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The Berar Land Revenue Code 1928.

With Rules and Notifications thereunder
AND
with exhaustive notes and comments.

BY

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PREFACE

This book needs little introduction. There is no book in existence on the subject and the opportunity that I got in studying it while the Berar Land Revenue Bill was on the anvil emboldened me to attempt the task of writing notes on this subject in which almost everybody is interested. None is more cognisant of the defects in this work than myself, but I have tried to collect all the available information for the student. Many portions of the law have yet to come under the searchlight of judicial examination and interpretation but no pains have been spared to collect the results of such examination. Cases of the Nagpur High Court and of other High Courts when relevant have been noticed. Let me hope that the attempt will be of help to the Revenue Authorities and to the litigant and the general public. I do not propose to describe the tenures in Berar here as I wish to deal with the subject exhaustively separately.

Amraoti }
9-3-32 }

K. V. BRAHMA.

Berar Land Revenue Code.

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Berar Land Revenue Code.

List of abbreviations used.

A. I. R.—1927	All.	All India Reporter	Allahabad series of 1927
"	Bom.	"	Bombay "
"	Cal.	"	Calcutta "
"	Lah.	"	Lahore "
"	Luck.	"	Lucknow "
"	Mad.	"	Madras "
"	Nag.	"	Nagpur "
"	Oudh.	"	Oudh "
"	Pat.	"	Patna "
"	Rang.	"	Rangoon "
"	Sind.	"	Sindh "
"	P. C.	"	Privy Council Section.
Berar Leg. Com. Pro.		Berar Legislative Committee's Proceedings.	
Berar L. J.		Berar Law Journal.	
Bom. L. R.		Bombay Law Reporter.	
C. P. L. R.		Central Provinces Law Reports.	
Civil P. O. or C. P. O.		Civil Procedure Code.	
C. P. O. O. & R. & Compilation		C. P. Government Compilation of Notifications and Rules under the Berar Land Revenue Code.	
F. B.		Full Bench.	
I. C.		Indian Cases.	
I. L. R.—	All.	Indian Law Reporters	Allahabad Series.
"	Bom.	"	Bombay "
"	Cal.	"	Calcutta "
"	Mad.	"	Madras "
M. I. A.		Moore's Indian Appeals.	
N. L. R.		Nagpur Law Reports Series.	
N. L. J.		Nagpur Law Journal.	
O. C.		Oudh Cases.	
P.		Page.	
P. C.		Privy Council.	
P. R.		Punjab Records.	
W. R.		Sutherland's Weekly Reports.	

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GOVERNMENT OF INDIA

Foreign and Political Department.

NOTIFICATION.

Simla, the 25th September 1928.

No. 525-I.—Whereas it is expedient to consolidate and amend the law relating to land-revenue, the powers of Revenue Officers and other matters relating to land and the liabilities incident thereto in Berar, the Governor General in Council in exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1902, and of all other powers enabling him in that behalf, and in supersession of the notification of the Government of India in the Foreign Department, No. 3068-I B., dated the 2nd October, 1896, and of all subsequent notifications amending the same, is pleased to make the following Law:—

Notes.

History of Legislation.—By the treaties of 1853 and 1860 Berar was ceded to the British by the Nizam of Hyderabad, for the payment of the debt due to the East India Company for the support of the Hyderabad Contingent Force and for some other purposes. The arrangement was a kind of a possessory mortgage and the territory was therefore called in political parlance "The Hyderabad Assigned Districts" (H. A. D.). The British Government was under an agreement to pay to the Nizam whatever surplus remained after meeting the cost of administration and other charges. This continued upto 1902 when a new treaty was entered into. Berar is now held on a perpetual lease on payment of rupees 25 lakhs to H. E. H. the Nizam every year. The territory is therefore not vested in His Majesty and is not technically 'British India'. Laws made for 'British India' by the Central Legislature or the C. P. Council do not 'proprio vigore' apply to Berar.

They are made for it by the Governor General by virtue of jurisdiction vested in him by the 'Foreign Jurisdiction Order in Council,' 1902. Acts in force in British India are sometimes extended to Berar with such modifications as are necessary. Upto 1902 the territory was administered through a Commissioner by the Resident at Hyderabad. Since then it is handed over to the Central Provinces Government which administers it through a Governor assisted by a Legislative Council which includes 13 elected representatives from Berar. Laws specially intended for Berar are now made after consulting the wishes of the people of Berar through an 'ad hoc' Committee which includes the Berar members of the C. P. Legislative Council and a few officials and nominated members.

An idea of the conditions regarding rights in land in Berar when it was taken over can be had from the following extracts from the reports on the state of affairs in the North and South Berar in 1852. Mr. Bullock, describing the condition in North Berar writes :—

"There are no large classes of proprietors, and the tenure by which land is held is very vague. No doubt a proprietary right might be established in numerous instances, though it does not seem to be assented or recognized (except in the case of digging wells) nor does any class claim exclusive privileges; all appear to hold their fields as "Tenants at will" (i. e. of the Government); neither was there any village community in the sense in which the term is understood in North Western Provinces."

Referring to South Berar, Major Johnstone writes :—

"In these districts there are three descriptions of cultivators; first the "Mundkari" or resident cultivator, (mund refers to the stumps or roots in the uncleared soil, so that the term implies the first clearer of land) who has acquired prescriptive rights to certain fields and orchards which have been held for ages by the family and descend from father to son in hereditary succession of the rights of which he cannot be deprived so long as he pays the usual rent (revenue); secondly 'Khushbash' or persons residing in villages at will, Brahman, Musalmans and other castes not

cultivators, who rent land entering into agreement to renew the lease annually, and bring it under cultivation, by employing other persons for that purpose, obtaining those lands which are chiefly waste, or such as have been deserted by the raiyats at easy terms; thirdly "Walandadars" or 'Payakari': persons living in one village who cultivate lands of another from year to year having only a contingent interest expiring with the harvest. The Mundkari and resident raiyats have the choice of land in their own villages, selecting those nearest the village, unless other fields exist whose fertility will repay them for going to a greater distance."

