the cities and towns of Ahmedabad, Broach, Surat, Rander and Bulsar to a non-agricultural purpose, or to have land so appropriated demarcated and made into a separate number under section 116, shall be granted by the Collector, if the superficial contents of the land to which the application relates is less than two hundred square yards.

69.† The fine leviable under section 66 shall be fixed by the Collector at his discretion, but shall not exceed five times the amount imposable by him under section 65 of the Land Revenue Code. For the purposes of this Rule, villages, towns or cities included in Class V by the notifications issued under Rule 66 shall be deemed to have been included in Class IV.

70. In such cases as Government deem exceptional or unusual the amount of the fine to be imposed by the Collector, whether under section 65 or 66 of the Land Revenue Code, will be specially fixed by Government at such rate as they deem fit, notwithstanding anything contained in the foregoing Rules.

71. Nothing in Rules 66 to 70, both inclusive, shall be deemed to apply to potters and brick and tile-makers, who employ any material of the soil of the land in their occupancy for the purposes of their trade, or who erect huts or other buildings on their land for the more convenient pursuit of their trade. In the case of such persons no fine shall be levied under section 65 or 66 of the Land Revenue Code.

* This rule has been inserted under G. N. No. 8325, dated 14th October 1885, published in the B. G. G. Part I, page 1203, 1885.

† As regards determining the amount of fine see table given in Appendix II to the Code.

(1.) **Limit of brick and tile-maker's exemption.**—This rule provides that in the case of potters and brick and tile-makers no fine shall be levied under Section 65 or 66 of the Code. But for this special exemption the fine is leviable.

In the case, therefore, where a brick-maker unauthorisedly occupies land set apart for a special purpose and covers it with brick-kilns, the fine to be levied under rule 65 must be estimated at double the amount which could have been levied for similar appropriation of soil without permission for a non-agricultural purpose in an authorised occupancy but for the special exemptions. (G. R. No. 1672, dated 11th March 1882.)

72.* Nothing in Rules 66 to 70, both inclusive, shall apply, until further orders, to the district of Ratnagiri. The application of the said rules to the district of Kanara having by previous orders been stayed, it is directed that on and after the 10th day of June 1890 the said rules 66 to 70, both inclusive, shall apply to, and be in force in, the said district of Kanara.

XII.—APPROPRIATION OF LANDS FOR PROHIBITED PURPOSES OR WITHOUT PERMISSIOIN. [Sections 48, 66 and 214 (i).]

73. When the occupant, or any tenant or other person holding under or through him, shall appropriate land in his occupation to any purpose prohibited by Rule 48, or unconnected with agriculture, without the permission of the Collector being first obtained, he shall be deemed to have committed a breach of the conditions of his occupancy; and if after reasonable notice he shall fail to restore the land to its original condition, he shall be deemed to have forfeited his right to occupancy of the land, and the Collector may proceed to evict him summarily in the manner provided in section 202 of the Land Revenue Code.

The Collector may remove or cause to be removed any property, moveable or immoveable, belonging to the occupant, standing or existing in or upon the land, and the cost of removal shall be defrayed by the occupant himself or in default by sale of the said property.

* This is an amended rule sanctioned under G. N. No. 3807, dated 2nd June 1890, published in the B. G. G. Part I, page 511, 1890.

XIII.—RELINQUISHMENT OF OCCUPANCIES.
[Sections 74 and 214 (i).]

74.† The written-notice of relinquishment of an occupancy required by section 74 of the Land Revenue Code to be given to the Mamlatdar or Mahalkari, shall be in one or other of the forms in Appendix G.

(1.) **Registration of notices of relinquishment.**—When the value of the land relinquished exceeds Rs. 100 notice of relinquishment must be registered as it operates to relinquish the occupant's title in the occupancy. The Collector should not however insist on the registration of notices of relinquishment of occupancies of the value of Rs. 100 and upwards pending the amendment of the Registration Act. (G. R. No. 3087, dated 20th April 1883, and G. R. No. 2367, dated 19th March 1885.)

75.* The written agreement to be entered into by the persons or by the principal of the persons, if any, in whose favour an occupancy is relinquished, shall be in the form of Appendix D.

(1.) **Agreements to occupy land,—Endorsement on.**—The Endorsement “we declare to the best of our knowledge &c.” is not to be required in the case of agreements executed under this Rule. (G. R. No. 3842, dated 19th June 1883.)

* (1.) The first and second defendants were subtenants 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 of the plaintiff, who now sued to obtain it from the defendants, who had remained in possession.

Held, that, the plaintiff was entitled to the land. The Rajinama operated as a relinquishment of the tenancy by defendant No. 3 under Section 74 of Bombay Act V of 1879.

Held also, that the plaintiff was entitled to sue in ejectment, although he had not been put in possession of the land. (Bhutia Dhondu vs. Ambo,—I. L. R. Bombay, Volume XIII, page 294, 1889.)

(2.) As to alienated villages see order No. (4) under Section 74.

* Vide G. R. No. 1743, dated 2nd March 1889, printed as order No. (5) under Rule 31.

(2.)—**Exempt from court fees.**—The court fees on the agreements executed under this Rule has been remitted by the Governor General in Council under section 35 of Act VII of 1870. (G. of I. N. No. 7019, dated 18th September 1889, published in the B. G. G. Part I, page 808, 1889.)

(3.)—**Exempt from stamp duty.**—Agreements executed under this rule have been exempted from Stamp duty by the Governor General in Council under section 8 of Act I of 1879. (G. of I. N. No. 5855, dated 22nd November 1889, published in the B. G. G. Part I, page 1008, 1889.)

76. Every notice and every agreement given under the last two Rules shall be endorsed by two respectable witnesses to the effect prescribed below each of the said forms, and the Mamlatdar or Mahalkari who receives any such notice or agreement will be held responsible for exercising due care in ascertaining the identity of the person who has signed the same, notwithstanding that such notice or agreement has been duly endorsed as hereinbefore required.

77.* All notices and all agreements received under Rule 74 or Rule 75 shall be kept in separate files in the records of the Village accountant until the expiry of one year after the end of the year in which they were given or executed and afterwards in the records of the Mamlatdar or Mahalkari.

78.† It shall be the duty of every village accountant if so desired by any occupant in his village or by any person in whose favour land is about to be relinquished by any occupant in his village, to prepare any notice or any agreement that may be necessary under Rule 74 or Rule 75, without fee or charge of any kind.

* This is an amended rule sanctioned under G. N. No. 2882, dated 6th April 1883, published in the B, G, G. Part I, page 283, 1883.

† Twenty-five printed copies of each of the forms marginally noted, should be stiched or pasted together in a book form and supplied to each village officer; the cost of each book being recovered by the Mamlatdar when the officiating Kulkarni is paid his contingent allowance

(G. R. No. 6312, dated 6th September 1886.)

FORM OF

- 1 Notice of relinquishment.
- 2 Kabulayat or Agreement.
- 3 Notice of relinquishment in favour of some other person.

A village accountant who prepares any such notice of agreement, shall affix his signature beneath the words "written by" on the lower left-hand corner thereof.

(1.) **Rajinamas executed before Forest Settlement Officers.**—Whenever the Mamlatdars accept, without further inquiry, notices of relinquishment executed and duly endorsed before a Forest Settlement Officer they will be held by Government to have exercised the due care enjoined by Rule 76 of the Rules framed under Section 214 of the Land Revenue Code. (G. R., No. 1708, dated 4th March 1886.)

XIV.—SURVEY-FEES IN TOWNS AND CITIES.

[Section 132.]

79. Towns and cities to the sites of which a survey has been or may hereafter be extended will be divided by Government, by notification in the *Bombay Government Gazette*, into three classes for the purpose of determining the survey-fees to be levied therein respectively under section 132 of the Land Revenue Code.

The towns and cities hereinbelow mentioned, in which Bombay Act IV of 1863 was in force before the Code became law, shall belong to the following classes :—

Class I.	{	Ahmedabad. Surat. Broach. Karachi. Hyderabad. Sukkur.
Class II.	{	Rander. Bulsar. Dharwar. Hubli. Bijapur.*

80. Survey-fees shall be levied at one of the follow-

* This has been added to the towns under Class II, under G. N. No. 1146, dated 6th February 1885, published in the B. G. G. Part I, page 173, 1885.

ing rates according to the class under which each town or city falls :—

Class I.			Class II.		
Rs.	a.	p.	Rs.	a.	p.
5	0	0	3	0	0
4	0	0	2	0	0
3	0	0	1	8	0
1	8	0	0	8	0
0	8	0			

81. The rates of survey-fees to be paid by the holder of each tenement in each class shall be fixed by the Collector or, subject to revision by him, by such officer as he may empower in that behalf, on a full consideration of the position, value, rental and area of each holder's tenement and of the labour, time and expense involved in the survey of such tenement: Provided that not more than one survey-fee shall be payable in respect of each separate tenement.

Explanation.—“Separate tenement” shall be deemed to include all the area within one ring-fence or in one locality and in the actual possession of one and the same person or family. If any portion of such area is sublet or occupied separately, such portion shall be deemed a “separate tenement.”

XV.—RECOVERY OF LAND REVENUE.

[Sections 146 and 214. (i).]

82. All payments of land revenue shall be made to the officers of the village in which such revenue is due ; Provided that, with the sanction of the Collector, such payments may in special cases be made into the Huzur or Taluka Treasuries.

(1.) Practice of paying revenue belonging to one District into another District to be restricted.—It is very desirable to restrict the practice of paying revenue demands at places other than those where they are due, as it often creates complications and gives rise to much avoidable correspondence. The sanction referred to in this rule should therefore be given only in special cases. (G. R. No. 3301, dated 19th May 1882.)

(2.)—In such cases sanction of the Collector needed.—The proviso to this rule applies to payments in districts other than that in which they are due. (G. R. No. 460², dated 14th July 1882.)

(3.)—Not applicable to moneys other than land revenue.—This rule is not applicable to the moneys payable under the Local Fund, Abkari, and Toll Acts as they are not land revenue and as the times when, the places where, and the persons to whom such moneys are payable are specified in the enactments and rules framed thereunder, relating to such moneys respectively. Moneys payable on account of kurans are land revenue and to them this rule is applicable. (G. R. No. 2215, dated 17th March 1883.)

(4.) Payments belonging to other Districts.—Payments on account of land revenue and Local fund-cess belonging to another District made into any treasury should be remitted to the treasury concerned by a remittance receipt issued at par. In cases in which payments to other treasuries are made voluntarily by landholders, the prescribed fee for remittance should be charged. (G. R. No. 9781, dated 4th December 1885.)

(5.) Payment of revenue by postal money orders.—As the Accountant General states that there is no account objection to land revenue being paid by a Post office money-order, His Excellency the Governor in Council is pleased to direct that Post office money-orders should in future be received in payment of the land assessment due by person residing in the village or villages where they hold lands in respect of which payments are due. (G. R. No. 2039, dated 13th March 1886.)

(6.) Special form of money order not needed.—Government do not deem it necessary that a special form of money-order should be provided for remitting payments of land revenue as the Director General has sanctioned the inclusion of pies in the ordinary money-order form, when made use of for remittance of land revenue. (G. R. No. 192, dated 10th January 1890.)

83. In the Ratnagiri and Kanara Districts and in the khoti villages of the Kolaba District, land revenue payable in respect of lands assessed for purposes of agriculture only shall, until further orders, continue to be paid in such instalments and on such dates as are now usual in those districts and villages respectively.

84. In all districts except Ratnagiri and Kanara and in all the villages of the Kolaba District, except the khoti villages, the land revenue payable in respect of lands assessed for purposes of agriculture only shall be paid in two equal or nearly equal instalments, on the fol-

lowing dates (namely) :—

- (a) in the Thana and Kolaba Districts (excepting the khoti villages of Kolaba), the 1st January and the 16th February ;
- (b) in other districts—
 - in villages placed under Rule 85 in Class I, the 10th December and the 10th January ;
 - in villages placed under the said Rule in Class II, the 10th January and the 10th March ;
 - in villages placed under the said Rule in Class III, the 10th February and the 10th April :

Provided that—

(1) in districts, or parts of districts where the above dates may be found to be unsuitable, the Collectors may, with the sanction of the Commissioner to whom they are respectively subordinate, fix such other dates as they may deem expedient according to the circumstances of the season and of the villages comprised in them and the character of the crops generally sown ;

(2) when the total amount of assessment is Rs. 4 or under, it shall, if the Collector shall so order, be payable in a lump sum at the date of the first instalment ;

(3) if the person from whom the year's revenue is due so wishes, he may in any case pay the whole amount at once instead of by instalments.

(1.) Ground rent may be accepted in lump sum.—There is no legal objection to the ground rent or assessment leviable for the entire period of a lease being accepted at once in a lump sum. (G. R. No. 4074, dated 30th May 1883.)

85. For the purposes of clause (b) of the last preceding Rule the Collectors of the districts to which that clause applies shall, with the sanction of the Commissioner to whom they are respectively subordinate, classify the villages in the said districts into three classes :

Class I shall include *kharif* villages in ghat districts and elsewhere where it is necessary that the revenue be secured specially early.

Class II shall include *kharif* villages in Gujarat and

elsewhere where no such special provision is necessary.

Class III shall include *rabi* villages generally.

86. Land revenue, to which the provisions of the last three Rules are inapplicable, shall ordinarily be paid in one instalment on such date as the Collector shall think fit in each case to prescribe; but in special cases the Collector may, in his discretion, allow the payment to be made in two or more instalments on dates which shall be fixed by him.

87. The notice of demand to be issued under section 152 of the Land Revenue Code shall be in the form of Appendix H.

The village officers shall be held responsible by the Collector for warning landholders verbally from time to time of the dates on which their instalments are due and for using their personal influence in securing prompt payment without resort to notices of demand or other compulsory process, and exemplary punishment should be awarded to any village officer who is remiss in the performance of this duty.

88 * The village officers shall report to the Mamltdars or Mahalkaris to whom they are respectively subordinate the names of the landholders who, they have reason to believe, will not punctually pay their instalments, in order that the precautionary measures authorized by Sections 140 to 145 of the Land Revenue Code may, when necessary, be adopted in due time.

XVI.—ADMINISTRATION OF SURVEY SETTLEMENTS.

[Section 214 (g).]

(1) *Notification of Survey Settlement.*

89. When a Survey settlement shall have received the sanction of Government under section 102 of the Land Revenue Code, a notification shall be published in the district or portion of a district to which the settlement

* Vide G. R. No. 7858, dated 23rd December 1881, printed as order No. (2) under Section 154 of the Code.

extends, in the form of Appendix J and the period for which the assessments have been fixed shall be notified in the *Bombay Government Gazette*.

When the settlement is introduced into a portion of a taluka already partially settled, the guarantee will be restricted to the unexpired portion of the period for which the assessments in the first settled portion of the taluka were fixed.

90. In isolated villages to which a survey settlement was extended before the 9th March 1858, the settlements shall be understood to have been fixed for a period of thirty years, unless there is specific evidence that a guarantee for a shorter period was given at the time.

(2) *Trees.*

91. The extent to which the right of Government to trees is generally conceded under paragraph 2 of section 40 of the Land Revenue Code will be specified in the notification issued under Rule 89. The said general concession will ordinarily extend to all trees, except the following (namely):—

- (1) all road-side trees planted by or under the orders of Government;
- (2) teak, blackwood, and sandalwood;
- (3) trees, the produce of which has hitherto been disposed of by Government.

Trees in groves, trees round temples or places of encampment declared to be such by the Collector, and trees other than teak, blackwood or sandalwood which for any reason are of special value or utility will be specially reserved at the settlement and entries to that effect made in the settlement records.

The right to trees of any of the above classes which have already been specially assigned to the occupant or purchased by him, or to trees standing in public places, will, of course, not be affected by this Rule or by the notification issued under Rule 89.

(1.) **Disposal of teak trees in occupied lands. Register of such trees.**—When rights to teak trees in Government lands have been parted with, the fact should be noted in the village register, and no teak in Government land should for the future be disposed of to occupants, but should be reserved as Government property. Care should be taken that the entries in the registers are not made without due enquiry and confirmation by the Assistant Collector, for such entries will bar the rights of Government, and there is great temptation to make them fraudulently. A statement of fields, in which Government has parted with its rights, should be prepared showing the amount paid for trees, and when the whole has been confirmed by the Assistant Collector, entries may be made. (G. R. No. 3480, dated 10th July 1878.)

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

The only way to prevent such road-side trees being cut down is to apply the provisions of Act X of 1870 for the acquisition for public purposes either of the trees, or of both, the trees and the land on which they stand. (G. R. No. 3495, dated 3rd July 1879.)

(3.) **Sale of trees on occupied lands to occupants.**—As the demarcation and settlement of forests is now well advanced, it is expedient, as a general rule, that the sale of the trees to the occupants should follow on the completion of the settlement. The area of forest will then have been finally determined, and the trees on occupied numbers not included or to be included in forests should pass into the charge of the Collector, who should offer the whole of the trees on each number to the occupant at a fair upset price. The procedure to be followed should be that the option of purchasing at that price should be continued to the cultivator for a period of say two years, in order that, if not possessed of the necessary funds at once, he may try to scrape the amount together. Lists showing all the numbers the reserved trees in which have not been sold outright and stating the upset price of the trees should be hung up in the chavdi of the village, so that there may be no chance of any misunderstanding.

If the occupant finally declines to purchase, the reserved trees should be cut and removed by the Forest Department. (G. R. No. 3906, dated 22nd May 1883.)

(4.) **Trees in Inam lands.—Trees in lands settled under Summary Settlement belong to the holder.**—Where an Inamdar has accepted a summary settlement under Bombay Act II of 1863, he is full proprietor of his holding, teak trees and all. (G. R. No. 2232, dated 14th March 1884.)

(5.) **Where there is no evidence to the contrary Inamdar's right to trees will not be questioned.**—If it cannot be proved from the Collector's records or otherwise that the forests were at the time of the settlement in the possession of Government the title of the Inamdar will not be questioned. (G. R. No. 3079, dated 15th April 1884.)

(6.) **Reservation of Honi and Matti trees in Kanara.**—The Honi and Matti trees have been reserved in Kanara and are placed at the disposal of the Forest Department. (G. R. No. 1053, dated 4th February 1885.)

(7.) **Rights to trees in Service Inam Lands.**—Trees in lands held for service without proprietary right, cannot be claimed as of right by the holders of the lands either

(a) as proprietors, or

(b) as occupants.

Rights to trees may be conceded by Government but cannot arise till concession has actually been made, and such concession would not be complete till communicated to the persons in whose favor it is made. (G. R. No. 2156, dated 24th March 1890.)

92. Notwithstanding anything contained in the last preceding Rule, Government will specially reserve their rights to all trees, or to trees of other kinds than those therein enumerated, whenever it may be deemed expedient so to do.

(1.) **Power of Government to reserve any trees rights to which have not already been conceded.**—Except as provided in the last para of Rule 91 there is no legal objection to Government reserving under Rule 92 any trees whatever in any land to which the first mentioned rule applies *i. e.* to lands in villages or portions of villages of which the original survey settlement shall be completed after the passing of the Land Revenue Code.

But trees in occupied land over which the rights of Government have already been conceded or sold cannot in any case be again reserved unless the owner conveys them first of all to Government. (G. R. No. 4891, dated 29th June 1883.)

(2.) **Trees rights to which have been conceded cannot be reserved.**—Rule 92 is intended only to indicate that the preceding rules are not to be taken as limiting the powers already conferred on Government by the Legislature. The rule cannot however extend those powers so as to enable Government to make any fresh reservation of trees not already reserved on any former occasion.

The power of reservation as to trees in occupied unalienated land is defined in section 40. In villages completely surveyed before the Code was passed, the concessions were declared complete. The Section

declares that all trees shall be deemed to have been conceded except those already reserved before, at or after the original settlement.

With regard to villages not completely surveyed before the Code, reservation was still possible at the *original* survey settlement, and might be made expressly or by general notification before the settlement of the District was completed, but not afterwards.

No reservation of trees in occupied lands, therefore, since the passing of the Land Revenue Code, is possible, except where the survey is being introduced for the first time. (G. R. No. 5637, dated 3rd August 1889.)

93. Of the trees to which the rights of Government are reserved, such numbers or kinds as Government may from time to time direct will be at the disposal of the Forest Department. Lists shall be kept of all occupied numbers, over the trees in which the Forest Department has any control or lien ; the clearing of these numbers by the Forest Department shall be arranged in concert with the Collector, and every number when cleared shall be recorded as exempt from all interference in the future on the part of the Forest Department.

All reserved trees not placed at the disposal of the Forest Department shall be in charge of the Collector who may dispose of the same, or of the produce thereof, in such manner as he may from time to time deem fit.

(1.) **Sale proceeds of trees in lands at the disposal of the Forest Department to be credited to that Department.**—In supersession of the orders contained in G. R. No. 129, dated 6th January 1876 it is directed that the proceeds of the sale of such trees on Government assessed waste lands as Government direct to be at the disposal of the Forest Department should be credited to Forest Revenue ; the proceeds of the sale of all other trees which are growing or have been growing on assessed waste land should be credited to Land Revenue. (G. R. No. 3095, dated 16th April 1884.)

(2.)—**Of trees in other lands to be credited to Revenue Department.**—The principle laid down in the above Resolution for assessed waste should be applied also to unassessed waste not included in forest. In occupied numbers, the sale proceeds of trees which are placed at the disposal of the Forest Department by Rule 93 or are reserved by such a special rule as No. 98 A should be credited to the Forest Department, and the sale proceeds of all other trees to the Revenue Department. (G. R. No. 4503, dated 4th June 1884.)

94. In talukas in which the demarcation of forests has been completed, when the right of occupancy of any unoccupied number containing jungle or valuable trees which have not been included in any forest reserve is granted to any person, the Collector may, if he thinks it better to grant the land for cultivation than to keep it for jungle, offer the jungle or such of the trees as he may see fit to the occupant at a valuation to be made by the Collector. If the occupant agrees to purchase the same, the value shall be recovered from him by the Collector and credited to the Forest Department.

95. In talukas in which the demarcation of forest reserves has not been completed, the Collector may, if he thinks fit, consult the Conservator of Forests before the occupancy of any land containing jungle or valuable trees is granted; and if the occupancy of any such land is granted to any person, the provisions of the preceding Rule shall apply: Provided that specified trees of a valuable kind shall not be cut down, and that in no case shall the occupancy be granted if the land is likely to be required for forests.

96. Whenever the occupancy of survey number is disposed of at any time after the first introduction of a survey settlement, trees of the kind specified in clause (3) of Rule 91 shall be excluded from reservation, and shall be disposed of along with the occupancy under the provision of paragraph 2 of section 62 of the Land Revenue Code.

97. Whenever the right to unreserved trees in any survey number is at the disposal of Government simultaneously with the occupancy of such number, all such trees shall invariably be disposed of to the same person who acquires the occupancy and not to any other person.

98.* When the right of Government to any trees in a survey number has been once disposed of to the occu-

* This is an amended rule sanctioned under G. N. No. 2919, dated 17th April 1889, published in the B. G. G. Part I, page 301, 1889.

pant, or when reserved trees have been once cut and removed either—

- (1) at the grant of the occupancy, or
- (2) after such grant, or
- (3) in the province of Sind at any time before such grant, or
- (4) elsewhere than in the province of Sind, within five years before such grant.

Government will have no further claim to trees of the same descriptions which may afterwards grow in the number, or which may spring up from the old roots or stumps during the occupancy of the said occupant.

(1.) Rights to trees grown up in lands after the sale of occupancy right.—The interpretation to be placed on this rule is that Government abandon their claim to any tree-growth after the sale of the occupancy right, i.e., to trees or saplings which have grown up either for the first time or from the stools, or old roots, after the occupant has obtained the land. In the cases referred to where teak has been cut by Government on waste lands which are still unoccupied, any new growth, which may rise either from the old roots or stumps, or entirely separate from those roots or stumps, prior to the sale of occupancy right of such lands, is the property of Government. (G. R. No. 4321, dated 30th June 1888.)

98 A.* Nothing in the foregoing rules, Nos. 93

1 Kuhinde Bk.	8 Vehtale.	to 98, both inclusive, shall be deemed to apply to <i>warkas</i> lands in the Districts of Thana, Kolaba and Ratnagiri, and <i>beta</i> lands in the
2 Talavde.	9 Kahu.	
3 Avdari.	10 Kadadhe.	
4 Kude Bk.	11 Saburdi.	
5 Washere.	12 Koyali, tarf	
6 Deoshi.	Wade.	
7 Saigaon	13 Darakwadi.	

* (1.) This rule has been inserted under G. N. No. 3928, dated 22nd May 1883, published in the B. G. G. Part I, page 372, 1883; and subsequently amended by Government under the following notifications:—

No. 1285, dated 13th February 1884, published in the B.G.G. Part I, page 111, 1884.
 No. 6195, " 1st August " " " " " " " " page 575, "
 No. 6129, " 21st August 1889, " " " " " " " " " " page 740, 1889.

(2.) The words enclosed in brackets in this rule have been inserted under G. N. No. 7915, dated 27th October 1893, published in the B. G. G. Part I, page 1016, 1893.

District of Kanara, or to any unalienated land in the Dindori Taluka of the Nasik District, or in any of the villages noted in the margin in the Khed Taluka of the Poona District or to any land on the banks of streams and nalas in the Godhra Taluka of the Panch Mahals District, or to any river-side jambhul trees growing in occupied lands on the banks of the rivers noted in the margin in the Parner, Rahuri, Sangamner and Akola Talukas

Mula.
Mhais.
Pravara.
Mhalungi.

of the Ahmednagar District.

In the said lands the trees on which the rights of Government are reserved shall be available for cuttings to be made from time to time by or under the orders of the Forest Department, in consultation with the Collector.

The sale of any such tree, or of the timber thereof, will confer no right to the after-growth from the root or stump of the tree so cut (unless such right is at the time of the sale specially conceded or conferred in accordance with such general or special orders and subject to such conditions as Government may from time to time prescribe in this behalf). The reservation of the rights of Government over the trees will (unless such right has been specially conceded or conferred as aforesaid) extend to all such after-growth also.

98 B.* And pending the issue of further orders which will be issued by Government when the demarcation of forests in the Haveli, Purandhar and Junnar Talukas and the Ambegaon petha has been completed, nothing in the said Rules Nos. 93 to 98, both inclusive, shall be deemed to apply to teak trees growing in any unalienated land in any of the said talukas or petha.

*(1.) This rule has been inserted under G. N. No. 4774, dated 13th June 1884, published in the B. G. G. Part I, page 441, 1884.

(2.) The words enclosed in brackets in this rule have been inserted under G. N. No. 7915, dated 27th October 1893, published in the B. G. G. Part I, page 1016, 1893.

Pending the issue of such orders, teak trees growing in any such land shall be available for cuttings to be made from time to time by or under the orders of the Forest Department in consultation with the Collectors, and the sale of any teak tree growing in any such land or of the timber thereof, will confer no right to the after-growth from the root or stump of the tree so cut (unless such right is at the time of the sale specially conceded or conferred in accordance with such general or special orders and subject to such conditions as Government may from time to time prescribe in this behalf), but the reservation of the rights of Government over the teak-trees will (unless such right has been specially conceded or conferred as aforesaid) extend to their after-growth also.

(3) *Entry of Co-occupants' Names.*

99. On written application being made for this purpose to the Collector or, whilst survey operations are proceeding, to a survey officer, the names of the co-occupants of the registered occupant of any survey number and the share in fractional parts of a rupee of each such co-occupant in the occupancy may be entered in the records along with the name and share of the registered occupant of the number: Provided that no such entry shall—

- (1) affect the liability of the occupants to Government, or amongst themselves, for the land revenue of the number, or
- (2)* be deemed to constitute the share to which it relates a recognized share of the survey number.

(4) *Inspection, Maintenance, and Repair of Boundary-marks.*

100. On the introduction of a survey settlement into

* This clause has been amended under G. N. No. 5546, dated 8th July 1885, published in the B. G. G. Part I, page 868, 1885; vide also footnote to Rule 55.

a district the Superintendent of Survey shall furnish the Collector with a map and statements showing the position, size and description of the boundary-marks erected or prescribed by or under the orders of the Survey Department, with a view to his taking measures for their maintenance and repair under section 124 of the Land Revenue Code.

101. The digging of earth close around an earthen boundary-mark for the purpose of repairing it is prohibited. A space of two cubits in breadth all around each such mark is to be left untouched, so as to prevent injury to the mark from water lodging in the cavities from which earth is taken for the repairs.

(1.) Injury to boundary marks caused by digging around it how to be dealt with.—In the case noted in the margin the High Court having reversed the conviction and sentence *Imperatrix vs. Irapa.* passed on the accused for digging earth within a space of two cubits of an earthen boundary mark—an act prohibited under Rule 101 of the rules under Section 214 (g) of the Land Revenue Code—a question was raised as to how boundary marks were in future to be protected. In referring this question for the orders of Government the Commissioner, N. D., observed:—

** * * *

“4. No. 101 of the rules made under section 214 of the Land Revenue Code, prohibits ‘the digging of earth close around an earthen boundary mark,’ and enjoins that ‘a space of two cubits in breadth all around each such mark is to be left untouched, so as to prevent injury to the mark from water lodging in the cavities from which the earth is taken.’ Clause 3 (a) of Rule 111 makes breaches of the above rule punishable, on conviction before a magistrate, ‘with a fine which may extend to 10 rupees.’

“The Honourable Messrs. Justices Birdwood and Parsons have held that Rule 101 (and, consequently, Clause 3 (a) of Rule 111 also) could not be legally made for reasons given in their decision.

“5. The Commissioner would submit that the words ‘Administration of Survey Settlements,’ occurring in Clause (g) of Section 214, under which rules 89 @ 107 have been made, have a much wider scope than is supposed by the Honourable the Judges. Chapter VIII of the Code headed ‘Survey Settlements and Partition of Estates,’ deals with the

introduction and revision of survey settlements; Section 214 Clause (g), on the other hand authorizes the framing of rules for the administration of a Settlement. Preservation and maintenance of the Survey boundary marks is an essential feature of such administration, and Government therefore appear competent to frame rules on the subject.

"6. It may be added that under Clause (i) of section 214, the Governor in Council has authority to make rules *generally* for the guidance of all persons, in matters connected with the enforcement of this Act or in cases not expressly provided for therein."

The question was referred to the Legal Remembrancer who gave his opinion as follows:—

(a) Report No. 19, dated 4th January 1889—

* * * * *

"7. Rules for administration generally mean departmental rules regulating the administration, and binding on persons carrying out the administration, and not rules binding on the public, and I fear from this point of view Rule No. 101 might be held unsustainable.

"8. But I would venture to point out that the Land Revenue Code itself provides for unintentional injury to boundary marks, a remedy which Government might consider sufficient to meet all the practical necessities of any case that may arise.

"9. Section 123 renders every landholder responsible for the maintenance and good repair of the boundary marks of his holding and for any charges reasonably incurred by the Revenue Officer in cases of *alteration* or *disrepair*, and in case of disrepair the Survey Officer may repair and assess all charges incurred. These duties and powers are imposed and conferred by Section 124 on Collectors, on the completion of the Survey, and therefore the Collector, if any injury has been done, is not limited to the recovery of a ten rupees fine, but can insist on full repair at the landholder's expense. 'The size, material and description of boundary marks shall be such as may be deemed necessary by the Superintendent of Survey according to the requirements of soil and climate,' and if a strip round a mound is deemed necessary to boundary marks, there is apparently nothing to prevent the officer charged with their maintenance and repair from insisting that such strips, if altered, should be restored at the holder's expense."

(b) Report No. 222, dated 23rd February 1889—

"After considering the correspondence which accompanied Government memorandum No. 975 of 6th February 1889, I reluctantly come to the conclusion that no rule that would stand criticism in a criminal court could be framed under section 214 (i) of the Land Revenue Code,

attaching a penalty to an injury to a boundary mark unintentionally caused by digging within two cubits of such mark.

"2. The Honourable Mr. Stewart suggests that such a rule might be made under section 214 (i) if not under section 214 (g) of the Land Revenue Code.

"3. Statutory powers are always construed very strictly, especially Maxwell on interpretation of where power is given to impose statutes, pages 265 to 267. a penalty.

"4. But section 214 (i) only empowers the making of rules for the *guidance* of all persons in matters connected with the enforcement of the Act or in cases not expressly provided for therein.

" * * * * *

"This is the view, I think, taken by the High Court. For the note made on the returns before the papers were called for by the High Court, runs as follows:—

'Quære whether this rule is not *ultra vires*. Section 215 gives the Local Government power to impose penalties only in the case of general rules passed under section 214. It is not clear how this rule falls under that section. Probably clause (i) is contemplated, but that is somewhat vague, and it seems doubtful whether a rule for the *guidance* of persons could properly have a penalty attached to it.'

"5. I do not think that under that sub-section any obligation requiring to be enforced can be imposed. No new powers or obligations could be created by rules under Section 214 (i). Such rules could only indicate the manner in which the powers and obligations already conferred or imposed by the Land Revenue Code should be carried out. There is no power under the Code to punish unintentional injury to a boundary mark, and the only obligation under the Code except in case of wilful injury, is to construct and repair such marks or pay the charges incurred in respect thereof.

"6. But as I have pointed out it is apparently within the discretion of the Superintendent of Survey to prescribe the size, material and description of boundary marks according to the requirements of soil and climate. I think that where the soil and climate are of such a nature that the boundary mark unless protected by a space of two cubits left untouched, would be liable to injury from water lodging in the cavities caused by digging round it, it would be perfectly within the powers of the Superintendent of Survey to require all boundary marks injured from such cause to be repaired substantially with stones or in such other durable manner or material as would be costly enough to deter landholders from thoughtlessly injuring the marks." (G. R. No. 2131, dated 19th March 1889.)

102. Village officers shall examine all the boundary-marks in their respective villages once a year in November or December, and the village accountant shall record in village form No. 3 (Hope's Forms) the condition in which the boundary-marks are found.

Details of all marks found to be out of repair shall be entered in village form No. 4 (Hope's Forms) by the village accountant, and after the lapse of a sufficient time to allow of the repairs to the marks being completed, a second inspection shall be made of every field entered in this register.

(1.) Presents to village Officers for keeping boundary marks in repair.—The discretion of power applied for by the Commissioner to make presents to patels for having kept in thorough repair the boundary-marks of their villages is granted on condition that such presents are given only for exceptional merits. The expenditure incurred annually by each Commissioner on this account should not however exceed Rs. 100. (G. R. No. 309, dated 14th January 1889.)

103. Prior to the second inspection, the Collector shall issue a notification under section 122 of the Land Revenue Code requiring landholders to repair their boundary-marks within a period of ten days. The provisions of paragraph 2 of the said section shall be rigidly enforced in the case of any repairs remaining unexecuted at the time of the second inspection.

104. A further test-inspection of boundary marks shall be made annually in each village by a Mamlatdar's karkun. The inspection shall be made in the presence of the village officers and of such of the landholders as may attend. The results of these inspections shall be recorded in the village form No. 3, in the column provided for the purpose, and in column 15 of village form No. 4 (Hope's Forms).

For the first three years after the first introduction of a survey settlement this test-inspection shall extend to

all the boundary-marks of each village. After the first three years the following Rules shall be observed :—

- (1) For the purpose of taluka inspection of boundary marks, the number of fields in each village shall be divided into four equal sections, and the fields comprised in one section shall be inspected by the General Duty Karkun in each successive year. Thus the whole village will be completely supervised in a period of four years.
- (2) The division of the boundary-marks of a village into sections as directed in the preceding Rule shall be made once for all by the Mamlatdar personally with the sanction of the Assistant Collector, who should be supplied with the division lists to enable him to take the necessary tests of the work performed by the Taluka Officers.
- (3) Each General Duty Karkun shall be duly supplied with lists specifying the fields of each village in his charge which he is required to inspect in a particular year.
- (4) The inspections by General Duty Karkuns must be careful and thorough, and the results of their inspections should be noted in village form No. 3 (Hope's Forms) against each field as indicated in the form.
- (5) The General Duty Karkun should, when the required inspection in a village is over, sign a certificate at foot of village form No. 3 (Hope's Forms) to the following effect :—

“I hereby certify I have personally examined the boundary-marks of the fields noted by me as examined against each field.”

105. When the necessary repairs have all been completed, the Mamlatdar or Mahalkari shall prepare and for-

ward to the Collector, or to the Assistant or Deputy Collector in charge of the taluka, by a date to be specially fixed by the Collector of each district, a general abstract of the Inspection Registers.

106. Mamlatdars and Mahalkaris and Assistant and Deputy Collectors in charge of talukas will personally examine the boundary-marks of some of the numbers of several villages in every taluka as soon as possible after the completion of the second inspection required by Rule 102. In the case of talukas which are in the immediate charge of the Collector, that officer shall mark off several numbers in the village registers for examination by the Daftardar or other high officer of his establishment.

The results of inspections made under this Rule shall be recorded in the same way as in the case of inspections made under Rule 104.

107. The Commissioners shall during their tours take measures to prevent the inspection and examination required by the foregoing Rules becoming a mere form.

XVII.—APPEALS. [Section 214 (h).]

108. Every appeal shall be made in the form of a petition addressed to the authority to whom an appeal lies, and shall be drawn up in concise, intelligible and respectful language, and bear the signature or mark of the appellant or of his duly authorized agent.

The petition should give the following particulars:—

the name, father's name, occupation and place of residence or address of the appellant;

the name and address of the writer of the petition;

and, if possible, the date of the order or decision appealed against and the name and designation of the officer who passed it.

The petition should also contain a brief and unexaggerated statement of the facts on which the appellant relies in support of his appeal; and the grounds of the appellant's objection to the order or decision appealed against.

109. Appeals may either be presented to the authority to whom an appeal lies in person, or be forwarded to him by post.

When an appeal is sent by post the postage on the cover containing it must invariably be fully prepaid.

110. Inattention in any material respect to the requirements, of either of the last two preceding Rules will render an appeal liable to be rejected without inquiry into its merits.

(1.) **Petitions to Government how to be drawn up.**—All petitions to Government should be written as concisely as the nature of the case admits of. If they are found to be unnecessarily prolix or to be couched in unintelligible, exaggerated or disrespectful terms they will be returned for amendment to the parties submitting them.

Petitions of appeal preferred by parties to civil and political suits should invariably be submitted in English. Petitions on other matters may be either in English or in any of the Vernacular languages of this Presidency. Those written in any of the Vernacular languages, when not accompanied by English translations, will be rendered into the latter language by the Oriental Translator to Government before being placed before His Excellency the Governor in Council, but manuscript petitions in the Vernacular in which the words are not properly separated and the sentences punctuated wherever necessary by means of the marks shown

Full stop.....	!	} in the margin will be returned to the senders to be redrafted. (G. R. No. 200, dated 27th January 1856.)
mark of interrogation	||	

XVIII.—PENALTIES. [Section 215.]

111. Breaches of the general Rules hereunder men-

tioned shall be punishable on conviction before a Magistrate as follows:—

Clause 1.—(a) Whoever without due authority shall take, or attempt to take, any produce of any tree belonging to Government;

(b) whoever without due authority shall cut down or remove, or attempt to cut down or remove, any jungle or trees belonging to Government or the right to which has not been conceded by Government;

(c) whoever without due authority shall remove, or attempt to remove, the grass or any other produce of land belonging to Government;

(d) whoever without due authority shall dig or remove, or attempt to dig or remove, any earth, stone, kankar, sand or muram, or any other material from land belonging to Government;

shall be punished with imprisonment of either description which may extend to one month, or with fine which may extend to five hundred rupees.

Clause 2.—(a) Whoever shall unlawfully cultivate land of which the cultivation has been prohibited under Rule 48;

(b) whoever shall unlawfully destroy or materially injure for cultivation land held for purposes of agriculture only;

(c) whoever shall appropriate for purposes of agriculture compounds to bungalows or patches of open ground surrounding houses after such culti-

vation has been prohibited by the Collector on sanitary grounds ;

- (d) whoever shall, except for the purpose of laying the foundations of buildings, sinking of wells, or making grain-pits, within the site of any village, town or city, excavate, without the previous permission in writing of the Collector, or, when such permission has been granted, shall excavate contrary to any terms prescribed by the Collector ;
- (e) whoever shall suffer his land to be or to become overgrown with prickly-pear or rank grass so as to be dangerous to the health or safety of the neighbourhood ;

shall be punished with fine which may extend to five hundred rupees.

Clause 3.—(a) Whoever shall dig earth within a space of two cubits of any earthen boundary ;

- (b) whoever shall use land near villages which has been assigned for any of the purposes mentioned in Rule 43 for any other purpose, or shall use for any of such purposes, land near villages which has not been so assigned ;

shall be punished with a fine which may extend to ten rupees.

Clause 4.—Whoever, being a village officer,

- (a) shall take or levy any fee for preparing any document or copy or extract of any document which he is bound by any Rule or Order to prepare without charge ;
- (b) or who shall charge any fee for granting any permission which he is authorized by these Rules to grant but for which no fee can lawfully be charged ;

shall be punished with the punishment provided in clause 1 of this Rule.

Clause 5.—Whoever, being a village officer,

- (a) shall refuse or neglect to prepare any document or copy or extract of any document, or to sign or certify the same, in the manner prescribed by any of the Rules ;
- (b) or shall neglect to make any report or to perform any duty which he is required by any of these Rules to make or to perform ;
- (c) or shall neglect to inspect the boundary-marks in his village in the manner and at the time required by these Rules ;

shall be punished with the punishment provided in clause 2 of this Rule.

Nothing in this Rule shall prevent any person from being prosecuted under any enactment for any offence punishable under these Rules, or from being liable under any enactment to any other or higher penalty than is provided for such offence by this Rule : Provided that no person shall be punished twice for the same offence.

(1.) **Magistrate defined.**—The word “Magistrate” means “any Magistrate.” (G. R. No. 3103, dated 20th April 1883.)

(2.) **By what Magistrate certain Officers to be tried.**—The offence committed in contravention of Rule 111, clause 1, item (d) of rules framed under Section 214 of the Land Revenue Code, (Act V of 1879, Bombay) is exclusively triable by a Magistrate of the First class. Accordingly a conviction and sentence by a second class Magistrate were set aside by the High Court. (Queen *vs.* Shivram,—I. L. R. Bombay, Volume VIII, Page 591, 1884.)

(3.) **Fines inflicted by Magistrate how to be recovered.**—Fines inflicted by Magistrate under this rule should be recovered under section 187 of the Code. (G. R. No. 4697, dated 9th June 1885.)

(4.) **Removal of prickly pear.**—In the case of an alienated village a Magistrate cannot take any action under clause 2 (e) of rule 111 of the

rules under section 214 of the Land Revenue Code. This clause must be held to refer to rule 52 which applies only to unalienated land. (G. R. No. 3639, dated 14th June 1887.)

(5.)—Clause 2 (e) to rule 111 is a penal clause attached to rule 52 which purports to be under sections 48, and 214 (c) and (i) of the Code. These sections deal with the interests of land revenue and have no reference whatever to public health. It is feared therefore that the High Court would consider the clause *ultra vires*.

Section 48 prescribes the penalties for appropriation of land to purposes, alien to agriculture, or prohibited. If it be held that notwithstanding such express provision it was legal to prescribe by rules an additional penalty, for such appropriation the question should arise whether rule 52 which deals with mere passive neglect and not appropriation to any purpose whatever, comes within section 48 of the Code.

For these reasons it would be safer to adopt, in respect of occupied lands overgrown with prickly pear &c., the course prescribed in Section 33 of Bombay Act VII of 1867 which was expressly intended to protect public health rather than under rule 52 which has reference to public revenue.

In respect of unoccupied lands, and lands in deserted village-sites overgrown with prickly pear the proper course would be to proceed under Section 34 of Bombay Act VII of 1867. (G. R. No. 6540, dated 4th September 1889.)

APPENDICES TO THE RULES UNDER THE CODE.

APPENDIX A.

(Referred to in Rule 5.)

Form of Annual Statement showing the results of inquiries made as to the
sufficiency of the Security furnished by Revenue Officers in the District of
for the year ending the of 18 .

Consecutive No.	Names and designations of Officers required to give Security.	Amount of Security given	Nature of Security given.	Names of Sureties, if any, and dates of their Bonds.	Names of new Sureties, if any, substituted for former ones who have died or withdrawn or whose fitness is considered doubtful.	Amount of Security, if any, for which each Surety is liable on account of other Officers, whether in the same or in any other Department.	Opinion of Head of Office as to sufficiency of present Security.
1	2	3	4	5	6	7	8

APPENDIX B.

(Referred to in Rule 11.)

Forms of Sanads for revenue-free grants of land for Religious or Charitable purposes.

FORM No. 1.

To,

A. B.

WHEREAS Government has been pleased to grant to you, A. B., the below-mentioned piece of land situated in the village of _____ in the _____ taluka of the _____ district, for the purpose of* _____ revenue-free (namely)—

All that piece of land bounded on the North by _____, on the

* The purpose and the extent of the public interest in it should be clearly set forth, as, for instance, " building a dharamshala for the free and unrestricted use of all classes of the community."

South by _____, on the East by _____, and on the West by _____, and measuring from North to South _____ and from East to West _____, comprising _____ square _____ in superficial area, and numbered No. _____ in the _____:

It is hereby declared that the said land shall be continued for ever free of all claim on the part of Government for rent or land revenue to whoever shall from time to time be the lawful holder or manager of the said _____, on the condition that neither the said land nor any building erected thereupon shall at any time, without the express consent of Government, be diverted either temporarily or permanently to any other than the aforesaid purpose, and that no change or modification shall be made of the object for which the said

is founded, and that in the event of any such unauthorized diversion, change, or modification being made, it shall be lawful for Government, on causing six months, previous notice in writing to be given to the said holder or manager, to take either of the two following courses (namely), either—

(1) to require that the said land be vacated and delivered up to Government free of all claims or incumbrances of any person whatsoever, or

(2) to impose thenceforward such annual rent for the occupation of the said land until the same is vacated and delivered over to Government as to Government shall seem fit, which said rent shall be recoverable under the law at the time in force for recovering an arrear of land revenue.

This grant is made subject to the reservation of the right of the Secretary of State for India in Council to all mines and mineral products and of full liberty of access for the purpose of working and searching for the same, with all reasonable conveniences.

This sanad is executed on behalf of the Secretary of State for India in Council by order of His Excellency the Governor in Council of Bombay, by the Collector of _____, this _____ day of _____ 18 _____.



(Signed)

Collector.

FORM No. II.