It will be apparent from the above that proprietary rights in land existed from before the cession and Sir A. Lyall points out in the Berar Gazetteer of 1870 that the right was also alienable. On the assumption of management by the British, settlements continued to be annual and were made 'Mauzawar' i. e. by assessing a lump sum on the whole village and a settlement on the North Western Provinces model (Zamindari) was even ordered for the province. But ultimately a settlement on the Bombay 'Raiyatwari' line was decided on. Survey of lands was started under the direction of Bombay officers and completed as follows:—

Buldana District	...	...	...	1862-63
Akola	"	...	...	1864-65
Amraoti	"	...	...	1868-69
Ellichpur	"	...	...	1868-69
Basim	"	...	...	1872-73
Wun	"	...	...	1873-74

Principles laid down in the 'Joint Report' of 1847 by Mr. Goldsmid, Captain Wingate and Captain Davidson for the settlement of Deccan districts of the Bombay Presidency were followed. A Code of simple rules was drawn up which was sanctioned by the Government of India on 10th December 1866. This was the first Revenue Law for Berar and was called 'The Berar Settlement Rules.' The principal features of the Bombay Joint Report which were followed were as under:—

(i) the unit of assessment was to be the field or survey number, and not the total area or holding held by one individual.

(ii) the assessment of the unit was to be based on a system which was known as 'Aggregate to Detail' and which involved,

(a) the division of areas into 'groups' having similar climatic, economic and agricultural conditions,

(b) the determination first of the total amount to be levied upon a group, and

(c) the distribution of the amount according to the classes of the soil and the particular soil classification of a field. For this purpose lands were divided into 'dry crop land' and 'irrigated lands' and the productive capacity of each field was determined and expressed in anna notation, the best kind of field being called the 16 annas field.

(iii) the tenure, that was assured to persons taking up land, was to be permanent and heritable property subject only to the condition of payment of the amount assessed upon it from time to time.

(iv) the settlement was to be for a long period viz. 30 years.

Consistently with the Survey and Settlement Act (I of 1865) of Bombay provision was also made for co-owners in a survey number to apply and have their names registered in the Register of Occupants and their shares shown in fractional part of a rupee. This was done by 'Sub-Tenancy Rules' which were sanctioned by the Government of India in December 1866.

Rules called 'Inam Rules' were also promulgated in 1859 for investigating and regulating the titles of persons claiming to hold lands from former Governments on favourable terms. Those lands were also surveyed but no survey settlement was introduced. The liability of such land to pay the state demand was carefully recorded in the sanads granted to the holders. Revenue business was thus regulated by the 'Settlement Rules' 'Sub-Tenancy Rules' and the 'Inam Rules' and where necessary by circular orders issued by the Resident from time to time.

A comprehensive legislation to deal with lands, landed rights, and the revenue business in Berar was undertaken in

1891 and a Code known as the 'Berar Land Revenue Code 1896' was put into operation from 1st. January 1897. This Code was fashioned on the Bombay Land Revenue Code.

In 1912 the Code was amended by the addition of chapter VIII-A providing for the preparation of a record of rights in land. The conception of 'registered occupant' (person recorded in the Register of occupants being primarily responsible for the payment of revenue) which was the basic principle in the Code thus became obsolete. A committee was appointed in 1917 to draft changes necessitated by the record of rights. The consideration of changes suggested by the committee had to be postponed on account of the pressure of other more urgent business. In the meantime the Code was getting more and more out of date. Increasing pressure resulted in encroachments on communal and private rights. Subjects which were incompletely or not at all dealt with by the Code began to assume greater importance. The embodiment in one code of two separate systems of record, one of 'registered occupancy' for purposes of revenue and the other of record of rights in land complicated matters and made the code more difficult of interpretation. Early in 1923 the Standing Committee of the Legislative Council for Berar Revenue urged Government to undertake a complete revision of the code and drew attention in particular to one of the consequences of the record of rights viz. the inconvenience caused by the fact that the law of preemption took no account of subdivisions of survey numbers created under chapter VIII-A. The C. P. Government thereupon took up the preparation of a complete and revised revenue code, to eliminate inconsistencies, and to embody provisions fixing the principles of land revenue settlement as desired by the Select Committee of the Houses of Parliament. This draft was placed before the Berar Legislative Committee in 1925 and its recommendations were submitted to the Government of India. Certain alterations in important particulars were suggested to the Committee and after considering its views on them this law was passed by the Government of India in 1928. The following are the important changes brought about by the present Code :—

(i) Procedure of conducting revenue work is regulated and is set out in greater detail than before (chap. III)

(ii) A right of 3rd. appeal to the Governor-in-Council is given; and review is provided for (Chap. IV)

(iii) Right of Government to minerals is expressed in a more pronounced way than before (Sec. 44)

(iv) The title of the occupant is expressly declared to be permanent, heritable and transferable property (sec. 56)

(v) The right of the occupant to divert land is recognised (sec. 58)

(vi) Power is given to revenue officer to eject persons unauthorizedly in possession of land. (sec. 65)

(vii) Law of alluvion and diluvion is made more clear (chap. VII)

(viii) Disputes as to who are antealienation tenants are set at rest by enacting that all persons continuously in possession from 1865 are antealienation tenants. (sec. 72)

(ix) Principles of settlement are enunciated and settlement proposals are subjected to popular scrutiny (sec. 93-95); and the term of settlement is by law fixed at 30 years (sec. 100) and the policy of suspension and remission of revenue is accepted by statute (sec. 139)

(x) A record of right is prescribed not only for purposes of ascertainment of titles in land but for purposes for fixing the liability of payment of land revenue (secs. 88, 110, 127). Unit of assessment is no longer the survey number, and the principle of basing revenue liability on registered occupancy is abandoned.

(xi) D. C. is authorised to allow a right of way over boundaries of fields for convenience of cultivation. (Sec. 129).

(xii) Forfeiture of land for default in payment of land revenue is abandoned.

(xiii) Right of preemption is extended to transactions of lease, usufructuary mortgage and exchange (sec. 178, 184)

(xiv) Forfeiture or assessment of lands given out as 'service Inams' is provided by law (sec. 190)

(xv) Exclusive jurisdiction of revenue authorities and bar of civil suits in certain cases is pronounced in a clear way (sec. 192)

CHAPTER I.

Preliminary.

1. (1) This Law may be called the Berar Land Revenue Code, 1928.

Title, extent and commencement.

(2) It extends to the whole of Berar except such areas as may from time to time be constituted as reserved forests under the Indian Forest Act, 1927, or any other enactment for the time being in force relating to the Forests.

Notes.

Forest areas—This Code does not apply to cultivated or cultivable lands in Reserve Forests. In these areas, villages called 'forest villages' are established and people are induced to settle down on favourable terms on condition that they supply labour for forest purposes. Persons holding lands in such forest areas will be governed by the terms on which land is given to them and not by this code.

(3) It shall come into force on such day as the Governor in Council may, by notification, direct.

Notes.