To,

A. B.

WHEREAS, in consideration of your having built (or undertaken to build, as the case may be,) a temple, with a dharmshala annexed thereto, for the use of the Hindu community (or otherwise as the case may be) on

the piece of land hereinafter mentioned, which is your property (or which has been granted to you by Government for this purpose, *as the case may be,*) Government have been pleased, at your request, to exempt the said piece of land from liability to rent or land revenue.

It is hereby declared that so long as the said piece of land continues to be devoted to the purpose aforesaid, it shall be continued free of all claim on the part of Government for rent or land revenue to whoever shall from time to time be the lawful holder or manager of the said temple and its appurtenances (*or otherwise as the case may be.*)

The piece of land hereir referred to is situated in the village of _____ in the _____ taluka of _____ district, and is bounded on the North by _____, on the South by _____, on the East by _____, and on the West by _____, and comprises about _____ square _____ in superficial area, be the same more or less, and is numbered No. _____ in the _____

* This grant is made subject to the reservation of the right of the Secretary of State for India in Council to all mines and mineral products: and of full liberty of access for the purpose of working and searching for the same with all reasonable conveniences

This sanad is executed on behalf of the Secretary of State for India in Council by order of His Excellency the Governor in Council of Bombay, by the Collector of _____ this _____ day of _____ 18 _____.



(Signed)

Collector.

APPENDIX C.

(Referred to in Rule 27.)

Form of Agreement for exchange to be executed by villagers removing to a new village-site.

AGREEMENT† executed the _____ day of _____ 18 _____ by A. B. _____ resident of _____ in the _____ Taluka of _____ the _____ District.

* This clause is to be inserted only when the land is being granted under the sanad.

† The proper stamp-duty for this agreement is four annas. (*See Act I of 1879, Schedule I, Article 5 (b).*)

WHEREAS Government have been pleased to sanction a change being made in the position of the site of the village of _____ in the Registration Sub-District of _____ of the _____ District, and in pursuance of such sanction the following plot of ground has been allotted to me in the new site in exchange for the ground held by me in the old site, namely, the piece of land bounded as follows, that is to say, on the North by _____, on the South by _____, on the East by _____, on the West by _____, measuring _____ in length from North to South, and _____ in width from East to West, and comprising about _____ square _____ in superficial area and numbered No. _____ in the _____ :

I do hereby agree, in consideration of the allotment to me of the new piece of land aforesaid, as follows (namely):—

(1) That all my right, title and interest in any land whatsoever, situate within the old site of the said village, shall be deemed to be, and is hereby, surrendered to Government, together with the trees standing thereon, and all rights over or other benefits arising out of, or enjoyed by me, in respect of the said land ;

(2)* That I shall hold the piece of land aforesaid in the new site from the date of this agreement on the same terms and with the same rights and subject to the same liabilities as would apply to my tenure of the ground held by me in the old site, if I continued to be the holder thereof."

In witness whereof I have hereto set my hand the day and year aforesaid.
Written by _____

(Signed) A. B

Signed and delivered by _____ in our presence

*(1.) As objection is made to clause (2) of the agreement in Appendix C under Rule 27 subsidiary to the Land Revenue Code that clause may be omitted, but by this alteration of the form of agreement Government does not abandon any right of buying land revenue which it may possess under the Land Revenue Code or otherwise. (G. R. No. 9021, dated 6th November 1885.)

(2.) This clause has been substituted under G. R. No. 10096, dated 16th December 1885, and G. N. No. 676, dated 27th January 1886, published in the B. G. G. Part I, page 81, 1886, for the clause which ran as follows :—

That I shall hold the piece of land aforesaid in the new site from the date of this agreement as the occupant of the same, free of land revenue for such period as Government may be pleased to continue such exemption, but subject nevertheless to the payment of land revenue of such amount, if any, as may hereafter at any time, or from time to time, be lawfully imposed under the orders of Government thereupon.

APPENDIX D.

(Referred to in Rules 32 and 75.)

Form of agreement to be passed by persons intending to become registered occupants.

AGREEMENT.*

To

The Mamlatdar (or Mahalkri) of
 I, A. B., inhabitant of _____ in the
 Taluka of the _____ District, hereby accept, on behalf of
 myself and of my co-occupants, present and future, the occupancy of the
 land comprised in Survey No _____ (or of the building-sites
 hereinbelow described, or otherwise as the case may be,) in the village of
 _____ in the _____ Taluka of the
 District, and I pray that my name be entered in the Government records
 as the registered occupant of the said land.

† The said occupancy has been granted to me subject to the provisions of the Bombay Land Revenue Code, 1879, and of the rules in force thereunder, in perpetuity (or for the period of, as the case may be,) from the _____ day of _____ 18 ; ‡ and I undertake to pay the land revenue from time to time lawfully due in respect of the

* This agreement is exempt from court fee under section 35 of Act VII of 1870 and G. N. No. 7019, dated 18th September 1889, published in the B. G. G. Part I, page 808, 1889. It is also exempt from stamp duty under section 8 of Act I of 1879 and G. of I. N. No. 5855, dated 22nd November 1889, published in the B. G. G. Part I, page 1008, 1889.

† When an occupancy is to be granted gratis on the condition that the occupant should not transfer it in any way to another person the following clause should be substituted for this in the agreement to be taken from him:—

“The said occupancy has been granted to me in perpetuity from the day of _____ 18, subject to the condition to which, in consideration of Government having granted to me the occupancy without payment of any price therefor, I hereby assent, namely, that I may not at any time lease, mortgage, sell, or otherwise encumber the said occupancy without the previous sanction in writing of the Collector, and subject also to the provisions of the Bombay Land Revenue Code, 1879 and of the rules in force thereunder; and I undertake to pay the land revenue from time to time lawfully due in respect of the said occupancy.” (G. R. No. 6210, dated 22nd August 1883.)

‡ When an occupancy is sold for a fixed period free of land revenue, the agreement should end here, and the second endorsement may be omitted.

said occupancy (or I undertake, whenever Government shall see fit to discontinue the exemption of the said land from payment of land revenue, to pay such revenue as may be lawfully imposed, under the orders of Government, thereupon, (or otherwise as the case may be).

Dated the _____ day of _____ 18 ____ at _____
Written by _____

(Signed) *A. B.*

We declare that *A. B.*, who has signed this agreement, is, to our personal knowledge, the person he represents himself to be, and that he has affixed his signature hereto in our presence.

(Signed) *C. D.*
E. F.

* We declare that to the best of our knowledge and from the best information we have been able, after careful inquiry, to obtain, the person who has passed this agreement is a fit person to be accepted by Government as responsible for the punctual payment of the land revenue from time to time due on the above land.

(Signed) *G. H. Patel,*
J. J., Village Accountant.

APPENDIX E.

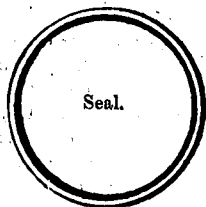
(Referred to in Rule 34.)

Form of written permission to occupy land to be given by a Mamlatdar or Mahalkari under Section 60.

Permission is hereby given to *A. B.*, inhabitant of _____ District to
in the _____ Taluka of the _____
occupy _____ Survey No. _____ (or the building-
site hereinbelow described, or otherwise as the case may be,) in the village of _____
in the _____ Taluka of the _____

District.

Dated the _____ day of _____ 18 ____ at _____



(Signed)

Mamlatdar (or Mahalkari).

* This endorsement is to be required only when the agreement is given under Rule 32. It is not to be required in the case of agreement executed under rule 75. (G. R. No. 3842. dated 19th May 1883.)

APPENDIX F.

(Referred to in Rule 57.)

Form of Register of Alienations.

Register of Alienated Villages and Lands in the District kept under Section 53 of the Bombay Land Revenue Code (Bombay Act V of 1879).

Serial Number.	Number of Village.	Number of the present Aliance.	(1) Class of Alienation.	Number.	Date, month and year.	Name and Office of the Officer signing it.	(2) Particulars of the Sanad.			Duration of tenure, i. e., whether continuing permanently or hereditarily for more lives than one, or for life only, or what period.	Particulars of the villages or lands alienated.	(5) Land Revenue payable to Govt.			REMARKS.					
							Name of the Holder.	Names of the Taluka and District in which it is entered.	(3) Number of Form of the Sanad annexed to the Register.			Entire village.	Additional Quit-rent, if any, payable under the Sanad.	Amount.		Total.	Land Revenue alienated.			
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
									Taluka.											
									Taluka.											

NOTES:—

(1) This column should show whether the sanad is for a political or other saranjam, or a personal inam or a devasthan, or a watan inam or a district officer's watan, or a village servant's watan, and in the latter case whether the watan is (a) useful to the village community, or (b) useful to Government. If the alienation does not come under any of these classes, it should be appropriately described.

(2) In those cases in which no sanad has been granted, the number and date of the decision confirming or continuing the alienation should be written across columns 5—10.

(3) To avoid the necessity of copying out a sanad *in extenso* in each entry, a sample form of every kind of sanad registered should be annexed under the Collector's signature to the Register, and

numbered, and the number of the form should be entered in column 10 of each entry.

- (4) If the amount of *judi* actually paid has been less than the maximum amount fixed by the Inam Commission or otherwise, the former amount should be entered in column 16, and the latter, with an explanatory note, in column 21.
- (5) When column 16—18 are inapplicable, the amount of land revenue payable should be shown in column 19 only.

APPENDIX G.

(Referred to in Rule 74.)

Form of Notice of Relinquishment.*

No. (1.) † Absolute Relinquishment.

To

The Mamlatdar (or Mahalkari) of

I, *A. B.*, inhabitant of _____ in the _____ taluka of the _____ district, the registered occupant of Survey No. _____ the building-site hereinbelow described (*or otherwise as the case may be*), in the village of _____ in the _____ taluka of the _____ district, hereby give notice, under section 74 of the Bombay Land Revenue Code, 1879, that it is my intention to relinquish absolutely the occupancy of the said Survey No. _____ (*or building-site, &c.,*) at the end of the current year.

Dated this _____ day of _____ 18 _____ at _____

Written by _____

(Signed) *A. B.*

We declare that *A. B.*, who has signed this notice, is, to our personal knowledge, the person he represents himself to be, and that he has affixed his signature hereto in our presence.

(Signed) *E. F.*
G. H.

No. (2.) Relinquishment in favour of some other person.

To

The Mamlatdar (or Mahalkari) of _____

I, *A. B.*, inhabitant of _____ in the _____ taluka of the _____ district, the registered occupant of Survey No. _____ (*or of the building-site hereinbelow described, or otherwise as the case may be,*) in the village of _____ in the _____ taluka of the _____ district, hereby

* The Court-fee payable on these notices has been remitted. (G. of L. N. No. 3421, dated 28th December 1876, published in the B. G. G. Part I, page 1230, 1876.)

† These notices must be given before the 31st March, or such other date as Government prescribe, under section 74, for each district.

give notice, under section 74 of the Bombay Land Revenue Code, 1879, that I have relinquished the occupancy of the said Survey No. (or building-site, &c.) in favour of *C. D.*, inhabitant of in the taluka of the district; and I request that the necessary mutation of names be made in the records.

Dated this day of 18, at
Written by

(Signed) *A. B.*

We declare that *A. B.*, who has signed this notice, is, to our personal knowledge, the person he represents himself to be, and that he has affixed his signature hereto in our presence.

(Signed) *E. F.*
G. H.

APPENDIX H.

(Referred to in Rule 87.)

Notice to a Defaulter.

To

A. B., residing at

You are hereby required to take notice that the sum of Rs. a. p. due by you on the as the (* instalment of) land revenue on (Sub-No. of) Survey No. (or otherwise as the case may, be) in the village of in the taluka of in the district, has not been paid, and that, unless it is paid within ten days from the date of this notice, together with the sum of annas, being the fee chargeable for this notice, compulsory proceedings will be taken according to law for the recovery of the whole of the revenue still due by you for the current year on the said land.

Dated the day of 18 .
(Signed)

Mamlatdar (or Mahalkari).

APPENDIX I.

(Referred to in footnotes to Rules 19 and 31.)

Form of lease to be granted to an occupant who takes up land on special terms under No. 19 of the Land Revenue Code Rules.

This is to certify that, with the previous sanction of the Commissioner (in Sind, or as the case may be)

of has been granted the occupancy of survey No. in the village of in the Taluka of the District for a term of

* "First" or "second," as the case may be.

years from the day of 18
 subject to the payment of land revenue as follows (viz) :—
 (a) for the first years, A. D. 18 to
 18 , nil ;
 (b) for the next years, A. D. 18 to
 18 , a reduced assessment of Rs. ;

The reason for the grant of the said occupancy on the favourable terms aforesaid is that the lessee has undertaken, at his own expense within a period of from the day of 18 , to carry out to the satisfaction of , the following work, whereby the cultivation of the said survey No. will be improved (or rendered feasible, or otherwise, as the case may be), viz:—

(Here describe as accurately as possible the work to be executed.)

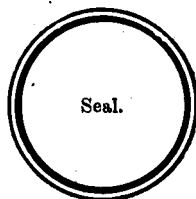
The conditions on which this lease is granted are :—

(1) That the lessee shall completely execute the work aforesaid to the satisfaction of the said within the period above-mentioned ;

(2) that he shall keep the said work when executed in good order and repairs to the satisfaction of the said until the expiry of this lease ;

(3) that if the lessee shall fail to perform either of the aforesaid conditions he shall be liable, notwithstanding anything hereinbefore written, to pay the full assessment of the land comprised in this lease amounting to Rs. , for the year during which such failure shall take place and for every subsequent year of the term of this lease ;

(4) that the lessee shall be entitled, on the expiry of this lease, to retain the occupancy of the land herein comprised, subject to the payment of the full assessment from time to time fixed thereupon under the law and rules in force in this behalf, on his executing an agreement in the form prescribed for persons who intend to become registered occupants. This lease is executed on behalf of the Secretary of State for India in Council, by order of the Government of Bombay in Council, by the Collector of and under his seal of office, this day of 18 .



(Signed)

Collector.

I the aforesaid lessee do hereby accept this lease on the terms and conditions therein mentioned.

Signed by

In the presence of

(Signed)

Lessee.

NOTE.—The above form has been sanctioned by G. R. No. 7033[†] dated 3rd September 1884.

APPENDIX J.

(Referred to in Rule 89.)

Notification determining the period of Settlement.

The Governor of Bombay in Council having sanctioned the Survey Settlement introduced by the Superintendent of Revenue Survey and Assessment, under the provisions of the Bombay Land Revenue Code, 1879, into the taluka of the district, the following notification is published for the information of the landholders and village officers in the said taluka :—

1. The survey rates as fixed under this settlement will remain in force without increase for a period of years, commencing from* and extending to*

2. But in the case of land which may hereafter be brought under irrigation by the use of water, the right to which vests in Government, or which is supplied from works constructed and maintained by, or at the instance of, Government, or of land which may be supplied with an increased amount of water from works constructed, repaired, or improved at the cost of the State, Government reserves to itself the right of imposing an extra cess or rate, or of increasing any existing rate, for the use of water supplied or increased by such means, whether under the provisions of the Bombay Irrigation Act, 1879, or otherwise.†

3. In addition to the fixed assessment, a cess not exceeding such rate as may be allowed by law will be levied under the Bombay Local Funds Act, 1869, [now Local Boards Act, 1884] or other law for the time being

* Here enter the Fasli and A. D.

† Should any other special cess, for the maintenance of irrigation works such as the pat-fala in Khandesh, be levied, it should be here specified.

in force, for the purpose of providing funds for expenditure on objects of local public utility and improvement.

4. The Government rights to trees standing in lands which are now occupied, is hereby conceded to the occupants thereof, subject to the general exceptions entered in the margin* and the special exceptions recorded in the settlement records.

5.† It is also hereby notified that at future revisions of rates there will be no general remeasurement and that no sub-division of survey numbers beyond that which has been now effected will be made at the expense of Government. If any occupant hereafter wishes to have his occupancy sub-divided he must apply to the Collector forwarding with his application such fee as may be necessary, according to the rules in force from time to time to cover the expenses of remeasurement, and alteration of the map and records.

APPENDIX K.

(Referred to in footnote to Rule 25.)

Form of Lease of building sites to be ordinarily granted by Collectors when no special conditions have been prescribed in respect of the disposal of such sites under No. 25 of the Land Revenue Code Rules, and no survey settlement has been extended to the land.

—o—

This is to certify that* on payment of the sum of
Rs. for the occupancy right* of
has been granted the occupancy for a term of ninety-
nine years commencing from the day of
18 of a building site situated in the
of in the Registration Sub-District
of of and in taluka
of the district bounded as
follows :—

(Here describe the plot as required by section 21 of the Indian Registration Act of 1877.)
(Here insert a plan of the plot with dimensions)

and of the following shape and about the following dimensions :—

* The names of reserved trees are to be specified in the margin.

† This paragraph has been added under G. R. No. 1325, dated 16th February 1889.

* * The words between these two asterisks may, whenever the Collector thinks it expedient, be omitted.

This lease is granted subject to the payment of an annual ground rent of Rs. _____ being at the rate of Rs. _____ per *and subject to the further condition that the lessee shall within two years from the date hereof (or within such further period, if any, as the Collector shall deem fit to grant) erect on the said site one or more buildings of a permanent description and construction.*

* * The words between two asterisks must be omitted whenever the preceding condition to which they refer is omitted.

The occupancy of the said building-site is both transferable and heritable and will be continued by the British Government for the aforesaid term of ninety-nine years to whomsoever shall from time to time be the lawful holder thereof, subject only to the payment annually of the above ground rent according to the provisions of the Land Revenue Code, 1879, or of any other law for the time being in force for regulating the payment of land revenue, *and to the liability to forfeiture of the said occupancy and of all rights and interests connected therewith in case of failure so to pay the said ground rent or in case of a breach of the condition hereinbefore contained as to the erection of a building or buildings on the said site.*

This lease 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 the Collector of _____ this _____ day of _____ 18 .



(Signed)

Collector.

* This note can be added, under clause 4 of No. 25 of the Land Revenue Code Rules, at any time that lessee with the Collector's consent, makes the lump payment. (G. R. No. 9316, dated 18th December 1883.)

Note.*—With the consent of the Collector, a lump payment of Rs. _____ has on this the _____ day of _____ 18 _____ been made by _____ the holder of this lease, into the Government Treasury at _____ in satisfaction of the ground rent due under this lease up to the date of expiry of the term thereof on the _____ day of _____ 18 .

(Signed)

Treasury Officer.

Note.—The above form has been sanctioned under G. R. No. 7898, dated 25th October 1883.

APPENDIX L.

(Referred to in footnote to Rule 31.)

Register of leases executed under rule 31 of the rules framed under the Land Revenue Code for 18 , Taluka .

SERIAL NUMBER.	Name of lessee and place of residence.	Name of village in which the land or ground is situate.	Survey number or Gaothan register's No as the case may be.	Acres and Gunthas or area in square feet.	Amount of occupancy price if any.	Amount of the annual ground-rent.	Period for which the occupancy is disposed of and the particular date on which the term expires.	Remarks.
1	2	3	4	5	6	7	8	9

NOTE.—An index similar to that prescribed for Taluka Form No. 31 should be prefixed to this Register when the number of occupancies is large.

When a lease is entered in this Register an extract of the entry should be furnished by the Mamlatdar under his signature to the Village Officers concerned. The Village Officers should arrange extracts in one file and keep them in their current papers. (G. R. No. 8959, dated 6th December 1883.)

APPENDIX M.

(Referred to in Rule 42.)

(1) FORM OF PROCLAMATION AND WRITTEN NOTICE OF SALE OF ATTACHED PROPERTY.

(Under Section 165 of Bombay Act V of 1879.)

Whereas the property of _____ hereinunder specified has been attached on account of the Government assessment Rs. _____ due by the said _____ ; and whereas it is necessary to recover the said amount by sale of the said property, together with all lawful charges and expenses resulting from the said attachment and sale :

Notice is hereby given that on the _____ day of _____ 18 , at _____ o'clock A. M. _____ A, B,

the Mamlatdar of (or other person appointed) will, at in Taluka in this District, sell by auction to the highest bidder and without reserve, the right, title and interest of the said in the property hereinunder specified, and every power of disposing of the same or any of them or of the profits arising therefrom which the said may now consistently with the law exercise for his own benefit.

Moveable Property.

1	2	3	4	5	6
Lot No.	Number and description of articles.	Where attached.	Where now placed.	When to be viewed.	Whether the sale is subject to confirmation or not.

Immoveable Property.

2	2	3	4	5	6	7	8	9
Lot No.	Description of Lot, including local situation, supposed or estimated rent or annual value, and, if leased, for how long, on what terms, and to whom.	Survey number, Municipal number and other fiscal designation.	Government Revenue, including any Local Cess, any other known fiscal charge resting on the Lot.	Present occupant.	(Here enter any other particulars the Collector may see fit.)			

N. B.—No guarantee is given of the title of the said or of the validity of any of the rights, charges or interest claimed by third parties.

(Signed)

Collector.

(2) FORM OF PROCLAMATION AND WRITTEN NOTICE OF
SALE OF RIGHT OF OCCUPANCY OF UNOCCUPIED LAND.

Notice is hereby given that the right of occupancy of the under-mentioned unoccupied land, situate in the village of _____ in the _____ Mahal and the _____ Taluka of the _____ District, will be put up to public auction at _____ on _____ day the _____ day of _____ 18 _____, at or after _____ o'clock A. (OR P.) M.

The written (or printed) conditions of sale signed by _____ may be seen on application, during office hours, on any office day before the day of the auction, to the Mahalkari (or Mamlatdar) of _____ or, at the time of the auction, to the officer who conducts the same, and intending bidders are warned that they should ascertain the said conditions before bidding.

Description of the land.

(Here give a full description of the land, viz. the Survey Number or Numbers, if it has been surveyed, if not, its boundaries; the class of land, i. e., whether it is dry-crop land, garden land, or a building site, &c., the area of the land, adding 'be the same more or less'; the assessment, if any, at present payable for the land, and the term for which that assessment has been fixed.)

Dated the _____ day }
of _____ 18 _____ } (Signed)

Collector (or other competent officer.)

APPENDIX N.

(Referred to in footnote to the heading of Rules
under section 214.)

In exercise of the power conferred by section 40 (d) of the Khoti Settlement Act, 1880, the Governor in Council is pleased to make the following rules to determine the extent to which rules or orders made under section 214 of the Bombay Land Revenue Code, 1879, shall be applicable to villages to which the said Khoti Settlement Act extends (namely):—

1. No rule or order which shall be hereafter made under section 214 of the Bombay Land Revenue Code, 1879, shall be applicable to the said villages, unless it is expressly directed in such rule or order, or in some subsequent rule or order, that it shall be applicable thereto.
2. Of the rules and orders at present in force under section 214 of the Bombay Land Revenue Code, 1879, Nos. 7 to 34, both inclusive, 36, 37,

43, 46 Paragraph 2, 50, 53, 57, 58 to 72, both inclusive, 74 to 82, both inclusive, 84 to 86, both inclusive, 87 paragraph 2, 88, 99 proviso 1, and 111, clause 2, sub clause (c), and clause 3, sub clause (b) shall not be applicable to the said villages.

3. The rest of the said rules and orders shall be applicable to the said villages, subject, as regards those of them which are hereinbelow in this rule mentioned, to the modifications hereinbelow respectively specified, viz :—

No. of rule or order.	Modification.
2	After the word "Code" insert "and Japtidars (i. e. stipendiaries appointed by the Collector to manage attached villages)."
35	For the words "the produce of trees belonging to Government" substitute, "where the produce of trees belongs to Government, it."
45	For "Village Officers" read "Village Accountant or Japtidar where there is one, and of the Band Karkun where there is no village Accountant or Japtidar."
46 Para I.	Omit the words "of section 46, or" and for the last two words substitute "section."
56	For the words "under rule 66" substitute "by the Collector."
102	<p>(1) For the words "Village Officers" substitute "Village Accountants and Japtidars"; and</p> <p>(2) For the words "November or December and the Village Accountant" substitute "January or February. Villages in which there is no Village Accountant or Japtidar shall be divided by the Collector into groups, and the Band Karkun shall examine all the Boundary marks in every Village comprised in one such group every year in rotation. The examining officer"; and</p> <p>(3) For the words "Village Accountant," in Para 2, substitute "examining officer."</p>
104	For "Village officers" substitute "Village Accountant or Japtidar, if there be one."
111	<p>(1) In clause I (c) for the words "the grass or any other produce of land" substitute "any produce," and</p> <p>(2) In clause I (d) omit the words "from land," and</p> <p>(3) In clause 4 for the words "Village officer" substitute "Police Patel, Village Accountant or Japtidar," and</p> <p>(4) In clause 5 for the words "Village Officer" substitute "Village Accountant or Japtidar."</p>

Persons who have any remarks or suggestions to make should communicate them in writing to the Chief Secretary to Government Revenue Department within one month from the date of this notification. (G. N. No. 6794, dated 11th September 1889, published in the B. G. G. Part I, page 779, 1889.)

APPENDIX O.

(Referred to in footnote to Rule 47.)

Rules regarding alluvion and diluvion, owing to changes in the course of the river Indus, or other waters, in the province of Sind.

1. Any land, separate from the main banks of the river, or sea-shore by a channel which contains water throughout its length during the whole year, is to be considered an island.

2. Islands newly thrown up by the river or sea are the property of Government.

3. All new land not separated from the main land by a channel containing water throughout its length during the whole year, is to be considered as the property of the owner of the old land to which it is annexed, subject to Government assessment in the cases provided for in the rules below.

4. These rules hold good only in cases of lands newly thrown up by the river in such a manner as to make it impossible to identify them with any lands which may have previously existed on the same spot, and been since swept away. If the river, by a sudden change in its course cut off a portion of an estate without gradual encroachment, so as merely to separate such portion of land from the rest of the estate to which it previously belonged, without destroying the identity or preventing the recognition of the land so cut off, then the land, on being clearly and unmistakably identified, will continue to be held on the same tenure as before its separation.

5. But no weight should be allowed to the pretended recognition of lands which have been so entirely swept away at some previous period, that they disappeared during the whole of a season, and which, on the river again changing its course, are supposed to re-appear merely because in situation or composition they somewhat resemble those previously swept away. These would come under Rules 2 and 3.

6. Where lands bordering on the river are leased out by Government it is to be the rule that whenever $\frac{1}{8}$ th of the land, or a portion of the land yielding $\frac{1}{8}$ th of the rental, may be swept away, the lessee can claim a resettlement of the estate. On the other hand, the Government can assert no claim to assess any increment

According to the rule in the N. W. Provinces, para 210.

to lands so leased, unless it amount in extent or produce to more than $\frac{1}{8}$ th of the estate leased.

7. This rule should be observed even though no provision for such a contingency may have been made in the original lease.

8. When a revision of settlement takes place under these rules on the plea of diluvion, if the total assets of the whole estate settled be found to be from any cause as large as, or larger than, they were computed to be at the time of settlement, the claim for reduction in the lease will be disallowed. If they be less a proportionate deduction will be allowed, the assessment being calculated on the whole existing assets, in the same manner as when the settlement was originally made.

Rule para: 262 of
Directions for Revenue
Officers, N. W. Pro-
vinces, No. 211.

9. And when Government claim an increase of assessment, on account of increment above $\frac{1}{8}$ th, the lessee may, at his option, either have the whole estate resettled, or come under a new engagement, for the sum which may be demandable upon the newly accrued portion alone.

10. Remissions of assessment granted on account of diluvion in fixed leases, are to be reported to the Commissioner: and likewise increase of assessment on account of alluvion.

11. Holders of lands in jaghir, or on other rent-free tenure, are to be left in possession of all lands attached to their estates under Rule 3, provided the increment do not exceed, by more than 10 per cent., the land which they held at the date of the latest confirmatory grant issued by competent authority.

12. If the increment exceed 10 per cent., all lands, beyond those previously held under sanction of competent authority, will be liable to assesment, but remain the property of the holder of the original rent-free estate.

13. In cases, however, where a certain fixed quantity of land has been granted rent-free, and not a village *mukan* or estate, then the holder can have no claim on any increment to his original lands.

14. If any claim being preferred by Government to assess lands newly attached to rent-free estates it be proved that more or an equal amount of land has, since the date of the last confirmatory grant to the rent-free holder, been lost by diluvion from the same estate, then the claim to assess shall be disallowed.

15. This plea is in no case to hold good, with reference to lands which had been swept away before the conquest of Sind.

16. If a rent-free estate be entirely carried away the holder will have no claim to a new grant, nor in the event of new lands being subsequently formed by the river again receding will the rent-free estate be re-

vived. The new lands will be an increment to the estate to which they are attached under Rule 3.

17. Where villages or estates have been granted subject to payment of a quit-rent, Government will not claim to assess any increment until it reaches 10 per cent. ; when it exceeds 10 per cent. the whole of the increment will be liable to the ordinary assessment.

18. The same rules which would apply to alienations, or leases

Example.

A holds a Jaghir $\frac{1}{4}$ of the Government revenue of the village of Syudpur producing 10,000 Rs. per annum.

(a) Case. Land producing Rs. 500 per annum is swept away. A will receive only $\frac{1}{4}$ of the remaining Rs. 9,500.

(b) Case. A similar amount of land is added. A will then receive $\frac{1}{4}$ of Rs. 10,500.

(c) Case. Land yielding a revenue of Rs. 2,000 is swept away. A will receive only $\frac{1}{4}$ of Rs. 8,000.

(d) Case. Land yielding Rs. 2,000 is added. A has still a right to only $\frac{1}{4}$ of Rs. 10,000-

(e) Case. The village in 1848, when the grant was confirmed to A, yielded Rs. 15,000 Government Revenue, though latterly, the value has been only Rs. 10,000. In the case if land yielding Rs. 2,000 be added, A will receive a fourth of the additional Rs. 2,000 as well as of the Rs. 10,000.

of the whole Government share, shall be applicable where only a fractional portion of such share has been alienated, the addition or deduction, as the case may be, being proportioned to the extent to which the rights of Govern-

ment may in each instance have been alienated.

19. Claims founded on grants by competent authority, specifying particularly the alienation of alluvial land formed by increment must be decided specially on consideration of the terms of the grant.

20. If cases should arise in the Civil Courts involving questions of alluvion and diluvion the litigants should be called upon to prove, if possible, the local usage ; and by that, if the practice be clear and free from doubt, the Court should decide all cases relating to alluvial land between the parties where estates may be liable to such usage. Where this proof fails, the Court should decide in the spirit of the above rules.

APPENDIX P.

(Referred to in footnote to Rule 68.)

Under No. 68 of the Rules framed by Government under Section 214 of the Land Revenue Code, Bombay Act V of 1879, His Excellency the Governor in Council is pleased to direct that the amount of fine leviable under the said rule on any lands within the undermentioned limits shall be fixed by Collectors in their discretion at rates not exceeding those named in columns below:—

District.	Taluka.	City, town or village.	Limits to which the Notification applies.	Amount of fine leviable per acre.	Govt. authority.	
1	2	3	4	5	6	
PRESIDENCY PROPER.						
Khandesh.	Jalgaon.....	1 Jalgaon	Within the limits of the Municipality	1,000	G. N. No. 6360, dated 30th August 1883, published in the B. G. G. Part I, page 628, 1883.	
	Jalgaon.....	1 Jalgaon	Within a radius of one mile from the Railway Station excepting the limits of the Municipality	500		
	Bhusaval.	1 Bhusaval	{	Within the limits of the Bhusaval Municipality and within a radius of one mile from the Bhusaval Railway Station		
		2 Satara				
	3 Kandari					
	4 Khadki					
Poona.	Poona.....	Poona City	The whole of the City.	1,000	G. N. No. 942, dated 4th February 1891, published in the B. G. G. Part I, page 100.	
	Haveli.....	1 Mali	{			The whole of the village limits
		2 Mungert				
		3 Bhamburda				
4 Parvati						
	5 Chorpuadi.....					
	6 Wanowari.....					
	7 Mundwa.....					
	8 Bapori.....					
	Maval.....	1 Khandala	{	The whole of the village limits		
		2 Lonauli				
		3 Tungarli.....				

istrict.	Taluka.	City, town or village.	Limits to which the Notification applies.	Amount of fine leviable per acre.	Govt. authority.
1	2	3	4	5	6
Poona ...	Maval ...	4 Bhushi.....	The whole of the village limits.....	1,000	G. N. No. 1532, dated 25th 7th April 1891, published in the B. G. G. Part I,
		5 Walwan.....	Do.	1,000	
Sholapur.	Sholapur....	1 Sholapur.....	Within the Municipal limits or within a radius of one mile from the Ry. Station in any direction.....	1,000	G. N. No. 2400, dated 7th April 1891, published in the B. G. G. Part I,
	Barsi	1 Barsi.....	Within Municipal limits	.	
	Barsi	1 Barsi.....	Within a radius of one mile outside the Municipal limits		
	Sholapur....	1 Hotgi	Within a radius of one mile from the Railway Station	500	
	Madha.....	1 Kurduwadi....	Do. do.		
Ahmednagar.	Ahmednagar.....	1 The City of Ahmednagar ...	Within a quarter of a mile from the City, Railway Station, or Cantonment of Ahmednagar	500	G. N. No. 6360, dated 30th August 1883, published in the B. G. G. Part I, page 628, 1883.
		2 Railway Station of Ahmednagar.....			
		3 Cantonment of Ahmednagar ...			

District.	Taluka.	City, town or village.	Limits to which the Notification applies.	Amount of fine leviable per acre.	Govt. authority.	
1	2	3	4	5	6	
Dharwar.	Dharwar	1 Dharwar.....	Lands within survey limits of each village.....	5,000	G. N. No. 2752, dated 18th April 1893, published in the B. G. G. Part I, page 369, 1893.	
		2 Hosiellapur ...				
		3 Kamlapur				
4 Malapur						
5 Gulganjikop ...						
6 Saidapur						
7 Saptapur						
8 Narayanpur ...						
9 Bagtalav						
10 Dodunaikop.....						
11 Lakmanhalli.						
Dharwar.	Gadag	Gadag Bettigeri...	Beyond the above limits and within a radius of one mile from the Gadag Railway Station..	500	G. N. No. 6583, dated 1st October 1898, published in the B. G. G. Part I, page 786, 1898.	
	Hubli ...		1 Keshvapaur ...	Lands within survey limits of each village.....	5000	G. R. No. 2752 dated 18th April 1893, published in the B. G. G. Part I, page 369, 1893.
			2 Nag-hetukop			
			3 Madi Naikankarlikatti			
			4 Marian Timnagar			
			5 Bommapur ...			
			6 Yellapur			
			7 Ayodhya			
			8 Krishnapur ...			
			9 Narayanpur ...			

District.	Taluka.	City, town or village.	Lands to which the Notification applies.	Amount of fine leviable per acre.	Govt. authority.		
1	2	3	4	5	6		
Belgaum	Belgaum	Belgaum Town.	Within Municipal limits.	5,000	G. N. No. 2752, dated 18th April 1893, published in the B. G. G. Part I, page 369, 1893.		
		Belgaum Cantonment.	Within Cantonment-Limits.	5,000			
	Wai	1. Lonand	Lands within a radius of half a mile from the Lonand Railway Station.	200		G. N. No. 8916, dated 26th November 1889, published in the B. G. G. Part I, page 1006, 1889.	
		Koregaon	1. Wathar				Do from Wathar Railway Station.
			2. Satara Road.				Do Satara Ry. St.
			3. Koregaon				Do Koregaon Ry. St.
			4. Rahimatpur.				Do Rahimatpur Ry. St.
	5. Tasgaon	Do Tasgaon Ry. St.					
	Karad	1. Masur	Do Masur Ry. St.				
		2. Karad	Do Karad Ry. St.				
3. Shenoli		Do Shenoli Ry. St.					
Valva	1. Takari	Do Takari Ry. St.					
Tasgaon	1. Asta Road	Do Asta Road Railway Station.					

District.	Taluka.	City, town or village.	Limits to which the Notification applies.	Amount of fine leviable per acre.	Govt. authority.
1	2	3	4	5	6
Ahmedabad.	Dasdrohi.	1 Ahmedabad—City and Camp.	Lands situated within 3 miles of the Ahmedabad Railway Station.	Ra. 1,000	G. N. No. 631, dated 25th January 1883, published in the B. G. G. Part I, page 85, 1883.
		2 Changispur.			
		3 Shaekhpur—Khanpur.			
		4 Waduj.			
		5 Usmanpur.			
		6 Dariapur—Kasipur.			
		7 Asarwa.			
		8 Rakhial.			
		9 Rajper Hirpur.			
		10 Khokkra—Mehmadabad.			
	11 Bagfardoa.				
	12 Sundhal—Khamodral.				
	13 Paldi.	Lands situated within 2 miles of the Sabharmatti Railway Station.	500		
	14 Kochrab.				
	15 Chhadawad.				
	16 Kali.				
17 Ranip.	Lands situated within one mile of the Kacheri.	500			
18 Acher.					
19 Motera.	Lands situated within 2 miles of the Virangaon Railway Station.	500			
Dhandhuka.			Dhandhuka town.		
Virangaon..			Virangaon town.		
Sanand.	Sanand town	Lands situated within one mile of the Kacheri.	500		
Parantij.	Parantij town.				
Kaira.	Nadiad.	1 Piplug.	Radius of 2 miles from the Railway Station at Nadiad.	500	
		2 Dumral.			
		3 Kumlo.			
		4 Nadiad.			
	Anand.	1 Gamdi. 2 Anand. 3 Umreth.	Radius of 2 miles from the Ry. St. at Anand. Radius of 2 miles from the Ry. St. at Umreth.		

District.	Taluka.	City, town or village.	Limits to which the Notification applies.	Amount of fine leviable per acre.	Govt. authority.	
1	2	3	4	5	6	
Broach.	Broach.	1 Broach.	Lands within the Survey limits of each village.	Rs. 1,000		
		2 Kāsuk.				
		3 Majampur.				
		4 Kalmivaga.				
		5 Ali.				
		6 Dungri.				
		7 Vejalpore.				
	Chorasi.	1 Surat	Lands within the limits of the city...	1,000		
		2 Athva				
		3 Kathodra				
		4 Umarwada				
		5 Ajna				
		6 Navagam				Lands situated within half a mile of the City of Surat.
		7 Tunki.....				
		8 Majura				
	Surat.	Balsar.....	1 Balsar	Lands within the Municipal Limits.		500
			2 Bhagadavada .			
			3 Pardi-Sandpor			
		Balsar.....	4 Mogravadi	Lands within half a mile of the Municipal limits of Balsar.		
			5 Nanakvada ...			
			6 Abrama			
7 Lilapoor						

G. N. No. 631, dated 25th January 1883, published in the B. G. G. Part I, page 85, 1883.

District.	Taluka.	City, town or village.	Limits to which the Notification applies.	Amount of fine leviable per acre.	Govt. authority.
1	2	3	4	5	6
Surat	Jalalpur.	1 Jalapur Vijalpur	Lands within a radius of half a mile from the Naosari Ry. St. Lands within a radius of $\frac{1}{4}$ mile from the Amalsad Railway Station.	Rs.	G. N. No. 5460, dated 4th July 1892, published in the B. G. G. Part I, page 600, 1892.
		2 Amalsad Sari-bujrag		500	
Thana	Salsette.	1 Thana	Lands within the Survey limits of each village	1000	G. N. No. 631, dated 25th January 1883, published in the B. G. G. Part I, Page 85, 1883.
		2 Chendni			
		3 Pach Pakhadde			
		4 Majiwade			
		5 Kalwe			
		6 Mahul			
		7 Turumbhe			
		8 Shahabaj			
		9 Bandra			
		10 Danda			
		11 Andheri			
		12 Amboli			
13 Vesava					
14 Mhad					
15 Darowli					
16 Erangal					
17 Akseh					
18 Marve					
19 Malaona					
20 Manori					
21 Gorai					
22 Utan					
23 Dongri					
24 Boraoli					

District.	Taluka,	City, town or village.	Lands to which the Notification applies.	Amount of fine leviable per acre.	Govt. authority.
1	2	3	4	5	6
Thana.	Kalyan. ...	Kalyan ...	Lands within the Survey limits of each village	1,000	Rs.
	Bhiwndi {	1 Bhiwndi ... 2 Nizampur ...			
	Panwel ...	Panvel ...			
	Mahim ... {	1 Pamtembi ... 2 Kare Kuran ... 3 Kelve... ...			
PROVINCE OF SIND.					
Shikarpur.	Sukkar ...	Town of Sukkar.	Within the limits of the Municipality.	500	G. N. No. 631, dated 25th January 1883, published in the B. G. G. Part I, page 85, 1883.
Hyderabad.	Taluka Hyderabad.	Station Gidu Bandar. {	Gidu Bandar Sari ...	Within a radius of one mile from the Railway Station.	1,000
		Station Hyderabad. {	Hyderabad Nareja ... Gujo ...	Within the limits of the Hyderabad Municipality.	
		Station Tando Nawals. {	Ghangro ... Ghangra ... Hyderabad ... Narejani ... Chacha Dhetha ...	Within a radius of one mile from the Railway Station.	
		Station Tando Jam. {	Hotki ... Rahuki ...	Do.		500
G. N. No. 5352, dated 25th July 1893, published in the B. G. G. Part I, page 660, 1893.					
G. N. No. 4290, dated 15th May 1894, published in the B. G. G. Part I, page 438, 1894.					

District.	Taluka.	City, town or village.	Limits to which the Notification applies.	Amount of fine leviable per acre.	Govt. authority.	
1	2	3	4	5	6	
Hydrabad.	Taluka Tando Alahyar.	Station Landhi Khesano	{ Daro Kubi..... Gujo Bhanoki	Within a radius of one mile from the Railway Station.	Rs. 500	G. N. No. 4290, dated 15th May 1894, published in the B. G. G. Part I, page 438, 1894.
		Station Tando Alahyar	{ Tando Alahyar Nahuki Amri Daro Sahto.....		Do.		500
		Taluka Mirpur Khas.	Mirpur Khas Station	{ Mirpur Khas... Pawharki Rahu Khatti.....	Do.		500

APPENDIX Q.

(Referred to in Order No. (1) under Rule 3.)

Form of security bond to be taken from treasurers or other officers of Government entrusted with the charge of public Money.*

KNOW all men by these presents that

* (1.) This is an amended form sanctioned under G. R. No. 3378, F. D., dated 9th December 1885.

(2.) It is not necessary or possible that all security bonds to be executed in future shall be drawn up in the exact form which is here prescribed. (G. R. No. 3739, dated 2nd October 1882.)

(3.) The above form is to be made in cases in which Government paper is deposited under section 23 of the Land Revenue Code. In other cases the form prescribed in Schedule B of the Bombay Land Revenue Code should be used. (G. R. No. 7522, dated 26th October 1882.)

(4.) It should be left optional with Subordinate Revenue Officers who are entrusted with the charge of money either to deposit Government promissory notes or to execute a bond in the form in Schedule B of the Code. (G. R. No. 3031, dated 17th August 1883.)

(Principal) of (1st surety)
 (2nd surety), of are held and firmly bound
 unto the Secretary of State for India in Council in the sum of Rs.
 to be paid to the said Secretary of State in Council, his
 successors or assigns, or his or their certain attorney or attorneys for which
 payment, well and truly to be made, we bind ourselves, our heirs, execu-
 tors, administrators, and representatives jointly, and every two of us bind
 ourselves, our heirs, executors, administrators, and representatives joint-
 ly, and each of us binds himself, his heirs, executors, administrators and
 representatives severally, firmly by these presents, sealed with our seals,
 dated this day of 18, and each of
 us the said doth hereby for himself, his heirs, executors,
 administrators, and representatives, covenant with the said Secretary of
 State in Council, his successors and assigns, that if any suit shall be
 brought touching the subject matter of this obligation or the condition
 hereunder written in any court, subject to the High Court of Judicature
 at other than the said High Court in its Ordinary Ori-
 ginal Jurisdiction, the same shall and may at the instance of the said Se-
 cretary of State in Council, be removed into, tried and determined by the
 said High Court, in its Extraordinary Original Jurisdiction.