This code came into force from 1-11-1928.

2. In this Law, unless there is anything repugnant in the subject or context,—

Definitions.

(1) "agricultural year" means the year commencing on the first day of April or on such other date as the Governor in Council may, in the case of any specified local area, by notification, appoint;

"Agricultural year."

Notes.

The importance of the commencement of the agricultural year may be borne in mind specially with reference to notices for ejectment and enhancement of rent, under sections 74 and 75.

(2) "alienated land" means land in respect of which Government has assigned in whole or in part its right to receive land-revenue equal in amount to the fair assessment, and the person to whom such assignment is made is called the "superior holder";

"Alienated land" and "superior holder."

Notes.

In common parlance this refers to Jagir and Palampat lands and Inam fields. Ijaras granted under the Waste Land Rules of 1865 and 1876 also fall within the definition. The proprietary right of Jagirdars and Inamdars over their lands is secured by Inam certificates or Sanads granted in pursuance of the enquiries made by the Inam Commission appointed prior to 1863-64. It is confirmed by section 41 of this Code by the words "which are not the property of persons" occurring in that section. This definition merely aims at pointing out that Government has waived its right to receive rent or land revenue for these lands and puts down a certain minimum requirement. So a village may be an alienated village even if grant in the soil is not made by Government. Vide *Ganpat v. Raje Laxmanrao* 26 N. L. R. 195. For the conception of 'fair assessment' see notes to section 97.

(3) "*chaudi*" means the place ordinarily used by the patel for the transaction of village business;

"Chaudi."

"Holder."

(4) "holder" means—

(a) in reference to unalienated land, an occupant;

(b) in reference to alienated land, a superior holder and

(c) in reference to any land, a lessee, tenant, or mortgagee with possession;

"Holding."

(5) "holding" means—

- (a) a parcel of land separately assessed to land-revenue; and
- (b) in reference to land held by a tenant—a parcel of land held from a landlord under one lease or set of conditions;

Notes.

Holder:—The definition of a holder under the present code is indicative in character. It does not define the characteristics required for being a holder. It simply indicates or enumerates persons who are intended to be classed as holders. To arrive at an idea as to who is a holder in respect of a particular kind of land clause (c) has to be read with clauses (a) and clause (b). Thus in the case of 'unalienated land' i. e. Khalsa fields the following persons are holders:—

- (1) Owners of survey numbers or sub divisions thereof.
- (2) Lessees.
- (3) Tenants.
- (4) Mortgagees with possession.

In the case of 'alienated lands' i. e. Jagir or Palampat lands or Inam fields the following are the holders:—

- (1) Jagirdar, Inamdar and his sharers,
- (2) Lessees,
- (3) Tenants, or
- (4) Mortgagees with possession of such land.

It should be noted that all persons in possession are not 'holders' according to this enumeration, e. g. a licensee, or trespasser is not a holder according to this definition.

The importance of the definition is with reference to, section 85, which empowers a Settlement Officer to demand help from holders for purposes of measurement of fields &c; section 108 which lays down what persons are entitled to have their rights recorded in the record of rights; section 118, which empowers revenue officers to secure assistance from holders for preparing maps; section 125 which deals with the liability to repair boundary marks of fields, and section 171 clause (2) which deals with the payment of Jaglia and Mahar cess of alienated plots of land. In none of these cases can a licensee or trespasser in possession be called upon to discharge the liabi-

lity that rests on an occupant or his transferees like the tenants, or mortgagees with possession or on a superior holder or his transferees.

Under the Code of 1896 now replaced by this Act holder did not include a tenant or a lessee. Under that Code the definitions of "to hold land" and 'holder' stood as follows:—

"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."

"Holder or land holder" means 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; and includes a mortgagee vested with a right to possession."

'Holder' under this definition included two categories of persons:—

(i) persons who were invested with the right to possession and enjoyment; and

(ii) persons who were invested with the right to possession as also with the right of disposal.

In other words it included 'owners' and persons in possession. Under the amended Bombay Code 'to hold land' and 'to be a land-holder or holder' have now been defined to mean to be lawfully in possession of land whether such possession be actual or not (vide Bombay Code section 3 (ii))

And the Bombay High Court has held that the term holder as defined in the Bombay Code is wide enough to include a tenant from an occupant.¹

With specific provision for record of rights and a specific recognition of the heritable and transferable character of rights possessed by occupants the element of the right to dispose of land became unimportant, whereas complication of holding of land in modern times made it necessary to include persons with merely possessory title in the definition of holder so as to indicate their liability in certain respects.

1 Nanabhai v. the Collector of Kaira I.L. R. 34 Bom. 686.

The definition adopted in the Code steers clear of these technicalities and merely indicates the persons who would be regarded as holders for the purposes of this Code.

It should however be noticed that a licensee or trespasser pure and simple would not be a holder and cannot therefore be subjected to the same responsibilities as other holders.

(6) "improvement" means, with reference to land, "Improvement," any work which materially adds to the value of such land, which is suitable thereto and consistent with the purpose for which it is held and which, if not executed on the land, is either executed directly for its benefit, or is, after execution, made directly beneficial to it; and, subject to the foregoing provisions, includes—

- (a) the construction of tanks, wells, water-channels, embankments and other works for the storage, supply or distribution of water for agricultural purposes;
- (b) the construction of works for the drainage of land or for the protection of land from floods, or from erosion or other damage from water;
- (c) the planting of trees and the reclaiming, clearing, enclosing, levelling or terracing of land;
- (d) the erection of buildings on land or in its immediate vicinity, elsewhere than in the village site, required for the convenient or profitable use of such land; and
- (e) the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto;

but does not include temporary wells and such water-channels, embankments, levellings, enclosures or other works, or petty alterations in or repairs to such works, as are commonly made by agriculturists of the locality in the ordinary course of agriculture.

Explanation.—A work which benefits several holdings may be deemed to be an improvement with respect to each of such holdings ;

Notes.

This definition is borrowed from the C. P. Tenancy Act section 2 (5).

Its importance is with reference to improvements by tenants of antiquity mentioned in section 73 and the principles of assessment enunciated in section 93 (5).

It should be noted that an improvement of a temporary character is no improvement.

(7) "land" means a portion of the earth's surface and, where land is referred to in this Law,
 "Land." it shall be deemed to include all things attached to or permanently fastened to anything attached to such land ;

Notes.

Portion of earth's surface.—These words are important and indicate that the theory that the ownership over land extends to the 'centre of the earth' is not recognised by the statute Law of the land.

(8) "land records" means records maintained under
 "Land records." the provisions of and for the purposes of Chapter X ;

(9) "rent" means whatever is payable to a landlord
 "Rent." in money, kind or service by a tenant for the right to use land ;

(10) "Revenue Officer" means any officer declared to
 "Revenue officer." be a Revenue Officer by this Law and any other officer whom the Governor in Council may, for any of the purposes of this Law, declare to be a Revenue Officer ;

Notes.

Settlement Commissioner and other officers engaged in connection with survey and settlement are Revenue officers only for purposes of procedure outlined in Chapter III ; and for appeals &c. mentioned in Chapter IV of the Code. They are not revenue officers for other purposes within the meaning of the Code.

(11) "revenue year" means the year commencing on the first day of August or on such other date as the Governor in Council may, in the case of any specified local area, by notification, appoint;

(12) "sub-division of a survey number" means a portion of a survey number in respect of which the area and the land-revenue payable are separately entered in the land records under an indicative number subordinate to that of the survey number of which it is a portion, and includes a recognized division of a survey number recognized under section 86 of the Berar Land Revenue Code, 1896.

Notes.

This definition would now include subdivisions of survey numbers which were sub-numbers and were known as "Paiki numbers."

(13) "survey number" means a portion of land formed into, or recognized as, a survey number at the last preceding revenue-survey, or subsequently recognized as such by the Deputy Commissioner, in respect of which the area and the land-revenue payable are separately entered under an indicative number in the land records;

(14) "tenant" means a person who holds land from another person called his "land-lord" and is, or but for a contract, would be, liable to pay rent for such land to that landlord; but does not include a person holding land directly from Government or an occupant or a mortgagee;

(15) "village" includes any tract of land which at the last revenue-survey of such land has been recognized as a village, or which the Governor in Council may, by notification, declare to be a village for the purposes of this Law; and

(16) References to any enactment shall refer to such enactment as applied to Berar.

CHAPTER II.**Appointment and Powers of Revenue Officers.**

Revenue Officers. 3. There shall be the following classes of Revenue Officers :—

- (1) The Commissioner ;
- (2) Deputy Commissioners ;
- (3) Assistant Commissioners of the first and second grade ;
- (4) Tahsildars ;
- (5) Naib-Tahsildars.

The term "Assistant Commissioner" includes "Extra-Assistant Commissioner."

Notes.

This chapter is, with only slight modifications, a reproduction of chapter II of the C. P. Land Revenue Act.

Subordination of Revenue Officers. 4. (1) All Revenue Officers shall be subordinate to the Governor in Council.

(2) All Revenue Officers below the rank of Commissioner shall be subordinate to the Commissioner.

(3) Unless the Governor in Council otherwise directs, all Revenue Officers in a district shall be subordinate to the Deputy Commissioner.

5. The Commissioner shall be appointed by the Governor in Council and shall exercise the powers and discharge the duties conferred and imposed on the Commissioner by this Law or by an enactment for the time being in force.

The Commissioner. 6. (1) The Governor in Council may alter the limits of any district or taluq and may create new or abolish existing districts or taluqs, and may divide any district into sub-divisions and may alter the limits of or abolish any sub-division :

Power to create, alter or abolish districts, subdivisions and taluqs.

Provided that no district shall be created or abolished until the expiry of six months from the date of a notification publishing the scheme whereby the Governor in Council proposes to carry such creation or abolition into effect; and such scheme shall be treated as a draft published under the provisions of section 22 of the Central Provinces General Clauses Act, 1914.

(2) Subject to the orders of the Governor in Council under sub-section (1) every taluq shall be deemed to be a sub-division of a district.

Notes.

The proviso to the section is new. The idea is to give the residents of the district ample opportunity to put forth their objections if any to the proposed change.

7. The Governor in Council shall appoint in each district a Deputy Commissioner who shall exercise therein the powers and discharge the duties conferred and imposed on a Deputy Commissioner or a Collector by this Law or by any enactment for the time being in force.

8. The Governor in Council may appoint to each district as many persons as he thinks fit to be Assistant Commissioners of the first and second grades, who shall exercise such powers as the Governor in Council may, by notification, direct.

Notes.

For Rules see Compilation of Rules page 1.

9. (1) The Governor in Council may appoint to each district as many persons as he thinks fit to be Tahsildars and Naib-Tahsildars and may delegate to the Commissioner his power of appointing them.

(2) Tahsildars and Naib-Tahsildars shall exercise the powers and discharge the duties conferred and imposed upon them by or under this Law or any enactment for the time being in force.

Notes.

For rules see Compilation p. 1

10. (1) The Governor in Council may appoint such other officers and invest them with such powers as may be necessary to give effect to the provisions of this Law.

(2) Such officers shall discharge such duties and be subordinate to such authorities as the Governor in Council may prescribe.

11. (1) The Commissioner may place any Assistant Commissioner of the first grade in charge of one or more sub-divisions of a district.

(2) Such Assistant Commissioner shall be called a Sub-Divisional Officer and shall exercise such powers of a Deputy Commissioner as the Governor in Council may, by notification, direct,

(3) The Commissioner may delegate his powers under sub-section (1) to the Deputy Commissioner.

Notes.

For powers see Compilation page 1.

12. Unless the Commissioner otherwise directs every Revenue Officer in a sub-division shall be subordinate to the Sub-Divisional Officer and in a taluq a Naib-Tahsildar shall be subordinate to the Tahsildar.

13. (1) The Governor in Council may confer on any stipendiary Government servant the powers of an Assistant Commissioner of the first grade or a Tahsildar.

(2) The Governor in Council may confer on an Assistant Commissioner of the first or second grade, Tahsildar, or Naib-Tahsildar any of the powers of a Revenue Officer of a higher class.

(3) If any Revenue Officer who has been invested with any powers under this Law in any taluq or district is transferred to an equal or higher office of the same nature in any other taluq or district he shall, unless the Governor in

Council otherwise directs, be held to be invested with the same powers under this Law in such other taluq or district.

Notes.

For powers see Compilation pages 2-3.

The corresponding section of the C. P. Act (section 14) confers on the Governor in Council (Chief Commissioner) the power to invest 'any person'. This Act permits him only to invest a stipendiary Government Servant so that no powers can be conferred on a non-official. As an administrative convenience the C. P. provision is more helpful in times of emergency.

Clause (3):—An officer when once invested with powers is by this clause supposed to carry them with him wherever he goes. This is for administrative convenience and to save the trouble of publishing his powers every time he is transferred.