WHEREAS the above bounden was on the
 day of 18 appointed to and now holds and
 exercises the office of Treasurer at ; AND WHEREAS, by
 virtue of such office, the said has, amongst other duties,
 the care, charge, and oversight of and responsibility for the safe and
 proper storing and keeping in the places appointed for the custody thereof
 respectively, of all money, specie, bullion, coin, jewels, Government cur-
 rency notes, stamps, and Government securities of whatever description,
 gold, silver, copper, lead, goods, stores, chattels or effects stored and used
 at, received into or despatched from the Treasury of or
 paid, deposited or brought into the said Treasury by any person or persons
 whomsoever and for any purpose or purposes whatsoever; AND WHEREAS
 the said as such Treasurer as aforesaid is so responsible
 that all such moneys, specie, bullion, coin, jewels, Government currency
 notes, stamps, and Government securities of whatsoever description, gold,
 silver, copper, lead, goods, stores, chattels, or effects (hereinafter together
 only called "the said property") are and is of full measure and good quality
 when received into the said treasury and until he has duly accounted
 therefor and for every part thereof in manner hereinafter referred to;
 AND WHEREAS the said is bound, whenever called upon
 so to do, to show to his superior officers that the said property and every
 part thereof save so much thereof as he has duly accounted for is at all
 times intact in the places aforesaid and is also bound to attend for the pur-
 pose of discharging his duties aforesaid at such times and places as his
 superior officers may appoint; AND WHEREAS the said is fur-
 ther bound to keep true and faithful accounts of the said property and of

his dealings under written orders of his superior officers therewith respectively in the form and manner that may from time to time be prescribed under the authority of Government, and also to prepare and submit such returns and such accounts as he may from time to time be called upon to do; AND WHEREAS the bulk of the said property remains as well in the care, charge and custody of the Treasury Officer for the time being at

as of the said but as between himself and the said Secretary of State for India in Council he the said is alone responsible and answerable therefor and for every part thereof; AND WHEREAS the responsibility of the said.

for the said property and every part thereof does not cease until the same has been duly used under the written orders aforesaid and accounted for or been duly despatched from the said Treasury and delivered over to and a full and complete discharge therefor obtained from such persons and places as the district officer of or other the person exercising his functions for the time being under the sanction of the Government of may direct; AND WHEREAS the said

in consideration of his said appointment has delivered to and deposited with and endorsed over to as such district officer as aforesaid Government securities to the extent of Rs.

of which the numbers, amounts and other particulars are set forth and specified in the Schedule hereunder written for the purpose of in part securing and indemnifying the said Secretary of State in Council, his successors and assigns, against all loss and damage which he or they might or may in any way suffer by reason of the said property or any part or parts thereof being in any way consumed, wasted, embezzled, stolen, mispent, lost, misapplied or otherwise dishonestly, negligently, or by or through oversight or violence made away or parted with by himself the said or any person acting for him in his said office during his absence or otherwise or by any subtreasurers, servants, clerks, sircars, cash-keepers, poddars, coolies or other persons, nominated or accepted by or serving under him the said or by any other

person or persons whomsoever, whether in the service of Government or otherwise; and whereas the said (principal) and the said (1st surety) and (2nd surety) as his the said sureties in that behalf have entered into the

above bond in the penal sum of conditioned for the due performance by him the said of the duties of the said office aforesaid and of other the duties appertaining thereto or which may lawfully be required of him and the indemnity of the said Secretary of State in Council and his servants against loss from or by reason of the acts or defaults of the said and of all and every the persons and

person aforesaid: Now the condition of the above written bond is such that if the said has whilst he has held the said office of Treasurer as aforesaid always duly performed and fulfilled the said duties of the said office and other the duties aforesaid and if he the said shall, whilst he shall hold the said office, always duly

perform and fulfil all and every the duties thereof aforesaid, and further if the said and do and shall indemnify and save harmless the said Secretary of State in Council, his successors and assigns, the Government of and all and every the person or persons who from time to time has or have held or shall hold or exercise the said office of district officer while the said has held or shall hold and enjoy the said office of Treasurer as aforesaid of and from all and every loss and damage, which, during the time the said has held, executed and enjoyed the said office, has happened or been sustained, or shall or may at any times or time hereafter during the time that he the said or his agent or agents, nominee or nominees, shall hold or exercise or act in the said office happen to or be sustained by the said Secretary of State in Council, his successors or assigns, the Government of or the said district officer, for the time being, by, from or through the means of the neglect, failure, misconduct, disobedience, omission or insolvency of the said or his said agent or agents, nominee or nominees, or of any of the subtreasurers, servants, clerks, sircars, cash-keepers, poddars, coolies or other persons nominated, accepted by or serving under him the said or his said agent or agents, nominee or nominees, or by, from or through the consuming, wasting, embezzling, stealing, misspending, losing, misapplying or otherwise dishonestly or negligently, or through oversight or violence, making away or parting with the said property or any part or parts thereof, by any person or persons whomsoever, whilst he or the said has acted or shall continue to act in the said office of Treasurer as aforesaid, then this obligation to be void and of no effect, otherwise the same shall be and remain in full force and virtue : Provided always and it is hereby agreed and declared that neither of them the said and shall be at liberty to terminate their Suretyship except upon giving to the District officer for the time being of the Government of six calendar month's notice in writing of his or their intention so to do and their joint and several liability under this bond shall continue in respect of all omissions and defaults on the part of the said until the expiration of the said period of six months : Provided always and it is hereby declared and agreed by the said and when the said Secretary of State in Council, that the Government Promissory Notes for Rs. so deposited as aforesaid respectively or such other Government security or securities to the same amount as the district officer for the time being of the Government of may consent from time to time to accept and receive and shall accordingly receive in lieu or exchange for the same and the interest thereof respectively shall be and remain with the said District Officer for the time being or the Government of as and for part and additional security to the said Secretary of State in Council, his successors and assigns, for the purposes aforesaid with full power to the said Secretary of State in Council, his successors or assigns, or his or their officers and servants, duly authorised in that behalf, from

time to time as occasion shall require, to sell and dispose of the said Government securities or a sufficient portion thereof with the interest thereon and to apply the proceeds thereof in and towards the indemnity as aforesaid of the said Secretary of State in Council, his successors and assigns, as the case may require, but nevertheless the interest of the said Government securities may in the meantime be paid over as the same shall be realised by the said district officer for the time being or the Government of _____ if they shall think fit to the said

: Provided further and it is hereby expressly agreed and declared between and by the said _____ and _____ the Secretary of State in Council that it shall be lawful for the said _____ with the consent of the said district officer or of other the person exercising his functions for the time being under the sanction of the Government of _____ first had and obtained to change and substitute for the said deposit of Government Promissory Notes for Rupees _____ or any part thereof or for any substituted notes from time to time other notes of the same or other loans of the same or greater value without in any way affecting the obligation of the said bond or the liability of the said _____ and _____ as such securities as aforesaid. The Schedule above referred to

And it is hereby lastly agreed and declared by and between the said [*Principal*] and the said [*one surety*] and [*other sureties*] as his the said [*Principal's*] sureties and the said Secretary of State that on the vacation by the said [*Principal*] of his said office of _____ the above mentioned Government promissory notes for Rs. _____

or any notes that may be substituted therefor as aforesaid shall not be at once returned to him but shall be and remain with the said [*the authority with whom the notes are deposited*] for the term of six months as security against any loss that may have been incurred by the Secretary of State owing to the neglect or default of the said [*Principal*] or any other person or persons as aforesaid and which may not have been discovered until after the vacation of his appointment by the said [*Principal*]; *Provided always* that the return at any time of the said Government promissory notes shall not be deemed to affect the right of the said Secretary of State to take proceedings upon the said bond against the said [*Principal*] and [*Sureties*] in case any breach of the conditions of the said bond shall be discovered after the return of the said Government promissory notes.

INDICES.

A.—Index to Government Resolutions, &c.

B.—General Alphabetical Index.

A.—Index to Government Resolutions, Notifications, High Court Decisions, &c. :—

No. of Order.	Date.	Section.	Rule.	Page.	No. of Order.	Date.	Section.	Rule.	Page.
	1842.					1867.			
3876	29th Dec.	33f.	...	34	793	25th Feb.	33f.	...	34
	1850.					1868.			
5189	4th July.	108f.	...	137	3613	28th Sep.	216f.	...	205
	1851.				3861	19th October.	113f.	...	140
						1869.			
1223	10th Feb.	216f.	...	205	2036	20th May.	214	2f.	245
9976	17th October.	"	...	204	2161	29th "	98f.	...	123
	1852.					1871.			
543	12th Feb.	"	...	"	4693	22nd Sep.	214	48	279
Govt. Letter	20th August.	122f.	...	151		1872.			
	1855.				1983	25th April.	72	...	85
3479	29th Dec.	216f.	...	205	"	" "	72f.	...	86
	1859.				2595	29th May.	113f.	...	139
					2935	19th June.	72	...	85
1545	25th April.	214	59f.	300	G. of L.	" 12th " Oct.	214	14f.	256
	1865.				5108	} 5th Nov.			
					G. of L.			213	9f.	241
2581	19th June.	216f.	...	204	4018	} 11th "			
					5594			98f.	...	124
	1866.					1873.			
4086	5th Nov.	122f.	...	151	2210	18th April.	100		125
					5487	3rd October.	213	f.	235

No. of Order.	Date.	Section.	Rule.	Page.	No. of Order.	Date.	Section.	Rule.	Page.
1874.					5921	16th Nov. ...	216f.	...	207
1028	25th Feb.	101f.	...	128	G. of I. } 31st Dec.	125	...	155	
2818	4th June ...	86f.	...	102	I. L. R. Bo. Vol. II.	39f.	...	38	
3172	23rd "	101f.	...	126	" " "	214	44f.	277	
3618	14th July ...	"	...	127	1879.				
4914	12th August.	214	14f.	256	1076	28th Mar.	213	11	242
4550	25th "	"	38f.	271	F. D. }	3rd July. . .	42f.	...	42
5739	29th October.	107f.	...	135	3495	" " "	214	91	315
1875.					3750	16th " ...	33f.	..	34
373	21st January.	216f.	...	206	G. of I. }	29th "	33f.	...	35
1044	19th Feb.	214	20	259	L. 37-				
2030	31st March.	213	9f.	241	1389-				
1287	17th April ...	"	11	242	1404 }				
1876.					4000	31st " ...	56	...	56
129	6th January.	214	93	317	G. of I. }	12th Sept.	214	12	252
793	16th Feb.	172	...	184	L. 446 }				
1811	21st March.	110f.	...	188	3739	2nd October.	"	3	246.
3504	15th June ...	216f.	...	206	5728	27th "	129	...	160
4107	17th July ...	110f.	...	188	5730	" " ...	56	...	56
7390	15th Dec.	216f.	...	206	5730	" " " ...	184	...	188
7432	18th " ...	214	9f.	250	"	9th Dec. ...	1	...	2
G. of I. }	28th " ...	...	{ App. G. f.	340	5728	P. D. }			
8421					5730	" "	1	...	2
1877.					6688	15th "	69	...	77
3292	23rd May ...	108f.	...	137	6709	16th "	216	...	206
1878.					1880.				
1110	1st March ...	46	...	46	172	12th January	61	...	61
1546	26th "	55f.	...	54	132	15th " ...	214	12	252
3480	10th July ...	214	91	315					

No. of Order.	Date.	Sec. tion.	Rule.	Page.	No. of Order.	Date.	Sec. tion.	Rule.	Page.
773	13th Feb. ...	47f.	...	47	4297	25th July ...	56	...	57
"	"	214	47	278	"	"	214	58f.	297
1625	30th March	61	...	61	4314	"	98	...	124
2083	21st April ...	3	...	3	"	"	214	54f.	281
"	"	58	...	58	4404	29th	61	...	61
2689	24th May ...	86	...	103	5400	11th August.	84	...	99
3009	10th June ...	181	...	187	4839	20th	103	...	130
3016	"	153	...	174	G.of I.	2nd Sep....	214	2f.	244
3350	29th	86	...	105	2778	"	"	"	"
3796	21st July ...	56	...	56	5126	5th	"	{ App.	244
3872	24th	35	...	36	"	"	"	{ IV	"
4375	20th August	153	...	174	5406	17th	86	...	106
4379	"	86	...	105	5454	21st	"	...	"
"	"	"	...	106	5730	1st October	74	...	88
4891	16th Sep. ...	56f.	...	55	5795	4th	86	...	103
"	"	169	...	183	5838	6th	85	...	100
4949	18th	214	56	297	6067	15th	61	...	61
5430	14th October.	58	...	58	6455	29th	56	...	57
5841	30th	86	...	105	6550	3rd Nov. ...	41	...	41
5843	"	83f.	...	98	6682	10th	101f.	...	128
7130	20th Nov. ...	169	...	183	6737	11th	125	...	155
J.of I.	30th	1	...	2	6750	"	86	...	103
1256	"	"	...	"	6925	19th	216	...	206
7285	2nd Dec. ...	183	...	188	7045	23rd	74	...	88
6386	6th	216	...	207	7052	"	113	...	140
6401	"	"	...	"	7057	24th	86	...	105
6841	30th	86	...	105	7285	2nd Dec. ...	183	...	188
	1881.				7322	3rd	216	...	207
1388	8th March ...	88	...	118	7368	6th	213	11	242
2516	5th May ...	106f.	...	132	7851	23rd Dec. ...	53	...	53
2877	21st	149f.	...	171	7858	"	154	...	175
3007	27th	192	...	194	"	"	214	88f.	313
3089	30th	86	...	106	L. L. R. Bo. Vol. V	"	55f.	...	55
3396	13th June ...	154	...	175		1882.			
3439	15th	74	...	88	31	5th January.	104	...	130
4150	18th July ...	86	...	105	369	19th	172	...	184
4213	21st	55f.	...	54	649	30th	41	..	41

No. of Order.	Date.	Section.	Rule.	Page.	No. of Order.	Date	Section.	Rule.	Page.
959	10th Feb.	74	...	88	631	25th Jan.	App. P	357	
987	11th "	90	...	120					
1014	13th "	71	...	78					
1672	11th March ..	214	71	306	"	"	"	"	358
2108	31st "	104	...	130	"	"	"	"	359
2235	5th April	99	...	125	"	"	"	"	360
2711	26th "	72	...	80	443	24th Feb.	214	55	288
"	" " "	"	...	82	829	28th "	"	3	246
"	" " "	"	...	85	1743	1st March ...	157	...	178
3208	16th May.	214	31f.	265	2002	10th "	185	...	189
3299	19th "	102	...	128	2028	" "	214	31	265
3301	" "	214	82	310	2116	13th "	32	...	33
3904	17th June.	86	...	106	2215	17th "	214	82	311
"	" " "	87	...	115	2218	" "	214	f.	259
4330	5th July	85	...	101	2407	22nd "	74	...	89
1468	10th "	192	...	194	2459	26th "	86	...	111
4602	14th "	214	82	311	"	" "	152f.	...	307
6280	11th Sept.	113	...	141	"	" "	214	61f.	243
3739	2nd October ...	{	App. Qf.	361	2485	27th "	148	...	170
6905	4th " "	181	...	187	2598	31st "	86	...	106
6884	" " "	214	12	252	2600	" "	70	...	78
7074	11th " "	74	...	89	"	" "	185	...	189
7350	21st " "	192	...	194	2674	3rd April ...	100f.	...	126
7522	26th " "	{	App. Qf.	361	2882	6th " "	214	77f.	308
7831	8th Nov.	66	...	74	3079	15th " "	"	91	316
"	" " "	214	25	262	3042	18th " "	"	27	263
4486	22nd " "	"	3	246	3087	20th " "	"	74	307
8391	30th " "	49f.	...	51	3101	" " "	213	11	242
8486	4th Dec.	66	...	74	3102	" " "	72	...	81
"	" " "	214	25	262	"	" " "	"	...	82
8558	6th " "	"	12	252	"	" " "	86	...	83
8619	9th " "	"	f.	259	3103	" " "	214	111	331
I. L. R. Bo. Vol. VI.	84f.	...	...	99	3171	23rd " "	"	54f.	282
"	B. G. G.	214	66f.	304	3378	2nd May ...	187	...	191
"	" " "	113	...	140	3410	" " "	213	9f.	240
"	" " "	214	66f.	304	3482	5th " "	214	31	265
"	" " "	"	...	"	3483	" " "	113	...	140
"	1883..	"	...	"	1549	9th " "	33	...	35
106	6th Jan.	88	...	119	3621	12th " "	214	12	252

[1883-1884.]

INDEX.

No. of Order.	Date.	Section.	Rule.	Page.	No. of Order.	Date.	Section.	Rule.	Page.
3842	19th May	...	App. Df.	338	692 C. W. 1-1783 P. W. D. }	21st Nov.	214	12	253
3906	22nd "	214	91	315					
3928	" "	"	98A	319					
4074	30th "	"	84	312					
4100	" "	32	...	33					
4180	2nd June	53	...	53					
"	" "	213	1f.	236					
"	" "	"	9f.	240					
3842	19th "	214	75	307					
4667	20th "	"	25f.	262					
4891	29th "	"	92	316	I.L.R. Bo. Vol. VII } " B. G. G. " } 1884. 91 11th Jan. ... } G. of I. 2-77-103 (public) } 381 4th Feb. ... } 1385 13th " ... } 1542 19th " ... } 1790 27th " ... } 2232 14th March... } 2619 26th " ... } " 28th " ... } 1026 28th " ... } 3045 14th April ... } " 15th " ... } 3079 15th " ... } 3095 16th " ... } G. of I. 269 } R. } 3543 2nd May ... } 3661 7th " ... } 3778 10th " ... } " " " ... }	214	44f.	277	
2282	25th July	"	8	246		156	...	177	
5630	31st "	87	...	116		214	66	304	
5634	" "	53	...	53					
5635	" "	31	...	25					
5712	2nd August...	71	...	78					
5804	4th "	85	...	101					
5953	11th "	84	...	100					
6020	15th "	85	...	101					
6023	" "	181	...	187					
6024	" "	86	...	106					
3031	17th "	214	3	246					
"	" "	...	App. Qf.	361					
6210	22nd "	214	20	259					
"	" "	...	App. Df.	337					
6307	25th "	213	9f.	240					
6360	30th "	...	App. P	353					
"	" "	"	"	354					
7136	24th Sept.	216	...	207					
7170	} 16th Oct.	33	...	35					
J. D.									
7898	25th "	...	App. K	346					
8293	12th Nov.	214	54	282					
"	" "	...	App. L	...					
"	" "	...	App. K	...					

No. of Order.	Date.	Section.	Rule.	Page.	No. of Order.	Date.	Section.	Rule.	Page.
1579	13th May ..	213	f.	235	9587	4th Dec. ...	137	..	191
G. D.					9819	12th " ...	88	...	119
4099	21st " ...	126	...	159	9981	19th " ...	32	...	34
4191	23rd " ...	214	41	275	9982	" " ...	154	...	175
4297	28th " ...	"	42f.	276	I. L. R. Bo. Vol. VIII.				
4390	2nd June ...	"	12	252	"	"	83f.	...	95
4503	4th " ...	"	93	317	"	"	87	...	116
4578	6th " ...	"	31	265	"	"	162f.	...	180
4774	13th " ...	214	98B/	320	"	"	214	111	331
2119	17th " ...	23	...	17	"	B. G. G. ...	113	...	141
4892	18th " ...	214	55f.	288	"	"	214	66	304
4964	20th " ...	3	...	4	1885.				
6037	26th July ...	85	...	102	203	9th Jan. ...	88	...	119
619f	1st August... 214	98A/		319	205	" " ...	48	...	48
6225	2nd " ...	216	...	207	259	12th " ...	58	...	58
6560	14th " ...	132	...	152	563	23rd " ...	27	...	20
6920	28th " ...	Sch.	...	216	783	27th " ...	72	...	83
7033	3rd Sept. ...	214	19f.	258	"	"	"	...	85
"	" " ...	"	31f.	264	1053	4th Feb. ...	214	...	91
"	" " ...	...	App.	343	1146	6th " ...	79f.	...	309
"	" " ...	...	L		1266	11th " ...	181	...	187
G of I. 216	9th " ...	31	...	25	1935	6th March ...	213	11	242
7484	19th " ...	85	...	102	2367	19th " ...	74	...	89
G. of I. 3626	23rd " ...	60f.	...	59	"	"	214	74	307
7669	26th " ...	213	f.	239	3291	23rd April... "	39	...	275
"	" " ...	"	11	242	3541	4th May ...	107f.	...	136
7858	28th " ...	113	...	142	3727	8th " ...	86	...	110
G. of I. 713-164-2-R.	17th Oct... 1	...		2	3812	13th " ...	72	...	86
8402	25th " ...	87	...	115	3813	" " ...	"	..	"
8757	6th Nov. ...	154	...	175	G. of I. 21-797-806 } 15th .. 31 ... 28				
"	" " ...	214	58f.	297	"	"	"	...	30
9107	18th " ...	85	...	102	3942	16th " ...	48	...	49
9194	20th " ...	214	31	265	4106	21st " ...	213	f.	239
9586	4th Dec. ...	148	...	170	"	"	"	11	242
					4148	23rd " ...	65	...	71
					4333	29th " ...	214	27	264

No. of Order.	Date.	Sec- tion.	Rule.	Page.	No. of Order.	Date	Sec- tion.	Rule.	Page.			
4551	6th June	37	...	37	10096	16th Dec.	...	App. Cf.	336			
4559	" "	104	...	131	10196	19th "	48	...	49			
2135	" "	31	...	28	I. L. R. Bo. Vol. IX							
G. D. } 9th "	...	122	...	152	"	"	61	...	67			
4686	" "	214	111	331	"	"	84f.	...	99			
4697	" "	...	11A.	251	1886.							
4771	11th "	...	32f.	266	14	5th Jan.	214	39	275			
4782	" "	...	39	275	100	P. W. } 13th "	...	12	253			
4788	" "	...	49f.	280	D.		317	25th "	81f.	26		
5019	19th "	74	...	90	200	27th "	214	110	328			
5205	25th "	61	...	64	676	" "	...	App. Cf.	336			
5243	26th "	72f.	...	79	1189	13th Feb..	...	App. III.	223			
"	"	86	...	110	84 C.	} 18th "	...	224	12	253		
5430	3rd July	214	86	271	W.		261 P.	...	31	...	29	
G. off. }	" "	1	...	2	833	4th March...	30		
433								"	"	214	78	309
136								"	"	...	82	311
2-R.					1708	"	...	38	271			
5546	8th "	214	55f.	292	2039	13th "	...	47f.	47			
"	"	...	99	321	2143	18th "	...	214	47	278		
3372	} 4th Sept...	31	...	28	2771	12th April	...	141	167			
7858		28th "	113	...	142	"	"	107f.	...	136		
8078	5th October...	74	...	89	1513	} 29th "	31	...	30			
8325	14th "	214	f.	267	G. D.		3436	12th May	217	212		
"	"	...	56Af.	297	4344	13th June	48f.	...	47			
"	"	...	68Af.	305	"	"	61	...	62			
9021	6th Nov.	...	27f.	263	"	"	95	...	63			
"	"	...	App. Cf.	336	"	"	126f.	...	121			
9781	4th Dec.	214	82	311	"	"	...	...	159	
9835	5th "	71	...	79								
3378	} 9th "	...	App. Cf.	361								
F. D.		10023	14th "	72	...	84						
221	} 15th "	214	12	253								
W. I.		538-P	...	...						
W. D.		...	...	...					

No. of Order.	Date.	Sec. tion.	Rule.	Page.	No. of Order.	Date.	Sec. tion.	Rule.	Page.
1765	21st June.	113	..	142	720	8th March.	214	12	252
F. D.					F. D.				
2223	23rd "	31f.	...	30	1798	23rd "	..	31f.	264
G. D.					G. of L.				
4758	3rd July	48	...	49	2111	22nd April.	198	...	197
"	"	66	...	74	2452	23rd "	214	10	250
4779	5th "	177	...	186	2457	" "	113	...	141
5312	3rd August	76f.	...	91	2836	7th May	104	...	131
5637	7th "	123	...	154	3181	23rd "	65	...	71
5965	20th "	37	...	38	3378	30th "	122	...	152
6262	2nd Sept.	214	38	273	3639	14th June	214	111	332
6312	6th "	"	78f.	308	3814	23rd "	61	...	66
3452	29th "	31	...	30	3815	" "	"	...	63
G. D.					"	217	...	213	
7063	5th October	123	...	154	4672	21st "	86	...	111
7264	13th "	122	...	152	4892	27th "	214	17f.	257
7486	20th "	214	59Af	300	"	"	"	25f.	261
"	"	"	60f.	301	5698	28th August.	122	...	152
"	"	"	62f.	302	6111	9th Sept.	61	...	63
7447	21st "	107f	...	135	"	"	214	39f.	274
7609	27th "	214	13f.	255	"	"	"	54f.	281
7230	11th Dec.	113	...	142	6306	19th "	48	...	50
8725	"	23	...	17	6806	6th October..	185	...	189
8931	21st "	214	22	260	6807	" "	214	20	259
					3143	11th "	31	...	30
I. L. R. Bo. Vol. X.		83f.	...	96	G. D.				
"	"	121f	...	148	7633	9th Nov.	41	...	41
	1887.				364A.	6th Dec.	214	35	270
					-1964				
					P.W.D.				
140	7th Jan.	113	...	142	G. of L.	8th "	"	12	254
419	17th "	41	...	41	6501				
468	19th "	214	16	257	8601	17th "	"	58	299
625	26th "	122f	...	151	8667	21st "	198	...	198
"	"	123	...	154	8721	23rd "	86	...	110
632	"	86	...	111					
843	4th Feb.	23	...	17		1888.			
844	"	214	33	273					
1041	14th "	"	"	"		73rd Jan.	122	...	152
1243	26th "	216	...	207		634	28th "	3f.	7

INDEX.

[1889-1890.]

No. of Order.	Date.	Section.	Rule.	Page.	No. of Order.	Date.	Section.	Rule.	Page.
4888	9th July	...	1	...	2				
4893	" "	...	31f.	...	24	942	4th Feb.	...	App. P. 353
5042	15th "	...	214	38	273	1057	8th "	...	214 38 274
5627	3rd August...	"	12	254	1794	5th March	"	7f.	248
"	" "	"	38	273	3156	24th "	"	91	316
5637	" "	"	92	317	2302	31st "	198f.	...	198
6129	21st "	"	98A	319	1993	J. D. } 14th April.	113	...	143
6528	4th Sept.	...	122	153	1497	G. D. } 17th "	31	...	28
6540	" "	...	214	111	2053	J. D. } " "	113	...	142
6794	11th "	...	f.	244	3038	2nd May	...	214 50A.	281
"	" "	...	App.	350	3318	13th "	"	7f.	248
"	" "	...	N	...	3318	A. } " "	"	21f.	259
3496	14th "	...	23	...	3807	2nd June	...	72f.	306
F. D.	" "	...	App.	337	3837	3rd "	...	61	...
7019	18th "	...	214	75	308	G. of I. } " "	"	...	66
"	" "	...	Df.	...	19-	public } 14th "	31f.	...	25
4409	23rd Oct...	...	31	...	1161-	1170			
G. D.	" "	...	App.	337	6035	25th August.	61	...	68
8785	19th Nov.	...	186	...	"	"	66	...	76
G. of I.	22nd "	...	214	2f.	264	1st Sept.	...	61	62
5855	" "	...	75	308	6376	9th "	...	41	42
"	" "	...	App.	337	6412	10th "	...	61	68
"	" "	...	Df.	337	"	"	...	65	72
8916	26th "	...	App.	356	6556	16th "	107f.	...	136
8988	27th "	...	P	...	6937	1st October...	122	...	153
9578	19th Dec.	...	214	31f.	6959	2nd "	187f.	...	190
I.L.R. Bo. Vol. XIII	" "	...	41	...	7065	6th "	213	f.	235
"	" "	...	74f.	...	7152	8th "	74	...	91
"	" "	...	125	...	4097	"	...	...	...
"	" "	...	214	74f.	3449	G. D. } 11th "	31	...	32
			82	311	F. D.	14th "	27	...	22
			119	146					
			86	111					
			216	114					

No. of Order.	Date.	Section.	Rule.	Page.	No. of Order.	Date.	Section.	Rule.	Page.		
3687	7th Nov. ...	214	3	247	I.L.R. Bo. Vol. XV	83f.			96		
F. D.								187			191
8027					12th "	86					
4955	16th Dec. ...	31		31	1892.						
G. D.											
1891.					22-W.	19th Jan. ...	187f.		190		
				I.-105							
674	27th Jan. ...	141f.		166	23-W.						
"	" " " "	145f.		169	I.-106	" " " "					
"	" " " "	App. xiii		231	521	23rd "	1187		140		
	" " " "	xiv		231	784	3rd Feb. ...	102		129		
596	27th "	214	48	279	1135	15th "	214	25	262		
728	28th "	61		67	G. of I.	29th "		12	255		
942	4th Feb. ...	App. P		353	848						
1532	25th "			354	1849	17th March...					
1604	2nd March ...	45f.		44	3205	5th April ...	107f.		135		
1637	3rd "	65		72	4011	9th May ...	217		214		
2179	26th "	156		177	4609	31st "	3		6		
2400	7th April ...	App. P		354	5460	4th July ...	App. P		359		
2400	" " " "	214	2f.	244	5893	20th "	65		73		
3012	1st May ...	48		50	G. of I.						
3170	8th "	214	41	275	2407-	22nd Aug.	214	12	255		
3600	26th "	217		212	M. W.						
"	" " " "			214	8882	11th Nov. ...	187f.		191		
3880	4th June ...	107f.		135	9085	18th "	214	12	255		
4582	7th July ...	214	2f.	244	9381	29th "	217		214		
5115	25th "	48		50	9482	3rd Dec. ...	214	61f.	302		
5519	12th August.	136		165	1893.						
5734	21st "	61		69	693	26th Jan. ...	217		214		
5954	31st "	154		176	1319	16th Feb. ...	18f.		14		
G. of I.	23rd Oct. ...	214	12	254	2749	18th April ...	118f.		144		
4374								2752	" " " "	App. P		355
8167	28th Nov. ...	"		"							
8616	12th Dec. ...	86		107							
8720	17th "	"		111							

No. of Order.	Date.	Sec. tion.	Rule.	Page.	No. of Order.	Date.	Sec- tion.	Rule.	Page.
2752	18th April ...	{	App.	356	7915	27th October.	214	98Bf	320
		P				I.L.R.Bo.Vol.XVII	83f.		96
3411	11th May ...	48f.	...	48	"	"	"	...	97
4296	15th June ...	67f.	...	76		1894.			
4523	23rd " ...	3f.	...	4					
5138	14th July ...	213f	...	203	1117	12th Feb. ...	87	...	116
5344	25th " ...	48	...	50	2110	20th March...	107f.	...	136
5352	" " ...	{	App.	360	4290	15th May ...	{	App.	360
		P					P		
7915	27th October.	214	98Af	319	"	"	"	...	361

B.—General Alphabetical Index.

(o)

	Page.		Page.
A		Act.—(continued).	
Absolute Relinquish- ment. — see <i>Relinquishment</i> .		XVIII of 1838 (Securities, Bombay), <i>sch. A</i> ...	215
by minors, <i>s. 74 n.</i> ...	89	XIII of 1842 (Revenue, Bombay), <i>sch. A</i> ...	"
Accounts. —		XVII of 1842 (Revenue Commissioners, Bombay), <i>sch. A</i> ...	"
right of inspection of, <i>r. 1</i> ...	235	III of 1846 (Boundary Marks, Bombay), <i>s. 216 f.</i>	204
Accretion. —		<i>sch. A</i> ...	215
alluvial, on alienated lands, <i>s. 46, & n.</i> ...	<i>pp. 44-45</i>	XII of 1850 (Public Ac- countants), <i>sch. A.</i> ...	"
of alluvial lands to be traced and assessed, <i>r. 47 & n.</i> ...	278	XI of 1852 (Titles to Rent- free Estates, Bombay), <i>s. 126 f.</i> ...	<i>pp. 157-158</i>
Act. —		<i>s. 127</i> ...	159
II of 1827 (Regulation), <i>s. 86 n.</i> ...	114	XXI of 1852 (Deputy Col- lectors, Bombay), <i>sch. A.</i>	215
IV of 1827 (Reg.), <i>sch. A</i> ...	215	XLV of 1860 (Penal Code), <i>s. 86 n.</i> ...	<i>pp. 113-114</i>
VIII of 1827 (Regulation), <i>s. 72 n.</i> ...	<i>pp. 81-83</i>	<i>s. 142</i> ...	168
<i>s. 72 n. f.</i> ...	86	<i>s. 196</i> ...	196
XVI of 1827 (Regulation), <i>sch. A</i> ...	215	1861 (Indian Councils), <i>s. 2</i>	3
XVII of 1827 (Regulation), <i>s. 61 n.</i> ...	67	V of 1862, Bom. (Bhag- dari & Narvadari Tenures), <i>s. 117 & f.</i> ...	144
<i>s. 72 n. f.</i> ...	86	II of 1863, Bom. (Exem- ptions from land Revenue), <i>s. 126 f.</i> ...	<i>pp. 157-158</i>
<i>s. 83 f.</i> ...	96	<i>s. 127</i> ...	159
<i>s. 86 n.</i> ...	<i>pp. 106, 114</i>	<i>s. 216 n.</i> ...	<i>pp. 207-208</i>
<i>s. 126 f.</i> ...	158	<i>r. 91 n.</i> ...	315
<i>sch. A.</i> ...	215	VII of 1863, Bom. (Sum- mary Settlement of claims to exemption from revenue), <i>s. 126 f.</i> ...	<i>pp. 157-158</i>
V of 1830 (Regulation), <i>sch. A</i> ...	"	<i>s. 216 n.</i> ...	208
XIII of 1830 (Reg.), <i>s. 90</i> ...	119	<i>sch. A.</i> ...	215
XV of 1831 (Regulation), <i>sch. A</i> ...	215		
II of 1832 (Reg.), <i>sch. A</i> ...	"		
V of 1833 (Reg.), <i>sch. A</i> ...	"		

	Page.
Act.—(continued).	
I of 1865, Bom. (Survey and Settlement), s. 3 (1) n.	6
s. 40	39
s. 41	40
s. 48 n.	48
s. 60 f.	59
s. 66 n.	74
s. 83 f.	96
s. 84 f.	98
s. 107 f.	133
s. 107.	135
s. 126 f.	157
s. 128	160
s. 130	161
s. 216 n. pp. 206, 210,	212
sch. A.	215
r. 55 f.	288
I of 1866, Bom. (Extending to Sind Bombay Act. I. of 1865), s. 1	1
sch. A.	215
XI of 1866, Bom. (Port-dues), s. 86 n.	114
VII of 1867, Bom. (District Police), r. 111 n.	332
VIII of 1867, Bom. (Village Police), s. 72 n.	86
I of 1868, Bom. (Assistant & Deputy Collectors), sch. A.	215
IV of 1868, Bom. (City-Surveyors), s. 66 n.	74
s. 98 f.	123
s. 126 f. pp. 157-159	159
s. 128	160
s. 129 n.	160
s. 130	161
s. 132	162
sch. A.	215
r. 9 (S) & f.	240
r. 21 f.	259
r. 55 f. pp. 298-294	294
r. 79	309

	Page.
Act.—(continued).	
III of 1869, Bom. (Local Improvement Funds), s. 83 f.	96
s. 86 n.	104
VII of 1870 (Court-Fees), s. 3 (16)	7
s. 60 f.	59
s. 87 n.	116
s. 90 n.	120
s. 198 n.	197
r. 15 & f.	243
r. 75 n.	308
X of 1870 (Land Acquisition), r. 91 n.	315
I of 1872 (Evidence), s. 213 f.	235
r. 14 & 16	243
IX of 1872 (Contract), s. 27 n.	21
X of 1872 (Criminal Procedure), s. 26	19
s. 86 n.	112
VI of 1873, Bom. (District Municipal), s. 37 n.	37
s. 61 n.	63
r. 13	255
III of 1874, Bom. (Hereditary Offices), s. 26 f.	19
s. 32 n.	33
XIV of 1874 (Scheduled Districts), s. 1	1
I of 1875, Bom. (Amending Bombay Act I of 1865), sch. A	215
X of 1876 (Bombay Revenue Jurisdiction), s. 126 f.	158
III of 1877 (Registration), s. 53 n.	53
s. 74 n. f.	89
s. 213 f.	235
r. 1	286
r. 14	243
r. 31 f.	264
r. 74 n.	307

	Page.
Act.—(continued).	
I of 1879 (Stamps), s.181 n.	187
r. 15 & f.	... 243
r. 12 n.	... 253
r. 31 f.	... 264
r. 75 n.	... 308
App. Of.	... 335
App. Df.	... 337
VII of 1879, Bom. (Irriga- tion), s. 55 & f.	... 55
s. 101 & f.	... 128
s. 105 & f.	... 190
XV of 1879. s. 61 n.	... 67
I of 1880, Bom. (Khoti), s. 162 f.	... pp. 179-180
XIV of 1882, (Civil Proce- dure), s. 86 n.	... pp. 111-114
s. 113 n.	... pp. 141-142
s. 120 & f.	... 147
s. 156 & f.	... pp. 176-177
s. 189	... 192
s. 192 & n.	... pp. 193-194
X. of 1882, (Criminal Pro- cedure), s. 26 f.	... 19
s. 61 n.	... pp. 65-66
s. 113 n.	... 114
VII. of 1885, s. 1 n.	... 2
III of 1886, Bom. (General Clauses), s. (2) f.	... 4
s. 3 (22) and (23) f.	... 8
s. 215 f.	... 204
s. 216 f.	... "
IV of 1886, Bom. (Amend- ing Land Revenue Code), s. 107 f.	... 133
V of 1886, Bom. (Amending Hereditary Offices Act), s. 26 f.	... 19
VII of 1886 (Amending Re- gistration Act), r. 1 f.	... 236
of 1888, Bom. (Taluk- lari), s. 114 f.	... 143
I of 1890 (Revenue Recovery), s. 147 f.	... 170
s. 149 f.	... pp. 170-171

	Page.
Admission.—	
of appeal after period of limi- tation, s. 206	... 206

Advances.—	
for repair of boundary marks to be drawn under Civil Ac- count Code, s. 122 n.	... 153

Agreement.—	
in writing to be entered by persons in whose favour oc- cupancy is relinquished, s. 74	... 87
and relinquishment in alien- ated villages, s. 74 n.	... 88
on behalf of minors, s. 74 n.	89
village boundaries to be set- tled by, s. 118	... 144
to be passed by Inamdar to pay remuneration to village officers, s. 216 n.	... 207
do. to furnish agricul- tural statistics, s. 216 n.	... "
in what form to be taken from Inamdars before in- troduction of survey rates, s. 217 n.	... 214
do. for lands for build- ing-site, r. 27.	... 263
in case of persons permitted to cultivate alluvial lands temporarily, r. 31 n.	... 265
and relinquishment to be ac- cepted by Avalkarkuns, r. 31 n.	... 266
by would-be occupant, to be endorsed by village account- ant and Patel, r. 32	... "
do. , village accountant to prepare and sign, r. 33	... "
to enter upon land, form of, r. 75	... 307
do. , to be endorsed, r. 75 n.	... "

	Page.
Agreement. —(<i>continued</i>).	
to enter upon land, exempt from court-fee and stamp duty, <i>r. 75 n.</i> ...	308
to be endorsed by witnesses, <i>r. 32 and 76</i> ...	pp. 266, 308
to be kept in village accountant's records, <i>r. 77</i> ...	308
supply of printed forms of, <i>r. 78 f.</i> ...	"
Agricultural Statistics. —	
Inamdar to pass agreement to furnish, <i>s. 216 n.</i> ...	207
Agriculture. —	
in revising assessment regard to be had to value of land and profits of, <i>s. 107</i> ...	133
compounds of bungalows not to be used for purposes of, <i>r. 50</i> ...	220
liability of person injuring for cultivation land held for purposes of, <i>r. 111</i> ...	329
do. of person appropriating compounds of bungalows for purposes of, <i>r. 111.</i> ...	"
Akalkot State. —	
application of present Code to, <i>s. 1 n.</i> ...	2
Akarband. —	
to be prepared by Survey Department, <i>s. 108 f.</i> ...	136
form of, <i>App. X</i> ...	pp. 228-229
Alienated. —	
defined, <i>s. 3(19)</i> ...	8
Alienated holding. —	
dealing with forfeited, <i>s. 56 & n.</i> ...	pp. 55, 57
to be forfeited when arrears due, <i>s. 150</i> ...	172
attachment of, <i>s. 150</i> ...	"

	Page.
Alienated holding. —(<i>contd.</i>)	
after confirmation of sale Collector to put purchaser in possession of, <i>s. 181</i> ...	186
when forfeited, not to be restored without Government sanction, <i>r. 63</i> ...	302
Alienated land. — see <i>Register of alienated lands.</i>	
rights to alluvial lands of holders of, <i>s. 46 n.</i> ...	pp. 44
alluvial accretions on, <i>s. 46 n. & f.</i> ...	pp. 45-
provisions regarding unauthorized occupation or appropriation not applicable to, <i>s. 61 n.</i> ...	64
occupants not holders of, <i>s. 65 n.</i> ...	71
superior holders to include sharers in, <i>s. 86 n.</i> ...	106
Governor in Council to confer powers on holders of, <i>s. 88</i> ...	pp. 116-117
commission to be issued to agents of holders of, <i>s. 89</i> ...	119
superior holder primarily responsible for land revenue of, <i>s. 136</i> ...	163
recovery of Government due from co-sharers of inferior holder of, <i>s. 136</i> ...	"
Alienated village. — see <i>Inam village, Dumala village.</i>	
Appointments of Patels, &c., in, <i>s. 16</i> ...	14
provisions regarding unauthorized occupation or appropriation of land not applicable to, <i>s. 61 n.</i> ...	64
encroachments on public roads passing through, <i>s. 61 n.</i> ...	pp. 64-66

	Page.
Alienated village.—(contd.)	
holder of inam numbers in village not to be holder of shares in, s. 85 n. ...	102
assistance to village officers in recovering dues in, s. 86 n. ...	103
assistance to recover dues to be given to Deshmukhs and Deshpandes in, s. 86 n. ...	105
whether surveyed or unsurveyed, assistance for recovery of rent to be given to holders of, s. 86 n. ...	"
village officers to be paid by holders of, s. 88 n. ...	119
scale of remissions allowed after revision settlement not applicable to, s. 107 f. ...	136
separate entry in revenue records in cases of partition in, s. 113 n. ...	140
village boundaries to be fixed by holders of, s. 118 ...	145
penalty for default to be paid to superior holders of, s. 148 n. ...	170
includes watan land, s. 153 n. ...	174
application of provisions of chapters VIII and IX to, s. 216 ...	204
preservation of boundary marks in, s. 216 f. ...	205
rules regarding revenue survey of, s. 216 f. ...	"
cost of surveying Jahgirs and, s. 216 f. ...	206
fixing of survey rates in, s. 216 f. ...	"
rights & responsibilities of occupants in surveyed, s. 217 n. ...	209
method of fixing survey rates for, s. 217 n. ...	212
effects of application of survey settlements to, s. 217 n. ...	pp. 209-212

	Page.
Alienated village.—(contd.)	
Survey Department to determine survey-rates for, s. 217 n. ...	213
provisions of present Code applicable to unalienated lands not to apply to, s. 218. ...	214
relation of Inamdar and rayats in surveyed, s. 217 n. ...	pp. 209, 214
Alienation.—	
keeping of register of, s. 53 ...	52
of lands rent-free not to be permitted without sanction, r. 9 ...	250
of land revenue to Municipality forbidden, r. 12 and n. ...	pp. 251-252
reservation of mines and mineral products in case of every, r. 14 ...	256
form of, r. 57 ...	297
Alluvial land.—	
to be subject to payment of land revenue, s. 46 ...	pp. 44-45
rights of holders of alienated lands to, s. 46 n. ...	45
disposal of occupancy of, s. 63 ...	69
right of occupancy, &c., to, s. 63 ...	"
occupancy price of, s. 63 ...	70
temporary right to, s. 64 ...	"
lease in case of, r. 31 n. ...	265
disposal of, r. 46 ...	pp. 277-278
Alluvion.—	
village officers, &c., to ascertain changes caused by, r. 45. ...	277
do. , to report to Mamlatdar excess in area of, r. 46 ...	"
disposal by Collector of certain cases of, r. 46 ...	278

	Page.		Page.
Altered assessment. —		Appeal. —(<i>contd.</i>)	
appropriation of land assessed under present Code liable to, s. 48 & n. ...	49	rules for drawing up and presentation of, s. 214 (h)...	203
fixing of scale of, r. 56 ...	296	when to be made to Mamlatdar in cases of removing earth, &c., r. 39 ...	274
Announcement. —		to be submitted to authority, form of, r. 108 ...	327
of assessment to be equivalent to introduction of settlement, s. 103 ...	131	either to be presented in person or sent by post, r. 109... ..	328
Appeal. —		when sent by post postage to be prepaid, r. 109 ...	"
on orders regarding fining, reducing, &c., revenue officers. s. 35 ...	35	not properly drawn up to be rejected, r. 110 ...	"
not to lie against any order for inflicting fine not exceeding one rupee, s. 35 ...	36	to Government how to be drawn up, r. 110 n. ...	"
on Mahalkari's orders in cases of assistance to recover rent, s. 86 n. ...	107	Appellate authority. —	
to be made to Superintendent of Survey by occupants dissatisfied with manner in which improvements are dealt with, s. 107 f. ...	134	to annual, reverse, &c., order of subordinate authority, s. 209 ...	201
to lie from any order passed by revenue officer to his superior, s. 203 ...	200	to direct further investigation of cases appealed against, s. 209 ...	"
on decisions and orders passed by Survey Commissioner or Commissioner, s. 204... ..	"	to take additional evidence in appeal, s. 209 ...	"
limit within which to be submitted, s. 205 ...	"	to suspend execution of decision of subordinate officer, s. 210 ...	"
computing periods of limit within which to be submitted, s. 205 ...	"	Appendices. —	
to be admitted after period of limitation, s. 206 ...	"	to present Code, <i>App. I to XV</i> ... pp. 221-233	
when to be made if last day of fixed period falls on Sunday or holiday, s. 207 ...	201	to rules framed under present Code, <i>App. A to Q</i> ... pp. 333-365	
authenticated copies of orders appealed against to accompany petition of, s. 208 ...	"	Application. —	
Governor in Council to frame		for leave to extend cultivation or to occupy land exempt from court-fees, s. 60 f. ...	59
		to be made by occupant to Collector for appropriation of land to purposes other than agriculture, s. 65 n. pp. 70-71	

	Page.
Application.—(contd.)	
for permission to appropriate lands to be made to Collector, s. 65 ... pp. 70-71	71
made subsequent to passing of present Code for permission to appropriate lands, s. 66 n.	74
not necessary for inquiries as to whose name should be registered, s. 71 n. ...	78
of section 74 to alienated villages, s. 74 n. ...	89
for assistance to recover rent, when to be made, s. 86 ...	102
do. , stamp duty in cases of, s. 86 f. ...	"
do. , to be received and disposed of by Mamlatdars and Mahalkaris, s. 86 n....	106
do. , in cases of several inferior holders, s. 86 n. ...	110
do. , how to be dealt with in case of death of tenant, s. 86 n. ...	111
do. , to be sent by post, formal attendance not necessary, s. 86 ...	"
do. , procedure on receipt of, s. 87 ...	114
for mutation of names in settlement register, s. 109 ...	137
for restoration of attached village, s. 163 ... pp. 180-181	180-181
for setting aside sale, s. 178... 186	186
for return of document exempt from court-fees, s. 198 n. ...	197
of provisions of chapters VIII and IX to alienated villages, s. 216 n. ...	204
for introduction of survey settlement, effect of, s. 216 ... pp. 20-205	20-205
by alienee, in cases of villages surveyed under Act I of 1865, s. 216 n. ...pp. 205	206

	Page.
Application.—(contd.)	
by Iuamdar, to extend survey to his village, s. 216 n. pp. 205-206	205-206
of survey settlement to alienated villages, effect of, s. 217... 209	209
for certified copy, &c, r. 4 ... 237	237
for search of public documents, r. 8 ... 238	238
for copies, &c., to be made in writing, r. 12 ... 242	242
for copies how to be disposed of, r. 13 ... pp. 242-243	242-243
Appointment.—	
made under repealed enactments to be deemed as made under present Code, s. 2 ... 3	3
of Commissioners, s. 5 ... 9	9
of Assistants to Commissioners, s. 6 ... 10	10
of Collectors, s. 8 ... "	"
of Assistant and Deputy Collectors, s. 9 ... 11	11
of Mamlatdars, s. 12 ... 12	12
of Mahalkaries, s. 13 ... "	"
of Patels and village accountants, s. 16 ... 13	13
of certain officers to be notified, s. 20 ... 15	15
acting, s. 20 ... "	"
liability of surety not affected by principal's change of, s. 29 ... 22	22
of Huzur Surveyor, s. 113 f. 139	139
additional security in cases of temporary, r. 2 (b) ... 245	245
Appropriation.—	
of land assessed before passing of Act I of 1865, s. 48 n. 48	48
do. not settled under present Code not liable to altered assessment, but only to fine, s. 48 n. ... "	"
do. assessed under present Code liable to altered assessment, s. 48 n. .. 49	49