The conferral of powers is the conferral of jurisdiction i. e. the power to decide a claim. Jurisdiction under the Revenue Law is mostly territorial. An officer is invested with powers but the exercise of it is confined to a geographical area and if the officer exercises his power beyond the limits he has to assign reasons. Thus a person acting as a Tahasildar at Ellichpur can not exercise his powers beyond the limits of Ellichpur Tahsil nor can a Subdivisional officer of Amraoti exercise his powers in the subdivision of Basim. Jurisdiction has reference to power to decide and should not be confounded with the exercise of that power. An officer having power to decide can not be said to be acting without jurisdiction because he decides a case wrongly. As the Privy Council points out a court has power to decide both rightly and wrongly.¹ The distinction between jurisdiction and the exercise of it has been pointed out recently by the Calcutta High Court in the following words:²—

The term "Jurisdiction" as pointed out in the case of Hriday Nath Roy vs. Ramchandra is often inaccurately used. There is a clear distinction between "Jurisdiction" and "Exercise of jurisdiction." Since jurisdiction is the power to hear and determine a case, it does not depend either upon the

1 *Malkarjun vs. Narhari*. I. L. R. 25 Bom 337;

2 *Arunchandra Singh vs. Manmohan Singh* A. I. R. 1924 Cal. 154;

regularity of the exercise of that power or upon the correctness of the decision pronounced, for the power to decide necessarily carries with it the power to decide wrongly as well as rightly. As an authority for this proposition reference may be made to the celebrated dictum of Lord Hobhouse in *Malkarjun vs. Narhari*. "A court has jurisdiction to decide wrong as well as right. If it decides wrong, the wronged party can only take the course prescribed by law for setting matters right; and if that course is not taken, the decision however wrong, cannot be disturbed." Lord Hobhouse then 'added that though it was true that the court made a sad mistake in following the procedure adopted, still in so doing the court was exercising its jurisdiction; and to treat such an error as destroying the jurisdiction of the court was calculated to introduce great confusion into the administration of the law. The boundary between an error of judgment and the usurpation of power is this: the former is reversible by an appellate court within a certain fixed time and is therefore only voidable, the latter is an absolute nullity. So far as the jurisdiction itself is concerned, it is wholly immaterial whether the decision upon the particular question be correct or incorrect. Were it held that a court had jurisdiction to render only correct decisions, then each time it made an erroneous ruling or decision, the court would be without jurisdiction and the ruling itself void'.

14. In conferring powers under this Law the Governor in Council may empower persons by name or classes of officials generally by their official designations.

Conferral of powers on officials by name or class.

Notes.

When powers are given by name the individual officer gets them and carries them with him wherever he goes by virtue of section 13. When powers are conferred by 'official designation' the officer who steps into that office gets the authority to exercise the powers of that office without being himself invested with those powers, and as soon as he vacates the office he is divested of the powers which pertained to that office. In common parlance the latter kind of investing is known as giving powers 'ex-officio' i. e. by virtue of office.

15. If the Deputy Commissioner dies or is disabled from performing his duties, the officer who succeeds temporarily to the chief executive administration of the district in revenue matters shall be held to the Deputy Commissioner under this Law until the Governor in Council appoints a successor to the Deputy Commissioner so dying or disabled, and such successor takes charge of his appointment.

Deputy Commissioner in case of temporary vacancy.

CHAPTER III.

Procedure of Revenue Officers.

16. Except for reasons to be recorded, no Revenue Officer shall inquire into or hear any case at any place outside the local limits of his jurisdiction :

Place for hearing cases.

provided that a Sub-Divisional Officer may inquire into or hear any case at the headquarters of the district to which he is appointed.

Notes.

General:—This chapter again is borrowed largely from the C. P. Act chapter III.

A revenue officer has power to inquire or hear a case within the limits of his jurisdiction. If he has an occasion to do it outside he must record his reasons in writing. If this is not done he will be acting without jurisdiction. An exception to the rule is the case of a Sub-Divisional officer. His jurisdiction is over a taluq or two and his head quarters may not be the head quarters of the district. In such a case the S. D. O. may hear a case at district head quarters without recording reasons though he is outside the territorial limits of his jurisdiction. As to jurisdiction and exercise of it see *Arunochandra Sinha vs. Manmohan Sinha* A. I. R. 1924 Calcutta 154. quoted above.

17. All Revenue Officers, revenue inspectors, measurers, and Patwaris, and, when under their observation and control, their servants and workmen when so directed, may enter upon and survey land and demarcate boundaries and do other acts, connected with their duties under this Law or any other enactment for the time being in force, and in so doing, shall cause no more damage than may be required for the due performance of their duties :

Power to enter upon and survey land.

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house, unless with the consent of the occupier thereof, without giving such occupier at least twelve hours' notice in writing, and, in making such entry, due regard shall be paid to the social and religious sentiments of the occupier.

Notes.

This section corresponds to section 17 of the C. P. Land Revenue Act with this difference that in this section protection is extended to inspecting officers in respect of claims for damage caused during inspection. In measuring fields some damage is inevitable and in the absence of a statutory protection a revenue officer can be made liable to damage as upon a tort. This section limits the protection to the minimum damage necessary and in a civil action against an inspecting officer burden will be upon the officer to justify the extent of the damage caused as being necessary for the due performance of his duty as it is a fact within his special knowledge.

Under the old Code there was a general protection to revenue officers. Section 173 of that code said "No Revenue Officer shall be liable to be sued in any civil court for any act done or ordered to be done by him as such in pursuance, or execution or intended execution of the provisions of this law or of any law, rule or order for the time being in force." This general protection is withdrawn by the present law and a revenue officer has now to justify the reasonableness of his orders or doings.

A revenue officer exceeding his authority is not an agent of the State and Government would not be liable for damage caused by such officer. See Ratanlal's Law of Torts pages 112-113.

Proviso. The proviso provides that entry in a building or enclosure has to be with 12 hours' previous notice unless it is with the consent of the occupier; and in making such entry due regard is to be paid to the social and religious sentiments of the occupier. A disregard of these provisions may expose the revenue officer to a suit for damages.

18. The Governor in Council or the Commissioner may transfer any case or class of cases from any sub-ordinate Revenue Officer to any other such officer competent to deal therewith.

Power of superior revenue authorities to transfer cases.

Notes.

This section and the next relate to the power of transferring a revenue case from one officer to another. This section is wider than the next one and under this Governor-in-Council or the Commissioner can transfer a case from any officer to any other officer; whereas under the next question the Deputy Commissioner, Sub Divisional Officer or Tahsildar can transfer a case on the file of a subordinate officer to himself and try it himself or transfer a case on his own file or on the file of a subordinate officer to another subordinate officer.