	Page.
Appropriation.—(contd.)	
of mharki inam lands, s. 48 n. —	50
area to be subjected to fine in cases of, s. 61 n. ...	67
of land in alienated villages how to be dealt with, s. 61 n., & 65 n. ... pp. 64, 71	71
do. to purposes other than agriculture requires Collector's permission, s. 65. pp. 70-71	71
do. without permission liable to penalty, s. 66 ...	73
rules and procedure to be fol- lowed in cases of, s. 66 n. pp. 74-75	75
grant of permission for, s. 67.	76
of land for Local Fund Pro- vincial roads, r. 12 n. ...	252
do. for public purposes, r. 12 n. ... "	"
do. for schools, dharmas- shalas, roads, &c., r. 12 n. ... "	"
do. prohibited to certain purposes, s. 48 n., r. 48. pp. 48, 278	278
Arbitration.—	
settlement of boundary dis- pute by, s. 120 ...	146
Arbitration Committee.—	
to be appointed to settle boundary disputes, s. 120...	146
Survey Superintendent to confirm decisions passed by, s. 120 ...	147
failing to effect settlement of boundary dispute, Survey Superintendent to settle, s. 120 ... "	"
Area.—	
to be subjected to fine in cases of occupation and ap- propriation, s. 61 n. ...	67

	Page.
Arrears of land reve- ue.—	
Government moneys to be recovered as, s. 26 ...	19
fine inflicted for breach of departmental rules to be re- covered as, s. 34 ...	35
to be levied by Collector, s. 56 ...	55
occupancy price to be reco- vered as, s. 62 ...	69
powers under commission to extend to, s. 92 ...	120
explained under Revenue Recovery Act, s. 149 f. ...	171
certified statement of account to be conclusive proof of, s. 149 ... "	"
process of recovery of, s. 150.	172
if due, occupancy or alienat- ed holding to be forfeited, s. 150 (b) ... "	"
when accrued, notice of de- mand to be issued, s. 152...	173
watan land to be forfeited for, s. 153 n. ...	174
when due, defaulter to be ar- rested and detained in cus- tody, s. 157 ... pp. 177-178	178
land to revert to Govern- ment when attached for, s. 160 ...	179
surplus profits of attached land to be applied in defray- ing, s. 162 ...	180
sale to be stayed on default- er paying, s. 169 ...	183
to be paid by defaulter at any time before day fixed for sale, s. 169 ... "	"
loss entailed by resale to be recovered as, s. 176 ...	185
proceeds of sale to be applied to payment of, s. 183 ...	188
boundary mark charges, &c, to be recovered as, s. 187...	190

	Page.		Page.
Arrears of land revenue.—(contd.)		Assessment.—(contd.)	
when due, Collector to declare holding to be forfeited, s. 153 & r. 58 ... pp. 174, 297	297	superior holder to recover from inferior holders, commuted, s. 50 ...	51
to be remitted even if forfeited holding is not sold, r. 64 ...	303	to be distributed on land held free or wholly or partially assessed, s. 51 ...	52
Arrest.—		of land not under operation of section 95 by whom to be fixed, s. 52 ...	"
of subordinates failing to produce Government moneys, papers, &c., s. 25 ...	18	settlement with whom to be made in cases of, s. 54 ...	53
of defaulter to be made for recovery of arrears of land revenue, s. 150 ...	172	Inam lands using Government water liable to, s. 55 f. ...	54
scale of cost of, s. 152 f. ...	173	land unauthorizedly occupied and appropriated liable to, s. 61 ...	59
Collector and Deputy Collector to exercise powers of, s. 152 f. & 157 n. ... pp. 173, 178	178	chargeable in cases of unauthorized cultivation to be remitted, s. 61 n. ...	61
of defaulters when arrears become due, s. 157 ...	178	of lands in village sites held free of assessment, s. 61 n. ...	62
Commissioner to fix cost of, s. 158 ...	"	in cases of appropriations of land to any purpose other than agriculture, fine to be levied in addition to special, s. 65 ...	71
of defaulter on warrant, s. 199.	198	to be remitted on lands relinquished by minor or on his behalf, s. 74 n. ...	89
Assessed land.—		relinquishment of lands paying lump, s. 75 ...	91
Commissioner to sanction for public purposes appropriation of, r. 12 n. ...	252	fixed by Survey settlement, Collector to give assistance upto amount of, s. 87 & n. ...	115
Assessment.—see altered assessment.		of lands not under operation of revenue survey to be fixed by Collector, s. 52 & 95 f. ... pp. 52, 121	"
Devasthan Inam not to be subjected to full, s. 45 f. ...	44	for land revenue to be fixed by survey officer on all lands, s. 100 ...	125
of land revenue in cases of diluvion, s. 47 ...	47	scale of elimination of fractions when fixing survey, s. 100 f. ...	"
liable to change when purpose for which land is assessed is changed, s. 43 ...	"		
of land indirectly taxed to State, s. 49 ...	51		
do. liable to occasional assessment, s. 49 ...	"		
commutation of variable cess, fine or tax into annual, s. 49 ...	"		

	Page.
Assessment.—(contd.)	
regard to be had to subsisting rights in fixing, s. 52 & 100 ... pp. 52, 126	126
on lands partially or wholly exempt from land revenue, s. 52 & 100 ... pp. 52, 126	126
for water how to be fixed on lands under Bandharas, s. 101 f. ...	126
fixed by survey officer to be directly on land or means of irrigation, s. 101 ...	127
on lands irrigated from wells, orders regarding, s. 101 f. ...	"
fixed by survey officers not to be believed without Government sanction, s. 102 ...	128
to be declared fixed for term of years not exceeding 30 in case of agricultural land, s. 102 ...	"
do. do. not exceeding 99 in case of non-agricultural land, s. 102 ...	"
in revision settlement, levy of excess, s. 104 ...	130
in excess in revision settlement not to be levied on lands relinquished, s. 104 ...	"
amount of remission to be disbursed to whomsoever pays, s. 104 n ...	"
when announced to be equivalent to introduction of settlement, s. 103 & 104 n ... pp. 129, 131	131
on lands not to operate as a bar to levy of cess on means of irrigation, s. 105 ...	132
classification made second time not to be revised with view to revision of, s. 106 ...	"
original classification declared final not to be revised with view to revision of, s. 106 ...	"

	Page.
Assessment.—(contd.)	
regard to be had to value of land and profits of agriculture in revising, s. 107 ...	13
improvements effected at cost of occupant not to be taken into consideration in revising, 107 f. ...	"
occupants to bring to notice of survey officers facts entitling village to special consideration in fixing, s. 107 f. ...	13
not to be levied at revision on lands included in survey No. as unarable at original survey, s. 107 f. ...	13
in case of lands in village sites exposition of Government policy relating to, s. 126 ... pp. 156-15	15
do. Collector to determine exemption from payment of, s. 129 ...	16
of lands in village sites appropriated for purposes other than agriculture, s. 134 ... pp. 162-16	16
Local Funds to be paid or redeemed on redemption of, r. 10 n. ...	25
Commissioners to exercise authority of sanctioning abatement of, r. 12 n. ...	25
to be fixed by Collector on survey Nos. not already assessed, r. 18 ...	25
survey numbers when to be given at reduced, r. 19 ...	25
do. not to be given for less than proper, r. 20 ...	"
on building site, period for which to be fixed, r. 25 n. ...	26
grant of new village sites to be free of, r. 27 n. ...	263
in cases of diluvion, decrease of, r. 47 ...	278

Page.	Page.
Assessment.—(contd.)	Assistance for recovery of rent or land revenue.—(contd.)
not to be placed on lands in beds of rivers, r. 53 ... 281	superior holders not bound to apply for, s. 86 n. ... 104
of compounds of bungalows and open ground surrounding houses, r. 54 ... pp. 281-282	extent of, s. 86 n. ... 105
maximum extent of Pardi lands to be allowed free of, r. 54 n. ... 282	Deshmukhs, Deshpandes and other Hakdars in alienated villages entitled to, s. 86 n. ... "
lands to be classed according to productive qualities for purposes of, r. 55 ... 291	holders of alienated villages entitled to, s. 86 n. ... "
to be imposed on each survey No. and Pot No., r. 55 n. ... 295	in doubtful cases, Collector to refuse, s. 86 n. ... "
on appropriation of agricultural land for other purposes in certain localities, s. 56A. 299	in cases of sub-sharers in alienated villages, s. 86 n. ... 106
of Rs. 4 and under to be paid at first instalment, r. 84 ... 312	Mamltdars and Mahalkaries to receive and dispose of applications for, s. 86 n. ... "
to be paid at once instead of by instalments, r. 84 ... "	appeals on orders to be made to Assistant Collector in cases of, s. 86 n. ... 107
Assignment.—	in cases of several inferior holders, application for, s. 86 n. 110
of lands for special purposes, s. 38 & r. 43 ... pp. 38, 276	when applicant does not appear procedure in cases of, s. 86 n. ... "
Assistance.—	existing practice to be respected in granting application for, s. 86 n. ... "
to recover money paid by persons other than registered occupants, s. 80 ... 93	procedure in case of death of tenant against whom application is made for, s. 86 n. 111
to kulkarnis or village officers in recovering dues in alienated villages, r. 86 n. ... 103	sending by post, of applications for, s. 86 n. ... "
to superior holder (Jahagirdar) to recover sums not sanctioned by law, r. 86 n. ... 104	existing practice regarding levying expenses in cases of, s. 86 n. & f. ... 112
to be rendered by holders at survey of lands, s. 96 ... 122	Bhatta to karkuns deputed to conduct sales in cases of, s. 86 n. ... pp. 112-113
hired labor to be employed on failure of holders of land to render, s. 97 ... "	whether superior holders can be represented by any person other than pleader when applying for, s. 86 n. ... 113
Assistance for recovery of rent or land revenue —	in cases of superior holders not registered in Collector's books, s. 86 n. ... pp. 107-110, 113
when to be applied for, s. 86. 102	
for past years, s. 86 n. ... 103	

	Page.		Page.
Assistance for recovery of rent or land revenue.—(contd.)		Assistant and Deputy Collectors.—(contd.)	
Collector how to proceed on applications for, s. 87 ...	114	to fix subsistence money to be paid to defaulter, s. 152 f....	173
in what cases Collector cannot withhold, s. 87 n. ...	115	to call for and examine proceedings of subordinate officer, s. 21I ...	pp. 201-202
grounds on which Collector's decision to proceed in cases of, s. 87 n. ...	"	Assistant Collector.— see <i>Assistant and Deputy Collectors.</i>	
decisions not decrees of Civil Courts in cases of, s. 87 n... ..	"	when on special duty not to be deemed as such, s. 11 ...	12
orders not to bar recourse to Civil Courts in cases of, s. 87 n. ...	116	appeals on Mahalkari's orders to be made to, s. 87 n. ...	107
Assistant and Deputy Collectors.—		Assistant Superintendent of Survey.— see <i>Survey Officer.</i>	
to be appointed by Governor in Council, s. 9 ...	11	publication of notification requiring occupants to bring improvements to notice of, s. 107 ...	134
to be subordinate to Collector, s. 9 ...	"	to summon persons to give evidence and produce documents, s. 189. ...	192
duties and powers of, s. 10... ..	"	to call for and examine proceedings of subordinate officers, s. 211 ...	pp. 201-202
Mahalkari to be subordinate to, s. 13 ...	12	Assistant to Commissioner.—	
to remit assessment in cases of unauthorized cultivation, s. 61 n. ...	61	to be appointed by Governor in Council, s. 6 ...	10
to introduce survey settlement, s. 103 ...	129	duties of, s. 6 ...	"
to give reasonable notice of introduction, s. 103. ...	"	Asylum.—	
to correct clerical and admitted errors in settlement register, s. 109 ...	137	disposal of trees in, r. 35 ...	262
to inquire into and pass orders for mutation of names in settlement register, s. 109, ..	"	Attachment.—	
statement of account to be conclusive proof of arrear when certified by, s. 149 ...	pp. 170-171	Government claims to have precedence over all other claims in respect of, s. 137. ..	10
to remit notice fee, s. 152 f. ...	173	of alienated holdings for recovery of land revenue, s. 150 ...	17
to exercise powers of arrest and imprisonment in cases of defaulters, s. 152 f. ...	"		

	Page.		Page.
Attendance. —		Bandharas. —(continued.)	
of witnesses in formal or summary inquiry, procedure for procuring, s. 192	... 193	rules regarding fixing water assessment on lands under, s. 101 f.	... pp. 126-127
Authenticated Copy. —		permission of Collector necessary to erect, s. 101 f.	...pp. 126-127
of orders appealed against to accompany petition of appeal, s. 208	... 201	Beds of rivers. — see <i>Rivers.</i>	
Authority. — see <i>Appellate authority.</i>		Beta lands. —	
holding formal inquiry to be deemed Civil Court, s.196...	196	special provisions as regards trees in, r. 98 A.	... 319
form of appeal to be submitted to, r. 108	... 327	Bhatta. —	
liability of person taking produce of Government trees without, r. 111	.. 329	to be paid to persons entrusted with partition, s. 113 n.	... pp. 140-141
Avalkarkuns. —		do. to Measurers entrusted with partition, s. 113 n....	142
to accept relinquishment and agreement, r. 31 n.	... 266	Black-wood trees. —	
Award. —		see <i>Reserved trees.</i>	
to be passed by officers in cases of boundary disputes, s. 118	... 145	Bombay. —	
by survey officers in boundary disputes to be subject to confirmation by Survey Superintendent, s. 118	... "	present Code not applicable to city of, s. 1	... 1
made by officers other than survey officer to be subject to confirmation by officers appointed by Government, s. 118	.. "	application of present Code to Presidency of, s. 1	... "
to be remitted by Superintendent of Survey, s. 120...	147	Bonds. — see <i>Security-bonds.</i>	
		deposited by officers how long to be kept, s. 23 n.	... 17
B		security to be furnished by execution of, r. 3 n.	... 244
Band. — see <i>Boundary Mark.</i>		form of, s. 23 n. & r. 3 n.	... pp. 17, 246
Bandharas. —		to be executed in lieu of depositing Government paper with Government sanction, r. 3 n.	... 246
erected without permission, treatment of, s. 101 f.	... 127	number of sureties in case of execution of, r. 3 n.	... 247
	4	Boorke. — see <i>Well.</i>	
		of permanent construction to be treated as well, s. 101 f.	127

	Page.		Page.
Boundary(ies).—see		Boundary Dispute.—(contd.)	
<i>Field boundary(ies).</i>		to be settled by Superintendent of survey on failure of arbitration to effect settlement, s. 120	... 147
of survey Nos. divided in partition to be preserved, s. 113 f.	... 139	decisions of revenue officers to be final in case of, s. 121 f.	..
of any two or more villages to be fixed by agreement, s. 118	.. pp. 144-145	Boundary mark.—	
procedure in case of dispute as to, s. 118 n.	... 145	defined, s. 3(9)	... 1
once settled not to be revised, s. 119 n.	... 146	vacant strips of land not to be, s. 3(9) n.	... 6
practice of recovering cost to be continued in inquiries of, s. 119 n.	... ..	survey officers to cause to construct or repair, s. 122	148
effect of settlement of, s. 121	... 147	payment of charges for constructing or repairing, s. 122	..
principles and orders regarding demarcation of, s. 122 f.	148	requisition on landholders to erect or repair, s. 122	... 149
of gairan lands to be repaired by village committee, s. 122 n.	... 152	to assess charges relating to construction of, s. 122	..
of free grazing land included in forest to be repaired by Forest Department, s. 122 n.	... ..	size and description of, s. 122	... 151
Boundary dispute.—		recovery of charges of, s. 122 f.	... ..
to be determined by survey officers, s. 118	... 144	in Government lands, construction of, s. 122 f.	... ..
do. by any other officer appointed by Government, s. 118	.. ..	provisions of funds regarding advances for repair of, s. 122 f.	... ..
formal inquiry by whom to be made in case of, s. 118	.. ..	removal of superfluous, s. 122 n.	... ..
officer to pass an award in case of, s. 118	... 145	writing off outstanding balances on account of, s. 122 n.	15
confirmation of award in case of, s. 118	... ..	of free grazing lands included in forest limits to be repaired by Forest Department, s. 122 n.	... ..
to be settled free of cost, s. 119 n.	... 146	of gairan lands to be repaired by village communities, s. 122 n.	... ..
do. by arbitration, s. 120	.. ..	Collector to pass expenditure incurred on account of inspection of, s. 122 n.	... ..
confirmation of decisions regarding, s. 120	... ..	landholders to be responsible for removal of superfluous, s. 122 n.	... ..
Survey Superintendent to refer award for reconsideration in case of, s. 120	... 147		

	Page.
Boundary mark.—(contd.)	
village officers and Circle Inspectors to demolish superfluous, <i>s.</i> 122 <i>n.</i> ..	152
responsibility of holders of Sanadi Inam lands regarding maintenance of, <i>s.</i> 122 <i>n.</i> ..	153
permanent advances not necessary on account of repairs to, <i>s.</i> 122 <i>n.</i> ...	"
landholders responsible for maintenance and repair of, <i>s.</i> 123 ...	<i>pp.</i> 153-154
village officers to prevent destruction or unauthorized alteration of, <i>s.</i> 123 ...	154
Forest Department to pay charges on account of, <i>s.</i> 123 <i>n.</i> ...	"
after introduction of survey settlement Collector to have charge of, <i>s.</i> 124 ...	"
Collector to take measures to maintain and repair, <i>s.</i> 124 ..	"
do. to punish persons convicted of injuring, <i>s.</i> 125...155	155
summary inquiry to be made in case of persons injuring, <i>s.</i> 125 ...	"
disposal of fine in case of injury to, <i>s.</i> 125 ...	"
do. of petitions and complaints in case of injury to, <i>s.</i> 125 <i>n.</i> ...	"
conviction and sentence in case of injury to, <i>s.</i> 125 <i>n.</i> ..	"
recovery of charges on account of, <i>s.</i> 137 ...	191
do. in case of waste inam land, <i>s.</i> 216 <i>f.</i> ...	204
in alienated villages, preservation of, <i>s.</i> 216 <i>f.</i> ...	205
of survey numbers to be shown in village map, <i>r.</i> 55 (5) ...	290
Collector to be furnished with	

	Page.
Boundary mark.—(contd.)	
map showing position of, <i>r.</i> 100 ...	322
digging of earth prohibited within 2 cubits of, <i>s.</i> 125 <i>n.</i> & <i>r.</i> 101 ...	<i>pp.</i> 155, 322
penalty not to be inflicted for unintentional injury to, <i>s.</i> 125 <i>n.</i> & <i>r.</i> 101 <i>n.</i> ...	<i>pp.</i> 155, 322-324
village officers to examine, <i>r.</i> 102 ...	325
presents to patils for keeping in thorough repair, <i>r.</i> 102 <i>n.</i> ..	"
Collector to issue notification requiring landholders to repair, <i>r.</i> 103 ...	"
to be inspected by karkuns, <i>r.</i> 104 ...	<i>pp.</i> 325-326
Mamlatdars to make test-inspection of, <i>r.</i> 104 ..	326
to be divided into 4 sections for taluka inspection, <i>r.</i> 104 ..	"
Mamlatdar to examine, <i>r.</i> 106 ...	327
do. to prepare abstract of register of inspection of, <i>r.</i> 105 ...	<i>pp.</i> 326-327
Commissioner to see proper inspection of, <i>r.</i> 107 ...	327
liability of person digging earth within 2 cubits of, <i>r.</i> 111 ...	330
do. of village officer neglecting to inspect, <i>r.</i> 111	331
Breach.—	
of rules to be inquired into and punished on conviction, <i>s.</i> 215 ...	204
do. punishable on conviction before a Magistrate, <i>r.</i> 111 ...	328
Brick and tile-makers.—	
to remove earth, &c., for <i>bona</i>	

	Page.		Page.
Brick and tile-makers.—		Building-site—(continued).	
<i>(continued).</i>		delegation of powers to con-	
<i>vide</i> purposes with sanction		firm sale of, r. 24 ...	261
of Mamlatdar, r. 39 ...	274	period for which assessment	
provisions of fine not to apply		to be fixed on, r. 25 n.	
to, r. 71 ...	305	... pp. 261-262	
fine to be levied in certain		compounding of ground rent	
cases on, r. 71 n. ...	306	on, r. 25 n. ...	262
Bridges.—		lands to be granted for,	
not being property of in-		r. 25 n. & r. 26 ... pp. 261, 263	
dividuals belong to Govern-		in new village sites to be free	
ment, s. 37 ..	36	of assessment, r. 27 n. ...	263
Buddhist.—		Government to assess, r. 27 n.	
dying intestate, disposal of		occupancy of land intended	
occupancy of, s. 72 ...	80	for, r. 34 ...	267
Building.—		Bungalow.—	
on land unauthorizedly occu-		not to be used for agriculture,	
pied liable to forfeiture,		compounds of, r. 50 ...	28
s. 61 ... pp. 60-61		assessment on compounds to,	
liability of land appropriated		r. 54 ...	28
for purposes of, s. 65 n.		liability of persons appropriat-	
... pp. 70-71		ing for agriculture com-	
Government to alienate rent-		pounds of, r. 111 ...	
free land for, r. 9 ...	250	Burial ground.—	
belonging to Government		assessment of, r. 43 ...	
not to be placed at dispo-		unusable lands may be culti-	
posal of Municipalities with-		vated by occupants except	
out sanction, r. 12 n. ...	254	in case of, r. 48 & n. ...	
liability of persons excavating			
in towns except for laying		C	
foundations of, r. 111 ...	330	Canal.—	
Building for residence.—		not being property of indivi-	
defined, s. 31 f. ...	30	duals belongs to Government,	
Building-site.—		s. 37 ... pp. 36	
defined, s. 3 (8) ...	5	disposal of survey numbers	
Collector to issue sanads to		cut off by, r. 12 n. ...	
holders of, s. 133 ...	162	Candidate.—	
within municipal limits vests		for office not to acquire	
in Government, r. 13 ...	255	land, s. 31 n. ...	
disposal of occupancy of,		Cattle.— see <i>village cattle.</i>	
r. 23 ... pp. 260-261		assignment of land for, r. 43	

	Page.		Page.
Cess. —		Charge(s). —	
to be commuted into annual assessment, s. 49	... 51	provision as regards levy of, s. 187	... 190
relinquishment of lands not assessed but subject to special, s. 76	... pp. 91-92	for copying, &c., to be calculated according to rules framed by Government, s. 198	... 197
fixing of assessment on land not to operate as bar to levy of any, s. 105	... pp. 131-132	on account of boundary marks on waste inam lands how to be recovered, s. 216 a.	... 204
provisions as regards levy of, s. 187	... pp. 189-190	removal of earth free of, r. 40	... 275
Certificate. —		assignment of land for special purposes to be free of, r. 43	... 276
of Civil Court, entry as registered occupant of persons holding, s. 70	... 77	karkuns to be supplied with list of villages in their, r. 104	326
of heirship to be given effect to in making entries of occupants' names, s. 71	... 78	Collector to mark several numbers for examination in talukas in his, r. 106	327
of purchase to be granted to purchaser by Collector, s. 181	... 187	liability of village officer for taking fees for granting permission authorized to grant free of, r. 111	... 330
Stamp duty on purchase, r. s. 181 a.	... "	Chavri. —	
liability to pay revenue of persons named in, s. 185	188	general orders preventing reaping or removal of crop to be proclaimed by affixing copy in, s. 142	... 168
inspection being completed	326	written notice of sale of immoveable property to be affixed in, s. 166	... 182
of karkun to sign, r. 104	326	Circle Inspector. —	
Distilled extracts. —		to cause to remove superfluous boundary marks, s. 122 a.	... pp. 151-152
of maps, survey records, village accounts, &c., to be given on payment of fee, s. 213	... 203	to take steps for demolition of superfluous boundary marks, s. 122 a.	... 152
Certified copies. —		City(ies). —	
of maps, survey records, village accounts, &c., to be given on payment of fee, r. s. 213	... 203	defined, 3 (20)	... 8
of extracts and maps how to be obtained, r. 3	236	revenue survey to extend to any, s. 95	... 123
Certified purchaser. —			
of Civil Court to dismiss suit against, s. 182	... 187		

	Page.
City(ies).—(continued).	
Collector to determine what lands to be included within site of, s. 126	pp. 156-158
Governor in Council to direct survey of lands in, s. 131	161
disposal of occupancies of building sites in towns and, r. 21 f.	... 259
occupancy of land in certain, r. 34 A	... 267
disposal of strips adjoining building in certain, r. 34 B	"
disposal of proprietary right in certain, r. 34 C	... 268
disposal of occupancies of unoccupied land in certain, r. 34 D	.. "
occupancies of land for building sites in certain, r. 34 E & 34 F	... "
occupancies of land for agricultural purposes in certain, r. 34 G	... "
excavation of unalienated lands in, r. 51	... 281
permission to be granted by Collector to appropriate lands in certain, r. 68 A	305
for the purpose of levying survey fees, division of, r. 79	... 309
liability of person excavating except for sinking wells in, r. 111	... 330
City Survey.—	
disposal of occupancies of building sites in towns and cities coming under, r. 21 f.	259
City Survey Act.— see <i>Act (IV of 1868).</i>	
Civil Account Code.—	
provides for drawing ad-	

	Page
Civil Account Code.—(contd.)	
vances for repairs to boundary marks, s. 122 n.	... 15.
Civil Court(s).— see <i>decrees.</i>	
entry as registered occupants of persons holding orders, decrees and certificates of, s. 70	...
orders in cases of assistance to recover rent not to bar recourse to, s. 87 n.	...
until receipt of revenue Collector to prevent removal of crop on land sold by order of, s. 140	...
dismissal of suit instituted in, s. 182	...
surplus not to be paid to creditors without order of, s. 184	...
authority holding summary inquiry to be deemed, s. 196	...
Civil Jail.—	
subordinates failing to produce Government moneys, papers, &c., to be confined in, s. 25	...
Collector to send defaulters to, s. 157	...)
period for which defaulter to be imprisoned in, s. 157	...
persons resisting or obstructing subordinates deputed by Collector to be imprisoned in, s. 202	...
Civil officer.— see <i>officer.</i>	
Civil Procedure Code.—	
see <i>Act (XIV of 1882).</i>	
property exempt from distraint under, s. 156	... pp. 1

	Page..		Page.
Civil Procedure Code.— (continued).		Classification.— (continued).	
as to imprisonment of default- er, provisions of, s. 156 f. & s. 157 ... pp. 177-178	192	classer to record particulars of, r. 55 n. ...	292
exemption from appearing in person under, s. 189 & f.	192	manner and extent of test of, r. 55 n. ...	293
Civil Servant.—		independent character of test of original, r. 55 n. ...	294
prohibited from acquiring or holding land, s. 31 n. ...	25	into Kharif and Rabi villages by Collector, r. 85 ...pp. 312-313	313
Civil Service Regula- tions.—		Collector.—	
travelling allowances under, s. 113 n. ...	142	as defined under present Code, s. 3 (3) ...	4
Civil suit.—		do. under General Clauses Act, s. 3 (3) f. ...	"
cases of encroachments on public roads to be dealt with by, s. 61 n. ...	65	to be appointed to each dis- trict by Governor in Coun- cil, s. 8 ...	10
or recovery of rent not barred, s. 87 ...	115	to be subordinate to Com- missioner, s. 8 ...	"
Encumbrances.—		powers and duties of, s. 8 ...	"
attached moveable proper- ty to be disposed of by Col- lector, s. 186 ...	189	Assistant or Deputy Collect- or to be subordinate to, s. 9 ...	11
when rejected, property to be sold, s. 186 ...	"	in case of temporary vacancy, s. 11 ...	"
decrease of assessment, s. 7 & f. ...	278	Mamlatdar to be subordi- nate to, s. 12 ...	12
Classification.—		Mahalkari to be subordinate to, s. 13 ...	"
holders of land to furnish security in connection with, s. 97 ...	122	to appoint village officers, s. 16 ...	13
second time not to be dealt with view to revi- sion of assessment, s. 106 ...	132	to prescribe records and pub- lic writings to be kept by village accountant, s. 17 ...	14
original if declared void by Governor in Coun- cil to be revised with view to revision of assess- ment, s. 106 ...	"	to delegate powers to subordi- nates, s. 21 ...	16
		to demand fresh or additional security, s. 24 ...	18
		to require production of pub- lic moneys, papers, &c., in charge of subordinates, s. 25 ...	"
		to exercise power under Cri- minal Procedure Code in cases of subordinates failing to produce public moneys, &c., s. 26 ...	19

Page.

Collector. —(continued).	
information as to place of concealment of public moneys, &c., to be given to, s. 26	19
to pass orders for fining, reducing, &c., subordinates, s. 35	35
to dispose of Government property, s. 37	37
to prescribe rules for grazing, s. 39	38-39
in cases of disputes of grazing rights conclusive character of decision of, s. 39	39
road side trees not to be cut without permission of, s. 42	42
in cases of value of trees conclusive character of decision of, s. 43	43
in cases of exercise of privileges for fire-wood conclusive character of decision of, s. 44	"
to prescribe rules regulating supply of fire-wood and timber, s. 44	"
to prohibit appropriation of land for certain purposes, s. 48	48
to fix assessment on land not under operation of section 95, s. 52	52
to keep a register of alienated lands, s. 53	"
to give extract from register of alienated lands, s. 53	52-53
to fix rates for use of Government water, s. 55	54
to levy arrears of land revenue, s. 56	55
to take possession and dispose of forfeited holdings, s. 57	57
to make summary inquiry in-	

Collector. —(continued).	
to cases of failure to gra receipts, s. 59	
unauthorized occupation land liable to fine at discretion of, s. 61	
as to assessment of land unauthorizedly occupied conclusive character of decision of, s. 61	
to forfeit crops, building &c., in cases of unauthorized occupation, s. 61	
to summarily evict persons occupying land unauthorizedly, s. 61	
to adjudge forfeiture in case of unauthorized occupation, s. 61	
to remit assessment chargeable in cases of unauthorized cultivation, s. 61 n.	
to see proper performance duty in cases of encroachments in taluka towns, s. 61 n.	
not to enforce eviction in certain cases, s. 61 n.	
not to deal with cases of encroachments on public roads passing through alienated villages, s. 61 n. ... pp	
to require payment of occupancy price, s. 62	
to dispose of occupancy alluvial lands, s. 63	
to dispose of temporary rights to alluvial lands, s. 64	
in cases of appropriation of land to purposes other than agriculture, application for permission of, s. 65	
to require fine in addition to special assessment on land appropriated to purposes other than agriculture, s. 65	

	Page.
Collector.—(continued).	
in cases of appropriation of alienated lands holder not to apply for permission of, <i>s. 65 n.</i> ...	71
application for permission to appropriate lands to be disposed of by, <i>s. 65 n.</i> ...	72
penalty for appropriating land without permission of, <i>s. 66</i>	37
to enter names of persons holding order, decree, &c., of Civil Court, as registered occupants, <i>s. 70</i> ...	77
do. heir's name on death of registered occupant, <i>s. 71</i>	78
to alter name of registered occupant on production of Civil Court's order, &c., <i>s. 71</i>	"
in entering registered occupant's names, extent of power of, <i>s. 71 n.</i> ...	pp. 78-79
to dispose of intestate property, <i>s. 72</i> ...	80
to take initiative in cases of intestate occupancy, <i>s. 72 n.</i>	85
to grant or refuse consent to relinquishment of lands paying lump assessment, <i>s. 75 n.</i>	91
not bound to recognize persons as occupants without registration of names in revenue records, <i>s. 79</i> ...	93
to receive assessment on behalf of registered occupants, <i>s. 80</i> ...	"
to give assistance to recover money paid by persons other than registered occupants, <i>s. 80</i> ...	"
how to proceed in cases of occupants failing to pay revenue, <i>s. 81</i> ...	94
to hold summary inquiry in cases of superior holders collecting dues direct, <i>s. 85</i>	100

	Page.
Collector.—(continued).	
to grant permission to superior holders to collect dues direct, <i>s. 85</i> ...	100
application for assistance to recover rent to be made to, <i>s. 86</i> ...	102
to refuse assistance to recover rent in doubtful cases, <i>s. 86 n.</i> ...	105
on application for assistance to recover rent, to cause written notice to be served on inferior holders, <i>s. 87</i> ...	114
do. to hold summary inquiry, <i>s. 87</i> ...	"
to give assistance up to amount of assessment fixed by survey settlement, <i>s. 87</i>	115
in cases of assistance to recover rent grounds for decision of, <i>s. 87 n.</i> ...	"
not to withhold assistance for recovery of rent, <i>s. 87 n.</i> ...	"
cases in which commission holders to make report to, <i>s. 90</i> ...	119
to make inquiry and pass orders for sale of property, <i>s. 90</i> ...	"
to hold summary inquiry when compulsory process is continued, <i>s. 91</i> ...	120
do. into cases of excessive demand by commission holders, <i>s. 93</i> ...	"
to fix assessment on lands not under operation of revenue survey, <i>s. 95</i> ...	121
cases of erecting Bandharas with or without permission of, <i>s. 100 f.</i> ...	126
to introduce survey settlement, <i>s. 103</i> ...	129
to give reasonable notice of	

	Page.
Collector. —(continued).	
introduction of survey settlement, s. 103	... 129
to be present at introduction of settlement, s. 103 n.	... 130
to submit to Government objections to proposed rates through Commissioner, s. 107 f.	... 135
to be furnished after introduction of rates with map & register, s. 108 f.	... 136
to correct errors in settlement register, s. 109	... 137
to enquire and pass orders in cases of mutation of names in settlement register, s. 109	”
to keep settlement register and survey records, s. 110	... pp. 137-138
to frame village records and accounts in accordance with survey records, s. 110	... 138
not to make any corrections, alterations, &c., in settlement register, s. 110	”
to inform Survey Department of alterations in records, s. 110 f.	”
to divide estates for purposes of partition, s. 113	... 139
to see whether fees in partition cases are levied, s. 113 n.	142
to subdivide lands appropriated to non-agricultural purposes into separate survey Nos., s. 116	... 144
to determine field boundaries, when in charge of survey records, s. 119	... 146
to see whether superfluous boundary marks are removed, s. 122 n.	... pp. 151-152
to pass expenditure on account of boundary mark inspection, s. 122 n.	... 152

	Page.
Collector. —(continued).	
to have charge of boundary marks after introduction of survey settlement, s. 124	... 1
to take measures for maintenance and repairs of boundary marks, s. 124	...
to punish persons convicted of injuring boundary marks, s. 125	... 1
to determine what lands are to be included within site of any village, &c., s. 126	... pp. 156-1
to hold summary inquiry into claims to exemption from land revenue, in cases of village sites, s. 129	... 1
to determine rights to exemption in cases of village sites, s. 129	...
in cases of exemption on account of village sites conclusive character of decision of, s. 129	...
to charge survey fee for survey of lands in village site, s. 32	...
to give notice of six months for collection of survey fee, s. 132	... pp. 161-
to issue sanads to holders of building sites on payment of survey fee, s. 133	...
to levy additional fee for issue of sanads in certain cases, s. 133	...
limitation of suits regarding village sites against decision of, s. 135	...
to prevent removal of crop on land until revenue is paid, s. 140	...
to secure payment of land revenue by enforcement of Government lien on crop, s. 14	...

	Page.
Collector.—(continued).	
to prevent reaping and removal of crop on land liable to pay land revenue, <i>s.</i> 141 ...	167
to issue orders preventing reaping or removal of crop to all or individual holders, <i>s.</i> 142 ...	<i>pp.</i> 167-168
not to defer reaping of crop unduly, <i>s.</i> 143 ...	168
to take portion of crop for sale for recovering revenue due, <i>s.</i> 143 ...	"
to release crop when revenue not paid, <i>s.</i> 143 ...	"
to exercise powers of manager to attached villages, <i>s.</i> 144 ...	169
empowered to dispose of surplus profits, <i>s.</i> 144 ...	"
to pay surplus profits to proper persons, <i>s.</i> 144 ...	"
precautionary measures to be relinquished on security for land revenue being furnished to, <i>s.</i> 145 ...	"
to levy entire revenue due by defaulter, <i>s.</i> 148 ...	170
statement of account to be conclusive proof of arrear when certified by, <i>s.</i> 149 ...	171
of one District to proceed to recover revenue of another District, <i>s.</i> 149 ...	"
of one Presidency to recover revenue of another Presidency, <i>s.</i> 149 <i>f.</i> ...	"
to recover arrears on receipt of certified statement of account, <i>s.</i> 149 <i>f.</i> ...	<i>pp.</i> 171-172
to remit notice fee, <i>s.</i> 152 <i>f.</i> ...	173
to exercise powers to arrest defaulters, <i>s.</i> 152 <i>f.</i> ...	"
to fix subsistence money to be allowed to defaulter, <i>s.</i> 152 ...	"
to declare occupancy or alien-	

	Page.
Collector.—(continued).	
ated holding forfeited, <i>s.</i> 153 ...	174
to sell or otherwise dispose of occupancy or alienated holding, <i>s.</i> 153 ...	"
to credit sale proceeds of defaulter's holdings to defaulter's account, <i>s.</i> 153 ...	"
to cause defaulter's moveable property to be distrained or sold, <i>s.</i> 154 ...	"
to delegate powers of distraint to Mamlatdars and Mahalkaries, <i>s.</i> 154 <i>n.</i> ...	175
to cause defaulter's right, &c., in moveable property to be sold, <i>s.</i> 155 ...	176
as to what property is entitled to exemption conclusive character of decision of, <i>s.</i> 156 ...	177
to send defaulter to civil jail, <i>s.</i> 157 ...	178
to exercise powers of arrest, <i>s.</i> 157 <i>n.</i> ...	"
to take attached villages under own management or under that of any agent appointed for special purpose, <i>s.</i> 159 ...	179
to have power to attach villages on non-payment of revenue, <i>s.</i> 159 ...	"
to receive rents or profits from attached lands, <i>s.</i> 160 ...	"
to release villages on application of superior holders, <i>s.</i> 162 ...	180
redemption of attached village within period prescribed by, <i>s.</i> 163 ...	181
to release defaulter on furnishing security, <i>s.</i> 164 ...	"
to issue proclamation of sale, <i>s.</i> 165 ...	"

	Page.
Collector. —(continued).	
written notice of sale of im- moveable property to be affixed in office of, <i>s.</i> 166 ...	182
to cause notice of sale to be published in any way, <i>s.</i> 166 ..	”
sale to be made by such per- son as may be directed by, <i>s.</i> 167 ...	”
do. of perishable articles to be made without delay under orders of, <i>s.</i> 168 ...	183
do. of moveable property to be subject to confirmation by, <i>s.</i> 170 ...	<i>pp.</i> 183-184
to recover loss entailed by re- sale from defaulter's pur- chaser, <i>s.</i> 176 ...	185
application to set aside sale to be made to, <i>s.</i> 178 ...	186
not to set aside sale on ground of fraud, irregularity, &c., <i>s.</i> 178 ...	”
to direct fresh sale if first sale is set aside, <i>s.</i> 178 ...	”
to confirm sale if no applica- tion to set it aside has been made, <i>s.</i> 179 ...	”
to put purchaser in possession of occupancy or alienated holding when sale is con- firmed, <i>s.</i> 181 ...	187
to grant purchaser certificate of sale, <i>s.</i> 181 <i>n.</i> ...	”
to make enquiry, &c., into cases of resistance or ob- struction to any officer, <i>s.</i> 202 ...	199
limit of time within which ap- peals to be submitted on or- ders from, <i>s.</i> 205 ...	200
to call for and examine records and proceedings of subordinate officers, <i>s.</i> 211.	201
to delegate powers to Mam- latdars, &c., to enquire into	

	Page.
Collector. —(continued).	
claims to attached moveable property, <i>s.</i> 186 <i>n.</i>
summons to be sent for ser- vice to, <i>s.</i> 190
to evict person wrongfully in possession of land by notice, <i>s.</i> 202
to depute subordinate to re- move person refusing to obey notice, <i>s.</i> 202
not to grant copies if public interest will suffer thereby, <i>r.</i> 1 <i>f.</i>
to determine amount of secu- rity in certain cases, <i>r.</i> 2 (<i>a</i>)	...
to require full security in certain cases, <i>r.</i> 2 (<i>c</i>)
to submit statement showing results of enquiries as to sufficiency of securities to Commissioner, <i>r.</i> 5
to dispose of lands and all rights pertaining thereto, <i>r.</i> 7	...
to hand over unoccupied salt lands to Salt Department, <i>r.</i> 7 ...	<i>pp.</i> 248-
to make revenue free grants, <i>r.</i> 10
to see whether terms of sanads of free grants are not evade- d, <i>r.</i> 11
questions of rights between Government and Municipa- lity to be decided by, <i>r.</i> 13	...
occupancy of unoccupied Survey No. to be granted by, <i>r.</i> 13
do. to be put to public auction by, <i>r.</i> 16
special conditions not to be annexed to occupancies by, <i>r.</i> 17
survey Nos. not assessed by Survey Department to be assessed by, <i>r.</i> 18

	Page.
Collector.—(continued).	
to grant occupancies revenue free or at reduced rent for certain term, r. 19	... 258
occupancies of land in beds of rivers to be sold by, r. 22 & n.	... 260
do. of building sites to be disposed of by, r. 23	pp. 260-261
to dispose of occupancies of land of special character, r. 29	... 264
to place upset price on occupancies, r. 30	... "
sale of occupancy in cities by, r. 34 H.	... 269
to sell grazing of unoccupied land, r. 36	... 270
Local Funds to remove sand, &c., with sanction of, r. 41	... 275
not bound to grant permission to remove earth, &c., r. 41 n.	... "
to ascertain changes caused by alluvion and diluvion, r. 45	... 277
excess of alluvion to be dealt with by Mamlatdars subject to orders of, r. 46	... 278
cases of alluvion not provided for in rules to be disposed of by, r. 46	... "
unalienated land in village sites not to be excavated without permission of, r. 51	... 281
to declare holding in respect of which arrear is due to be forfeited, r. 58	... 297
to postpone forfeiture under certain circumstances, r. 58	... "
not bound to confirm sales, r. 59 A	... 301
restoration of forfeited occu-	

	Page.
Collector.—(continued).	
pancies at discretion of, r. 63	... 302
to exercise discretion in raising amount of fine, r. 67	... 304
permission to appropriate lands in certain sites to be granted by, r. 68 A	... 305
to remove moveable and immoveable standing on land, r. 78	... 306
rate of survey fees to be fixed and revised by, r. 81	310
payments of revenue to be made to Huzur and Taluka treasuries with sanction of, r. 82	... "
to change dates of instalment with sanction of Commissioner, r. 84	... 312
classification into Kharif and Rabi villages to be made by, r. 85	... "
land revenue to be paid in one or two instalments under orders of, r. 86	... 313
trees of special value to be reserved by, r. 91	... 314
Inamdar's title to be accepted if nothing contrary is shown in records of, r. 91 n.	... 316
trees in occupied Nos. to be cleared with consent of, r. 93	... 317
to grant occupancies of jungle Nos., r. 95	... 318
to be furnished with map, r. 100	... 322
to issue notice requiring landholders to repair boundary marks, r. 103	... 325
to mark several Nos. for examination of boundary marks in talukas, r. 106	... 327

	Page.		Page.
Commencement. —		Commissioner. —(contd.)	
of present Code, s. 1	1	disposal of Government property by Collector subject to orders of, s. 37	37
Commission. —		to set apart land for special or public purposes, s. 38	38
received by Government servants how to be dealt with, s. 31 f.	24	rules for grazing to be prescribed by Collector with sanction of, s. 39	pp. 38-41
conferring certain powers to be issued to holders of alienated lands, s. 88	116	to fix commuted assessment on land indirectly taxed to State, &c., s. 49	49
care to be taken to protect tenant from rackrenting in granting, s. 88, n.	119	to enforce responsibility in cases of encroachments in taluka towns, s. 61 n.	pp. 63-64
to be in form of Schedule F, s. 89	"	to be present at introduction of settlement, s. 103 n.	103
to be withdrawn at pleasure of Government, s. 89.	"	objections to proposed rates to be submitted to Government by Collector through, s. 107 f.	107
to be issued to agents of holders of alienated lands, s. 89	"	to write off outstanding balances on account of boundary marks, s. 122 n.	122
extension of power under, s. 92	120	Collector to pay surplus profits to proper persons subject to orders of, s. 144	144
payment and disposal of fees granted to revenue officers and classers deputed on, s. 113, n.	pp. 141-142	to frame rules with Government sanction for issue of notice of demand, s. 152	152
Commissioner. — see <i>Commissioner of Survey.</i>		to fix costs recoverable from defaulter, s. 152	152
to be chief controlling authority in matters of land revenue, s. 4	8	to direct by what officers distraint and sale to be made	s. 154
to be subject to Governor in Council, s. 4	"	to fix rules with Government sanction as to what officer should exercise powers of arrest, s. 158	158
extent of territories under, s. 4	"	to fix cost incidental to arrest	s. 158
territories to be a division when under, s. 4	9	Collector to attach villages which revenue is due without previous sanction of, s. 173	173
to be appointed by Governor in Council, s. 5	"	Collector to take attached villages under management,	173
powers and duties of, s. 5	10		
Assistants to, s. 6	10		
Collector to be subordinate to, s. 8	"		
to appoint Mamltdars of taluka, s. 12	12		

	Page.		Page
Commissioner.—(contd.)		Commissioner.—(contd.)	
with previous sanction of, s. 159	"	classification into Kharif and Rabi villages to be made by Collector with sanction of, r. 85	"
to prescribe rules under Government orders for calculation of expenses of sale, s. 183	188	to see whether inspection and examination of boundary marks are properly carried out, r. 107	327
appeal to be made to Governor in Council on decisions and orders passed by, s. 204	200	Commissioner of Survey.—	
Collector to submit statement as to sufficiency of securities to, r. 5	248	to be appointed by Governor in Council, s. 18	14
report in case of insufficient security to be submitted to, r. 6	"	designation of officer holding appointment of, s. 18 f.	"
Collector to grant rent-free land with sanction of, r. 10	250	to fix minimum area of survey Nos., s. 98	123
to sanction appropriation of lands to Local Fund roads, r. 12 n.	252	survey Nos. of less extent than prescribed minima to be made with special sanction of, s. 98	124
do. for sohools, dharmashalas and other public purposes, r. 12 n.	"	objections to proposed rates to be submitted by Collector through, s. 107 f.	135
decisions of Collector in cases of disputes between Municipality and Government to be referred through, s. 13	256	appeal to be made to Governor in Council on decisions and orders passed by, s. 204	200
special conditions not to be annexed to occupancies by Collector without sanction of, r. 17	257	occupancies less in extent than prescribed minima to be separately measured, demarcated, &c., subject to orders of, r. 55(1)(b). pp. 283-284	
grant of occupancies revenue free by Collector with sanction of, r. 19	258	to prescribe form of book in which measurements are to be recorded, r. 55 (3)	...pp. 288-289
to sanction disposal of grazing, r. 37	271	original measurements to be tested by officers in charge of measuring establishment under orders of, 55 (4).	...pp. 289-290
do. remission and suspension of land revenue, r. 58 n.	299	village maps to be prepared under orders of, r. 55 (5)	290
arrear payable by defaulter to be recovered with sanction of, r. 64	303	number of classes and their relative value reckoned in	
Collector to change dates of instalments with sanction of, r. 84	312		

	Page.
Commissioner of Survey.—(contd.)	
annas to be fixed under orders of, r. 55 (6) ...	291
original classification to be tested by officers in charge of classing establishments under orders of, r. 55 (8) ...	pp. 293-294
matters not provided for in rules to be determined in accordance with orders of, r. 55 (10) ...	296
Commission holder.—	
to take precautionary measures but not to inflict penalties, s. 88 n. ...	118
to make report to Collector to attach defaulter's property, s. 90 ...	119
to attach defaulter's property, s. 90 ...	"
cases in which sale of attached property to be conducted by, s. 90 ...	pp. 112-120
no court-fee to be charged on report of, s. 90 ...	120
on defaulter's paying amount due, termination of compulsory process of, s. 91 ...	"
penalty for unnecessary continuation of compulsory process of, s. 91 ...	"
not to enforce unusual or excessive demand, s. 93 ...	"
penalty for so doing, s. 93 ...	121
to establish right to enhanced rent in Civil Courts, s. 94 ...	"
Company.—	
land acquired under Land Acquisition Act for, r. 12 n....	252
Complaints.—	
in cases of boundary marks to be disposed of, s. 125 n.	155

	Page.
Compounds.—	
not to be used for agriculture, r. 50 ...	280
surrounding houses, assessment of, r. 54. ...	281
liability of person appropriating for agriculture, r. 111...	329
Compulsory process.—	
used by commission holders to cease on defaulter's paying amount due or furnishing security, s. 91 ...	120
penalty for unnecessarily continuing, s. 91 ...	"
Concession.—	
of Government rights to trees in alienated land, s. 40 ...	40
do. do. to occupants, r. 91...	314
Conditions.—	
to be prescribed by Collector before releasing attached villages, s. 162 ...	180
to be specially inserted in grants of land to public purposes, r. 12, n. ...	pp. 254-255
not to be annexed to occupancies by Collector without Commissioner's sanction, r. 17 ...	257
of ground rents, r. 25 ...	261
Confinement.—	
in civil jail of subordinates not producing public moneys, papers, &c., s. 25 ...	18
maximum period of, s. 25...	19
Co-occupant.—	
appropriating land without consent responsible to registered occupant for damages, s. 66 ...	74
interested in occupancy to pay Government dues when	

	Page.		Page.
Co-occupant. —(contd.)		Co-sharer. — see <i>Superior holder.</i>	
registered occupant fails to pay, s. 80	93	to pay Government revenue on failure of person primarily responsible for payment, s. 136	pp. 163-164
in unalienated land to pay Government revenue on failure of person responsible to pay, s. 136	163	to be allowed credit for recovery of land revenue, s. 136	164
to be allowed credit for recovery of land revenue, s. 136	pp. 163-164	as to payment of land revenue responsibility of, s. 136	pp. 164-165
names to be registered in records in case of, r. 99	321	introduction of survey rates in inam-village not to be affected without consent of, s. 217 n.	213
Copies. —		Cost. —	
of decisions, &c., on summary inquiry how to be obtained, s. 198	197	payable on land to be leviable as land revenue, s. 187	190
of orders appealed against, petition of appeal to be accompanied with authenticated, s. 208	201	of surveying alienated villages and Jagagirs or estates held on political tenure, s. 216 n.	pp. 205-206
of sanada, r. 1 f.	pp. 235-236	Court fees. —	
of public documents how obtainable, r. 3	236	application for leave to extend cultivation or to occupy land exempt from, s. 60	59
of official correspondence to be given with permission of Collector, r. 5 (b)	237	report of commission holders on attachment of defaulters property exempt from, s. 90 n.	120
of printed or lithographed documents not to be granted, r. 5 (c)	pp. 237-238	application for return of document exempt from, s. 198 n.	197
form of certificate of certification, r. 7	238	Court fees Act. — see <i>Act (VII of 1870).</i>	
talatis to be permitted to take, r. 9 f.	239	scope of term "occupant" for purposes of, s. 3(16) f.	7
payment of section writers to be made from fees for, r. 9 f.	pp. 239-240	Creditor. —	
fees for comparing and examining, r. 11 n.	242	without order of Civil Court surplus not to be paid to, s. 184	188
Government servants to examine and compare, r. 11 n.		surplus profits to be claimable by, s. 124 n.	.. "
Copyist. —			
not Government servants to be paid from fees, r. 11 n.	242		

	Page.		Page.
Creeks. —		Cultivation. —(<i>contd.</i>)	
bed of, below high water		liability of person injuring or	
mark not being property of		destroying land not held	
individuals belongs to Go-		for, <i>r.</i> 111	... 329
vernment, <i>s.</i> 37	... pp. 36-37	Custody. —	
Criminal Procedure		where arrears become due	
Code. — <i>see (Act X of 1882).</i>		defaulter to be arrested and	
in cases of subordinates fail-		detained in, <i>s.</i> 157. <i>pp.</i> 177-178	
ing to produce Government		on furnishing security def-	
money, paper, &c, power to		aulter to be released from,	
be exercised under, <i>s.</i> 26...	19	<i>s.</i> 164	... 181
obstruction of part of public			
road to be obstruction under,		D.	
<i>s.</i> 61 <i>n.</i>	... pp. 62-63	Daftardar. —	
Criminal Prosecution. —		in cases of boundary marks	
provisions of present Code		Collector to mark off sever-	
not to affect officers' liabi-		ral numbers for examina-	
lity to, <i>s.</i> 36	... 36	tion by, <i>r.</i> 106	... 327
suspension during trial of of-			
ficer subjected to, <i>s.</i> 36	... "	Death. —	
Crop. —		of principal not to affect	
in cases of land occupied		liability of surety, <i>s.</i> 29	... 22
without permission, forfei-		procedure on application for	
ture of, <i>s.</i> 61	... 60	recovery of rent against ten-	
Collector to prevent selling		ant in case of, <i>s.</i> 86 <i>n.</i>	... 111
or mortgaging of, <i>s.</i> 140	... 166	Debt. —	
forms of notices for prevent-		in respect of mortgage judg-	
ing reaping and removal of,		ment decrees, &c., Govern-	
<i>s.</i> 141 <i>f.</i>	... "	ment claims to have prece-	
Collector to place watchmen		dence over any other,	
over, <i>s.</i> 141	... 167	<i>s.</i> 137	... 165
do. to prevent remov-		Decision. —	
al of, <i>s.</i> 141	... "	of Collector in case of dispute	
do. to prevent reaping		of grazing rights to be con-	
of, <i>s.</i> 141	... "	clusive, <i>s.</i> 39	... 39
Cultivation. —		do. in case of value of	
Inamdar's rights to give out		trees to be conclusive, <i>s.</i> 43	43
land for, <i>s.</i> 74 <i>n.</i>	... 88	do. in case of exercise	
occupant not to use lands as		of privileges for firewood	
to cause destruction in, <i>r.</i> 49.	280	to be conclusive, <i>s.</i> 44	... "
liability of person cultivating		do. in case of assist-	
land when there is prohibi-		ance to recover rent, on	
tion for, <i>r.</i> 111	... 329	what grounds to proceed,	
		<i>s.</i> 87 <i>n.</i>	... 115

	Page.
Decision—(continued).	
passed by arbitration in boundary dispute to be final, a. 130	pp. 146-147
regarding boundary disputes to be confirmed by Survey Superintendent, a. 130	pp. 146-147
passed by revenue officers in case of boundary disputes to be final, a. 131 f. pp. 147-148	pp. 147-148
of Collector in cases of exemption from assessment in village sites, a. 129	... 160
do. as to exemption of property from attachment to be final, a. 156	.. 177
after formal inquiry writing and explanation of, a. 194	... 196
in formal or summary inquiry to be given in public, a. 196	... 196
how to obtain copies of, a. 198	197
do. translations of, a. 198	"
of Commissioner to be appealed against, a. 204	... 200
appealed against to be suspended from being executed, a. 210	... 201
declared final not to be appealed against, a. 212	... 202
do. do. modified, annulled, &c., by Governor in Council, a. 212	... "
of Collector as to questions of rights between Government and Municipality, r. 13	256

Decree—	
of Civil Court, entry as registered occupants, of holder of, a. 70	... 77
decision in assistance' cases not to have force of, a. 87 a.	115
power as regards sale of defaulter's property by Inam-	

Decree—(continued).	
dar authorized to execute his own, a. 90	... pp. 119-120

Defaulter—	
dealing with holding or occupancy of, a. 56 a.	... 56
attachment, by commissionholder, of property of, a. 90.	119
Inamdar not bound to give preliminary notice to, a. 141a.	167
defined, a. 147	... 170
do. under Revenue Recovery Act, a. 147 f.	... "
liabilities incurred by, a. 148	"
Collector to levy entire balance of revenue due by, a. 148	"
process for recovery of arrears by serving notice of demand on, a. 150	... 172
do. by distraint and sale of immovable and moveable property belonging to, a. 150	"
do. by arrest and imprisonment of, a. 150	... "
Collector, &c., to exercise powers of arrest and imprisonment of, a. 152 f.	... 173
do. to fix subsistence money to be paid to, a. 152 f.	"
with sanction of Governor in Council Commissioner to fix costs recoverable from, a. 152	... 174
distraint and sale of moveable property of, a. 154	... "
in exceptional cases treatment of holding of, a. 154 a.	175
to be arrested and detained in custody when arrears become due, a. 157	... 178
how long to be detained in Civil Jail, a. 157	... "
detained in custody to be set at liberty on furnishing security, a. 164	... 181

Defaulter—(contd.)
 written notice of sale of im-
 moveable property to be af-
 fixed to dwelling place of,
 s. 166 182
 sale to be stayed on payment
 of arrears and other char-
 ges by, s. 169 183
 to pay arrears, at any time
 before day fixed for sale,
 s. 169 & 7 183
 surplus proceeds claimable by
 creditors of, s. 184 188
 to be arrested on warrant,
 s. 199 198
**Collector to put up forfeit-
 ed occupancy for sale** at
 desire of, s. 59 A pp. 300-301
 provisions as to remission of
 arrears payable by, s. 64
 pp. 302-303

Definition—
 of 'Revenue officer,' s. 3(1) 3
 of 'Survey officers,' s. 3(2) 4
 of 'Collector,' under present
 Code, s. 3(3) 4
 do. under General Clauses
 Act, s. 3(3) 4
 of 'Land,' s. 3(4) 4
 of 'Estate,' s. 3(5) 4
 of 'Survey number,' s. 3(6) 4
 of 'Recognised share of Sur-
 vey number,' s. 3(7) pp. 4-5
 of 'Building site,' s. 3(8) 5
 of 'Boundary mark,' s. 3(9) 5
 of expression 'to hold land,'
 s. 3(10) 6
 of 'Holder,' s. 3(11) 6
 of 'Holding,' s. 3(12) 7
 of 'Superior holder,' s. 3(13) 7
 of 'Inferior holder,' s. 3(14) 7
 of 'Tenant, landlord,' s. 3(15) 7
 of 'Occupant,' s. 3(16) 7
 of 'Registered occupant,'
 s. 3(17) pp. 7-8

Definition—(contd.)
 of 'Occupancy,' s. 3(18) 8
 of 'Alienated,' s. 3(19) 8
 of 'Village, town or city,'
 s. 3(20) 8
 of 'Revenue year,' year,
 s. 3(21) 8
 of 'Section,' s. 3(22) 8
 of 'This chapter,' s. 3(23) 8
 of 'holding for purposes of
 diluvion,' s. 47 47
 do. of alluvion,
 s. 64 70

Demand, in respect of mortgage, judg-
 ment decree, &c., Govern-
 ment claims to have prece-
 dence over other, s. 137 165
 rules regarding notice of,
 s. 152 173
 form of notice of, s. 87 and
 App. H pp. 313, 341

**Demarkation of field
 boundaries**, principles and orders relating
 to, s. 122 f. pp. 148-150
 of Parampok Nos. s. 122 f. 150
 in case of land occupied by
 Railways, s. 122 n. 153
 do. required for road pur-
 poses, s. 12 253
 of roads constructed since
 original survey, s. 12 253

Departmental rules—
 revenue officers to be fined
 reduced, &c., for breach of,
 s. 32 33
 survey numbers to be subdi-
 vided at revision survey ac-
 cording to, s. 115 143

Deposit, of 25 percent of purchase mo-
 ney to be paid by purchaser,
 s. 172 184

	Page.		Page
Deposit—(contd.)	7	Diluvion—	11
no option under present Code for payment of, s. 172 n. ...	184	right to remission of assessment in cases of, s. 47 ...	47
if not paid property to be put up and sold, s. 172 & 173 ...	pp. 184-185	village officers, &c., to ascertain changes caused by, r. 45.	277
to be paid by purchaser in cases of sale of immoveable property, s. 173 ...	pp. 184-185	disposal of claims to decrease of assessment on account of, r. 47 ...	278
how to be disposed of in cases of failure to pay purchase money, s. 175, ...	185	corresponding accretions to be traced in disposing of claims to, r. 47 ...	"
expenses of sale to be defrayed from, s. 175 ...	"	circumstances under which decrease of assessment to be granted on account of, r. 47 n. ...	"
to be refunded when sale is set aside or not confirmed, s. 180 ...	186	owing to changes in course of the Indus in Province of Sind, rules regarding, r. 47 f. & App. O ...	pp. 278, 350-352
of Government papers for furnishing security, r. 5 ...	245		
Deputy collector— see <i>Assistant and Deputy Collectors.</i>		Dismissal—	
in cases of certain cities to grant permission for occupation, r. 34 J ...	269	of revenue officer, who is to be invested with power of, s. 32 ...	33
Description—		of public servant to be ordered, s. 33 f. ...	34
of boundary marks to be shown in maps furnished by Superintendent of Survey, r. 100 ...	322	of Government servants to be reported to Government, s. 33 f. ...	"
Deshmukhs—		of public servants to be reduced to writing, s. 33 f. ...	"
entitled to assistance to recover dues, s. 86 n. ...	105	to whom appeals to be made on orders of, s. 35 ...	35
Deshpandes—		to be made by order in writing, s. 33 ...	pp. 34-35
entitled to assistance to recover dues, s. 86 n. ...	105		
Deosthan Inam—		Distrait—	
not to be subjected to full assessment, s. 45 f. ...	44	of defaulter's moveable property in cases of recovery of arrears, s. 150 & 151 ...	pp. 172, 174
Dikes—		to be made by Tappedars in Sind, s. 154 n. ...	175
not being property of individuals belong to Government, s. 37 ...	pp. 36-37	dwelling houses not to be broken into for purposes of, s. 154 n. ...	"

	Page.
Distraint.—(contd.)	
standard form of warrant or order of, s. 154, n. ...	175
Mamlatdar, &c., to be delegated with powers of, s. 154 n. „	„
property exempt from, s. 156 & f. ...	176
materials of houses exempt from, s. 156 n. ...	177

District hereditary officers.—	
rights to trees of, s. 41 n. ...	41

District(s).— see Scheduled districts.	
in Sind, application of present Code to, s. 1 n. ...	2
division to be divided into, s. 7 ...	19
to comprise Talukas, s. 7 ...	„
to be called Zilla, s. 7 ...	„
summons to be sent for service to Collector of different, s. 190 ...	193
Governor in Council to determine language of, s. 201.	199
extent of application of provisions of fine to certain, r. 72	306
restrictions as to payments of revenue in, r. 82...pp. 310-311	„
payments on account of land revenue belonging to another, r. 82 n. ...	311
special provisions as regards trees in Warkas lands in certain, r. 98 A ... pp. 319-320	„

Ditches.—	
not being property of individuals belong to Government, s. 37 ... pp. 36-37	„

Division(s).—	
territories under Commissioner to be, s. 4 ...	9

	Page.
Division(s).—(contd.)	
existing at present, s. 4 ...	9
to be divided into districts, s. 7	10
of villages for purposes of determining fine, r. 66 ...	303
do. into sections to be made for purposes of inspection of boundary marks, r. 104 ...	326

Documents.—	
first karkuns and Assistant Superintendent to summon persons to produce, s. 189.	192
restoration to parties of original, s. 198 ...	197
court-fee not to be levied on application for return of, s. 198 n. ...	„
to be returned to proper parties, s. 198 & n. ...pp. 197-198	„
application of rules for inspection of, r. 1 ...	235
provisions as to right of inspection of, r. 1 & 2 pp. 235-236	„
do. as regards extracts and copies of, r. 3 to 7... pp. 236-238	„
do. do. searches of, r. 8.	238
do. do. fees for copies of, r. 9 ...	239
liability of village officer for unlawfully taking fees for preparing, r. 111 ...	330
do. of village officer for neglecting or refusing to prepare, r. 111 ...	331

Dry crop number.—	
scale of minimum area for, s. 98 f. ...	123

Dumala village.— see Alien-ated village. Inam village.	
assistance to recover rent in cases of sub-shares in, s. 86n.	103

	Page.		Page.
Duties. — see <i>Duties & powers.</i>		Enhancement. —	
liability of village officer neglecting or refusing to perform, <i>r.</i> 111	... 831	limitation in revision settlement as regards, <i>s.</i> 107 <i>f.</i>	... pp. 132-133
Duties and powers. —		Establishment. —	
of commissioner, <i>s.</i> 5	... 9	appointments of members of, <i>s.</i> 21	... pp. 15-16
of Assistant to Commissioner, <i>s.</i> 6	... 10	Governor in Council to frame rules for qualification of members of, <i>s.</i> 214 (a)	... 203
of Collector, <i>s.</i> 8	... "	officer in charge to take test of work of measuring, <i>r.</i> 55 (4)	... 289
of Assistant or Deputy Collector, <i>s.</i> 10	... 11	do. classing, <i>r.</i> 55 (8)	... 293
of Mamlatdar, <i>s.</i> 12	... 12		
of Mahalkari, <i>s.</i> 13	... "	Estate(s). —	
of Survey officer, <i>s.</i> 18	... 15	defined, <i>s.</i> 3 (5)	... 4
Dwelling houses. —		paying land revenue to Government to be divided for purposes of partition, <i>s.</i> 113	... 139
not to be broken into for purposes of distraint, <i>s.</i> 154 <i>n.</i>	175	sale of portions of, <i>s.</i> 113	... 140
E		subject to certain conditions partition to be made of Khoti and Talukdari, <i>s.</i> 114	... 143
Enactment. —		rules as to cost of surveying, <i>s.</i> 216 <i>f.</i>	... 205
repeal of, <i>s.</i> 2	... 2	held on political tenure, <i>s.</i> 216 <i>f.</i>	... 206
Encroachment. —		European Defaulter. —	
upon public streets before passing of present Code, 61 <i>n.</i>	... 61	subsistence money payable to, <i>s.</i> 152 <i>f.</i>	... 173
upon public roads not to be dealt with under present Code, <i>s.</i> 61 <i>n.</i>	... pp. 62-63	European Witness. —	
on beds of tanks within Municipal limits, <i>s.</i> 61 <i>n.</i>	... 63	subsistence allowance payable to, <i>s.</i> 192 <i>n.</i>	... 194
on open spaces not forming part of public road, <i>s.</i> 61 <i>n.</i>	... "	travelling expenses payable to, <i>s.</i> 192 <i>n.</i>	... "
in taluka towns, cases of, <i>s.</i> 61 <i>n.</i>	... pp. 63-64	Eviction. —	
on public road passing through alienated villages, <i>s.</i> 61 <i>n.</i>	... 64	tenant repudiating title liable to, <i>s.</i> 83 <i>f.</i>	... 96
Endorsement. —			
on agreement to enter upon land, <i>r.</i> 75 <i>n.</i>	... 307		

	Page.
Evidence. —	
first Karkun to summon persons to give, s. 189	192
Assistant Superintendent to summon persons to give, s. 189	
in summary inquiry how to be taken, s. 193	195
restoration to parties of original documents produced in, s. 198	197
Evidence Act. — see <i>Act (1 of 1872)</i> .	
Execution. —	
Government claims to have precedence over all other claims in respect of, s. 137	165
of bond in lieu of depositing Government papers, r. 3 n.	246
Exemption. —	
from land revenue strict proof to be given in support of right to, s. 45 f.	44
Collector to decide as to what property is entitled to, s. 156	177
from prohibition of sugar cane cultivation, r. 50 A.	280
Exhibits. —	
how to obtain copies and translations of, s. 193	197
Expenses. —	
of survey to be paid by Inamdar, s. 216 f.	pp. 204-205
Extension. —	
of certain provisions of present Code to alienated villages, s. 216	204

	Page.
Extent. —	
of present Code to Presidency of Bombay, s. 1	1
do. to Akalkot State, s. 1 n.	2
do. to Jat State, s. 1 n.	"
do. to Districts in Sind, s. 1 n.	"
do. to Panch Mahals, s. 1 n.	"
of obligation of Native Chiefs to accept survey rates, s. 217 n.	pp. 212-213
of Pardi land to be allowed free of assessment, r. 54 n.	282
of test of measurement, r. 55 (4)	pp. 289-290
do. of classification, r. 55 (8)	pp. 293-294
of application of provisions of fine to certain districts, r. 72	306
of test inspection after introduction of survey settlement, r. 105	326
F	8
	8
Farm buildings. —	
exempt from distraint and sale, s. 156 & f.	pp. 176-177
	10
Fees. —	
granted to classers and revenue officers, s. 113 n.	pp. 141-142
prescribed by High Courts, whether levied in partition cases, to be ascertained by Collector, s. 113 n.	142
to be levied by Collector, for sanads, s. 133	162
provisions as regards levy of, s. 187	pp. 189-190
for copying, &c., to be calculated according to rules.	

	Page.		Page.
Fees.—(continued).		Fence.—(continued).	
framed by Government, s. 198	... 197	duals belong to Govern- ment, s. 37	pp. 36-37
certified copies and extracts of maps, &c., to be given on payment of, s. 213	pp. 202-203	Field book.—	
for certified copies of public documents, r. 5	... 237	classer to record particulars of classification in, r. 55 n.	293
section writers to be paid from, r. 9	... pp. 239-240	Field Boundary(ies).—	
for extracts, &c., to be paid into Government treasury, r. 11	... 241	to be determined according to occupation and village records, s. 119	... 145-146
copyists and Draftsmen not being Government servants to be paid from, r. 11 n.	... 242	to be determined by Col- lector, s. 119	... 146
for comparing and examining copies, r. 11 n.	... "	Fine.—	
for section writing, scale of, r. 11 n.	... "	who is to be invested with power of inflicting, s. 32	... 33
to be charged for excavation in case of Railway Com- pany, r. 38 n.	... 271	to be ordered in writing, s. 33	... 34
on quarry, stone, &c., assign- ed to Local Funds, r. 38 f.	.. "	not to exceed two months' pay of Government ser- vants, s. 34	... 35
for removal of earth, &c., from Government land, r. 38 n.	... pp. 271-273	how to be recovered, s. 34	... "
do. from Railway Com- panies, r. 38 n.	... pp. 272-273	appeals to whom to be made on orders of, s. 35	... pp. 35-36
for quarrying, Municipality not entitled to levy, r. 38 n.	273	appropriation of land not settled under present Code liable to, s. 48 n.	... pp. 49-50
for quarrying within or with- out Municipal limits to be credited to Local Funds, r. 38 n.	... pp. 273-274	to be commuted into annual assessment, s. 49	.. 51
permission given to Local Funds for levying, r. 38 n.	... pp. 273-274	unauthorized occupation of land liable to, s. 61	pp. 59-60
for removal of sand, r. 41 n.	275	in cases of occupation and ap- propriation of land area to be subjected to, s. 61 n.	... 67
liability of village officer for unlawfully taking, r. 111	... 330	special assessment to be levied on land appropriated to purposes other than agri- culture in addition to, s. 65	71
Fences.—		to be disposed of in case of injury to boundary marks, s. 125	... 155
not being property of indivi-		provisions as regards levy of, s. 187	... pp. 189-190

	Page.		Page.
Fine.—(continued).		Forest.—(continued).	
in cases of unauthorized occupation of land to non-agricultural purposes, limit of, r. 65	303	acceptance of Inamdar's title to, r. 91 n.	316
division of villages for purposes of determining, r. 66	"	Forest Demarcation.—	
on appropriation of land to non-agricultural purposes, maximum amount of, r. 67	304	Collector to grant occupancies in talukas on completion of, r. 94	318
to be fixed in cases of appropriation of land to non-agricultural purposes, r. 68	... pp. 304-305	if not complete Collector to grant occupancies subject to conditions, r. 95	"
do. in cases of appropriation without permission, r. 69	305	Forest Department.—	
in exceptional cases to be fixed when land appropriated by Government, r. 70	"	to repair boundaries of free grazing land, s. 122 n.	152
to be brick in certain cases on brick and tile-makers, r. 71	"	to pay charges for boundary marks erected in forest land, s. 123 n.	154
extent of application to certain districts of provisions of, r. 72	306	assignment of revenue realized from quarries in forest lands under, r. 38 n.	273
inflicted by Magistrate how to be recovered, r. 111 n.	331	do. do. not under, r. 38 n.	"
Fire-wood.—		when occupants decline to purchase, trees to be cut down by, r. 91 n.	315
regulation of supply of, s. 44.	43	reserved trees to be placed at disposal of, r. 93	317
First Assistant Collector.— see <i>Assistant and Deputy Collectors.</i>		proceeds of sale of trees in Government waste lands to be credited to, r. 93 n.	"
Flag-holder.—		Revenue Department to be credited with proceeds of trees not at disposal of, r. 93 n.	"
to be furnished by holders of lands in connection with measurement and classification, s. 97	122	Forest land.—	
Forest.—		Forest Department to pay charges incurred for erecting boundary marks in, s. 123 n.	154
right, officer ascertaining, not to be revenue officer, s. 3 (1) n.	... pp. 3-4	assignment of revenue realized from, r. 38 n.	273
		Forest Settlement.—	
		sale of trees to be proceeded with as general measure after completion of, r. 91 n.	319

	Page.		Page.
Forest Settlement		Forfeiture.—(continued).	
Officer.—		of occupancy or alienated	
Inamdar to accept relinquish-		holding, <i>s.</i> 150	172
ments executed before,		stay of sale not to cancel,	
<i>r.</i> 78 <i>n.</i>	309	<i>s.</i> 169	183
Forfeited occupancy.—		provisions as regards levy of,	
to be sold or otherwise dis-		<i>s.</i> 187	... pp. 188-190
posed of by Collector,		under certain circumstances	
<i>s.</i> 153	174	Collector to postpone, <i>r.</i> 58.	297
need not necessarily be sold,		to be restricted to one or	
<i>s.</i> 183 <i>n.</i>	188	more numbers by Collector,	
extent of responsibility of		<i>r.</i> 58.	298
purchaser of, <i>s.</i> 185 <i>n.</i>	189	appropriation of land without	
Governor in Council to frame		permission entails, <i>r.</i> 73	306
rules for disposal of, <i>s.</i> 214.	203		
to be put up for sale except		Form(s).—	
in certain cases, <i>r.</i> 59 A		of security bond existing	
& 60	... pp. 300-302	at present to be retained	
to be "sold" as unoccupied		until amended, <i>s.</i> 23 <i>n.</i>	17
unalienated land, <i>r.</i> 61	302	do. do. to be modi-	
not sold, how to be disposed		fied to meet special cases,	
of, <i>r.</i> 62	"	<i>s.</i> 23 <i>n.</i>	"
restoration of, <i>r.</i> 63	"	of register of alienated lands	
		how to be prepared and	
		filled in, <i>s.</i> 53 <i>n.</i>	53
Forfeited holding.—		of warrant of distraint to be	
to be sold or otherwise dis-		in form of ordinary order in	
posed of by Collector,		correspondence, <i>s.</i> 154 <i>n.</i>	175
<i>s.</i> 153	174	of certificates of sales not to	
Governor in Council to frame		be printed, <i>s.</i> 181 <i>n.</i>	187
rules for disposal of, <i>s.</i> 214.	203	of agreement to be taken from	
when consisting of several		Inamdars before introduc-	
Nos. Collector to restrict		tion of survey rates not to	
forfeiture to one or two		be departed from, <i>s.</i> 217 <i>n.</i>	214
Nos., <i>r.</i> 58	298	of bond to be required under	
		section 23, <i>sch. B.</i>	... pp. 215-216
Forfeiture.—		of security to be subjoined	
crops, construction, building,		to bond of principal, <i>sch. B.</i>	216
&c., on land unauthorizedly		of warrant to be issued by	
occupied liable to, <i>s.</i> 61		Collector under section 25	
... pp. 59-50		or 157, <i>sch. C.</i>	... pp. 216-217
to be adjudged by Collector		of bond to be required under	
in cases of unauthorized		section 23 or 164, <i>sch. D.</i>	217
occupation, <i>s.</i> 61	... pp. 59-60	of security to be subjoined to	
of occupancy, remedies		bond of principal, <i>sch. D.</i>	...
against, <i>s.</i> 80	... pp. 93-94		

	Page.
Form(s).—(continued).	
of notice to be given by landlord to tenant to quit, <i>sch. E</i> ...	218
do. do. by tenant to landlord of his intention to quit, <i>sch. E.</i> ...	"
of commission conferring certain powers on holders of alienated villages, <i>sch. F</i> ...	pp. 218-219
of sanad for building sites, <i>sch. H</i> ...	pp. 219-220
of warrant to be issued by Collector under section 202, <i>sch. I</i> ...	220
of register of landed property, <i>app. I</i> ...	221
of notice to be issued under section 87 to inferior holder or co-sharer, <i>app. IV</i> ...	pp. 224-225
of notification in Government Gazette regarding extension of provisions of present Code to inam villages, <i>app. V</i> ...	225
do. of guarantee, <i>app. VI</i> ...	pp. 225-226
do. requiring occupants to bring improvements to notice of Assistant Superintendent, <i>app. VII</i> ...	226
do. showing existing and proposed groups and rates of villages, <i>app. VIII</i> ...	"
of Faisal Patrak used in Deccan and Konkan Surveys, <i>app. IX (a)</i> ...	227
do. do. in Guzerat survey, <i>app. IX (b)</i> ...	"
of Akarband used in Deccan Survey, <i>app. X (a)</i> ...	228
do. do. in Guzerat Survey, <i>app. X (b)</i> ...	229
of Sud, <i>app. XI</i> ...	230

	Page.
Form(s).—(continued).	
of order preventing reaping of crop, <i>app. XII</i> ...	231
do. do. removal of crop, <i>app. XII</i> ...	"
of security to be taken before relinquishing precautionary measures, <i>app. XIII</i> ...	pp. 231-232
of certificate in case of recovery of arrear of land revenue accrued in another district, <i>app. XIV</i> ...	232
of agreement to be taken from Inamdars before introduction of survey rates, <i>app. XV</i> ...	pp. 232-233
of endorsement on certified copies or extracts, <i>r. 6</i> ...	233
of certificate on certified copies or extracts, <i>r. 7</i> ...	"
of security bond under section 23 when to be used, <i>r. 3 n.</i> ...	243
of register of leases to be adopted in Sind, <i>r. 31 n.</i> ...	265
do. of occupancies on special terms, <i>r. 31</i> ...	pp. 264-265
of lease in case of alluvial lands, <i>r. 31 n.</i> ...	265
to be prescribed by Survey Commissioner for recording measurement, <i>r. 55 (3)</i> ...	pp. 288-289
of agreements to enter upon lands, <i>r. 75 n.</i> ...	307
of notices of relinquishment, <i>r. 78 & n.</i> ...	pp. 308-309
of certificate to be signed by karkun in case of boundary mark inspection, <i>r. 104</i> ...	326
of appeal to be submitted to authority, <i>r. 108</i> ...	pp. 327-328
of annual statement showing results of inquiries as to	

	Page.
Form(s).—(continued).	
sufficiency of security, <i>app. A</i> ...	333
of sanads for revenue free grants of land for religious or charitable purposes, <i>app. B</i> ...	pp. 333-335
of agreement for exchange to be executed by villagers removing to a new village site, <i>app. O</i> ...	pp. 335-336
do. to be passed by persons intending to become registered occupants, <i>app. D</i> ... pp.	337-338
of written permission to occupy land to be given by Mamlatdar or Mahalkari, <i>app. E</i> ...	338
of register of alienations, <i>app. F</i> ...	pp. 339-340
of absolute relinquishment, <i>app. G (1)</i> ...	340
of relinquishment in favour of some other person, <i>app. G (2)</i> ...	pp. 340-341
of notice of demand, <i>app. H</i>	341
of lease to be granted to occupant taking up land on special terms, <i>app. I</i> pp.	341-343
of notification of Survey Settlement guarantee, <i>app. J</i> ... pp.	343-344
of lease of building sites, <i>app. K</i> ...	pp. 344-346
of leases executed under rule 31, <i>app. L</i> ...	346
of proclamation and written notice of sale of attached property, <i>app. M (1)</i> ... pp.	346-347
do. do. of sale of right of occupancy of unoccupied land, <i>app. M (2)</i> ...	347
of security bond to be taken from treasurers or other	

	Page.
Form(s).—(continued).	
officers of Government en- trusted with charge of pub- lic money, <i>app. Q</i> pp.	361-365

Formal Inquiry.—see <i>Summary Inquiry.</i>	
to be held by officers in case of boundary disputes, s.	118. 145
Summary inquiry to be con- ducted at discretion of in- quiry officer under rules ap- plicable to, s.	195 ... 196
Fresh notice.—	
to be issued in every resale, s.	177 ... 185

G

Gairan land.—	
village committee to repair boundaries of, s.	122 n. ... 152
Garden numbers.—	
scale of minimum area for, s.	98 f. ... 123
General Clauses Act.— <i>see Act (III of 1886).</i>	
General Duty karkun.— <i>see Karkun.</i>	
Government.— see Govern- nor General in Council.	
to direct what security is to be given by revenue officers, s.	23 ... 16
dismissal of Government ser- vants to be reported to, s.	33 f. ... 34
all lands, roads, &c., not be- ing property of individuals belong to, s.	37 ... 36
in case of trees in unalienated land concession of right of, s.	40 ... 39

	Page.		Page.
Government.—(contd.)		Government.—(contd.)	
trees not conceded and not belonging to individuals be- long to, s. 41	40	to determine dates and instal- ments for payment of land revenue, s. 146	...
rights to road-side trees plant- ed at expense of, s. 42	42	preference to be given to claims of, s. 137 & 151.	pp. 165,
all lands liable to pay land revenue, s. 45	44	lands attached for arrears of revenue to revert to, s. 160.	...
in case of mines, reservation of right of, s. 69	77	rules for calculation of ex- penses of sale to be framed under orders of, s. 133	...
liabilities of holders or occu- pants to pay dues of, s. 79.	pp. 92-93	disposal of sale proceeds of occupancy granted by, s. 185 n.	...
commission conferring cer- tain powers on holders of alienated lands to be with- drawn at pleasure of, s. 89.	119	fees and charges for copying according to rules framed by, s. 198	...
assessment fixed by survey officers not to be levied without sanction of, s. 102.	128	form of bond to be execut- ed by officers of, r. 5 n.	...
objections to proposed rates to be submitted to, s. 107 f.	pp. 134-135	execution of bond in lieu of depositing Government pa- per with sanction of, r. 3 n.	...
in certain cases corrections made in settlement register requires sanction of, s. 109.	137	alienation of land free of rent with sanction of, r. 9	...
survey and settlement of vil- lages under temporary reve- nue management of, s. 111.	138	free grants not to be made without sanction of, r. 12...	pp. 251-2
partition of estates paying land revenue to, s. 113	139	do. do. with sanc- tion of, r. 12 n.	...
fees granted to revenue offi- cers deputed on commission to be credited to, s. 113 n.	pp. 141-142	in certain cases vacant build- ing sites to vest in, r. 13	...
for determining boundaries of villages, nomination of officers by, s. 118	144	Collector to decide questions of rights between Muni- cipality and, r. 13	...
superior holder and register- ed occupant of unalienated land to be primarily respon- sible for land revenue to, s. 136	163	Collector's decision if not ac- cepted by Municipality to be referred to, r. 13	...
for securing payment of land revenue Collector to enforce lien of, s. 141	166	to assess building sites, r. 27 n.	...
		disposal of produce of trees belonging to, r. 35	...
		sale of right to remove sand, &c., belonging to, r. 38	...
		permission given to Local Funds to appropriate fees	...

	Page.		Page.
Government. —(<i>contd.</i>)		Government paper. —	
from quarries not to prejudice rights of, r. 38 n...		security to be furnished by deposit of, s. 23 & r. 3 pp. 16, 245	
	<i>pp.</i> 273-274	execution of bond in lieu of deposit of, r. 3 n. ...	246
sale of right to take fruit of trees|belonging to, r. 42... 276		Government property. —	
changes in dates of instalments of revenue not to be made without sanction of, r. 58 n. ...	292	<i>see Public property.</i>	
in certain cases of remission and suspension report to be made to, r. 58 n. ... <i>pp.</i> 299-300		includes records prepared by hereditary officers, s. 26 f... 19	
lapses of alienated property to be immediately reported to, r. 59 f. ...	300	to be disposed of by Collector, s. 37 ...	37
forfeited alienated holding not to be restored without sanction of, r. 68 ...	302	Government servant. —	
in exceptional cases fines on appropriation to be fixed by, r. 70 ...	305	dealing with commissions received by, s. 31 f. ...	24
to reserve any and all kinds of trees, r. 92 ...	316	prohibited from having connection with land holding and commercial speculation in India, s. 31 n. ... <i>pp.</i> 25-28	
disposal of trees produce of which is at disposal of, r. 96. ...	318	to keep register of landed property, s. 31 n. ...	29
to have no right to trees which have once been disposed of, r. 98 ...	"	restriction on landed property held by wives of, s. 31 n....	30
boundary marks out of repair at second inspection to be repaired by, r. 103 ...	325	prohibited from taking loans from subordinates, s. 31 n. ...	31
form of appeals to petitions to be made to, r. 110 n. ...	328	indebtedness of, s. 31 n. ...	"
Government land. — <i>see Land.</i>		report to be made of dismissal of, s. 33 f. ...	34
Government money. —		for comparing copies, &c., village accountants not to be considered as, r. 11 n. ...	242
<i>see Public Money.</i>		to examine and compare copies, r. 11 n. ...	"
Government officer. — <i>see Officer.</i>		not to receive payment for section writing, r. 11 n. ...	"
stamp duty not to be levied on instruments executed by, r. 2 f. ...	244	Government trees. — <i>see Trees.</i>	
form of bond to be executed by, r. 3 n. ...	246	Governor in Council. —	
		<i>see Government.</i>	
		in matters of land revenue Commissioner's authority to be subject to, s. 4 ...	8
		to appoint Commissioners, s. 5 ...	9

	Page.		Page.
Governor in Council.—(contd.)		Governor in Council.—(cont)	
to sanction appointments of Assistants to Commissioner, s. 6	10	to direct fresh revenue survey or revision survey, s. 106.	
to prescribe limits of each division, s. 7	"	to authorize Commissioner to write off outstanding balances, s. 122 <i>n.</i>	1
do. districts to be comprised in each division, s. 7.	"	to direct survey of lands in village sites, s. 131	1
do. talukas and mahals to be comprised in each district, s. 7	"	Commissioner to frame rules for issue of notices with sanction of, s. 152	1
talukas to comprise such villages as may be notified by, s. 7	"	do. to fix rules relating to powers of officers as to arrest with sanction of, s. 158.	1
to appoint Collector to each district, s. 8	"	to sanction rules for conducting ordinary inquiry, s. 197.	1
do. Assistant or Deputy Collectors to each district, s. 9	11	to determine language of district, s. 201	1
do. Survey officer, s. 18.	14	to call for and examine records and proceedings of subordinate officers, s. 211.	2
to prescribe what revenue officers to use seals, s. 22	16	to modify, annul or reverse decisions or orders declared to be final, s. 212	202
certain revenue officers not to be fined without sanction of, s. 32	33	to frame rules regarding inspection of survey maps, &c., s. 213	"
to prescribe form of register of alienated lands, s. 53	52	do. for qualification of members of establishments, s. 214 (a)	203
to notify application of provisions relating to relinquishment and agreement, s. 82	94	do. for fixing revenue officers, s. 214 (b)	"
to confer certain powers on holders of alienated lands, s. 88	116	to prescribe purposes to which land may be appropriated, s. 214 (c)	"
to direct revenue survey of any part of Presidency, s. 95	121	to frame rules for system and manner of assessing land to land revenue, s. 214 (d)	"
to exercise control of revenue survey, s. 95	122	do. for disposal of forfeited occupancies, s. 214 (e).	"
to declare survey assessment fixed for term of years not exceeding 30 in case of agricultural lands, s. 102.	128	do. for fixing maximum amount of fine for unauthorized occupation, s. 214 (f).	"
do. do. not exceeding 99 in case of non-agricultural lands, s. 102	"	do. for administration of survey settlement, s. 214 (g)	"

	Page.		Page.
Governor in Council. —(<i>contd.</i>)		Hakdar. —(<i>contd.</i>)	
to frame rules for drawing up and presentation of appeal, s. 214 (A) ...	203	assistance to recover dues, s. 86 a. ...	105
do. for guidance of persons in matters connected with enforcement of present Code, s. 214 (i) ...	"	Head Accountant. —	
to prescribe penalties for breach of rules, s. 215 ...	204	amount of security to be furnished by, r. 2 ...	244
to authorize extension of provisions of chapters VIII and IX to alienated villages, s. 216 ..pp.	205-206	Heads of Offices. —	
Grazing. —		to see whether security furnished is good and sufficient, r. 4 ...	247
regulation of right of, s. 39... 38	38	Hearing. —	
Collector to prescribe rules for, s. 39 .. pp.	38-39	and decision in formal or summary inquiry to be in public, s. 196. ...	196
of unoccupied lands to be sold by Collector, r. 36 ...	270	Heir. —	
Commissioner to sanction disposal of, r. 37 ...	271	of deceased officer to be liable by suit for Government claims, s. 29 ...	22
sale of right of, r. 42 ...	276	to be deemed registered occupant on death of previous registered occupant, s. 74. 78	78
Guarantee. —		Hereditary Kulkarni. —	
publication of notification of, s. 102 f. ...	128	see <i>Kulkarni</i> .	
form of notification of, s. 102 f. "	"	Hereditary officer. —	
to be notified in Government Gazette, r. 89 ...	314	to grant receipts for land revenue, s. 58 a. ...	58
in case of talukas already partially settled, period of, r. 89 ...	"	Hereditary Offices (Watan) Act. — see Act (III of 1874).	
presumption as to settlement in absence of, r. 90' ...	"	Hereditary Patil. —	
Government waste land. —		see <i>Patil</i> .	
see <i>Waste land</i> .		High water mark. —	
Forest Department to be credited with proceeds of sale in, r. 93 ...	317	explained, s. 37 ...	37
		Hindu. —	
		dying intestate, disposal of occupancy of, s. 72... pp.	79-80

H

Hakdar.—
in alienated village entitled to

	Page.		Page.
Hired labour. —		Holder(s). —(continued).	
to be employed on failure of holders to render assistance, s. 97	... 122	of alienated villages to be required to pass agreement to pay village officers, s. 88 n.	...
in cases of surveyed lands		of alienated lands, commission to be issued to agents of, s. 89	...
assessment of cost of, s. 97	"	required to attend at survey of lands, s. 96	...
collection as revenue demand of cost of, s. 97	"	to render assistance in connection with survey operations, s. 96	...
Holder(s). — see <i>Commission holder. Inferior holder. Superior holder.</i>		to be called on to furnish flag-holders, s. 97	...
defined, s. 3 (11)	... 6	failing to render assistance hired labour to be employed, s. 97	...
explained, s. 3 (11) f.	"	cost of hired labour to be assessed on, s. 97	...
of alienated village, existing rights to appoint village officers in cases of, s. 16	... 14	interested to be present at introduction of settlement, s. 103	...
extent of right to alluvial lands belonging to, s. 46	... pp. 44-45	bound to pay charges incurred by survey officer on account of repair of boundary marks, s. 122	... 1
entitled to decrease of assessment, s. 47	... 47	do. to construct or repair boundary marks, s. 122	...
settlement of assessment to be made with, s. 54	... pp. 53-54	of Sanadi Inam lands not required to maintain boundary marks, s. 122 n.	... 1
of alienated lands, not to be held included within definition of occupants, s. 65 n. & 72 n.	... pp. 71, 86	Collector to issue orders for preventing reaping or removal of crop by, s. 142	... pp. 167-1
liable to pay Government dues, s. 79	... 92	extension of provisions of Chapters VIII & IX to alienated villages on application of, s. 216	... 2
of inam number in village		to have same rights and be affected by same responsibilities as occupants, s. 217	... 2
not to be holder of alienated share of village, s. 85 n.	... 102	to be allowed to occupy land up to bank of river, creek, &c., r. 44	... 2
of alienated villages entitled to assistance for recovery of rent, s. 86 n.	... 105		
do. to be superior holders, s. 86 n.	... 106		
do. powers to be conferred by commission on, s. 88	... 116		
of surveyed and unsurveyed villages, procedure to be followed in conferring powers on, s. 88 n.	... 118		

	Page.
Holder(s).—(continued).	
rate of survey fees to be paid by, r. 81	... 310
Holding.— see Alienated holding.	
defined, s. 3 (12)	... 7
occupants to have strips of land covered by trees, deducted from, s. 42	... 42
as defined for purposes of diluvion, s. 47	... 47
of defaulter how to be dealt with, s. 56 a.	... 56
as defined for purposes of alluvion, s. 64	... 70
enhancement in revision settlement not to exceed 100 per cent. in individual, s. 107 f.	... 135
Or after introduction of revision ^d settlement, granting of remissions in case of each, s. 107 f.	... 136
Collector to sell or otherwise dispose of forfeited, s. 57 & 153	... pp. 57, 174
to be declared by Collector to be forfeited when arrears become due, r. 58	... 297
of defaulter to be sold in certain cases if defaulter so desires, r. 59 A.	... 300
disposal of forfeited alienated and service Inam, r. 59	... "
when not sold arrears payable to be remitted, r. 64	... pp. 302-303
Hold land.—	
defined, s. 3 (10)	... 6
Ioni & Matti trees.—	
reservation of, r. 91 n.	... 316