Grounds for transfer.—Transfer of a case is an extraordinary matter and is not allowed without a sufficient cause.

The following may be said to be good grounds for transfer:—

- (1) Convenience of witnesses.
- (2) A better and speedier disposal of the case by site inspection, &c.
- (3) Officer being interested in one of the parties.
- (4) Reasonable fear in the mind of a party that justice may not be had.

19. A Deputy Commissioner, a Sub-Divisional Officer or a Tahsildar may make over any case or class of cases, arising under the provisions of this law or otherwise, for inquiry or decision, from his own file to any Revenue Officer subordinate to him competent to deal with such

Power to transfer cases to and from subordinates.

case or class of cases, or may withdraw any case or class of cases, from any such Revenue Officer and may deal with such case or class of cases himself or refer the same for disposal to any other such Revenue Officer competent to deal therewith.

20. Subject to the provisions of sections 132 and 133 of the Code of Civil Procedure, 1908, and

Power of Revenue Officers to take evidence and to require attendance of persons and production of documents.

to rules made under this Law, every Revenue Officer shall have power to take evidence and to summon any person whose attendance he considers necessary either as a party, or as a witness or to produce any document for the purposes of any case arising under this Law or any other enactment for the time being in force.

(2) 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 or power of the person summoned.

(3) If any person, on whom a summons to attend as a witness or to produce any document has been served, fails to comply with the summons, the officer by whom the summons has been issued may issue a bailable warrant for the arrest of such person.

(4) No person shall be ordered to attend in person unless he resides—

(a) within the local limits of the Revenue Officer's jurisdiction ; or

(b) without such limits but at a place less than fifty, or, where there is railway communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where he is summoned to attend, less than two hundred miles distant from such place.

(5) Any person present may be required by any Revenue Officer to give evidence or to produce any document then and there in his possession or power.

Notes.

Section 132 of the Civil Procedure Code lays down that women who according to the customs and manners of the country ought not to be compelled to appear in public are exempt from personal appearance and section 133 says that persons of rank who are specially exempted from personal appearance by notification in the local Official Gazette can not be compelled to appear in court. This Code makes no provision for examination of witnesses on commission consequently women and persons of rank cannot be examined if they do not of their own accord turn up in court to give evidence. It should also be remembered that no witness can be examined on commission.

To take evidence:—Revenue officers empowered to take evidence are courts within the meaning of the Evidence Act and the Oaths Act and consequently the provisions of both the Acts apply to the enquiries made by Revenue officers.

21. (1) Every summons shall be in writing in duplicate, and shall be signed and sealed by the officer issuing it or by such person as he empowers in this behalf, and it shall specify the time and place at which the person summoned is required to attend, and also whether he is required to attend as a party or to give evidence or to produce a document.

Form and contents of summons.

(2) Every summons shall be served by tendering or delivering a copy of it to the person summoned, or, if he cannot be found or refuses to accept service of the summons by affixing a copy of it to some conspicuous part of his usual residence, and, if such person resides in another district, the summons may be sent by post to the Deputy Commissioner of such district for service.

Mode of serving summons.

22. Subject to the provisions of this Law, whoever is summoned to appear before a Revenue Officer to attend as a party or to give evidence shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall

Duty of persons summoned to comply.

either attend to produce it, or cause it to be produced, at such time and place.

23. Every notice under this Law may be served either by tendering or delivering a copy thereof, or sending such copy by post to the person on whom it is to be served, or his authorised agent or, if service in the manner aforesid cannot be made, by affixing a copy thereof at his last known place of residence or at some place of public resort in the village in which the land to which the notice relates is situated or from which the land is cultivated.

Mode of serving notice.

Notes.

Service by post means service by registered post. See section 26 of the C. P. General Clauses Act.

24. Whenever a proclamation is issued under this Law copies thereof shall be posted in the court-house of the officer issuing it, at the headquarters of the taluq within which the land to which it refers is situated, and at some place of public resort on or adjacent to the land to which it refers, and, unless the officer issuing it otherwise directs, the proclamation shall be further published by beat of drum in the village in which the land to which it refers is situated, or, if such village is uninhabited, in the village from which the land is cultivated.

Mode of issuing proclamation.

Notes.

Proclamation must, as a general rule, be published by beat of drum. If a Revenue Officer thinks that a beat of drum is unnecessary as in the case of proclamation in jungles he must give a specific direction to that effect.

25. No notice or proclamation shall be deemed void on account of any error in the name or designation of any person or in the description of any land referred to therein, unless such error has produced substantial injustice.

Notice or proclamation not void for error.

26. If any party to a case before a Revenue Officer does not, after a summons or notice has been duly served upon him, appear on the date fixed for hearing, the case may be heard and determined in his absence or may be dismissed in default.

Hearing in absence of party.

27. (1) A Revenue Officer may, from time to time, for reasons to be recorded, adjourn the hearing of a case before him.

Adjournment of hearing.

(2) The date and place of an adjourned hearing of a case shall be intimated at the time of the adjournment to such of the parties and witnesses as are present.

28. (1) Except where a case before any Revenue Officer has been decided on the merits, no appeal shall lie from an order passed under section 26.

No appeal from order passed under section 26.

(2) The party against whom any order is passed under section 26 may apply, within thirty days, from the date of such order, to have it set aside on the ground he was prevented by any sufficient cause from appearing at the hearing, and the Revenue Officer may, after notice to the opposite party and after making such inquiry as he considers necessary, set aside the order so passed.

Application to set aside order passed under section 26.

29. A Revenue Officer may give and apportion costs incurred in any case arising under this Law or otherwise in such manner and to such extent as he thinks fit:

Power to give and apportion costs.

Provided that the fees of a legal practitioner shall not be allowed as costs in any such case unless such office considers otherwise for reasons to be recorded.

30. (1) An order for the delivery of possession of immovable property or for the ejectment of a person wrongfully in the possession of land shall be enforced in the manner provided in the Code of Civil Procedure, 1908, in respect of the execution of a decree by which a civil

Delivery of possession of, or ejectment from immovable property.

court has adjudged delivery of possession of, or ejection from, such property'.

(2) In enforcing such order a Revenue Officer shall have all the powers in regard to contempts, resistance, and the like which a civil court may exercise in the execution of its decrees.

(3) Rule 103, Order XXI, of the first schedule to the Code of Civil Procedure, 1908, shall apply to any order passed in exercise of powers under this section.