	Page.
Hospital.—	
disposal of trees in, r. 35 n.	... pp. 269-270
House(s).—	
how to be dealt with in cultivated lands in Kanara, s. 56 n.	... 72
exemption from distraint and sale of, s. 156 n.	... 177
written notice of sale of immoveable property to be affixed to, s. 165	... 182
liability of person appropriating for agriculture patches of, r. 111	... 329
Human dwelling.—	
not to be entered into without previous notice, s. 200.	198
Huzar Surveyor.—	
orders regarding appointment of, s. 113 f.	pp. 139-140
I	
Immoveable Property.—	
of defaulter to be sold, s. 150 & 155	... pp. 172, 176
when ordered to be sold Collector to issue proclamation, s. 165	... 182
affixing of written notice of sale of, s. 166	... "
period for which sales not to take place in case of, s. 167	... pp. 182-183
do. allowed for payment of purchase money in case of, s. 174	... 185
Imperial Revenues.—	
royalties on mines and quarries to be credited to, r. 14 f.	... 256

	Page.		Page
Inamdar. — see <i>Service</i>		Inamdar. —(contd.)	
<i>Inamdar.</i>		<i>status quo ante</i> of rayats and,	
not to deal with cases of en-		§. 217 n. ...	209
croachments, s. 61 n. ...	65	required to levy survey	
to exercise power of register-		rates, §. 217 n. ...	212
ing occupants' names,		before introduction of survey	
s. 71 n. ...	78	rates, form of agreement to	
dying intestate, disposal of		be taken from, §. 217 n. ...	214
lands of, s. 72 ...	pp. 79-80	to be full proprietor of teak-	
entitled to accept relinquish-		trees, r. 91 n. ...	315
ment from occupants,		acceptance of title to forest	
s. 74 n. ...	88	in case of, r. 91 n. ...	316
on resumption of inam lands,			
lapse of rights created by,		Inam land. —	
s. 84 n. ...	pp. 99-101	to what extent judi to be	
to collect dues through vil-		believed on, s. 49 f. ...	
lage accountant and to give		existing sanad to be altered	
receipts, s. 85 n. ...	101	when Government waste	
how to give receipts for pay-		land is given in exchange	
ment of dues, s. 85 n.		of, s. 53 n. ...	53
• ...	pp. 101-102	as regards use of Govern-	
to take precaution for secur-		ment water, liability of	
ing payment of land re-		holders of, s. 55 f. ...	54
venue, s. 141 n. ...	167	rights created by Inamdars	
not bound to give prelimi-		lapse on resumption of,	
nary notice to defaulter,		s. 84 n. ...	99
s. 141 n. ...	„	relation between landlord	
recovery of amounts payable		and tenant in cases of re-	
by, s. 187 ...	pp. 189-190	sumed, s. 84 f. ...	pp. 98-99
payment of survey expenses			
by, s. 216 n. ...	pp. 204-205	Inam village. —see <i>Alien-</i>	
to make application for ex-		<i>ated village. Dumala village.</i>	
tension of certain provisions		recovery of dues as superior	
of present Code to inam		holder by sharers in, s. 86 n. ...	106
villages, s. 216 n. ...	206	application by Inamdar for	
to pass agreements to pay re-		extension of certain provi-	
numeration to village offi-		sions of present Code to,	
cers, s. 216 n. ...	207	s. 216 n. ...	206
do. to fur-		fixing of survey rates for,	
nish agricultural statistics,		s. 217 n. ...	212
s. 216 n. ...	„	consent of co-sharer or sub-	
entitled to give out land for		sharer necessary for intro-	
cultivation, s. 74 n. ...	88	duction of survey rates in,	
to accept relinquishments for		s. 217 n. ...	213
lands, s. 74 n. ...	„	no consent of new coming	
reversion of relation to		share-holders necessary when	

	Page.		Page.
Inam village.—(contd.)		Instalment(s).—	
settlement is once introduced in, s. 217 n.	... 218	persons named in certificate liable to pay, s. 185	... 188
Inferior holder(s).—		sanction of Government necessary to make changes in dates of, r. 58 n.	... 299
defined, s. 3 (14)	... 7	continuation of existing dates of, r. 58 n.	... "
superior holder to recover commuted assessment from, s. 50	... 51	assessment of Rs. 4 and under to be made at first, r. 84	... 812
and tenant defined, s. 83 n.	... 98	whole amount of assessment to be paid at once instead of by, r. 84	... "
rent or land revenue to be recovered by superior holder from, s. 86	... 102	with sanction of Commissioner Collector to fix dates of, r. 84	... "
application for assistance to recover rent in cases of several, s. 86 n.	... 110	land revenue to be paid in one or two, r. 86	... 813
to be served with notice on application for assistance to recover rent, s. 87	... 114	village officers to warn land holders of dates of, r. 87	... "
required to pay land revenue, s. 136	... 163		
to be allowed credit for recoveries already made, s. 136	... 164	Instruments.—	
Inquiry.— see Formal inquiry. Summary inquiry.		executed by Government officer and sureties exempt from Stamp duty, r. 2 f.	... 214
appeals not properly drawn up to be rejected without, r. 110	... 328	of exchange of lands exempt from Stamp duty, r. 12 n.	... pp. 253-254
Inspection.—		Intestate occupancy.—	
maps, survey records, &c., to be open to, s. 213	... 202	how to be disposed of, s. 72	... pp. 79-80
of copies not to be granted as a matter of right, r. 14	... 243	whether registered or not to be disposed of by Collector, s. 72 n.	... 80
of boundary marks to be made by karkuns, r. 104 (4)	... 326	general law explained as to disposal of, s. 72 n.	... pp. 81-83
do. when completed karkun to sign certificate, r. 104 (5)	... "	whether registered or not, Collector to take initiative in case of, s. 72 n.	... pp. 85-86
do. Mamlatdar to prepare abstract of register of, r. 105	... pp. 326-327	Introduction of Settlement.—	
do. Commissioner to see whether properly carried out, r. 107	... 327	to be made by survey officer, s. 103	... pp. 129

	Page.
Introduction of Settlement.—(contd.)	
holders or persons interested to be present at, s. 103 ...	129
announcement of assessment to be equivalent to, s. 103. „	„
Collector or Commissioner to be present at, s. 103 n. ...	130
explained, s. 104 n. ...	131
new rates not to have effect in year of, s. 104 n. ...	„
with regard to revised rates, scale of remissions to be given in case of holdings after, s. 107 f. ...	pp. 134-135
arrears to be defrayed from surplus profits of attached land beyond cost of, s. 161 ...	189
in inam villages requires consent of co-sharers and sub-sharers, s. 217 n. ...	213
do. not to require consent of new coming shareholders, s. 217 n. ...	„
when made Superintendent of Survey to furnish Collector with maps, r. 100. ...	321
extent of test inspection during first three years of, r. 105 pp. 325-326	„
Irrigation.—	
assessment fixed by survey officers to be directly on land or on means of, s. 101 pp. 126-127	„
fixing of assessment on land not to operate as a bar to fix assessment on means of, s. 105 ...	pp. 131-132
abatment of assessment on lands taken up for purposes of, r. 12 n. ...	254

Irrigation Act.— see Act (VII of 1879).

	Page.
J	
Jahagir.—	
held on political tenure, cost of surveying, s. 216 n. ...	206
Jat State.—	
application of present Code to, s. 1 n. ...	2
Jirait Numbers.—	
scale of minimum area for, s. 98 f. ...	123
Judgment decree.—	
Government claims to have precedence over all other claims in respect of, s. 137.	„
Judi.—	
on inam lands to what extent to be levied, s. 49 f.	„
Judicial proceeding.—	
under certain sections of Indian Penal Code summary inquiry to be deemed, s. 196 ...	9

K

Kabulayat.— see Agreement.	
to be taken by Inamdar for new land, s. 74 n. ...	„
from lessee accepting lease, r. 31 f. ...	„
Kaira District.—	
extension to Panch Mahals of enactments applicable to, s. 1 n. ...	„
Karkun.—	
test inspection of boundary	„

	Page.
Malkarni. —(continued).	
marks to be made in presence of village officers, r. 104	325
in case of inspection of boundary marks division lists to be supplied to general duty, r. 104	326
do. one section to be examined each year by general duty, r. 104	"
do. form of certificate to be signed by, r. 104	"
to sign certificate after completion of inspection of boundary marks, r. 104	"
Malkarni. —	
effect of transfer of, s. 70 n.	
req. pp. 77-78	
Malkarni. —	
Of villages to which Khoti duty has been applied to be superior holder, s. 162 f.	179
Malkarni Act. — see <i>Act (I of 1880)</i> .	
Malkarni Estate. — see <i>Estates</i> .	
Malkarni. —	
special rules for grant of occupancy to, r. 20 n.	258
Malkarni. — see <i>Village</i>	
Malkarni. — see <i>Village</i>	
hereditary, not revenue officer, s. 8 (1) n.	3
in alienated villages entitled to assistance in recovering dues, s. 86 n.	103
to be permitted to take fees for making copies of maps and plans, r. 9 f.	239
hereditary, not to furnish security, r. 2 f.	245

L

	Page.
Land(s). — see <i>A alienated land</i> .	
<i>Waste land. Landed property.</i>	
defined, s. 8 (4)	4
revenue officer not to hold, s. 31 n.	24
stipendiary village accountant to hold only hereditary, s. 81 n.	"
sons or relatives of Government servants not to hold or acquire, s. 31 n.	30
not being property of individuals belongs to Government, s. 37	pp. 36-37
to be set apart for special or public purposes, s. 38	38
concession of Government rights to trees in unalienated, s. 40	39
rules regarding cutting of trees in service, s. 41 n.	42
not specially exempt liable to pay land revenue, s. 45	44
liable to pay land revenue in certain cases, s. 46	pp. 44-45
held free liable to assessment if purpose is changed, s. 48	pp. 47-48
prohibited to certain purposes, appropriation of, s. 48	48
assessed before passing of Act I of 1865, appropriation of, s. 48 n.	"
assessed, under present Code when appropriated, not liable to altered assessment, s. 48 n.	49
not settled under present Code when appropriated, not liable to altered assessment but only to fine, s. 48 n.	pp. 49-50

Page.

Land(s).—(contd.)

indirectly taxed to State, assessment of, s. 49 ...	51
liable to 'occasional' assessment, dealing with, s. 49 ...	"
distribution of assessment of inadequately assessed, s. 51 ...	"
not under operation of section 95 by whom to be assessed, s. 52 ...	52
land revenue to be paramount charge on, s. 56 ...	55
to be taken up after obtaining permission of Mamlatdar or Mahalkari, s. 60 ...	59
penalty for unauthorized occupation of, s. 61 pp. 59-60	
appropriated for agricultural purposes to which use to be put to, s. 65 ... pp. 70-71	
not to be appropriated for purposes other than agriculture without Collector's permission, s. 65 ...	71
appropriated to purposes other than agriculture, fine in addition to special assessment to be levied on, s. 65 ...	"
appropriated for building purposes; liability of, s. 65 n. in Kanara District, dealing with 'houses' in cultivated, s. 65 n. ...	72
application for appropriation of, s. 65 n. ... pp. 72-73	
subject to Veta or any other tax to be relinquished, s. 51 & 76 ... pp. 52; 75-76	
conditional rights to use and occupation of, s. 68 ...	76
belonging to Inamdars dying intestate to be disposed of, s. 72 ...	80
to be given for cultivation by Inamdar, s. 74 ...	88

Land(s).—(contd.)

Inamdar's rights to take kabulayats for new, s. 74.
relinquished by minor or on his behalf assessment to be remitted on, s. 74 n. ... pp. {
paying lump assessment not to be relinquished, s. 75 ..
subject to special cess, &c., to be relinquished, s. 76 pp. {
right of way to relinquished, s. 77 ...
revenue survey to extend to any, s. 95 ...
not under operation of revenue survey to be assessed, s. 95 f. ...
assessment of cost of hired labour on surveyed, s. 97.
to be assessed for land revenue by survey officers, s. 100 ...
partially or wholly exempt from land revenue to be assessed by survey officer, s. 100 ...
do. do. to be divided into survey numbers, s. 100 ...
under Bandharas, rules regarding fixing water assessment on, s. 101 f. ...
irrigated from wells, how to be assessed, s. 101 ... pp. 127-
excess assessment in revision not to be levied on relinquished, s. 104 ...
though assessed under s. 102 to be liable to any other cess, &c., s. 105 ... pp. 131-
in revising assessments regard to be had to value of, s. 107 & f. ... pp. 132-
included as Pot Kharab and left unassessed at original

Land(s).—(continued)	Page.	Land(s).—(contd.)	Page.
survey not to be assessed at revision, <i>s.</i> 107 <i>f.</i> ...	135	to be disposed of by Collector, <i>r.</i> 7 ...	248
appropriated to non-agricultural purposes to be divided into separate survey numbers, <i>s.</i> 116 ...	144	to be transferred to Railway Companies or State Railways, <i>r.</i> 8 ...	250
charges in connection with construction or repair of boundary marks to be assessed on, <i>s.</i> 123 ...	149	not to be alienated rent free without previous sanction of Government of India, <i>r.</i> 9 ...	"
occupied by Railways how to be demarcated, <i>s.</i> 122 <i>n.</i> ...	153	to be granted rent free by Government for building, &c., <i>r.</i> 9 ...	"
exempt from land revenue in towns and cities brought under operation of Act IV of 1868, <i>s.</i> 128 ...	160	redemption of tax on, <i>s.</i> 9 <i>f.</i> ...	"
in towns and cities recognized as exempt from land revenue, <i>s.</i> 128 ...	"	sanads to be issued in case of rent free, <i>r.</i> 11 & 11 A ...	251
do. held exempt for 5 years before passing of certain Acts, <i>s.</i> 128 ...	"	to be granted free to Shet-sandis, <i>r.</i> 11 A ...	"
do. do. held exempt under deed of grant, <i>s.</i> 128 ...	"	to be appropriated for schools, roads, &c., <i>r.</i> 12 <i>n.</i> ...	252
survey fees to be charged in certain cases for survey of, <i>r.</i> 32 ...	pp. 161-162	do. for public purposes, <i>r.</i> 12 <i>n.</i> ...	"
proportion of crop for revenue <i>s.</i> 138 ...	pp. 165-166	required for road purposes, demarcation of, <i>r.</i> 12 <i>n.</i> ...	253
attached for revenue to revert to Government, <i>s.</i> 160 ...	179	cut off by roads how to be disposed of, <i>r.</i> 12 <i>n.</i> ...	"
Collector to receive rent of attached, <i>s.</i> 160 ...	"	within cantonment limits, <i>r.</i> 12 <i>n.</i> ...	255
persons named in certificate of sale to pay instalment on, <i>r.</i> 185 ...	188	forming part of military encamping ground, <i>r.</i> 12 <i>n.</i> ...	"
powers of revenue officers to be exercised for purposes of assessment upon, <i>s.</i> 200 ...	198	otherwise held for military purposes not to be entered upon, &c., <i>r.</i> 12 <i>n.</i> ...	"
Collector to issue notice for ejecting person wrongfully in possession of, <i>s.</i> 202 ...	199	reservation of mines and mineral products in all alienations of, <i>r.</i> 14 ...	256
rights and responsibilities of holders of, <i>s.</i> 217 ...	209	to which survey settlement has been extended, grant of occupancies of, <i>r.</i> 15 ...	"

	Page.
Land(s).—(contd.)	
Mamlatdar to grant permission to enter upon, r. 34 ...	267
in certain cities, occupancies of, r. 34 A ...	"
do. do. , proprietary rights in, r. 34 C ...	268
for building sites, occupancies of, r. 34 E & F ...	"
to be granted for agricultural purposes in certain cities, r. 34 G ...	"
scale of fees to be levied for removal of earth, &c., from Government, r. 38 n. pp.271-272	
municipality not entitled to levy fees for quarrying in assessed, r. 38 n. ...	273
assigned for special purposes, r. 43 ...	276
do. for cattle to stand, r. 43 ...	"
permission to be given for occupation of r. 44 ...	277
rights of occupants of, r. 44 f. ...	"
included as unarable to be cultivated, r. 48 ... pp. 278-279	
not to be used by occupant so as to cause destruction, r. 49 ...	280
occupant not to allow grass to grow upon, r. 52 ...	281
to be classed according to productive qualities for purposes of assessment, r. 55 (6) ... pp. 290-291	
limit of fine in cases of unauthorized occupation of, r. 65 ...	303
division of villages for purpose of determining fine on appropriation of, r. 66 ...	"
Collector to grant permission in certain cities to appropriate, r. 68 A ...	305
occupancy liable to forfeiture	

	Page.
Land(s).—(continued).	
on unauthorized appropriation of, r. 73 ...	306
liability of person appropriating without permission, r. 73 ...	"
Collector to remove any moveable or immoveable standing on, r. 73 ...	"
endorsement on agreements to enter upon, r. 75 n. ...	"
agreements to enter upon, r. 75	
at disposal of Forest Department sale proceeds of trees thereon to be credited to that Department, r. 93 n. ...	317
sale proceeds of trees to be credited to Revenue Department in case of other, s. 93 n. ...	"
trees to be disposed of along with occupancy of, r. 96 ...	318
trees to vest in applicant for occupancy of, r. 97 ...	"
liability of person unlawfully injuring for cultivation, r. 111 ...	329
suffered to be overgrown with prickly pears, treatment of, r. 111 ...	330

Land Acquisition Act.—
see Act (X of 1870).

Landholder.—	
defined, s. 3 (11) ...	
to be required to construct boundary marks, s. 122 ...	14
do. responsible for removal of superfluous boundary marks, s. 122 n. ...	15
do. do. for charges incurred in removal of superfluous boundary marks, s. 122 n. ...	"

	Page.
Landholder. —(continued).	
to be responsible for maintenance and good repair of boundary marks, s. 123 ...	pp. 153-154
as regards dates of instalments, village officers to warn, r. 87 ...	313
do. non-payments of instalment, village officer to report names of, r. 88 ...	"
Director to issue notification occupying repair of boundary marks by, r. 103 ...	325
exempt repair to be charged to, r. 103 ...	"
Landlord. — see <i>Tenant</i> .	
defined, s. 3 (15) ...	7
relation between tenant and, s. 83 f. ...	pp. 95-96
existing rights to enhance rent, &c., not affected in case of, s. 83 ...	97
to give notice of termination of tenancy, s. 84 ...	98
effect of non-payment of rent by tenant to, s. 84 f. ...	99
in cases of recovery of land revenue relation of tenant and inferior holder to, s. 86 n. ...	105
of dead property. —	
effect of keeping register of, s. 31 n. ...	28
held by wives of Government servants to be treated as if held by themselves, s. 31 n. ...	30
held jointly how to be shown in register, s. 31 n. ...	"
and register. —	
to be open to inspection, s. 213 ...	202

	Page.
Land register. —(continued).	
on payment of fees, grant of certified extracts or copies of, s. 213 ...	202
Governor in Council to frame rules for taking fees for inspection of, s. 213 ...	"
do. for giving extracts or copies of, s. 213 ...	"
Land revenue. — see <i>Arrears of land revenue. Rent.</i>	
Commissioner to be chief controlling authority in matters of, s. 4 ...	8
all lands not specially exempt liable to pay, s. 45 ...	44
in certain cases, all lands under whatever title held to pay, s. 45 ...	"
strict proof to be furnished for support of right to exemption from, s. 45 f. ...	"
in cases of diluvion, alluvial lands liable to pay assessment of, s. 47 ...	47
what description of lands to be charged with, s. 48. ...	"
to be paramount charge on land, s. 56 ...	55
Collector to levy arrears of, s. 56 ...	"
occupancy liable to forfeiture on failure to pay, s. 56... pp. 55-56	56
receipts to be granted by revenue officers for payment of, s. 58 ...	58
paid in kind to be entered in receipt books, s. 58 n. ...	"
penalty for failure in granting receipts for, s. 59 ...	59
application for assistance to recover, s. 86 ...	102
of past years, assistance for recovery of, s. 86, n. ...	103

Page.

Land revenue.—(contd.)

relation of tenant and inferior holders to landlord in cases of recovery of, <i>s.</i> 86 <i>n.</i>	105
all lands to be assessed by survey officer for, <i>s.</i> 100	125
survey officer to prepare certain records, &c., at time of making settlement of, <i>s.</i> 108.	136
partition of estate paying to Government, <i>s.</i> 113	139
occupancy price leviable in addition to, <i>s.</i> 130	161
registered occupant to be primarily responsible for, <i>s.</i> 136	163
superior holder to be primarily responsible for, <i>s.</i> 136.	"
responsibility of superior holder or his co-sharer as to payment of, <i>s.</i> 136	"
in cases in which there are more than one superior holder, responsibility to pay, <i>s.</i> 136 <i>n.</i>	164
established practice to be maintained in case of recovery of, <i>s.</i> 136 <i>n.</i>	165
for current year if not discharged to be recovered from crop, <i>s.</i> 138... <i>pp.</i> 165-166	166
to be levied at any time during revenue year, <i>s.</i> 139	166
to be paid on dates fixed, when precautionary measures not deemed necessary, <i>s.</i> 139	"
Collector to enforce lien of Government to secure payment of, <i>s.</i> 141	"
precautionary measures for securing payment of, <i>s.</i> 141.	<i>pp.</i> 166-167
Inamdar's powers to take precaution for securing payment of, <i>s.</i> 141 <i>n.</i>	167

Land revenue.—(contd.)

Collector to levy fine not exceeding double amount of, <i>s.</i> 142	..
relinquishment of precautionary measures on furnishing security for payment of, <i>s.</i> 14	..
Government to determine dates of and instalments for payment of, <i>s.</i> 146... <i>pp.</i> 16	..
maximum amount of penalty for default in payment of, <i>s.</i> 148 <i>n.</i>	..
process for recovery of arrears of, <i>s.</i> 150	..
preference given to Government claims applicable to demands for current year in case of, <i>s.</i> 151	..
levy of all sums due on account of, <i>s.</i> 187... <i>pp.</i> 18	..
amounts payable by Inamdar to watandars leviable as, <i>s.</i> 187 <i>n.</i>	..
Governor in Council to frame rules regulating system and manner of assessing land to, <i>s.</i> 214 (<i>d.</i>)	..
not to be assigned to Municipality, <i>r.</i> 12 <i>n.</i>	..
revenue realised from quarries in forest lands when to be credited to, <i>r.</i> 38 <i>n.</i>	..
rules regarding suspension & remission of, <i>r.</i> 58	..
to be paid in one or two instalments, <i>r.</i> 86	..

Land Revenue Code.—

short title of, <i>s.</i> 1	..
local extent of, <i>s.</i> 1	..
when to be in force, <i>s.</i> 1	..
repeal of enactments by, <i>s.</i> 2	..
Government claims to be preferred to other claims for recovery of money under, <i>s.</i> 137	..

	Page.		Page.
Land Revenue Code.—(contd.)		Lithographed document.—	
property exempt from dis-		no copies to be granted of,	
traint and sale under Civil		r. 5	pp. 237-238
Procedure Code to be ex-			
empt under, s. 156 & n.	pp. 176-177	Liability(ies)—	
Language.—		of principals and sureties	
of district to be determined		under security bonds, s. 23 n.	17
by Governor in Council,		of sureties, extent of, s. 27 n.	pp. 20-21
s. 201	... 199	under old bonds when new	
Lawni Faisal Patrak.—		bonds are taken, s. 27 n.	... 21
settlement register to mean,		of surety not affected by death	
s. 108 f.	... 136	or change of appointment	
to be prepared by Survey De-		of principal, s. 29	... 22
partment, s. 108 f.	... "	of heirs of deceased officers,	
form of, s. 108 f.	... "	s. 29	... "
		how surety may withdraw	
Lease.—		from further, s. 30	... "
relinquishment not to affect		of officers to criminal prose-	
validity of, s. 77	... 92	cution not affected by pre-	
creating perpetual tenancy,		sent Code, s. 36	... 36
s. 83 f.	... 96	to payment of land revenue	
of annual tenancy, special		in case of alluvial lands,	
terms in, s. 84 n.	... 99	s. 46	... pp. 44-45
on special terms, form of,		in case of land appropriated	
r. 31 f.	... 264	for building purposes, s. 65 n.	72
do. exempt from stamp		do. of appropriation with-	
duty, r. 31 f.	... "	out permission of Collector,	
Kabulayat from lessee accept-		extent of, s. 66	... 73
ing, r. 31 f.	... "	and rights of registered and	
rights of lessee to be regulat-		unregistered occupants de-	
ed by conditions specified		fined, s. 74 n.	... pp. 89-90
in, r. 31 n.	... 265	of holders and occupants to	
in case of alluvial lands,		pay Government dues, s. 79	pp. 92-93
r. 31 n.	... "	of tenant repudiating title,	
for special occupancies, r. 31.	... "	s. 83 f.	... 96
duplicate of, r. 31	... "	incurred by default of instal-	
		ment of land revenue,	
Lessee—		s. 148.	... 170
accepting lease, Kabulayat		lands attached for arrears of	
from, r. 31 f.	... 261	revenue to revert to Go-	
in case of land leased or		vernment unaffected by,	
granted before passing of		s. 160	... 179
present Code, rights of,		of purchaser to pay Local	
r. 31 n.	... 265	Fund cess, s. 185 n.	... 188

	Page.		Page.
Limit(s).—		Local Fund roads.—	
up to which enhancement in revision settlements are al- lowed, s. 107 f. ...	135	appropriation of lands to, r. 12 n. ...	252
'Patasthal rates to be exclud- ed in calculating 33 per cent, s. 107 f. ...	"	Local Funds.—	
sites of town, city or village how to be fixed, s. 126. pp. 156-159	pp. 156-159	right to road side trees plant- ed at expense of, s. 42 ...	42
within which appeals to be submitted on orders from Collector or Superintendent of Survey, s. 205 ...	200	fees on quarries, stones, &c., to be assigned to, r. 38 f....	271
do. do. computing periods of, s. 205 ...	"	revenue realised from quar- ries to be credited to, r. 38 n.	272
orders relating to transfer of lands within cantonment, r. 12 n. ...	255	Government rights not affect- ed by permission for appro- priating fees given to, r. 38 n.	274
village officers to report to Mamlatdars excess of area by alluvion beyond prescrib- ed, r. 46 ...	277	and municipalities to remove sand, &c., r. 41 ...	275
sugarcane cultivation prohib- ited within certain, r. 50 A.	280	Local Funds Act.— see <i>Act (III of 1869).</i>	
of fine in cases of appropria- tion and unauthorized occu- pation of land, r. 65 ...	303	Lunatics.—	
do. on appropriation with- out permission, r. 69 ...	305	what persons are competent to pass agreement on behalf of, s. 74 n. ...	89
Local Board.—		M.	
free grant of lands with Go- vernment sanction to be made to, r. 12 n. ...	254	Magistrate.—	
Local Fund Cess.—		to inquire into and punish persons breaking rules, s. 215.	204
liability of purchaser to pay, s. 185 n. ...	188	breaches of general rules to be punishable before, r. 111. pp. 328-329	331
chargeable on assessment re- deemed, r. 10 n. ...	250	defined, r. 111 n. ...	331
Local Fund Committee.—		recovery of fines inflicted by, r. 111 n. ...	"
free grants of land not to be made to, r. 12 ...	252	offences triable by First Class, r. 111 n. ...	"
		not to take action under cer- tain provisions of present Code in alienated villages, r. 111 n. pp. 331-332	332
		Mahal(s).—	
		talukas to comprise, s. 7 ...	10
		portion of taluka in charge of Mahalkari to be called, s. 14 ...	13

	Page.		Page.
Mahalkari.—		Mahalkari.—(continued).	
to be appointed by Collector, s. 13 ...	12	amount of security to be furnished by, r. 2 ...	244
to be subordinate to either Mamlatdar, Assistant or Deputy Collector or Collector, s. 13 ...	"	to be delegated with power to confirm sale of building sites, r. 24 ...	261
to depute subordinates to perform certain duties, s. 13.	13	to identify persons signing agreements, r. 32 ...	266
portion of taluka to be called Mahal when in charge of, s. 14	"	to ascertain changes caused by alluvion and diluvion, r. 45 ...	277
in case of temporary vacancy, s. 15 ...	"	written notice of relinquishment of occupancy to be given to, r. 74 ...	307
to grant permission to take up unoccupied lands, s. 60.	59	to be responsible for ascertaining identity, r. 76 ...	308
notice of relinquishment of occupancy to be given to, s. 74 ...	87	notice to be sent to records of, r. 77 ...	"
to receive and dispose of applications for assistance to recover rent, s. 86 ...	106	villages; officers to report names of landholders delaying to pay instalments to, r. 88 ...	313
in case of assistance to recover rent, appeals to be made on order of, s. 86 n. ...	107	to prepare general abstract of boundary mark inspection register, r. 105. ...pp. 126-127	
to be furnished after introduction of rates with map and register, s. 108. ...pp. 136-137		to examine boundary marks of some numbers in several villages, r. 106 ...	327
to punish persons convicted of injuring boundary marks, s. 125 ...	155	Mahomedan.—	
to issue notice of demand, s. 152 ...	173	dying intestate, disposal of occupancy of, s. 72. ...pp. 79-80	
Collector to delegate power of distraint to, s. 154 n. pp. 175-176		Mamlatdar.—	
written notice of sale of immoveable property to be affixed in office of, s. 165... pp. 181-182		to be entrusted with revenue administration of taluka, s. 12 ...	12
to be delegated with powers to enquire into claims to attached moveable property, s. 186 n. ...	189	to be appointed by Commissioner, s. 12 ...	"
to call for and examine proceedings of subordinate officers, s. 211 ...	201	duties and powers of, s. 12 ...	"
		Mahalkari to be subordinate to, s. 13 ...	"
		to depute subordinates to perform certain duties, s. 14 ...	13
		in case of temporary vacancy, s. 15 ...	"

	Page.
Mamlatdar.—(contd.)	
empowered to fine village officers, s. 32 ...	83
Government sanction is necessary in fining, &c., revenue officers drawing more than salary of rupees 250 except, s. 32 ...	"
to grant permission to take up unoccupied land, s. 60...	59
to make enquiries as to whose name should be registered, s. 71 ...	78
notice of relinquishment of occupancy to be given to, s. 74 ...	87
to receive and dispose of applications for assistance to recover rent, s. 86 n. ...	106
record of minimum area of survey numbers to be kept in office of, s. 98 ...	124
to be furnished with map and register, s. 108 f. ...pp. 136-137	
not to be allowed permanent advances to meet charges regarding repairs to boundary marks, s. 122 ...	153
to punish persons convicted of injuring, &c., boundary marks, s. 125 ...	155
to issue notice of demand, s. 152 ...	173
Collector to delegate powers of distraint to, s. 154 pp. 175-176	
written notice of sale of immoveable property to be affixed in office of, s. 166 ...	182
to be delegated with powers to enquire into claims to attached moveable property, s. 186 n. ...	189
persons to be summoned to give evidence by first karkun to, s. 189 ...	192

	Page.
Mamlatdar.—(continued).	
to call for and examine proceedings of subordinate officer, s. 211 ...	201
amount of security to be furnished by, r. 2 ...	244
do. do. by first karkun to, r. 2 ...	"
application for certified copies of village documents to be made to, r. 4 ...	237
power of confirming sale of occupancy to be delegated to, r. 16 ...	257
do. do. of building sites to be delegated to, r. 24.	261
to identify persons signing agreement, r. 32 ...	266
not to give permission for occupation in certain cities, r. 34. ...	269
pottery to remove earth, &c., for <i>bona fide</i> purposes of trade with sanction of, r. 39.	274
to grant permission for removal of earth, &c., on refusal of police patel, r. 39. "	"
to ascertain changes caused by alluvion and diluvion, r. 45 ...	277
in cases of alluvion and diluvion village officers to report excess in area to, r. 46 pp. 277-278	
excess of alluvion to be dealt with by, r. 46 ...	278
written notice of relinquishment of occupancy to be given to, r. 74 ...	307
to be responsible for ascertaining identity of person signing notices, &c., r. 76...	308
notices to be sent to records of, r. 77 ...	"
to accept relinquishment, s. 78 ...	"

	Page.		Page.
Mamlatdar.—(contd.)		Measurement.—(contd.)	
village officers to report names of landholders delaying to pay instalments to, r. 88	... 313	power of revenue officers to enter upon any land for purposes of, s. 200	... 198
test inspection of boundary marks to be made by, r. 104	325	Survey Commissioner to require payment [of cost of, r. 55 (1) (b)]	...pp. 284-285
division of villages into sections to be made by, r. 105	pp. 326-327	do. to prescribe forms for recording, r. 55 (3)	pp. 288-289
to prepare general abstract of boundary mark inspection register, r. 105	... 327	Measurer.—	
to examine boundary marks of numbers in several villages, r. 106	.... "	entrusted with partition entitled to Bhatta, s. 113 n....	141
Map.—		Mharki Inam land.—	
to be furnished after introduction of rates to certain officers, s. 108 f.	... 136	appropriation of, s. 48 n. . .	5
do. supplied gratis and on payment, s. 108 f....pp. 136-187		Military Cantonment.—	
do. open to inspection, s. 213	202	fine to be levied by Collector for appropriation of land in vicinity of, r. 68	... 304
on payment of fee, grant of certified extract or copy of, s. 213	.... "	Military officer.—see Officer.	
Governor in Council to frame rules for giving copies or extracts of, s. 213	.... "	prohibited from acquiring or holding land, s. 31 n.	... 25
right of inspection of, r. 1...	235	Military purposes.—	
Survey Superintendent to furnish Collector with, r. 100.	... pp. 321-322	orders relating to lands held for, r. 12 n.	... 255
Mark.—see Boundary mark.		Mineral products.—	
Materials.—		reservation of, r. 14	... 256
of houses to be exempt from distraint and sale, s. 156 f...	176	Mines.—	
Matti trees.—		reservation of Government rights to, s. 69	...pp. 76-77
reservation of Honi and, r. 91 n.	... 316	in all future alienations of lands, reservation of Government rights to, r. 14	... 256
Measurement.—		imperial revenue to be credited with royalties on, r. 14f.	..
holders of lands to furnish flagholders in connection with, s. 97	... 122	Minimum.—	
10		of area of survey number to be fixed by Survey Commissioner, s. 98	... 123

	Page.		Page.
Minimum.—(contd.)		Moveable property.—(contd.)	
of area of survey number to be kept in Mamlatdar's office, s. 98	... 124	distrain and sale of, s. 154.	174
fixed not to be affected in certain cases, s. 98	... pp. 123-124	when ordered to be sold, Collector to issue proclamation, s. 165	... pp. 181-182
area, scale of, s. 98 f.	pp. 123-124	period to be allowed after notice for sale of, s. 167	... 182
do. not to apply to Pardi numbers, s. 98 n.	... 124	fixing of amount of purchase money of, s. 171 & 172	... 184
amount of purchase money for occupancies to be fixed by Collector, r. 34 H	... 269	Collector to dispose of claims to attached, s. 186	... 189
Minor.—		delegation of powers as to inquiry into claims to attached, s. 186 n.	... "
what persons are competent to relinquish or to pass agreement on behalf of, s. 74 n.	... pp. 88-89	standing on land to be removed by Collector, r. 73...	306
absolute relinquishment of occupancies by, s. 74 n.	... 89	Municipal Act.— see <i>Act (VI of 1873).</i>	
remission of assessment on lands relinquished by or on behalf of, s. 74 n.	... "	Municipality.—	
Moneys.—		without Government sanction, free grants not to be made to, r. 12 n.	... 252
payable on lands to be leviable as land revenue, s. 187.	190	prohibition on alienation of land revenue to, s. 12 n.	... 94
do. under Local Funds to be paid at specified places, r. 82 n.	... 311	land acquired under Land Acquisition Act for use of, r. 12 n.	... 9
Mortgage.—		placing of Government buildings at disposal of, r. 12 n.	24
preference to be given to Government claims over all other claims in respect of, s. 137	... 165	public streets within municipal limits to vest in, r. 13...	25
Mortgagee.—		vacant building sites in municipal limits vest in Government unless transferred to, r. 13	... pp. 255-3
interested in occupancy to pay Government dues, s. 80	... 93	Collector to dispose of questions of rights between Government and, r. 13	... 25
in possession to be superior holder, s. 86 n.	... 106	not entitled to levy fees for quarrying in assessed lands, r. 38 n.	... 27
Moveable property.—		to remove with Collector's permission and, &c., r. 41.	257
of defaulter to be sold, s. 150 (c)	... 172		

	Page..		Page.
Municipality.—(contd.)		Notice(s).—	
power to grant permission to remove sand, &c., to be given to, r. 41 n. ...	275	to be given in writing by Collector for removal of crops, buildings, &c., s. 61. ...	60
Municipal limits.—		in writing of relinquishment of occupancy to be given to Mamlatdar or Mahalkari, s. 74 ...	87
who is to be invested with rights to beds of tanks within, s. 37 n. ...	37	of relinquishment on behalf of minors and lunatics, s. 74 n. ... pp. 88-89	
rights to public streets within, s. 37 n. ...	"	do. registration of, s. 74 n. & f. ...	89
encroachments on beds of tanks within, s. 61 n. ...	63	of termination of tenancy, s. 84 ...	98
vesting in Municipality of public streets within, r. 13. ...	255	tenant not to be evicted without, s. 84 f. ... pp. 98-99	
do. in Government of vacant building sites within, r. 13 pp. 255-256		to be served on inferior holders, s. 87 ...	114
proceeds of sand, &c., within r. 38 n. ...	271	for suitable service in survey operations to be served on landholders and taluka or village officers, s. 96 ...	122
N		of introduction of survey settlement to be given at reasonable time, s. 103 ...	129
Nallas.—		of preventing reaping of crops s. 141 & f. ... pp. 166-167	
beds of, not being property of individuals, belong to Government, s. 37 ... pp. 36-37		do. removal of crops, s. 141 & f. ... pp. 166-167	
right to trees on banks; of, s. 41 ...	40	Collector to remit fee of, s. 152 ...	173
permission to occupy to be given to holders of land on banks of, r. 44 ...	277	in writing of sale of immovable property to be affixed in chavri, s. 166 ...	182
Jarvadari and Bhagdari Tenures Act.—		of sale to be published by Collector in any manner, s. 166 ...	"
see Act (V of 1862).		disposal of moveable property by Collector after, s. 186 ...	189
Native Chiefs.—		how to be served, s. 191 ...	193
required to accept survey rates, s. 217 n. ...	212	not to be void for error, s. 192 ...	"
Native Civil Servants.—		of seven days to be given before entering human dwelling, s. 200 ...	198
orders prohibiting land holding, &c., apply to, s. 31 n. ... pp. 25-26			
Nazaranas.—			
leviable as land revenue, s. 187 ... pp. 189-190			

	Page.
Notice(s).—(contd.)	
of sale, form of, r. 42 ...	276
in writing of relinquishment of occupancy to be given to Mamlatdar, r. 74 ...	307
to be endorsed by witnesses, r. 76 ...	308
to be kept in village accountant's records, r. 77 ...	"
supply of printed forms of, r. 78 f. ...	"
to be prepared by village accountant, r. 78 ...	pp. 308-309
Notice of demand.—	
defaulter to be served with written, s. 150 ...	172
to be issued when arrear accrues, s. 152 n. ...	173
Commissioner to frame rules for issue of, s. 152 f. ...	"
to be issued by Mamlatdar or Mahalkari, s. 152 f. ...	"
cost of issuing, s. 152 f. ...	"
rules regarding, s. 152 f. ...	"
to be issued by Collector in cases of eviction, s. 202 ...	199
Collector to depute subordinates to remove person refusing to obey, s. 202 ...	"
form of, r. 87 ...	313
Notification.—	
published under repealed enactments to be deemed as published under present Code, s. 2 ...	3
determining period of settlement to be published in Government Gazette, s. 102 n. ...	123
of guarantee, imperative publication of, s. 102 f. & n. ...	"
do. form of, s. 102 f. ...	"
occupants to represent improvement in lands after publication of formal, s. 107 f. ...	134

	Page.
Notification.—(contd.)	
showing groups of villages, &c., to be issued by Superintendent of Survey, s. 107 f. ...	134
to be issued by survey officers to holders of survey numbers to construct or repair boundary marks, s. 122 ...	149
of survey settlement, form of, r. 89 ...	pp. 313-314
to be issued by Collector requiring landholders to repair boundary marks, r. 103. ...	325

O

Collector, r. ...	72
Occupancy.—	
Collector, r. ...	261
defined, s. 11 Act	266
failure in 1873, for revenue	266
for revenue	266
s. 56 all	269
sale not n Govt	269
ed, s. 56 grants n	269
of defaulte r. 12 n.	269
with, s. 56, on alienation of lands to be	269
per cultivated under	269
of alluvial Act for	269
posed of t	269
in case of	269
occupants	269
right of, s. 62	269
how to be relinq	269
explained, s. 74	269
payment of Govt	269
to be made by	269
interested in, s.	269
remedies agai	269
of, s. 80 & 81	269
payment in	269
assessment	269
in resp	269
is du	269
Col	269
ated, s. 1	269

	Page.		Page.
Occupancy.—(cont.)		Occupancy.—(cont.)	
Collector to put purchaser in possession of, s. 181. pp. 186-187		of lands for agricultural purposes, r. 34 G	... 268
disposal of sale proceeds of, s. 183 & n. ... pp. 187-188		to be sold in certain cities, r. 34 H & 34 I	... 269
grant of, r. 15	... 256	to be separately measured, &c., r. 55	... pp. 262-283
of unoccupied survey number to be granted by Collector, r. 16	... pp. 256-257	appropriation of land without permission entails forfeiture, r. 73	... 306
do. to be put to public auction by Collector, r. 16	... 257	of unoccupied numbers to be granted by Collector, r. 94, 318	
Law. Collector to confirm sale of, settle, 16	...	of jungle numbers to be granted by Collector, r. 95.	"
s. 10. latdar to be delegated to be empowered to confirm sale department, in G.	...	trees to be disposed of along with, r. 96	"
form of, s. 11. building is to be an-	...	trees on lands to be disposed of by applicant for, r. 97	"
ease.—discontinued, &c. not as- relinquished of rates. Depart- valued, s. 108 f. by Col- lector supplied gratis	...	Occupancy Price.—	
payment, s. 108 g. free or to. open to lot being by Collect- or individuals, both	... 258	Collector to require payment of, s. 62	... 69
Government, s. 37. grant of, right to trees	...	to include price of trees, s. 62	...
s. 41. in beds of rivers to part to be sold by Collector, r. 22.	... 260	to be recovered as arrears of land revenue, s. 62	...
of building sites, disposal of, s. 126 n. & r. 23 & 25. pp. 159, 260-261		of alluvial lands, s. 63	...
do. in new vil- lage sites to be free of as- sessment, r. 27	... 263	to be paid in addition to land revenue, s. 130	... 161
of land of special character, r. 29	... 264	Occupancy Right.—	
upset price to be placed by Collector on, r. 30	...	to be paid for and to be liable to certain conditions, s. 62.	69
to be granted on special terms, r. 31	... pp. 264-265	to alluvial lands, s. 63	"
of lands in certain cities, r. 39 A	... 267	of waste land, conditions of sale of, s. 62 f. & app. III	pp. 69, 223
of lands in certain cities to be disposed of, r. 34 D	... 268	Occupant(s).— see <i>Co-occu- pant. Registered Occupant.</i>	
		defined, s. 3 (16)	... 7
		do. for purposes of Court Fees Act, s. 3 (16) f.	...
		Government rights to trees in alienated land to be con- ceded to, s. 40	... 39

	Page.
Occupant(s).—(contd.)	
Government rights to reserved trees not to be conceded to, s. 40 ...	40
not to cut road-side trees without Collector's permission, s. 42 ...	42
usufruct of road-side trees to vest in, s. 42 ...	"
to have strip of land covered by trees deducted from holding, s. 42 ...	pp. 42-43
failure in payment of land revenue by, s. 56 n. ...	56
uses to which agricultural land to be put by, s. 65 ...	70
to apply for Collector's permission to appropriate land to purposes other than agricultural, s. 65 ...	71
not to include holders of alienated lands, s. 65 n. ...	"
to remove earth, stone, &c., from land, s. 65 n. ...	"
appropriating land without Collector's permission liable to summary eviction, s. 66. and registered occupant when synonymous, s. 56 n. ...	74
to have rights to use of occupation of land, s. 68 ...	76
Inamdar to exercise power of registering names of, s. 71. persons in occupation when to be recognized as, s. 72 n. pp. 80-81	78
Inamdar's right to accept relinquishment from, s. 74 n. rights and liabilities of registered and non-registered, s. 74 n. ...	88
liable to pay dues, s. 79 pp. 92-93	89
in certain cases persons not recognized by Collector as, s. 79 ...	93

	Page.
Occupant(s).—(contd.)	
of unalienated lands to be superior holders, s. 86 n....	106
to give opportunities to represent improvements, &c., on lands, s. 107 f. pp. 133-134	
improvements effected at cost of, s. 107 f. ...	pp. 133-134
in certain cases to appeal to Superintendent, s. 107 f....	134
to bring to notice of survey officers certain facts in fixing assessment, s. 107 f. ...	"
in alienated villages rights and responsibilities of, s. 217 ...	209
applying for permission to appropriate land for salt manufacture to enter into special agreement, r. 7 ...	248
not required to get permission to gather surface stones, r. 39 n. ...	275
of lands abutting streams, rights of, r. 44 f. ...	277
unavailable lands to be cultivated by, r. 48 ...	pp. 278-279
not to use lands so as to cause destruction, r. 49 ..	280
not to suffer land to be overgrown with rank grass, &c., r. 52 ...	281
concession of Government right to, r. 91 ...	314
record to be kept showing rights of, r. 91 ..	"
right of reserved trees to be sold to, r. 91 n. ...	315
refusing to purchase trees to be cut down by Forest Department, r. 91 n. ...	"
Occupation.—	
of land, penalty for unauthorized, s. 61 ...	pp. 59-60

	Page.		Page.
Occupation.—(continued).		Officer(s).—(continued).	
of lands in village sites without authority, s. 61 ...	61	prohibition for entering into pecuniary arrangement to civil or military, s. 31 n.	25
commented prior to passing of present Code without authority, s. 61 n. ...	62	do. from acquiring or holding land, s. 31 n. ...	"
of lands in alienated villages or of alienated lands without authority, s. 61 n. ...	64	in superior service, orders prohibiting land holding to be subjected to, s. 31 n. ...	28
prescriptive title in cases of authorized, s. 61 n. ...	67	not to serve as directors to Banks, s. 31 n. ...	31
area to be subjected to fine in cases of, s. 61 n. ... pp. 67-69		to vindicate character as public servant, s. 31 n. ...	32
field boundaries to be determined according to, s. 119.	145	liable to criminal prosecution, s. 31 ...	§6
in certain cities Mamlatdar to grant permission for, r. 8½ J ...	269	to be suspended during trial and subsequently suspended, reduced, &c., s. 36 ...	"
		to require parties to execute agreement, s. 118... pp. 144-145	145
Occupied Number.—		to hold formal inquiry in case of boundary disputes, s. 118.	145
see <i>Survey Number</i> .		to make survey and plan of ground in dispute, s. 118 ...	"
rights to trees in, s. 41 n. ...	41	appointed by Government to confirm award made by officers other than survey officers, s. 118 ...	"
containing reserved trees to be cleared by Forest Department, r. 93 ...	317	when directed by Commissioner to make distraint and sale, s. 154 ...	175
		conducting sales to grant receipt on payment of purchase money, s. 172 ...	184
Offence.—		decision in formal inquiry to be written by, s. 194 ...	196
unintentional injury to boundary mark not punishable as, r. 101 n.... pp. 322-324		appellate authority to suspend execution of decisions of subordinate, s. 210 ..	201
offender not to be punished twice for same, r. 111 ...	331	Governor in Council, &c., to call for and examine records and proceedings of subordinates, s. 211 ...	"
triable by First Class Magistrate, r. 111 n. ...	"	granting copies to certify that such copy is true copy, r. 7 f. ...	238
Officer(s).— see <i>Revenue officer(s)</i>.			
notification of appointment of certain, s. 19 ...	15		
combination of, s. 19 ...	"		
Government to retain for 6 months securities furnished by, s. 23 n. ... pp. 16-17			
do. for one year, bonds deposited by, s. 23 n. pp. 16-17			

	Page.
Officer(s).—(continued).	
exemption of stamp duty in case of instruments exempted by Government, r. 2 f....	244
Collector to require full security from certain, r. 2 (c)	245
form of bond to be executed by Government, r. 3 n. ...	246
to execute bonds instead of depositing Government papers, r. 3 n. ...	”
rate of survey fees to be fixed by Collector or other, s. 81.	310

Orders.—	
issued under repealed enactments to be deemed as issued under present Code, s. 2 ...	3
fixing assessment prior to present Code not to be deemed as issued under present Code, s. 2 f. ...	”
prohibiting Government servants from having connection with land holding, &c., s. 31 n. ...	25
applicable to candidates for office regarding acquisition of land by Government servants, s. 31 n. ...	28
on subject of keeping register of landed property, s. 31 n. ...	29
recommending dismissal of public servants, s. 33 f. ...	34
regarding dismissal of public servants to be reduced to writing, s. 33 f. ...	”
for fining, &c., revenue officers, to be made in writing, s. 33	pp. 34-35
regarding fining, &c., subordinates drawing less than Rs. 35 not appealable, s. 35 n. ...	36

	Page.
Orders.—(continued).	
of Civil Court, persons to be entered as registered occupants on, s. 70 ...	7
passed by revenue officers in cases of assistance to recover rent, s. 87 n. ...	pp. 115-116
regarding assessment on lands irrigated by wells, s. 101 f. 12	12
regarding levy of excess assessment, s. 104 ...	130
regarding appointments of Huzur Surveyors, s. 113 f. 14	140
regarding demarcation of field boundaries, s. 122 f. 148	148
preventing reaping or removal of crop, s. 142 ...	pp. 167-168
in cases of penalty for disobedience of, s. 142 ...	168
to be issued by Collector for sale of perishable articles, s. 168 ...	183
of Civil Courts necessary for payment of surplus to creditors, s. 184 ...	188
relating to summary or formal inquiry, s. 192 ...	193
relating to travelling expenses of persons summoned, s. 192 n. ...	194
regarding payment of cost of attendance of witnesses, s. 192 n. ...	”
do. do. of travelling expenses to witnesses, s. 192 n. ...	”
as to how to be obtained copies of, s. 198 ...	197
do. translations of, s. 198. ...	”
passed by revenue officers to be appealed against, s. 203.	200
passed by Commissioners or Survey Commissioners to be appealed against, s. 204. ...	”
petition of appeal to be	”

	Page.
Orders.—(contd.)	
accompanied with authenticated copies of; s. 208 ...	201
declared final not to be appealed against, s. 212 ...	202
do. to be modified, annulled or reversed by Governor in Council, s. 212...	"
relating to transfer of lands within cantonment limits, r. 12 n. ...	255
relating to lands forming part of military camping ground, r. 12 n. ...	"
do. do. held for military purposes, r. 12 n. ...	"
of Collector for disposal of excess of alluvion by Mamlatdar, r. 46 ...	278
of Survey Commissioner for preparation of village maps, r. 55 (5) ...	290

Original Survey.—	
assessment not to be levied on lands included as unarable in, s. 107 f. ...	135
demarcation of roads constructed since, r. 12 n. ...	253

P

Panch Mahals.—	
application of present Code to, s. 1 n. ...	2
ceases to be scheduled district, s. 1 n. ...	"

Pandharpeshas.—	
orders regarding payment of travelling expenses to witnesses being, s. 192 n. ...	195
do. subsistence allowance do. , s. 192 n. ...	"

Pardi lands.—	
maximum area to be allowed	

	Page.
Pardi lands.—(continued).	
free of assessment in cases of, r. 54 n. ...	282

Pardi Nos.—	
minimum area for ordinary survey No. not to apply to, s. 99 & n. ...	pp. 123-124

Parampok Nos.—	
demarcation of, s. 122 f. ...	150

Partition.—	
of estates paying land revenue to Government, s. 213. ...	139
preservation of boundaries of survey numbers divided in, s. 113 f. ...	"
subject to prescribed minimum, Collector to divide estates for purposes of, s. 113 ...	pp. 139-140
sale of portions of estates incapable of subdivision for purpose of, s. 113...pp. 139-140	"
recovery of expenses incurred in, s. 113 ...	140
in alienated villages, each sharer to have separate entry in case of, s. 113 n. ...	"
extension to service inams of rules regarding, s. 113 n. ...	pp. 140-141
Bhatta to persons entrusted with, s. 113 n. ...	141
Collector to see whether fees prescribed by High Courts are levied in cases of, 113 n. ...	142
salaries of surveyors and peons to be included in expenses of, s. 113 n. ...	"
entry how to be made in records as regards expenses incurred in, s. 113 n. ...	"
levy of expenses incurred in, s. 113 n. ...	pp. 142-143

	Page.		Page.
Partition. —(continued).		Patil(s). —(continued).	
of Khoti and Talukdari		presents for keeping bound-	
estates to be made subject		ary marks in repairs to,	
to certain conditions, s. 114.	143	r. 102 n.	... 32
do. of expenses incurred in,		Pauper Cultivator. —	
s. 114	"	grant of occupancy to, s. 56n.	
Bombay Act V of 1862 not		pp. 56-57	
affected by rules regarding,		Payment. —	
s. 117	... 144	in case of revenue, existing	
Pasturage. —see <i>Grazing.</i>		rights not affected by, s. 80.	91
Patasthal —		of revenue by registered oc-	
rates not to be taken into ac-		cupant, failure in, s. 81	... 91
count in calculating 33 per-		in kind as well as in cash	
cent. limit, s. 107 f.	... 135	when made, receipts to be	
Paths. —		given for, s. 85 n.	... 10
not being property of indivi-		of Inamdar's dues when made	
duals belong to Government,		through village officers, re-	
s. 37	... pp. 36-37	ceipts to be given for,	
Patil(s). —		s. 85 n.	... "
hereditary, not revenue offi-		map and register to be sup-	
cer, s. 3 (1) n.	... 3	plied after introduction of	
to be appointed as stipen-		rates gratis and on, s. 108 f.	
dary where no hereditary		pp. 136-137	
one exists, s. 16	... 13	of survey expenses by Inam-	
sums received on account of		dar, s. 216 f.	... pp. 204-20
superior holders to be ac-		of non-official copyist, r. 9 f.	23
counted for by hereditary,		of section writers to be made	
s. 85	... 100	from fees for copies, &c.,	
in Presidency proper, distraint		r. 11 & n.	... 24
to be made by, s. 154 n.	... 175	for section writing not to be	
security not to be furnished		received by Government	
by hereditary, r. 2	... 244	servants, r. 11 n.	... 24
to endorse agreement from		of revenue to be made to vil-	
registered occupant, r. 32	... 266	lage officers or to treasury,	
removal of sand, &c., with		r. 82.	... 31
sanction of Police, r. 39	... 274	do. to be restricted in cer-	
appeal to be made to Mam-		tain cases, r. 82	... "
latdar when permission to		do. to be made by	
remove sand, &c., is refused		Postal money order, r. 82 n.	31
by, r. 39	"	village officers to use person-	
removal of earth, &c., with		al influence in securing	
sanction of, r. 40	... 275	prompt, r. 87	... 31
Penal Code. —see <i>Act (XLV</i>		Penal Code. —see <i>Act (XLV</i>	
<i>of 1860).</i>		<i>of 1860).</i>	

	Page.
Penalty.—	
for failure to grant receipts for land revenue, <i>s.</i> 59	59
for unauthorized occupation of land, <i>s.</i> 61	"
for appropriating land without permission, <i>s.</i> 66	73
not to be inflicted by commission holders, <i>s.</i> 88 <i>n.</i>	...
	<i>pp.</i> 118-119
for unnecessarily continuing compulsory process, <i>s.</i> 91	120
to be inflicted by Collector when unusual or excessive demand is enforced, <i>s.</i> 93	...
	<i>pp.</i> 120-121
for injuring boundary marks, <i>s.</i> 125	155
for disobedience of order preventing reaping or removal of crops, <i>s.</i> 142	... <i>pp.</i> 167-168
for default in payment of revenue, maximum amount of, <i>s.</i> 148	170
do. to be paid to superior holder in alienated villages, <i>s.</i> 148 <i>n.</i>	"
to be leviable as land revenue, <i>s.</i> 187	190
for breach of rules under present Code to be prescribed by Governor in Council, <i>s.</i> 215	204
Period.—	
for which defaulter to be imprisoned in civil jail, <i>s.</i> 157	...
	<i>pp.</i> 177-172
do. occupancies of building sites to be disposed of, <i>r.</i> 25.	261
do. assessment on building sites to be fixed, <i>r.</i> 25.	"
of guarantee in case of talukas already partially settled, <i>r.</i> 89	314

	Page.
Perishable articles.—	
to be sold without delay under orders of Collector, <i>s.</i> 168	183
sale to be at once final in case of, <i>s.</i> 170	"
Permission.—	
of Mamlatdar or Mahalkari required previous to taking up unoccupied land, <i>s.</i> 60	59
of Collector to appropriate alienated lands, not necessary, <i>s.</i> 65 <i>n.</i>	71
to appropriate lands to be applied for, <i>s.</i> 65 <i>n.</i>	72
liability of person appropriating land without, <i>s.</i> 66	73
for appropriation to be granted on terms, <i>s.</i> 67	76
of Collector to be applied for by Inamdar to collect dues direct, <i>s.</i> 85 <i>n.</i>	101
treatment of Bandharas erected without, <i>s.</i> 101 <i>f.</i>	126
of Collector to be obtained for erecting Bandharas, <i>s.</i> 101 <i>f.</i>	127
to be applied for by occupant to appropriate land for salt manufacture, <i>r.</i> 7(c).	249
to enter upon land to be given by Mamlatdar, <i>r.</i> 34	267
given to Local Funds to appropriate fees from quarries, &c., not to prejudice Government rights, <i>r.</i> 39	274
appeal to be made to Mamlatdar on refusal of Police Patel to grant, <i>r.</i> 39	"
to gather surface stones by occupants, <i>r.</i> 39	"
to be granted by Collector to Local Funds to remove sand, &c., <i>r.</i> 41	275

	Page.		Page.
Permission. —(<i>contd.</i>)		Post. —(<i>contd.</i>)	
of Collector required for excavating unalienated land, r. 51	281	postage to be prepaid when appeal is sent by, r. 109	328
to appropriate land in certain cities to be granted by Collector, r. 68 A	305	Pot Kharab. — see <i>Unarable.</i>	
limit of fine on appropriation without previous, r. 69	"	left unassessed at original survey to be left unassessed at revision settlement, s. 107 f.	135
forfeiture of occupancy to be incurred on appropriation of land without, r. 73	306	land taken up for road to be deducted as, r. 12 n.	253
liability of person appropriating land to prohibited purposes without, r. 73	"	defined, r. 39 n.	274
removal of every thing standing on land appropriated to prohibited purposes without, r. 73	"	how to be dealt with in revision survey, r. 48 n.	279
liability of village officer taking fees for granting, r. 111, clause 4 (b)	330	Pot number(s). —	
Petition. —		subdivision of survey number generally made into, s. 3 (6) f.	pp. 4-5
in cases of injury to boundary marks, s. 25 n.	155	distinction between recognized share of survey No. and, r. 55 f.	pp 281-296
of appeal to be accompanied by authenticated copies of orders appealed against, s. 208	201	Potters. — see <i>Brick and Tiles makers.</i>	
partitions to be shown in, r. 108	327	Power(s). — see <i>Duties and powers.</i>	
to Government how to be drawn up. r. 110 n.	328	conferred under repealed enactments to be deemed as conferred under present Code, s. 2	3
Police Acts (District and Village). — see <i>Acts (VII and VIII of 1867).</i>		to be delegated by Collector and Superintendent to subordinates, s. 21	16
Post. —		to be exercised by Collector or Superintendent of Survey under Criminal Procedure Code, s. 26	19
applications for assistance to recover rent need not be made in person but may be sent by, s. 86 n.	111	of fining, &c. revenue officers, s.	33
appeals to be presented in person or sent by, r. 109	328	of survey to set apart for public or private use, s.	38
		of "wants" names, s.	78

	Page.
Power(s).—(contd.)	
to enter registered occupants' names, s. 71 n. ...	78
to receive and dispose of applications for assistance to recover rent to be delegated to Mamlatdars and Mahalkaris, s. 86 n. ...pp.	106-107
to be conferred by commission holders of alienated lands, s. 88 ...	116
to demand security for payment of land revenue, s. 88 (a) ...	117
to attach property of persons making default, s. 88 (b) ..	"
to fix dates of instalments, s. 88 (c) ...	"
to levy fine in cases of appropriation of lands, s. 88 (d). "	"
to receive notices of relinquishment, s. 88 (e) ...	"
to take measures for maintenance and repairs of boundary marks, s. 88 (f) ...	"
formalities to be observed before Inamdar is invested with, pp.	117-118
to enforce payment of arrears, s. 92 ...	120
to make enquiries into claims of exemption from assessment in village sites to be delegated, s. 129 & n. ...	160
to arrest and imprison defaulter to be exercised by Collector and Deputy Collector, s. 152 f. ...	173
of arrest to be exercised by Collector, Assistant and Deputy Collectors, s. 157 n. ...	178
to enquire into claims to attached moveable property to be delegated to Mamlatdar or Mahalkari, s. 186 n. ...	189
of appellate authority, s. 209. ...	201

	Page
Power(s).—(contd.)	
of Governor in Council, &c., to call for and examine records and proceedings of subordinate officers, s. 211. ...	201
of Local Government to attached lands rent free r. 9... ..	250
to confirm sale of surveyed occupancies to be delegated to Mamlatdars, r. 16 n. ...	257
do. of building sites to be delegated, r. 24 ...	261
to permit occupation in all cities to be delegated, r. 34 J. ...	269
to grant permission to Local Funds to remove earth, &c., r. 41 n. ...	275

Precautionary measures.—	
assistance to recover rent by use of, s. 86 ...	102
to be taken by commission holders, s. 88 n. ...	118
land revenue to be paid on dates fixed where it is necessary to take, s. 139 ...	166
to be relinquished if security for land revenue is furnished, s. 145 ...	169

Presents.—	
revenue officer not to make or receive, s. 31 ...pp.	23-24
to patils for keeping boundary marks in thorough repair, r. 102 n. ...	325

Presidency.—	
of Bombay, application of present Code to, s. 1 ...	1
Governor in Council to direct revenue survey of any part of, s. 95 ... pp.	121-122
recovery of revenue by Collector in different, s. 149 f. ...	18
	pp. 170-

	Page.		Page
Presumption. —		Proceedings. —(<i>contd.</i>)	
as to tenures, s. 83	... 97	subordination of revenue officers with respect to, s.188.	191
Prickly pears. —		of subordinate officers to be called for and examined by Governor in Council, s.211.	201
occupants not to suffer land to be overgrown with, r. 51.	281	Proceeds. —	
liability of person allowing land to be overgrown with, r. 111 2 (e)	... 330	of sale of property to be applied in defraying cost of sale to payment of arrears, s. 183	... pp. 187-188
dealing with cases of land suffered to be overgrown with, r.111 2 (e)	... "	of sand, &c., within Municipal limits, r. 38 n.	... 271
Principal(s). —		of sale of trees to be credited to Forest Department, r.93n.	317
under security bonds, liability of, s. 23 n.	... 17	of trees in lands not included in forest to be credited to Forest Department, r. 93 n.	..
sureties to be proceeded against in same manner as, s. 27	... pp. 19-20	Process(es). —	
liability of surety not affected by death or change of appointment of, s. 29	... 22	to be employed in recovering dues of superior holders, s. 36 n.	... 106
Procedure. —		of recovery of arrears, s. 150 & 153	... 172
in dismissing public servant, s. 33 n.	... 35	to cease on defaulter's furnishing security, s. 64	... 181
in cases of summary eviction, s. 61 n.	... 66	in summary inquiry how to be served, s. 192 n.	... 194
in conferring powers on holders of surveyed and unsurveyed villages, s. 88 n.	... pp. 117-118	Proclamation. —	
in case of disagreement or dispute as to boundary, s. 118 (2)	... 145	of sale to be issued by Collector when sale is ordered, s. 165	... pp. 181-183
in procuring attendance in summary or formal inquiry, s. 192	... 193	of sale to state whether it is subject to confirmation, s. 165	... 182
in cases of tenants on expiration of lease, r. 31 n.	... 265	to be made by beat of drum at taluqs Head-quarters where saleable property is	... "
Proceedings. —		of	... r. 42 ... 276
pending under repealed enactments to be conducted under present Code, s. 2	... 3	Pr.	
applied for recovery of amount per to be stopped on payment, 154	... 181	of	... osal ... 264

Page.	Page.
Produce.—(contd.)	
of Government trees, liability of person unlawfully taking, s. 111 cl. 1 (a) ...	329
of Government land, liability of person unlawfully removing, r. 111 cl. 1 (a) ...	"
Property.—	
of Government to be disposed of by Collector, s. 37... pp. 36-37	
Collector to make inquiry and pass orders for sale of attached, s. 90 ...	pp. 119-120
commission holders how to conduct sale of attached, s. 90 ...	pp. 119-120
distrain and sale of defaulter's moveable and immoveable, s. 150 ...	172
exempt from distrain and sale, s. 156 & n. ...	pp. 176-177
when ordered to be sold Collector to issue proclamation, s. 165 ...	pp. 181-182
to be resold if deposit is not kept, s. 172 & 173 ...	184
whether moveable or immoveable when to be resold, s. 175 ...	185
surplus proceeds to be given to owner of, s. 183 ...	188
surplus without Civil Courts' order not to be paid to creditors of owner of, s. 184. "	"
liability of purchaser to pay Local Fund cess on purchased, s. 185 ...	"
to be sold in cases on claims being rejected, s. 186 ...	189
report to be made to Government regarding lapses of alienated, r. 59 f. ...	300
st.—	
meetings to be stopped on Government under, s. 164 ...	181
Province.	
of Sind, application of present Code to districts in, s. 1 n. 2	2
do. , rules regarding alluvion and diluvion in, App.O. pp. 350-352	350-352
Provisions.	
of Civil Procedure Code as to imprisonment of defaulter, s. 157 f. ...	pp. 177-178
where last day of appeal lies on Sunday or holiday, s. 207. 201	201
of chapters VIII & IX to be extended to alienated villages, s. 216 ...	204
do. do. before introduction of survey rates, s. 217 n. ...	pp. 209-212
of fines, not to apply to brick and tile makers, r. 71 ...	305
do. , extent of application to certain districts, r. 72. 306	306
of instalments when not applicable, land revenue to be paid in one or two instalments, r. 86 ...	313
as regards trees in Warkas lands, &c., in certain districts, r. 98 A & 98 B. ...	pp. 319-320
Public Auction.— see <i>Sale</i> .	
Collector to sell occupancies by, r. 30 ...	264
Public document.—	
grant of uncertified copy or extract of, r. 3 ...	236
fees for certified copies of, r. 5. 237	237
search of, r. 8 ...	238
application for search of, r. 8. "	"
defined, r. 16 ...	243
Public moneys.—	
to be produced by subordinates on demand by Collector or Superintendent of Survey, s. 25 ...	18

Page.	Page.
Public moneys. —(<i>contd.</i>)	Public servant. —(<i>contd.</i>)
liability of person not producing, s. 26 ... 19	orders recommending dismissal of, s. 33 f. ... pp. 34-35
revenue officer not to make private use of, s. 31 ... pp. 23-24	orders to be reduced to writing regarding dismissal of, s. 33 f. ... pp. 34-35
Public papers. — see <i>Public moneys.</i>	procedure to be followed in discussing, s. 33 n. ... 35
Public property. — see <i>Public moneys.</i>	Public streets. — see <i>Public roads.</i>
Public purposes. —	before passing of present Code, encroachments on, s. 61 n. ... 61
setting apart land for, s. 38 ... 38	within Municipal limits to vest in Municipality, r. 13. 255
appropriation of lands for, r. 12 n. ... 252	Public Works Department. —
abatement of assessment on lands taken up for, r. 12 n. 254	to remove sand, &c., with sanction of Collector, r. 41. 275
Public road(s). —	Public writings. —
not property of individuals belong to Government, s. 37. pp. 36-37	to be prepared by village accountant, s. 17 ... 14
within Municipal limits, rights to, s. 37 n. ... 37	Purchase certificate. —
cases not to be dealt with under present Code, with regard to encroachments on, s. 61 n. ... 62	stamp duty on, s. 181 n. ... 187
encroachments on open spaces not forming part of, s. 61 n. pp. 62-63	form of, s. 181 n. ... "
presumption as to obstruction of part of any, s. 61 n. 66	paper on which to write, s. 181 n. ... "
passing through alienated villages, encroachment on, s. 61 n. ... pp. 64-66	obligation of Collector to grant, s. 181 n. ... "
Public servant. —	Purchase money. —
acquisition of landed property by sons or relatives of, s. 31 n. ... 30	of moveable property to be paid as soon as sale is finally concluded, s. 171 ... 184
not prohibited from having connection with Eurasian and Anglo Indian Deposit and Loan Company, s. 31 n. 31	in cases of moveable and immoveable property, officer conducting sale to grant receipt on payment of, s. 171 ... "
vindication by officer of character as, s. 31 n. ... 32	sale to become absolute when receipt is granted for, s. 171. ... "
	to be paid before 15th day of sale in case of immoveable property, s. 174 ... 185

	Page.		Page.
Purchase money. —(contd.)		Question(s). —(contd.)	
to be paid before evening of 16th day if 15th day be Sunday or holiday, s. 174...	185	not governed by practice, to be decided by Civil Courts, s. 86 n. ...	110
in certain cases, recovery of balance of, s. 177 n. ...	"	do. , disposal of other doubtful, s. 86 n. ...	"
if not paid within prescribed time deposit how to be disposed of, s. 175 ...	"	do. as to whether superior holders can be represented by any person other than pleader, s. 86 n. ... pp. 113-114	"
fresh notice to be served in every resale consequent on default of payment of, s. 175. ...	"	as to whether revenue can be recovered from co-sharers when principal co-sharer is willing to pay, s. 136 n. ... pp. 164-165	"
to be refunded if sale is not confirmed or set aside, s. 180. ...	186	not to be raised regarding Inamdar's rights to trees where there is no evidence to contrary, r. 91 n. ...	316
Purchaser. —		on subject of injury to boundary marks caused by digging around within space of two cubits how to be dealt with, r. 101 n. ... pp. 322-324	"
to deposit 25 per cent. if sale be subject to confirmation, s. 172 ...	184	Quit-rent. — see <i>Judi.</i>	
on default of payment, &c., loss entailed by resale to be recovered from, s. 176 ...	185	provisions as regards levy of, s. 187 ... pp. 189-190	
to be put in possession of alienated holding or occupancy of which sale is confirmed, s. 181 ...	187	Quota. —	
Collector to grant certificate of purchase, s. 181 n. ...	"	to be paid by co-occupants, r. 55 (2) ...	287
liable to pay local fund cess on purchased property, s. 184 ...	188		
extent of responsibility of, s. 185 n. ...	189		
	Q		R
Quarries. —		Railway Companies. —	
imperial revenue to be credited with royalties on, r. 14 f. ...	256	transfer of lands to, r. 8 ...	250
assigned to Local Funds, fees on, r. 38 f. ...	271	fees to be charged in removal of sand, &c., in case of, r. 38 ...	271
is forest land revenue to be credited with revenue realized from, r. 38 n. ...	273	Railways. —	
Question(s). —		rules for demarcation of lands occupied by, s. 122 n. ...	153
in cases of recovery of rent	12	no fees for removal of materials for use of State, r. 41 n. ...	275

	Page.		Page.
Railway station. —		Receipt. —(contd.)	
fine to be fixed on appropriation of land to non-agricultural purposes in neighbourhood of, r. 68	... 304	for land revenue to be given on receipt books, s. 58 n.	... 58
Rajinama. — see <i>Relinquishment.</i> —		in case of land revenue penalty for failure in granting, s. 59	... 59
Rank grass. — see <i>Prickly pears.</i>		to be given by Inamdars for collection of dues through village accountant, s. 85 n.	100
land not allowed to be overgrown with, r. 52	... 281	to be given for payments in kind as well as in cash, s. 85 n.	101
Rate(s). —		how to be given by Inamdar for payment of dues, s. 85 n.	pp. 101-102
for use of water to be fixed by Collector, s. 55	... 54	to be granted by officer conducting sale on payment of purchase money, s. 171	... 184
to be fixed on means of irrigation by survey officer, s. 101 & f. & s. 105	pp. 127, 132	when granted on payment of purchase money sale to be absolute, s. 171	... "
publication of notification of, s. 107 f.	... 135	Receipt book. —	
on account of patasthal to be excluded in calculating limit of 33 per cent., s. 107 f.	... "	receipts for land revenue to be given in, s. 58 ² n.	... 58
enhancements resulting from revision of, s. 107 f.	... "	land revenue paid in kind to be entered into, s. 58 n.	... "
of assessment sanctioned to be imposed on each survey No., 55 (9)	... pp. 295-296	Reclamation. —	
of survey fees to be paid by holder of each tenement, r. 81	... 310	of salt lands not required for salt manufacture, r. 21	... 259
Receipt. —		Recognized share of Survey No. —	
to be granted by revenue officers for payment of land revenue, s. 58	... 58	defined, s. 3 (7)	... 5
to be granted by superior holders, s. 58	... "	to be subdivision of survey number, s. 3 (7) f.	... "
given by superior holder to be countersigned by village accountant, s. 58	... "	when to be deemed as survey number, s. 99	... 124
hereditary officers to grant, s. 58 n.	... "	demarcation of, s. 99	... "
		relinquishment of, s. 99	... "
		disposal of forfeited, s. 99 n.	125
		distinction between Pot No. and, r. 55 f.	... 282
		Records. — see <i>Revenue Records. Survey Records.</i>	

	Page.		Page.
Records. —(continued).		Recovery. —(continued).	
as prescribed by Collector,		of loss entailed by resale,	
village accountant to keep,		s. 176 ...	185
s. 17 ...	14	of balance of purchase money	
prepared by hereditary officers		in certain cases, s. 177 n.	
to be Government property,		pp. 185-186	
s. 26 f. ...	19	References. —	
preparation by survey officers		in repealed enactment to be	
of statistical and fiscal,		read as if made to present	
s. 108 ...	136	Code, s. 2 ...	3
of subordinate officers to be		Refund. —	
called for and examined by		of deposit when sale is set	
Governor in Council, s. 211.	201	aside or not confirmed,	
of land taken up for roads to		s. 180 ...	pp. 186-187
be kept, r. 12 n. ...	253	of purchase money, s. 180	
of village accountant to contain		pp. 186-187	
notices and agreements,		Register. — see <i>Register of</i>	
r. 77 ...	308	<i>alienated lands.</i>	
of village accountant to be		of landed property to be	
sent to Mamlatdars, r. 77... "	"	kept by Government ser-	
do. to contain notices		vants, s. 31 n. ...	26
and agreements, r. 77 ... "	"	do. to whom to be sub-	
to be kept showing rights of		mitted, s. 31 n. ...	28
occupants to reserved trees,		to be furnished after intro-	
r. 91 ...	314	duction of rates to Collect-	
of Collector not showing con-		or, &c., s. 108 f. ...	pp. 136-137
trary, Inamdar's title to be		to be supplied gratis and on	
accepted, r. 91 n. ...	316	payment, s. 108 f....	pp. 136-137
Recovery. — see <i>Assistance</i>		inspection of, r. 1 ...	pp. 235-236
<i>for recovery of rent or land</i>		of occupancies on special	
<i>revenue.</i>		terms, form of, r. 31 & f.	
of Government moneys,		pp. 264-265	
papers, &c., in charge of s. 26.	19	of alienations to be kept in	
subordinates how effected,		form of Appendix F, r. 57.	297
of value of trees unautho-		Mamlatdar to prepare ab-	
riously appropriated, s. 43.	43	stract of boundary mark in-	
of dues of superior holders,		spection, r. 106 ...	327
processes to be employed in		Register of; alienated	
cases of, s. 86 n. ...	106	lands. —	
of revenue, recourse to Civil		to be kept by Collector,	
Courts not barred in cases		s. 53. ...	52
of, s. 87 ...	pp. 114-115	in lieu of sanads extracts to	
of expenses incurred in parti-		be given from, s. 53 n.	
tion of Khoti and Talukdari		pp. 52-53.	
estates, s. 114 ...	143		

	Page.	Page	
Register of alienated lands.— <i>(continued).</i>		Registered occupant.— <i>(contd.)</i>	
Governor in Council to prescribe form of, s. 53 n. ...	53	village accountant to endorse agreements from, r. 32 ...	266
how to be filled in, s. 53 n. ...	"	Registration.—	
Registered occupant.— <i>see Occupant.</i>		of notice of relinquishment, s. 74 n. ...	81
defined, s. 3 (17) ...	7	of kabulayat from lessee, r. 31 n. ...	26
Collector to enter heir's name on death of, s. 71 ...	71	of agreement, form of, r. 34 ...	26
liable to pay fine and altered assessment on land appropriated without Collector's permission, s. 66 ...	73	of relinquishment, r. 74 n. ...	80
and occupants, terms when synonymous, s. 66 n. ...	74	Registration Act.— <i>see Act (III of 1877).</i>	
persons holding decree, order, &c., of Civil Court to be entered as, s. 70 ...	77	Regulations.—	
on production of Civil Court's decree, &c., alteration of names of, s. 71 ...	78	repeal of, s. 2 ...	pp. 2-
extent of Collector's power in entering names of, s. 71 n. ...	pp. 78-79	Relinquishment.—	
persons interested in occupancy to pay Government dues on failure of, s. 80 ...	93	of occupancy how to be made, s. 74 ...	8
assistance to be given to recover moneys paid by persons other than, s. 80 ...	"	occupant to give Mamladar written notice of, s. 74 ...	"
failure in payment of revenue by, s. 81 ...	pp. 93-94	right of Inamdar to accept, s. 74 n. ...	8
names of persons holding divisions of numbers at revision to be entered in settlement register as, s. 115 ...	pp. 143-144	in alienated villages, s. 74 n. ...	"
to be primarily responsible to Government for land revenue of unalienated lands, s. 136 ...	163	on behalf of minors & lunatics persons not competent to give notice of, s. 74 n. ...	pp. 88-1
practice of recovering land revenue from, s. 136 ...	"	absolute, by minors, s. 74 n. ...	1
		registration of notices of, s. 74 n. ...	"
		of lands paying lump assessment, s. 75 ...	"
		do. not assessed but subject to special cess, tax or fine, s. 76 ...	pp. 91-
		do. subject to yeta or any other tax, s. 76 ...	"
		right of way to land after, s. 77 ...	"
		validity of lease not affected by, s. 78 (b) ...	"
		responsibility of sharer not affected by, s. 79 ...	pp. 92

	Page.
Relinquishment. —(continued)	
to be accepted by Aval Kar-kua, r. 31 n.	266
written notice of occupancy to be given to Mamlatdar, r. 74	307
registration of, r. 74 n.	"
to be accepted by Mamlatdar in certain cases, r. 78 f.	308
Remission. —	
of assessment in case of unauthorized cultivation, s. 61 n.	61
do. of land relinquished by minor or on his behalf, s. 74 n.	pp. 88-89
to be disbursed to whomsoever pays assessment, s. 104 n.	pp. 130-131
how to be given in case of each holding after introduction of revision settlement, s. 107 f.	136
in case of land revenue rules regarding, r. 58 n.	pp. 298-299
Commissioner empowered to sanction, r. 58 n.	299
report to be made to Government in case of certain, r. 58 n.	pp. 299-300
Remittance. —	
of money due in one district paid in another, r. 82 & n.	310
Removal. —	
of sand, muram, &c., within municipal limits, r. 38 n.	271
do. in creeks, r. 38 n.	"
do. , scale of fees for, r. 38 n.	"
of loose stones by occupants, r. 39 n.	275
of earth from village sites not permissible, r. 39 n.	"

	Page.
Removal. —(contd.)	
of earth, &c., with sanction of Police Patil, r. 40	275
Rent. — see <i>Land Revenue.</i>	
payable by tenant, amount of, s. 83	95
not paid to landlord by tenant, s. 84 f.	99
application for recovery of, s. 86	102
of attached lands to be received by Collector, s. 160.	179
Rent free. —	
sanction of Government of India required for alienations of lands, r. 9	250
alienation of lands for garden, building purposes, r. 9	"
do. for charitable, & religious purposes, r. 10	"
form of sanad to be issued in cases of lands, r. 11	251
Repeal. —	
of enactments by present Code, s. 2	2
Repealed enactments. —	
presumption under present Code as to references in, s. 2	3
do. as to rules prescribed under, s. 2	"
do. as to appointments made under, s. 3	"
do. as to securities furnished under, s. 2	"
do. as to powers conferred under, s. 2	"
do. as to orders issued under, s. 2	"
do. as to notifications published under, s. 2	"

	Page.		Page.
Repealed enactments. —		Responsibility. —(<i>contd.</i>)	
(<i>contd.</i>)		of occupants in alienated vil-	
presumption as to proceedings		lages, s. 217	209
pending under, s. 2	3	do. to which survey set-	
		tlement has been introduc-	
		ed, s. 217	
Resale. —		of heads of offices to see that	
recovery of loss entailed by,		security furnished is good	
s. 176	185	and sufficient, r. 4	247
fresh notice to be served in			
every, s. 177	"		
		Restoration. —	
Reservation. —		of original documents to	
of rights of Government to		parties, s. 198	197
mines, r. 69 & n.	pp. 76-77		
of mines and mineral pro-		Resumption. —	
ducts in future alienation		of inam lands, rights created	
of lands, r. 14	256	by Inamdars lapse on,	
rights to trees of reserved		s. 84 n.	96
kind not to be affected by			
general, r. 91	314		
of Honi and Matti trees,		Revenue. — see <i>Land Re-</i>	
r. 91 n.	316	<i>venue. Arrears of Land</i>	
not possible where it has al-		<i>Revenue. Rent.</i>	
ready been made, r. 92	"	revenue officer not to be con-	
		cerned in, s. 31 (3)	23
		existing rights not affected	
		by payment of, s. 80	93
		failure of registered occupant	
		to pay processes employe d	
		for recovery of, s. 151	172
		Commissioner to frame rules	
		for levy of cost from default-	
		er as arrears of, s. 152 f.	173
		Watan land to be forfeited	
		for arrears of, s. 153	47
		persons named in certifi-	
		cate liable to pay instalment	
		of, s. 185	184
		realized from quarries in for-	
		est lands, r. 38 n.	273
		do. not under Forest	
		Department to be credited	
		to Local Funds, r. 38 n.	
		to be paid to village officers,	
		&c., r. 82	316
		in certain cases provisions	
Reserved trees. — see			
<i>Trees.</i>			
concession of rights of Gov-			
ernment to, s. 40	pp. 39-40		
several kinds of, r. 91	314		
record to be kept showing			
rights of occupants to,			
r. 91 n.	315		
Responsibility. — see			
<i>Rights and responsibilities.</i>			
of superior holder and of co-			
sharer as to payment of			
land revenue, s. 136	pp. 163-164		
to pay land revenue in cases			
in which there are more			
than one superior holder,			
s. 136	pp. 164-165		
of purchaser of forfeited occu-			
pancy, s. 185 n.	189		

	Page.		Page.
Revenue. —(<i>contd.</i>)		Revenue officer(s). —(<i>contd.</i>)	
and restrictions regarding payment of, r. 82 n. ...	310	not to purchase at public sale, s. 31 (2) ...	23
to be paid by Postal money order, r. 82 n. ...	311	not to be concerned in revenue, s. 31 (3) ...	"
village officers to report names of landholders refusing to pay, r. 88 ...	313	not to make private use of public money or property, s. 31 (4) ...	24
Revenue Administration.		not to make of receive undue exactions or presents, s. 31 (5) ...	"
of one or more talukas to be placed in charge of Assistant and Deputy Collectors, s. 10 ...	11	not to hold land, s. 31 n. ...	"
of taluka to be in charge of Mamlatdar, s. 12 ...	12	<i>pp.</i> 24-25	
Revenue demand. —		orders prohibiting certain acts to civil and military officers extend to, s. 31 n. ...	28
cost of hired labour employed for survey of lands, to be collected as, s. 97 ...	122	to be fined, &c., for breach of departmental rules, s. 32. ...	33
expenses incurred in part—		drawing more than salary Rs. 250 except Mamlatdars not to be fined, &c., without Government sanction, s. 32 ...	"
" " to recovered	140	maximum period of suspension of, s. 32 n. ...	"
as, s. 113 (8) ...	140	for payments of land revenue receipts to be granted by, s. 58 ...	58
Revenue Department. —		Revenue Records. —	
proceeds of trees not included in forest to be credited to, r. 93 n. ...	317	person not recognised as occupant unless name is registered in, s. 79 <i>pp.</i> 92-93	
Revenue Officer(s). —		in case of partition in alienated villages each sharer to have separate entry in, s. 113 n. ...	140
defined, s. 3 (1) ...	3	Revenue Recovery Act. —	
hereditary patils and kul-karnis not to be, s. 3 (1) n. ...	"	see <i>Act (I of 1890).</i>	
officers ascertaining forest rights not to be, s. 3 (1) n. ...	"	authorizes recovery of revenue in one Presidency by Collector of district in other Presidency, s. 149 <i>f. pp.</i> 170-171	
officers not appointed under present Code, not to be, s. 3 (1) n. ...	"	Revenue Survey. —	
to use seals when prescribed by Governor in Council, s. 22 ...	16	of any part of Presidency to	
to furnish security, s. 23 ...	"		
not to engage in trade, s. 31 (1) ...	23		
13			

	Page.		Page.
Revenue Survey. —(<i>contd.</i>)		Revision Survey. —(<i>contd.</i>)	
be directed by Governor in Council, s. 95	121	Governor in Council to direct fresh, s. 106	1
Collector to fix assessment of lands not under op: of, s. 95 f.	"	classification made second time not to be revised with view to assess at, s. 106	1
to be controlled by Governor in Council, s. 95	122	original classification declared final by Governor in Council not to be revised with view to assess at, s. 106	"
to extend to any land, village, town or city, s. 98	123	lands included as unarable in survey No. at original survey not to be assessed at, s. 107 f.	"
Governor in Council to direct fresh, s. 106	132	principles regarding settlement of, s. 107 f. pp. 132-	"
surplus profits of attached land to be applied in defraying cost of, s. 161	179	survey Nos. to be sub-divided according to departmental rules at time of, s. 115	pp. 143-
in case of alienated villages rules relating to, s. 216	pp. 204-206		
		Rice Nos. —	
Revenue year. —		scale of minimum area for, s. 98 f.	"
defined, s. 3 (21)	8		
land revenue leviable at any time during, s. 139	166	Right(s). —	
Revision. —		officer, not revenue officer though employed in ascertaining forest, s. 3 (1) n.	"
of boundaries once settled not allowed by law, s. 119 n.	146	already existing of holders of alienated villages to appoint village officers not affected, s. 16	"
Revision Settlement. —		to beds of tanks, &c., in Municipal limits in whom to vest, s. 37 n.	"
limits up to which enhancements are allowed in, s. 107 f.	135	to public streets in Municipal limits, s. 37 n.	"
scale of remission to be given in case of each holding after introduction of, s. 107 f.	136	of Government to trees in unalienated land to be conceded to occupants, s. 40	pp. 3
extension of above scale to every, s. 107 f.	"	to trees in Government lands, s. 41 n.	"
Revision Survey. —			
levy of excess assessment in, s. 104	130		
provisions regarding fixing of assessment in, s. 104	"		
orders regarding levy of excess assessment in, s. 104 n.	131		

	Page.		Page.
Right(s).—(continued).		Right(s).—(contd.)	
to trees in occupied numbers and on banks of rivers and nallas, s. 41 n. ... pp. 40-41	41	of way to relinquished land, s. 77 ...	92
do. of district hereditary officers, s. 41 n. ...	41	already existing not affected by payment of revenue, s. 80 ...	93
do. of service Inamdars, s. 41 n. ...	"	do. pertaining to landlords, not affected, s. 83 ...	97
do. of occupant and service Inamdar, s. 41 n. ...	"	created by Inamdar lapse on resumption of inam lands, s. 84 n. ...	99
do. on lands granted before or after alienation of village, s. 41 n. ...	42	already subsisting to be respected in fixing assessment, s. 100 ...	125
to road side trees, s. 42 ...	"	assigned by Courts to portion of survey Nos. of less than prescribed minimum area, not to be registered, s. 113 n. ...	140
to exemption from land revenue to be supported by strict proof, s. 45 f. ...	44	to exemption from land revenue to be determined by Collector, s. 129 ...	160
of holders of alienated lands to alluvial lands, s. 46 n. ...	45	of minor superior holder to pay land revenue, s. 136 n. ... pp. 164-165	
already existing to be respected in fixing assessment on lands, s. 52 ...	52	pertaining to land to be disposed of by Collector, r. 7. ...	248
of occupancy to be paid for and to be liable to certain conditions, s. 62 ...	69	between Government and Municipality to be disposed of by Collector, r. 13 ...	256
of occupancy to alluvial lands, s. 63 ...	"	of Government to assess building sites, r. 27 n. ...	263
in case of occupancy to waste land, conditions of sale of, s. 63 f. ...	"	in cases of building sites, grant of proprietary, r. 28. ...	264
of temporary character to alluvial land, s. 64 ...	70	of lessee in case of lands leased before passing of rules, r. 31 n. ...	265
of occupants to use and occupation of land to be conditional, s. 68 ...	76	in case of lands in certain cities, disposal of proprietary, r. 34 ...	269
to mines to be reserved by Government, s. 69 ... pp. 76-77	76-77	to remove sand, &c., in Government land, disposal of, r. 38 ...	271
of occupancy to be transferable and heritable, s. 73 ...	86	of Government to remove sand, &c., r. 38 n. ...	"
do. to accept relinquishments from occupants, s. 74 n. ...	88		
do. to give out land for cultivation, s. 74 n. ...	"		
do. to take kabulayat for new lands, s. 74 n. ...	"		

	Page.		Page.
Right(s).—(contd.)		Road(s).—(contd.)	
permission given to Local Funds to appropriate fees from quarries not to prejudice Government, r. 38 n.	273	demarkation of land required for purpose of, r. 12 n. ...	252
of occupants of lands abutting on stream, r. 44 f. ...	277	lands cut off by, r. 12 n. ...	"
of public to fish in sea, r. 44 f. ...	"	constructed since original survey, demarcation of, r. 12 n. ...	"
to trees of reserved kind already assigned not to be affected, s. 91 ...	314	unusable lands to be cultivated by occupants except in case of, r. 48 ...	pp. 278-279
of occupants to trees to be shown in records, r. 91 n.	315		
to trees in Service Inam lands, r. 91 n. ...	316	Royalties.—	
do. already conceded not to be reserved, r. 92 n. "	"	on mines and mineral products to be credited to imperial revenues, r. 14 f. ...	256
Rights and responsibilities.—			
of holders of lands in alienated villages surveyed under present Code to be same as those of occupants, s. 217 ...	209	Rules.—	
of occupants in alienated villages, s. 217 ...	"	prescribed under repealed enactments to be deemed as prescribed under present Code, s. 2. ...	3
		regarding cutting of trees in service lands, s. 41 n. ...	42
Rivers.—		regulating supply of fire-wood and timber, s. 44 ...	48
beds of, not being property of individuals belong to Government, s. 37 pp. 36-37		regarding fixing water assessment on lands under Bandharas, s. 101 f. ...	126
rights to trees on banks of, s. 41 n. ...	41	do. partition to be extended to service inams, s. 113 n. ...	pp. 140-141
occupancies of lands to be sold by Collector in beds of, r. 22 ...	260	do. partition not to affect Bombay Act V of 1862, s. 117 ...	22
no assessment to be placed on land in beds of, r. 53. ...	281	for demarcation of land permanently occupied for use of Railways in India, s. 122 n. ...	151
		to be framed by Commissioner for issue of notice of demand, s. 152 f. ...	178
Road(s).—		regarding notice of demand, s. 152 f. ...	"
Commissioner to sanction appropriation of lands for, r. 12 n. ...	252	do. imprisonment of defaulter, s. 152 f. ...	"