Notes.

Clause (1).—Order 21 rules 35 and 36 of the Code of Civil Procedure show the manner of delivery of possession in execution of decrees.

Clause (2).—Order 21 rules 97 to 101 of the Code of Civil Procedure refer to resistance to delivery of possession;

Clause (3).—Rule 103 Order XXI says that a party dissatisfied with the orders for possession or resistance to delivery of possession, may file a civil suit to question these orders and that subject to the result of the suit the orders are conclusive.

31. Save as otherwise provided in any other enactment

Persons by whom appearances and applications may be made before and to Revenue Officers.

for the time being in force, all appearances before, applications to, and acts to be done before, any Revenue Officer under this Law or otherwise may be made or done by the parties themselves, or by their recognized agents, or by any legal practitioner :

Provided that—

- (i) no legal practitioner of less than five years' standing shall be entitled to appear before the Governor in Council ;
- (ii) subject to the provisions of sections 132 and 133 of the Code of Civil Procedure, 1908, any such appearance shall, if the Revenue Officer so directs, be made by the party in person.

Notes.

The assumption underlying Proviso (i) seems to be that junior legal practitioners are not competent to appear before the Governor-in-council. This is hardly correct on principle and there is no reason why a client should not be given a free choice to select his advocate from any class of legal practitioners.

CHAPTER IV.

Appeal, Revision and Review.

32. Save where an order is declared by this Law to be final, an appeal shall lie from every original order under this Law or the rules made thereunder—

Appeals and appellate authorities.

- (a) if such order is passed by any Revenue Officer subordinate to the Deputy Commissioner, to the Deputy Commissioner ;
- (b) if such order is passed by a Deputy Commissioner, to the Commissioner ;
- (c) if such order is passed by the Commissioner, to the Governor in Council.

(2) A second appeal shall lie to the Commissioner or Governor in Council as the case may be—

- (a) if the original order has in appeal been varied or reversed, otherwise than in a matter of costs ; or
- (b) on any of the following grounds and no other, namely :—
 - (i) that the order is contrary to law or usage having the force of law ;
 - (ii) that the order has failed to determine some material issue of law or usage having the force of law,
 - (iii) that there has been a substantial error or defect in the procedure as prescribed by this Law, which may have produced error or defect in the decision of the case upon the merits.

(3) A third appeal shall lie to the Governor in Council on the following ground and no other, namely, that the order is contrary to law or usage having the force of law.

(4) An order passed on revision or review varying or reversing any order shall be appealable in like manner as the order so revised or reviewed.

Notes.

Every original order under this code is appellable unless an appeal is expressly barred; for instance no appeal lies from an order under sections 26, 33, 138, 139 and 146.

Appellate Courts :—The following table will illustrate the courts to which appeals lie :—

	Original court.	1st Appeal court.	2nd Appeal court.	3rd Appeal court.
1 2	Naib Tahsildar Tahsildar	Subdivisional officer specially empowered.	Commissioner.	Governor-in-council.
3	Subdivisional Officer.			
4	Deputy Commissioner.	Commissioner.	Governor-in-council.	
5	Commissioner.	Governor-in-council.		

2nd Appeals :—second appeal lies to the Commissioner even when the first appellate court is the S. D. O. as in hearing appeals he exercises the power of the D.C. A second appeal will always lie when the order of the original court is reversed by the court of first appeal; but when it is confirmed 2nd appeal is confined to three grounds only. viz. (i) the appellate order is contrary to law; (ii) it has failed to determine any material issue of law or (iii) there was a substantial error or defect in procedure which error or defect resulted in a miscarriage of justice. In other words concurrent findings of fact will not be disturbed in second appeal.

3rd Appeal:—Third appeal is confined to a point of law only even if in second appeal findings of fact have been disturbed.

Appeals from revisional orders or orders passed on review:—It is noteworthy that appeals are allowed from orders passed on revision or review varying or reversing the order complained against.

No appeal against certain orders.

33. No appeal shall lie from an order—

- (a) admitting an appeal or application for review on the grounds specified in section 5 of the Indian Limitation Act, 1908; or
- (b) rejecting an application for revision or review.

Notes.

The reason set forth in section 5 of the Limitation Act is that the appellant or applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within the period of limitation.

Limitation of appeals.

34. No appeal shall lie—

- (a) to the Deputy Commissioner after the expiration of forty-five days from the date of the communication to the appellant of the order to which objection is made; or
- (b) to the Commissioner after the expiration of sixty days from such date; or
- (c) to the Governor in Council after the expiration of ninety days from such date.

Notes.

In computing the period of limitation the following provisions of the Limitation Act have to be borne in mind as laid down in section 40 :—

- (1) Where the period of limitation prescribed expires on a day when the court is closed an appeal or an application may be preferred or made on the day that the court reopens.

(2) Courts have power to extend the period of limitation and condone delay if the appellant or applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within the prescribed period.

Sufficient cause is a question of fact but it should be remembered that when the time for appealing is once passed a very valuable right is secured to the successful litigant and the court must be fully satisfied on the justice of the ground for an extension of time.¹ The order admitting an appeal 'ex parte' can be reopened on the objection of the respondent at the hearing.¹ In the admission of appeals filed out of time the discretion of the appellate court is not fettered by any definite or crystallised set of rules.² Exercise of discretion must be sound and reasonable.

(3) In computing the period of limitation for an appeal or application for review of judgment the day on which judgment complained of was pronounced and the time requisite for obtaining copies is to be excluded.

Time requisite means properly required.³ Any delay in tendering advance for copies or any lapse of time attributable to the negligence or disregard of the appellant will not be considered as time requisite.⁴

35. Every petition for appeal, review or revision shall be accompanied by a certified copy of the order to which objection is made unless the authority to which the petition is made dispenses with its production.

Copy of order objected to accompany petition.

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- 1 Dand Bahadur Singh vs. Deo Nandan Prasad 20 I. C. 513;
See also Krishnasami vs. Ramasami, I.L.R. 41 Mad. 412 P.C.;
 - 2 Sudhakar Bant vs. Sadashiv Jhatup Sing 31 I.C. 705;
See also
Soneshavar (Das) vs. Kanakram, A. I. B. 1928 Cal. 249;
Ambika Ranjan vs. Manikganj Loan office, A.I.B.1928 Cal.468
 - 3 Jijibhoy N.Surty vs. T. S. Chettyar A. I. B. 1928 P.C. 103;
 - 4 Gondaji vs. Kisan 61 I.C. 889;
See also
Bagho vs. Madhgia, 10 N. L. R. 139;
Paga vs. Sadashiva, 8 N. L. B. 172;

36. (1) The appellate authority may either admit the appeal or, after calling for the record and giving the appellant an opportunity to be heard, may summarily reject it :
Powers of appellate authority.