	Page.
Rules.—(continued).	
as to what officers should exercise power of arrest, s. 158	... 178
for conducting official enquiry, s. 197	... pp. 196-197
fees and charges for copying, &c., to be calculated according to sanctioned, s. 198 f.	pp. 197-198
for taking fees for inspection or for giving copies or extracts of certain survey records to be prescribed by Governor in Council, s. 213	pp. 202-203
for qualifications of members of establishment, do.	
s. 214 (a)	... 203
for fining, reducing, &c., officers, do.	s. 214 (b) "
for appropriation of land paying revenue to Government, do.	s. 214 (c) "
for regulating system and manner of assessing land to land revenue, do.	s. 214 (d) "
for disposal of forfeited occupancies or alienated holdings, do.	s. 214 (e) "
for fixing maximum amount of fine for unauthorized occupation and appropriation to any non-agricultural purposes, do.	s. 214 (f) "
for administration of Survey Settlement, do.	s. 214 (g) "
for drawing up and presentation of appeals, do.	s. 214 (h) "
for guidance of persons in matter connected with enforcement of present Code, do.	s. 214 (i) "

	Page.
Rules.—(continued).	
Governor in Council to prescribe penalties for breach of, s. 215	... 204
framed by Governor in Council to be published and to have force of law until cancelled, s. 215	... "
relating to Revenue Survey of alienated villages, s. 216 (a)	... "
for grant of occupancies to Kolis and wild tribes, r. 20 n.	... 258
to be modified in cases of removal of earth, &c., r. 39 n.	... 275
disposal of cases of alluvion not provided in, r. 46	pp. 277-278
regarding suspension and remission of land revenue, r. 58 n.	... 298
punishment to be inflicted on conviction before Magistrate for breach of, r. 111	pp. 328-329
liability of village officer for neglecting to prepare documents in manner prescribed by, r. 111 cl. 5 (a)	... 331
do. do. to perform duty according to, r. 111 cl. 5 (b)	... "

S

Sale(s).—	
revenue officer not to purchase at public, s. 91 (2)	... 23
in cases of assistance to recover rent, Bhatta to karkuns deputed to conduct, s. 86 n.	... pp. 112-113
of attached property, Commissioner to make enquiry and give orders for, s. 90.	... 119

	Page.
Sale(s).—(continued).	
of attached property when to be conducted by commission holders, s. 90.	119
of portions of estates in capable of sub-division in partition cases, s. 113 ...	pp. 137-138
expenses of, s. 152 f.	173
rate of calculating expenses of, s. 152 f.	pp. 173-174
of defaulter's moveable property, s. 150 & 154 pp. 172, 174	
do. immoveable property, s. 150 & 155 pp. 172, 176	
what kind of property or materials to be exempt from, s. 156 & f.	pp. 176-177
Collector to issue proclamation of, s. 165 ...	181
do. to publish notice of, s. 166 ...	182
to be made by such persons as Collector may direct, s. 167	"
not to take place on Sundays or recognized holidays, s. 167 ...	pp. 182-183
do. until expiration of certain period in case of immoveable property, s. 167 ...	pp. 182-183
postponement of, s. 167 ...	183
of perishable articles to be made, s. 168	"
to be stayed on defaulter's paying arrears and incidental charges, s. 169 ...	"
forfeiture not to be cancelled by stay of, s. 169 n. ...	"
defaulter to pay arrears at any time before day of, s. 169 n. ...	"
of perishable articles to be final, s. 170 ...	"
of moveable property to be subject to confirmation, s. 170 ...	pp. 183-184

	Page.
Sale(s).—(continued).	
on payment of purchase money receipt to be granted by officer conducting, s. 172.	184
to become absolute when receipt of purchase money is granted, s. 172	"
by purchaser in certain cases, s. 173 ...	pp. 184-185
purchase money to be paid after date of, s. 174 ...	185
deposit to be forfeited after defraying thereout expenses of, s. 175 ...	"
application to be made to Collector to set aside, s. 178.	"
not to be set aside on account of irregularity, &c., s. 178.	"
to be confirmed by Collector in certain cases, s. 179 ...	"
when set aside or not confirmed deposit or purchase money to be refunded, s. 180 ...	186
proceeds to be applied in defraying expenses of, s. 183	pp. 187-188
owner of property to be paid surplus proceeds of, s. 183.	188
Commissioner to prescribe rules for calculation of expenses of, s. 152 f. & 183 f. ...	pp. 173-174, 183
of property in rejection of claims, s. 186 ...	189
of occupancies, right to waste land, conditions of, app. III	pp. 223-224
do. to be confirmed by Collector, r. 16 pp. 256-257	
do. in certain cities, r. 34 H ...	269
Commissioner to sanction disposal of grazing otherwise than by, r. 37 ...	271
conduct of, r. 42 ...	276

	Page
Sale(s).—(contd.)	
Collector not bound to confirm, r. 59 A	309
in certain cases forfeited occupancies to be put up for, r. 60	301
of forfeited occupancies to be made in same manner as in case of unalienated land, r. 61	302
of reserved trees to be proceeded with, r. 91 n.	315
of trees of Forest Department, r. 93	317
Salt.—	
occupants to apply for permission to appropriate lands for manufacture of, r. 9	248
Salt Department.—	
to be given charge of unoccupied land, r. 7	248
Salt Land.—	
disposal of, r. 7 A	248
terms in connection with reclamation of, r. 21	259
Sanadi Inam.—	
survey boundary marks not to be maintained by holders of, s. 122 n.	158
Sanad(s).—	
extracts from register of alienated lands to be given in lieu of, s. 53	pp. 52-53
already granted, to be altered when Government waste land is given in exchange of inam lands, s. 53 n.	53
not to be issued separately to several shareholders, s. 53 n.	"

	Page
Sanad(s).—(contd.)	
to be issued by Collector to holders of building site on payment of survey fees, s. 133	162
in certain cases Collector to levy additional fee for issue of, s. 133	"
issued to holders of building sites to be executed on behalf of Secretary of State, s. 133	"
copies of, r. 9 (3) f.	240
not necessary in case of religious endowment, r. 11 f.	251
in case of revenue free grants, form of, r. 11	"
not necessary in case of grant of land to Shetsandis, r. 11 A	"
Sanction.—	
execution of bonds in lieu of depositing Government paper, r. 3 n.	246
of Government of India necessary for alienation of revenue free lands, r. 9	250
to annex special conditions to occupancies, r. 17	257
of Commissioner required for grant of occupancies revenue free or at reduced rent, r. 19	258
of Police Patel required for removal of earth, &c., r. 39	274
of Mamlatdars to be required for removal of earth, &c., for purposes of trade, r. 39	"
changes in dates of instalment of revenue not to be made without, r. 58 pp. 297-298	"
forfeited alienated occupancy not to be restored without Government, r. 63	302

Page.	Page.
Sanction.—(contd.)	Scale.—(contd.)
of Commissioner to be required to recover arrears, r. 64 ... pp. 302-303	of remission to be given in case of each holding after introduction of revision settlement, s. 107 f. ... 136
of Collector required for payment of revenue, r. 82 ... 310	of Bhatta to persons entrusted with partition, s. 113 n. 141
of Commissioner required to change dates of instalment, r. 84 ... pp. 311-312	of cost of arrest, s. 152 f. ... 173
do. required by Collector to make classification of villages, r. 85 ... 312	of calculating expenses of sale, s. 152 f. ... pp. 173-174
	of fees for copying and translations, s. 198 f. ... pp. 197-198
Sand.—	do. for comparing, s. 198 f. ... pp. 197-198
in Government land, disposal of right to remove, r. 38 ... 271	do. for granting copies, r. 9 f. ... 239
right of Government to remove, r. 38 n. ... "	do. for section writing, s. 11 ... 241
to be removed for <i>bona fide</i> purposes with sanction of Police Patel, r. 39 ... 274	do. to be levied for removal of earth, &c., from Railway Companies, r. 38 ... 271
Municipality to remove, r. 41 ... 275	do. to be levied for removal of earth, &c., r. 38 n. ... pp. 271-272
power to grant permission to remove, r. 41 p. ... "	of altered assessment to be fixed, r. 56 ... 296
Collector not bound to grant permission to remove, r. 41 n. ... "	of survey fees fixed for several classes, r. 80 ... pp. 309-310
in case of Railway Company, no fees to be charged in removal of, r. 38 & 41 n. ... pp. 271, 275	Schedules.—
for <i>bona fide</i> special purposes occupants to remove, r. 49 ... 280	to present Code, sch. A to I. ... pp. 215-220
liability of person unlawfully removing, r. 111. ... 829	Scheduled District(s).—
	present Code not to apply to, s. 1 ... 1
Sandalwood trees.—	names of, s. 1 f. ... "
see <i>Reserved trees.</i>	Panch Mahals ceases to be, s. 1 n. ... 2
Scale.—	Sea.—
of elimination of fractions in fixing survey assessment, s. 100 f. ... 125	bed of, below high water mark not being property of individuals belongs to Government, s. 37 ... pp. 36-37
	right of public to fish in, r. 94 f. ... 277

	Page.		Page.
Seal. —		Security(ies). —(contd.)	
.. by whom to be used, s. 21.	pp. 15-16	in case of special revenue officer, r. 2	... 244
description and size of, s. 21	pp. 15-16	in certain cases, Collector to determine amount of, r. 2 (b)	... 245
Search warrant. —		in cases of certain temporary appointments, taking of additional, r. 2 (b)	... "
to be issued under Criminal Procedure Code for production of public papers, or property, &c., s. 26	... 19	do. furnished by officer before entering upon office, r. 2 (c)	... "
Second Assistant Collector. — see <i>Assistant and Deputy Collectors.</i>		to be furnished by deposit of Government papers or by execution of bonds, r. 3	... "
Secretary of State. —		hereditary Patil and Kulkarni not to furnish, r. 2 f	... "
sanads issued to holders of building site to be executed on behalf of, s. 133	... 163	Heads of offices to require good and sufficient, r. 4	... 247
Section. —		furnished by one officer not to hold good in case of another officers, r. 4	... pp. 247-248
defined, s. 8 (22)	... 8	Collector to submit to Commissioner statements showing results of inquiries as to sufficiency of, r. 5	... 248
Section writer. —		report to be submitted to Commissioner for recovering additional amount in case of insufficient, r. 6	... "
to be paid from fees for copies, extracts, &c., r. 11.	241	Security Bond. —	
Security(ies). —		form of, s. 23 n.	... 17
furnished under repealed enactments to be deemed as furnished under present Code, s. 2	... 3	liabilities of principals, and sureties under, s. 23 n.	... "
to be furnished by revenue officers, s. 23	... 16	in special cases, modification of form of, s. 23 n.	... "
variation by order of Government of amount of, s. 23 n.	... "	amendment suggested in form of, s. 23 n.	... "
to be taken in form of Schedule B.; s. 23	... "	when taken afresh, preservation of old, s. 27 n.	... 21
of officers how long to be kept, s. 23 n.	... "	form of, to be taken before relinquishing precautionary measures, s. 149	... 171
in case of insufficient security, taking of fresh or additional, s. 24	... 18	sureties liable to be dealt with as revenue defaulters, for	
defaulter detained in custody to be set at liberty on furnishing, s. 164	... 181		

	Page.
Security Bond.—(contd.)	
sums due from them under,	
s. 187	... 190
Service Inamdars.—	
rights to trees of, s. 41 n.	... 41
rules regarding partition to be extended to lands of,	
s. 113 n.	... pp. 140-141
Settlement.— see Announcements. Introduction of Settlement.	
of assessment to be made with holder, s. 54	... pp. 53-54
notification in Government Gazette of period of,	
s. 102 n.	... 128
levy of excess assessment in revision of, s. 104	... 130
orders regarding levy of excess assessment in revision apply to original, s. 104 n.	"
in cases of land revenue survey officers to prepare certain records on revision of,	
s. 108	... 137
of village boundaries, s. 118	... 144
do. by agreement to be final, s. 118	... pp. 144-145
of boundary dispute to be made free of cost, s. 119 n.	... 146
do. by arbitration, s. 120,	"
do. to be entrusted to arbitration committee, s. 120	... pp. 146-147
to be effected by Survey Superintendent on failure of arbitration, s. 120	... pp. 146-147
Settlement Register.—	
means Lawni Phaisal Patrak to be prepared by Survey Department, s. 108 f.	... 136
correction of clerical and admitted errors in, s. 109	... 137

	Page.
Settlement Register.—	
(continued).	
enquiry and passing orders on application for mutation of names in, s. 109	... 137
correction of errors through fraud, &c., in, s. 109	... "
to be kept by Collector, s. 110	... pp. 137-138
Collector not to make corrections or alterations in, s. 110	... 138
names of persons holding division of numbers at revision to be entered as registered occupants in, s. 115	... pp. 143-144
Sharer(s).—	
in inam villages to be superior holder in respect of respective shares, s. 86 n.	... 106
to have separate entry in revenue records in case of partition in alienated villages, s. 113 n.	... 140
Short Title.—	
of present Code, s. 1	... 1
Sind.—	
application of present Code to districts in, s. 1 n.	... 2
rates for use of water by whom or how to be fixed in Province of, s. 55 f.	... pp. 54-55
distrainment to be made by Tapedars in, s. 154 n.	... 175
Stamp.—	
to be used in case of application for assistance to recover rent, s. 26 f.	... 102
instrument of exchange of lands exempt from, s. 129.	... 160

	Page.
Stamp Act— see <i>Act (1 of 1879)</i>	
Stamp duty.—	
on purchase certificate, s. 181 a.	187
instruments executed by Government officers and sureties exempt from, r. 2 f.	244
leases of occupancies exempt from, r. 31 f.	264
agreements to enter upon lands exempt from, r. 75 a.	308
State Railway.—	
transfer of lands to, r. 8 ...	250
Stones— see <i>Boundary Mark</i>	
assignment of less on, r. 38 f.	271
appeal to be made on refusal of permission to remove, r. 39 ...	274
permission to be granted to occupant to gather surface, r. 39 a.	275
occupant may for agricultural purposes remove, r. 49 ...	280
liability of person unauthorisedly removing, r. 111 ...	329
Streams.—	
beds of, not being property of individuals belong to Government, s. 37 ...	pp. 36-37
permission to occupy to be granted to holders of lands on banks of, r. 44 ...	277
rights of occupants of lands abutting on, r. 44 f.	"
Strips of land.—	
in certain cases not boundary marks under present Code, s. 3 (9) a.	6
covered by trees to be deducted from holdings, s. 42	pp. 42-43

	Page.
Subdivision.—	
of survey number generally made into recognized share or pot number, s. 3 (6) f.	4
of number at time of revision survey to be made by survey officer, s. 115 ...	pp. 143-144
of warkas numbers into "Phalni tukras," r. 55 f.	294
Subordinate(s)—	
to produce Government money, papers, &c., when called upon by Collector or Superintendent of Survey, s. 25 ...	18
to be apprehended on failure to produce Government money, papers, &c., s. 25 ...	"
Government servants to be prohibited from taking loans from, s. 31 a.	25
to be deputed by Collector to remove person refusing to obey notice, s. 203 ...	199
deputed by Collector to arrest persons in case of resistance or obstruction, s. 202 ...	"
Subordination.—	
of revenue officers with respect to official acts and proceedings, s. 188 ...	pp. 191-192
Sub-sharer(s).—	
to be superior holder, s. 85 a.	100
provisions relating to assistance to recover rent in cases of, s. 86 a.	pp. 104-105
survey rates in inam villages to be introduced with consent of, s. 217 ...	209
Subsistence-money.—	
to defaulters to be fixed by	"

	Page.		Page.
Subsistence-money. —(<i>contd.</i>)		Summary Inquiry. —(<i>contd.</i>)	
Collector, Deputy or Assistant Collector, s. 152 ...	174	into claims to exemption from payment of land revenue, to be made by Collector, s. 129 ...	160
to be paid to witness, orders relating to, s. 192 n. pp. 194-195		to be made by Collector in cases of disobedience of order regarding reaping or removal of crop, s. 143 ...	168
Succession duty. —		claims to attached moveable property to be disposed of by Collector on, s. 186 ...	189
to be leviable as land revenue, s. 187 ...	pp. 189-190	procedure for procuring attendance of witnesses in formal or, s. 192 ...	193
Sud. —		orders relating to formal or, s. 192 n. ...	pp. 193-194
prepared by Survey Department in lieu of Akarband in certain district, s. 108 f. ...	136	payment of cost to be directed by officers conducting formal or, s. 192 n. ...	194
form of, s. 108 f. ...	"	processes how to be served in formal or, s. 192 n. ...	"
Sugarcane cultivation. —		how to be conducted, s. 195. ...	196
prohibited within certain limits of Poona, r. 50 A ...	280	to be conducted at discretion of inquiry officer as formal, s. 195 ...	"
exempted in certain cases of, r. 50 A n. ...	"	to be deemed judicial proceedings under certain sections of Indian Penal Code, s. 196 ...	"
Suit. —		authority to be deemed Civil Court, when conducting, s. 196 ...	"
made in Civil Court against certified purchaser to be dismissed, s. 182 ...	187	hearings and decisions to be in public in cases of, s. 196 ...	"
Summary Inquiry. —		how to obtain copies and translations of decisions, &c., in cases of, s. 198 ...	197
to be made in cases of failure to grant receipts, s. 59 ...	59	Summary eviction. —	
do. by Collector in cases of superior holders collecting dues direct, s. 85 ...	100	person unauthorizedly occupying land liable to, s. 61	
into applications for assistance to recover rent to be held by Collector, s. 87		pp. 59-60	
pp. 114-115.		procedure to be adopted in cases of, s. 61 n. ...	66
to be made by Collector in cases in which compulsory process is continued, s. 91 ...	120		
do. in cases in which unusual demand is made by commission holders, s. 93			
pp. 120-121			
to be made in case of persons convicted of injuring boundary marks, s. 125 ...	155		

Summary eviction.—(contd.)
not to be enforced in certain cases, s. 61 n. Page.
pp. 66-67

Summons.—

for suitable service in survey operations to be served on landholders or Taluka village officers, s. 96 ... 122
to be in writing and in duplicate, s. 190 ... 192
how to be served, s. 190 pp. 192-193
to be served through Collector of district, s. 190 ... 193

Superintendent of Survey.— see *Survey officer.*

to delegate powers to subordinates, s. 21 ... 16
to demand additional security, s. 24 ... 18
to require production of public money, papers, &c., in charge of subordinates, s. 25 ... "
to exercise power under Criminal Procedure Code, in cases of subordinate failing to produce public moneys, &c., s. 26 ... 19
to pass order for fining, &c., subordinates whether of his own motion or on appeal, s. 35 ... 35
occupants dissatisfied with manner in which representations are dealt with to appeal to, s. 107 f. ... 134
to publish in each village notification regarding occupant to bring improvements to notice of Assistant Superintendent, s. 107 f. pp. 134-135

Superintendent of Survey.—(continued).

to issue notification showing groups of villages and their present and proposed maximum rates, s. 107 f. ... 135
to confirm award made by survey officers in boundary dispute, s. 118 (2) ... 145
to confirm decision passed by arbitration, s. 120 pp. 146-147
to refer decisions passed by arbitration to reconsideration, s. 120 ... 147
to settle boundary disputes, on failure of arbitration, s. 120 ... "
to authorise survey officers to cause to construct or repair boundary marks, s. 122 ... 148
limit within which appeals to be submitted against orders of, s. 205 ... 200
to call for and examine records and proceedings of subordinate officers, s. 21 k. 201
to furnish Collector with map, &c., on introduction of Survey Settlement, r. 100 pp. 321-322

Superior holder(s).—

defined, s. 3 (13) ... 7
to recover commuted assessment from inferior holders, s. 50 ... 51
receipts to be granted by, s. 58 ... 85
collecting dues direct liable to punishment, s. 85 ... 100
village officers to account for sums received on account of, s. 85 ... "
sub-sharer to be, s. 85 n. ... "

	Page.		Page.
Superior holder(s).—(contd.)		Superior holder(s).—(contd.)	
to collect his dues direct from inferior holders with Collector's permission, s. 85 & n. ... pp. 100-101		village on application of, s. 162 ... pp. 179-180	
entitled to assistance for recovery of rent, s. 86 ... 102	102	surplus receipts to be made over to, s. 162 ... 180	180
not bound to apply for assistance to recover rent, s. 86 n. ... 104	104	Supernumerary Assistant Collector.— see <i>Assistant and Deputy Collectors.</i>	
assistance to recover sums not leviable by law to be given to, s. 86 n. ... "	"	Surety(ies).—	
process to be employed in recovering dues of, s. 86 n. 106	106	in what cases to be taken, s. 23 ... 16	16
mortgagees in possession to be, s. 86 n. ... "	"	under security bond, liabilities of, s. 23 n. ... 17	17
sharers in Inam villages to be, s. 86 n. ... "	"	to be proceeded against in same manner as principals, s. 27 ... pp. 19-20	19-20
occupants of unalienated lands & holders of alienated lands to be both, s. 86 n. ... "	"	not liable to imprisonment on payment of penalty, s. 27... 20	20
Collector to grant assistance for recovery of rent in cases of, s. 86 n. ... 107	107	effect of security bond when given by, s. 28 ... 22	22
whether to be represented by any person other than pleader in assistance cases, s. 86 n. ... pp. 113-114	113-114	to withdraw from further liability, s. 30 ... "	"
to be primarily responsible for land revenue of alienated lands, s. 136 ... 163	163	exception from stamp duty in certain cases applicable to instruments executed by, r. 2 f. ... 214	214
as to payment of land revenue, responsibility of, s. 136 n. ... pp. 164-165	164-165	in cases of execution of bond, number of, r. 3 ... 216	216
penalty for default in case of alienated villages to be paid to, s. 148 & n. ... 170	170	Surplus.—	
lands attached for arrears to revert to Government unaffected by liabilities of, s. 160. 179	179	not to be paid to creditors of owner of property without Civil Court's order, s. 184... 188	188
Collector to receive rents or profits from attached lands to exclusion of, s. 160 ... "	"	Surplus proceeds.—	
Collector to restore attached		to be paid to owner of property, s. 183 ... 188	188
		Surplus profits.—	
		of attached lands to be applied in defraying arrears, s. 161 ... 180	180
		when to be claimable by creditors of defaulter, s. 184 n. 188	188

	Page
Survey Assessment. —	
<i>see Assessment.</i>	
grant of waste lands in special cases for less than, r. 20 ...	258
Survey Commissioner. —	
<i>see Commissioner of Survey.</i>	
Survey Commissioner and Director of Land Records and Agriculture. —	
<i>see Commissioner of Survey.</i>	
Survey Department. —	
to determine survey rates for alienated villages, s. 217 n.	212
assessment by Collector of survey Nos. not assessed by, r. 18 ...	257
Survey Document. —	
granting copies of, r. 1 ...	235
Survey Fee(s). —	
to be charged by Collector in certain cases, s. 131 ...	161
to be paid within six months from date of public notice, s. 132 ...	pp. 161-162
Collector to issue sanads to holders of building sites on payment of, s. 133 ...	162
division of certain towns for purpose of levying, r. 79 ...	309
fixed for several classes, scale of, r. 80. ...	pp. 309-310
to be paid by holder of each tenement, rates of, r. 81 ...	310
Survey Number(s). —	
defined, s. 3 (6) ...	4
generally subdivided into pot numbers or recognized shares, s. 3 f. ...	pp. 4-5
typical character of, s. 3 f....	5

	Page
Survey Number(s). —(<i>contd.</i>)	
not to be of less extent than minimum fixed, s. 98 ...	123
scale of minimum area for jirait, garden and rice, s. 98 f. "	"
Survey Commissioner to fix minimum area of, s. 98. ...	pp. 123-124
record of minimum area to be kept in Mamlatdar's office in case of, s. 98 ...	124
already made of less extent not to be affected by minimum fixed, s. 98 ...	"
of less extent than prescribed minima to be made with special sanction of Survey Commissioner, s. 98 ...	"
provisions as regards application to Pardi lands of minimum area of, s. 98 n. "	"
recognized shares of survey numbers to be deemed and treated as, s. 99 ...	pp. 124-125
lands partially or wholly exempt from land revenue to be divided into, s. 100 ...	126
assessment to be levied at revision on lands included as unarable in, s. 107 f. "	pp. 134-135
divided in partition, preservation of boundaries of, s. 113 f. ...	139
to be subdivided at revision survey according to departmental rules, s. 115 pp. 143-144	
lands appropriated to non-agricultural purposes to be divided into separate, s. 116. 144	
survey officers to cause to construct or repair boundary marks of, s. 122 ...	148
do. to require by notification to construct or repair boundary marks, s. 122. 150	

	Page.
Survey Number(s).—(contd.)	
cut off by canals, disposal of, r. 12 n.	253
Collector to grant occupancies of unoccupied, r. 16	
pp. 256-257	
do. put to public auction occupancies of unoccupied, r. 16 ..	257
not assessed by Survey Department to be assessed by Collector before granting occupancies, r. 18 ..	"
village maps to show positions of boundary marks of, r. 55 (5) ..	290
assessment to be fixed on, r. 55 (9) ..	295
Survey Officer.—	
defined, s. 3 (2) ..	4
to be appointed by Governor in Council, s. 18 ..	14
designations of, s. 18 f.	"
duties and powers of, s. 18... ..	15
to fix rates for use of Government water, s. 55. pp.	34-35
to set apart land for special or public purposes when survey operations are going on, s. 38 ..	38
power to set apart land for special or public purposes not affected in case of, s. 38. ..	"
to require attendance of holders of lands, &c., at Survey, s. 96 ..	122
to require from holders, &c., assistance or service in connection with survey operations, s. 96 ..	"
to call on holders to furnish flag holders, &c., in connection with measurement and classification, s. 97 ..	"
to employ hired labour on	

	Page.
Survey Officer.—(continued).	
failure of holders of land to render assistance, s. 97 ...	123
to assess cost of hired labour on holders of lands surveyed, s. 97 ..	"
to fix assessment on all lands, s. 100 ..	pp. 125-126
do. do. on lands partially or wholly exempt from land revenue, s. 100 ..	124
to divide certain lands into survey Nos., s. 100.	"
to fix assessment directly on land or on means of irrigation, s. 101 ..	pp. 126-127
provisions as regards levy of assessment fixed by, s. 102. 124	
to introduce Survey Settlement, s. 103 ..	124
to give reasonable notice of introduction of settlement, s. 103 ..	"
facts entitling village to special consideration in fixing assessment to be brought by occupants to notice of, s. 107 f.	pp. 134-13
to prepare statistical records on occasion of making or revising settlement of land revenue, s. 108 ..	136
to correct clerical and admitted errors in settlement register, s. 109 ..	137
to inquire into and pass orders on application for mutation of names in settlement register, s. 109 ..	"
to subdivide numbers at time of revision survey according to departmental rules, s. 115 ..	pp. 143-441
to enter names of persons holding certain divisions as	

	Page.
Survey Officers.—(contd.)	
registered occupants in settlement register, s. 115	144
to fix boundaries of villages and determine boundary disputes, s. 118	"
in case of settlement of boundary disputes, unless specially nominated Divisional Inspector not to be, s. 118 f.	"
in case of boundary dispute, confirmation of award made by, s. 118 (2)	145
to determine field boundaries according to village records, s. 119	... pp. 145-146
to cause to construct or repair boundary mark, s. 122.	148
to assess all charges regarding construction of repair of boundary marks on holders of lands, s. 122	... 149
to require by notification holders of Survey Nos. to construct or repair boundary marks, s. 122	... 150
to punish persons convicted of injuring boundary marks, s. 125	... 155
to determine what lands are included in site of any village, town or city, s. 126	pp. 156-159
not to grant copies without Survey Commissioner's sanction, r. 9 (5)	... 241
Survey Rates.—	
extent of obligations of native chiefs to accept, s. 216 n.	207
Inamdar's obligation to levy, s. 217 n.	... 212
for alienated villages to be determined by Survey Department, s. 217 n.	...

	Page.
Survey Rates.—(contd.)	
how to be fixed for alienated villages, s. 217 n.	... 212
extension of provisions of Chapters VIII to X of present Code necessary before introduction of, s. 217 n.	"
consent of co-sharers and sub-sharers in inam village necessary for introduction of, s. 217 n.	... 213
consent of new coming sharers not necessary for introduction of, s. 217 n.	"
form of agreement to be taken from Inamdars before introduction of, s. 217 n.	... 214

Survey Records.—	
to be kept by Collector, s. 110	pp. 137-138
Collector to frame village accounts and records in accordance with, s. 110	pp. 137-138
to be open to inspection, s. 213, 202 defined, s. 213 f.	"
on payment of fee, grant of certified extracts or copies of, s. 213	... 203
Governor in Council to frame rules for taking fee for inspection of copies of or extracts from, s. 213	"

Survey Settlement.—	
Collector to give assistance for recovery of rent up to assessment fixed by, s. 87	pp. 114-115
to be introduced by survey officer, &c., s. 103	... 129
existing, to be considered as made under present Code, s. 112	... pp. 132-139

	Page.		Page
Survey Settlement.—(contd.)		Suspension.—(contd.)	
Collector to have charge of boundary marks after introduction of, s. 124	154	who is to receive appeals on order of, s. 35	31
Governor in Council to frame rules for administration of, s. 214	203	in cases of land revenue, r. 58 n.	298
to be extended to inam villages, s. 216 n.	206	rules regarding, r. 58 n.	pp. 298-299
rights and responsibilities of occupants in alienated villages after introduction of, s. 217	209		
to be extended to alienated villages s. 217	"	T	
form of notification of, s. 89	pp. 313-314	Talati—	
in isolated villages settled before 1858, presumption as to period of, r. 90	314	in Presidency proper, distraint to be made by, s. 154 n.	171
Inamdar to be full proprietor of teak trees, &c., if he has accepted, r. 91	315	to be permitted to take copies, r. 9 f.	23
Superintendent of Survey to furnish Collector with map, &c., on introduction of, r. 100	pp. 321-322	Taluka(s)—	
extent of test examination after introduction of, r. 105	pp. 326-327	district to comprise, s. 7	1
		to comprise such villages as Government may notify, s. 7	"
Survey & Settlement Manual.	121	Mamlatdar to be entrusted with revenue administration of, s. 12	1
s. 95 f.		portion of, to be called mahal when in charge of Mahalkari, s. 14	1
Survey Settlement Officer.— see Survey Officer.		increase in revenue in revision settlement not to exceed 83 percent in, s. 107 f.	13
Suspension.—		proclamation of sale to be made at Head-quarters of, s. 165	pp. 181-1
in case of revenue officer, who is to be intested with power of, s. 33	33	period of guarantee in case of partially settled, r. 89...	pp. 313-5
do., maximum period for, s. 33 n.	"	where forest demarcation is complete, Collector to grant occupancies in, r. 94	3
to be ordered in writing, s. 33	34	do. not complete, Collector to grant occupancies of jungle numbers in, r. 95	..
		Collector to make several numbers for examination in, r. 106	3

	Page.		Page
Talukdari Act. — see (<i>Act VI of 1888</i>).		Tenancy. —(<i>contd.</i>)	
Talukdari Estate. — see <i>Estate(s)</i> .		landlord to give notice of termination of, <i>s. 84</i> ...	98
Taluka karkun. — in Presidency proper, distraint, to be made by, <i>s. 154 n.</i> ...	175	special terms in lease of annual, <i>s. 84 n.</i> ...	99
Taluka officer. — responsible for encroachments, <i>s. 61 n.</i> ...	pp. 63-64	in certain cases, period of notice of termination of, <i>s. 84 f.</i> ...	pp. 98-99
Tank. — beds of, not being property of individuals belong to Government, <i>s. 37</i> ...	pp. 36-37	Tenant. — defined, <i>s. 3 (15)</i> ...	7
within Municipal limits, encroachment in beds of, <i>s. 61 n.</i> ...	68	appropriating land without Collector's permission liable to summary eviction, <i>s. 66</i> ...	73
unarable lands to be cultivated by occupants except in cases of, <i>r. 48</i> ...	279	do. without consent responsible for damages, <i>s. 66</i> , interested in occupancy to pay Government dues, <i>s. 80</i> ...	74 93
Tappedar. — in Sind to make distraint, <i>s. 154 n.</i> ...	175	repudiating title liable to eviction, <i>s. 83 f.</i> ...	96
Tax. — to be commuted into annual assessment, <i>s. 49</i> ...	51	amount of rent payable by, <i>s. 83</i> ...	pp. 95-96
relinquishment of lands not assessed but subject to special, <i>s. 76</i> ...	91	relation of landlord and, <i>s. 83 f.</i> ...	pp. 95-97
not permissible, redemption of land, <i>r. 9 f.</i> ...	250	and inferior holder defined, <i>s. 83 n.</i> ...	98
Teak trees — see <i>Reserved trees</i> .		not to be evicted without notice, <i>s. 84 f.</i> ...	"
Tenancy. — lease creating perpetual, <i>s. 83 f.</i> ...	96	notice of termination of tenancy to be given to, <i>s. 84</i> ...	"
long standing, <i>s. 83 f.</i> ...	pp. 95-96	in cases of resumed inam lands, relation between landlord and, <i>s. 84 f.</i> ...	99
duration of, <i>s. 83</i> ...	97	non-payment of rent to landlord by, <i>s. 84 f.</i> ...	"
termination of annual, <i>s. 84</i> ...	98	in cases of recovery of land revenue, difference between inferior holder and, <i>s. 86 n.</i> ...	105
		on application for assistance to recover rent in case of death of, <i>s. 86 n.</i> ...	111
		to be protected from rack-renting, <i>s. 88 n.</i> ...	119
		on expiration of lease, procedure in cases of, <i>r. 31 n.</i> ...	235

	Page.		Page.
Tenement. —		Trade. —	
rate of survey fees to be paid by holder of each, r. 81 ...	312	revenue officer not to engage in, s. 31 ...	23
Tenure. —		pottery, &c., to remove sand, &c., for purposes of, r. 39 ...	274
presumption as to, s. 83 ...	97	Transfer duty. —	
Territories. —		to be leviable as land revenue, s. 187 ...	pp. 189-190
under Commissioner, extent of, s. 4 ...	9	Translations. —	
do. to be division, s. 4. ,,	,,	of decisions, orders, exhibits, on summary inquiry how to be obtained, s. 198 ...	197
Tile. —		Travelling Allowance Code. — see <i>Civil Service Regulations.</i>	
in cases of unauthorized occupation of, s. 61 n. ...	67	Travelling expenses. —	
liabilities of tenants repudiating, s. 83 f. ...	96	of persons summoned, s. 192	
effect of disowning, s. 74 f. & r. 74 f. ...	pp. 87, 307	pp. 194-195	
of Inamdars to be accepted, r. 91 n. ...	316	of witnesses, s. 192 n. pp. 194-195	
Timber. —see <i>Fire-wood.</i>		Treasurer. —	
Town. — see <i>City(ies).</i>		to pass bond or deposit Government paper, r. 3 n. ...	246
defined, s. 3 (20) ...	8	Treasury. —	
Revenue Survey to extend to any, s. 95 ...	pp. 121-122	payment of revenue to be made to Huzur or Taluka, r. 82 ...	310
Collector to determine what lands are included within site of, s. 126 ...	pp. 156-157	Trees. — see <i>Reserved Trees.</i>	
Collector to charge survey fee in certain cases for survey of lands in sites of, s. 132 ...	pp. 161-162	in unalienated lands concession of Government rights to, s. 40 ...	39
assessment on appropriation of land in certain, r. 56 A ...	297	not conceded and not belonging to individuals belong to Government, s. 41 ...	40
fine to be defined for appropriation of land near certain, r. 68 ...	304	planted in Government land, right of private persons to, s. 41 n. ...	"
to be divided into classes for purpose of levying survey fee, r. 79 ...	309	in occupied numbers and on banks of rivers and nallas rights to, s. 41 n. ...	41
liability of person excavating except for laying foundation of building, r. 111 ...	330		

	Page.
Trees.—(continued).	
rights of district hereditary officers to, s. 41 n. ...	41
do. of service Inamdars to, s. 41 n. ...	"
do. of occupants and service Inamdars to, s. 41 n....	"
in service lands, rules regarding cutting of, s. 41 n. ...	42
provisions as regards cutting of road-side, s. 42 ...	"
occupant to receive usufruct of road-side, s. 42 ...	"
planted at expense of Government, &c., rights to road-side s. 42 ... pp. 42-43	43
unauthorizedly appropriated, recovery of value of, s. 43...	43
sale of produce of, r. 35 ...	269
in certain Government buildings, disposal of proceeds of, r. 35 ...	"
concession of Government rights to, r. 91 ...	314
kinds of reserved, r. 91 ...	"
blackwood, teak and sandalwood, r. 91 ...	"
road-side and in groves, r. 91. of special value to be reserved by Collector, r. 91 ...	"
right already assigned not to be affected by general reservation, r. 91 ...	"
remedy against cutting down road-side, r. 91 n. ...	315
to be sold as general measure, r. 91 n. ...	"
to be cut down by forest-officer, r. 91 n. ...	"
Inamdars to be full proprietor of teak, r. 91 n. ...	"
in service Inam lands, rights to, r. 91 n. ...	"
as special case Government to reserve any and all kinds of, r. 92 ...	316

	Page.
Trees.—(continued).	
not to be reserved in case of rights not conceded, r. 92n. to be placed at disposal of Forest Department, r. 93. Forest Department to be credited with proceeds of sale of, r. 93 ...	316 317
in jungle numbers not to be cut down, r. 95 ...	318
to be disposed of along with occupancy of land, r. 95 ...	"
on land to vest in applicant for occupancy of land, r. 97. once disposed of, Government to have no right on growth, r. 98 ... pp. 318-319	"
in warkas lands, special provisions as regards, r. 98 A & 98 B ... pp. 319-320	"
liability of persons taking without authority Government, r. 111 cl. (a) ... do. cutting down or removing any Government, r. 111, cl. (b) ...	329 "

U

Unalienated land.—	
registered occupant primarily responsible for land revenue of, s. 136 ...	163
Government revenue when to be recovered from co-occupants in, s. 136... pp. 163-164	164
alienated land not to be subjected to provisions of present Code applicable to, s. 218 ...	214
in cities to be excavated, r. 51. provisions as regards alteration of assessment on, r. 56. sale of forfeited occupancies to be made according to sale of unoccupied, r. 61 ...	281 296 302

	Page.		Page.
Unalienated Land. —(<i>contd.</i>)		Village(s). —(<i>contd.</i>)	
special provisions as regards trees in, r. 98 A	... 319	taluka to comprise, s. 7	... 10
Unarable. — see <i>Pot Kharab.</i>		procedure to be followed in conferring powers on holders of surveyed and unsurveyed, s. 88 n.	... pp. 117-118
assessment not to be levied at revision on lands included at original survey as, s. 107 f.	135	revenue survey to extend to any, s. 95	... pp. 121-122
cultivation of lands included as, r. 48	... pp. 278-279	enhancements in revision, settlement not to exceed 66 per cent. in single, s. 107 f.	135
Unoccupied land. —		under temporary revenue management of Government to be surveyed and settled, s. 111	... 138
construction and repair of boundary marks in Government, s. 122 f.	... 151	survey officers to cause to construct or repair boundary marks of, s. 122 ..	pp. 148-149
required for salt manufacture by Salt Department to be given over for disposal, r. 7 A	... 248	Collector to determine what lands are included within sites of, s. 126	... pp. 156-159
in certain cities, occupancies of, r. 34 D	... 268	temporary attachment or management of, s. 144	pp. 168-169
Collector to sell grazing of, r. 38	... 271	attachment of alienated, s. 150	172
belonging to Government, rules and orders applicable to, r. 46	... pp. 277-278	to be attached when revenue is due, s. 159	... 179
Unoccupied number. —		restoration of attached, s. 162	180
Collector to grant occupancy of, r. 94	... 318	Collector to prescribe conditions before releasing attached, s. 162	... "
Upset price. —		for purpose of determining fine, division of, r. 66	... 303
to be placed by Collector on lands to be sold by public auction, r. 30	... 264	Collector to make classification into Kharif and Rabi, r. 85	... pp. 312-313
V		presumption as to period of survey settlement in isolated and already settled, r. 90	314
Veta. —		special provision as regards trees in Warkas lands in, r. 98 A	... 319
relinquishment of lands subject to, s. 51 & 76, pp. 52, 75-76		in cases of boundary mark, inspection karkuns to be supplied with list of, r. 105	... pp. 326-327
Village(s). — see <i>Alienated village. Inam village. Duma-la village.</i>			
defined, s. 3 (20)	... 8		

	Page.		Page.
Village(s).—(contd.)		Village cattle.—	
Mamlatdar to examine boundary marks of certain numbers in, r. 106	... 327	defined, s. 39 f.	... 38
Village Accountant.—		right to grazing extends to, s. 39	... pp. 38-39
see <i>Kulkarni</i>		Village documents.— see <i>Document.</i>	
appointment of, stipendiary s. 16	... 13	Village form.—	
to keep records and public writings, s. 17	... 14	village officers to enter condition of boundary marks in, r. 102	... 325
hereditary land to be held by stipendiary, s. 31 n.	... 24	result of test examination to be recorded in, r. 104	... "
to countersign receipts given by superior holders, s. 58	... 58	Village map.—	
bound to give receipt for land revenue, s. 58 n.	... "	to be prepared under orders of Survey Commissioner, r. 55 (5)	... 290
to account for sums received on account of superior holders, s. 85	... 100	position of boundary marks to be shown in, r. 55 (5)	... "
Inamdar to give receipt for payment of dues collected through, s. 85 n.	... 101	Village officers.— see <i>Part(s). Village accountant.</i>	
to be furnished after introduction of rates with map and register, s. 109	... 137	appointment of, s. 16	... 13
not Government servants		existing rights of holders of alienated villages to appoint, s. 76	... 14
for purpose of copying, comparing, &c., copies, r. 11 n.	... 242	records prepared by hereditary, s. 26 f.	... 19
to endorse agreements from registered occupants, r. 32	... 266	Mamlatdars empowered to fine, s. 32 n.	... 33
to prepare or sign agreements of relinquishment, r. 33	... pp. 266-267	neglecting to give receipts for land revenue liable to punishment, s. 58 n.	... 58
notices to be kept in records of, r. 77	... 308	responsible for encroachment, s. 61 n.	... pp. 63-64
to prepare notices of relinquishment, s. 78	... "	in alienated villages entitled to assistance for recovering dues, s. 86 n.	... 103
Village boundary.—		holders of alienated villages bound to pay, s. 88 n.	... 119
to be fixed by survey officers, s. 418	... 144	required to attend at survey of lands, s. 96	... 122
to be settled by agreement, s. 118	... "	boundary of villages to be fixed according to line agreed to by, s. 118	... 144

	Page.		Page.
Village officers.—(contd.)		Village records and ac-	
to take steps for demolition		counts.—(contd.)	
of superfluous boundary		Governor in Council to frame	
marks, s. 122 n. ...	152	rules for taking fee for in-	
to prevent destruction or un-		spection of or giving copies	
authorized alteration of		of or extracts from, s. 213.	202
boundary marks, s. 123 ..	154		
Inamdar to pass agreements		Village servants.—	
to pay remuneration to,		to prevent destruction of un-	
s. 216 n. ...	207	authorized alteration of	
not to certify a copy to be		boundary marks, s. 123 ...	154
a true copy, r. 4 ...	237		
to ascertain changes caused		Village site(s).—	
by alluvion and diluvion,		unauthorized occupation of	
r. 45 ...	277	lands in, s. 61 n. ...	61
to report to Mamlatdar ex-		assessment of lands in, s. 61 n.	62
cess in area on account of		exposition of Government	
alluvion, r. 46 ...	"	policy relating to assessment	
payment of revenue to be		of lands in, s. 126 n. ...	159
made to, r. 82 ...	310	Governor in Council to direct	
responsible for warning		survey of lands in, s. 131 ..	161
land holders of dates of		survey of lands how to be	
instalments, r. 87. ...	313	conducted in, s. 131 ...	"
test inspection to be made		Collector to charge survey fee	
by Mamlatdar and in pre-		for survey of lands in, s. 132	"
sence of, r. 104 ...	325	lands to be granted for,	
liable to punishment for un-		r. 27. ...	263
lawfully taking fees for pre-		modification of rule regarding	
paring documents, r. 111(4)		removal of earth from,	
pp. 330-331		s. 39 n. ...	275
Village records.—		W.	
field boundaries to be deter-		Watandar.—	
mined by survey officers ac-		provisions as regards levy of	
cording to, s. 119 ...	145	dues of, s. 187 n. ...	191
		when unable to meet demand	
Village records and ac-		portion of watan land, to be	
counts.—		deducted from forfeited	
to be framed by Collector in		holding, r. 59 ...	300
accordance with survey re-			
ords, s. 110 ...	138	Watan land.—	
Collector to make alterations		to be alienated land, s. 153 n.	174
and corrections in, s. 110... ..	"	to be forfeited for arrears of	
to be open to inspection,		land revenue, s. 153 ...	"
s. 213 ...	202		

Page.	Page.
Water. —	Warrant. —(contd.)
standing and flowing not being property of individuals belonging to Government, s. 37. pp. 36-37	to be issued for confining subordinate in Civil Jail, s. 25 ... 18
Collector to fix rates for use of, s. 55 ... pp. 54-55	to be issued by Collector for sending defaulter to Civil Jail, s. 157 ... 178
liability of assessment on inam lands using Government, s. 53 f. ... 54	defaulter to be arrested on, s. 199 ... 198
Water course. —	persons resisting or obstructing subordinates deputed by Collector to be arrested on, s. 202 ... 199
not being property of individuals belongs to Government, s. 37 ... 36-37	Waste land. — see <i>Unoccupied land.</i>
Well. — see <i>Boorks.</i>	when given, in exchange, of inam land, existing sanad to be altered, s. 53 n. ... 53
orders regarding assessment on lands irrigated from, s. 101 f. ... 126	conditions of sale of occupancy right to, s. 63 f. & app. III ... pp. 69, 223
liability of person excavating in towns except for sinking, r. 111 ... 330	to be let for less than survey assessments in special cases, r. 207 ... 258
Witnesses. —	
orders relating to payment of travelling expenses to, s. 192. 194	
do. of subsistence allowance to, s. 192 n. ... "	
agreements to be endorsed by, r. 33 ... 266	
notice to be endorsed by, r. 76. 308	
Writing. —	Year(s). —
orders regarding dismissal of Government servants to be reduced to, s. 33 f. ... 34	defined, s. 3 (21) ... 3
Warkas land. —	of introduction, s. 104 n. ... 131
to be subdivided into "Phalni Tukras," r. 55 f. ... 294	of levy, s. 104 n. ... "
provisions as regards trees in, r. 98 A ... 319	village officers to examine all boundary marks every, r. 102 ... 325
Warrant. — see <i>Search Warrant.</i>	extent of test inspection after introduction of survey settlement during first three, r. 104 ... "
form of, s. 25 ... 18	one section to be examined by karkun each, s. 104 (1). 326
	Z
	Zilla. —
	each district to be called, s. 7. 10