Provided that the appellate authority shall not be bound to call for the record where the appeal is time-barred or does not lie.

(2) If the appeal is admitted, a date shall be fixed for hearing and notice thereof shall be served on the respondent.

(3) After hearing the parties, if they appear, the appellate authority—

- (a) may confirm, vary or reverse the order appealed against; or
- (b) may direct such further investigation to be made, or such additional evidence to be taken, as it may think necessary; or
- (c) may itself take such additional evidence; or
- (d) may remand the case for disposal with such directions as it thinks fit.

Notes.

Hearing the appellant :—The appellant is entitled to be heard even if the appellate authority does not send for the record and thinks of summarily rejecting the appeal on the ground that it is timebarred or does not lie. The proviso enables the appellate court to dispense with the calling for the record but does not justify it in rejecting the appeal without hearing the appellant.

Powers of appellate court and the procedure to be followed :—As regards procedure the general provisions of chapter III apply to the appellate courts also e. g. provisions in sections 16, 17, 20, 26, 27, 28, 29, 31 will hold good in cases of appellate authorities.

Clause (2) :—Service of notice :—For service of notice see section 23.

Clause (3) :—Powers of the appellate court. Taking additional evidence :—Parties to an appeal are not entitled

to produce additional evidence whether oral or documentary; for an appeal is not to be regarded as an opportunity to prove a case once again;¹ nor it is to be used as an occasion to supply defects and loopholes that a vigilant litigant is required to guard against.² The admission of evidence in appeal is a matter of discretion within certain limits viz.³

(1) If the lower Court has refused to admit evidence which ought to have been admitted, or

(2) if the appellate court requires it to enable it to pronounce correct judgment.

Remand for fresh disposal.—Remand means return for decision and is justified only on grounds of justice. A case is remanded when the decision by the first court is upon a preliminary point, or when the case is approached from an entirely wrong point of view and there is consequent failure of justice. Where the enquiry is full and complete and the appellate court can decide the points at issue on the evidence on record the appellate court is expected to decide the case itself and not send it back to the lower court for writing a correct judgment. The power of remand given in this clause is general and covers the case where the first court has gone wrong only on a particular point in which case the appellate court has the power to send down an issue for enquiry and finding.

The right of parties to adduce fresh evidence after remand depends on the circumstances of each case and on the order passed by the appellate court. If the remand is general parties are entitled to adduce fresh evidence. If it is on a particular issue the parties will not be permitted to adduce evidence on points not covered by the issue. Evidence before the remand is still evidence in the case and can be relied upon for support or contradiction.

When a case is remanded for trial the decision of the first court after remand is again subject to appeal as the first decision.

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- 1 *Khazan Singh vs. Panna Lal*, 13 I. C. 131 ;
Durga Prasad vs. Jai Narain I. L. R. 33 All. 379 ;
- 2 *Jagernath Gir vs. Rajman Gir* 49 I. C. 868 ;
- 3 *Jitan Dusadh vs. Jawahir Singh* 85 I. C. 459 ;
Tirthamayadasi vs. Atikulla, A. I. B. 1927 Cal. 140 ;

When on the contrary only an issue is sent down for finding, the appellate court is supposed to dispose of the appeal on receipt of the finding. Parties are at liberty to object to the findings given by first court; and the appellate court is expected to record its order after hearing those objections.

Appeal from the order of remand :—An order of remand is appealable like any other order.

37. (1) If an appeal is admitted, the appellate authority may, pending the result of the appeal, direct the execution of the order appealed from to be stayed.

Power to stay execution of orders appealed against.

(2) A Revenue Officer who has passed any order, or his successor in office, may direct the execution of such order to be stayed at any time before the expiry of the period prescribed for appeal, if no appeal has been filed.

(3) Before execution of any order is stayed under subsection (1) or (2), such security may be taken or conditions imposed as the appellate authority or Revenue Officer thinks fit.

Notes.

If appeal is admitted :—An appellate court has inherent jurisdiction to stay execution of any order though this section refers to stay only on an appeal being admitted for hearing i. e. hearing both parties. If for instance a revenue officer invested with appellate powers cannot take up the first hearing at a near date he has power to stay the execution of the order till he goes through the papers of the appeal. For the policy underlying the grant of stay attention is invited to the observations of the Calcutta High Court.¹

Forum for stay :—After the filing of an appeal it is the appellate authority which can grant the stay under clause (1) of the section. Clause (2) empowers the court passing the order to grant stay between the date of the order and the filing of the appeal.

¹ Shrinibash Prasadsing vs. Kosho Prasadsing I.L.R. 36 Cal. 754.

Reasons for stay :—No order for stay of execution can be made unless the court is satisfied that substantial loss may result to the applicant, that the application is made without delay and that sufficient security is given for the proper execution of the order in appeal. The appellate authority has power to demand security or impose conditions under clause (3) of the section. To determine if there is substantial loss all surrounding circumstances have to be borne in mind. In cases relating to immoveable property the disturbance of status quo ante does result in substantial loss.¹

When stay order takes effect :—Stay order takes effect after communication². But knowledge of the fact of stay order is sufficient for the lower court to stop execution though official communication has not been received.³ Sale held in ignorance of stay order is not a nullity.⁴

38. The Governor in Council, Commissioner or Deputy Commissioner may, at any time, either on his own motion or on the application of any party interested, for the purpose of satisfying himself as to the legality or propriety of any order passed by, or as to the regularity of the proceedings of, any Revenue Officer subordinate to him, call for and examine the record of any case pending before, or disposed of by, such officer, and may pass such order in reference thereto as he thinks fit:

Provided that he shall not vary or reverse any order affecting any question of right between private persons without having given to the parties interested notice to appear and be heard.

Notes.

Under the Code of Civil Procedure revision is confined to three reasons :—

(1) When the court passing the order has exercised a jurisdiction not vested in it by law,

¹ *Fatekhan vs Daim and others.* A I.R. 1927 Lah. 169;

² *Kasaribada Venkatchallapati Rao vs Maddipatla Kameswaramma* I. L. R. 41 Mad. 151;

³ *Ramanathan Chetty vs Arunachallam Chetty* I. L. R. 38 Mad. 766;

⁴ *L. Parsotam Saran vs B. Barhma Nand* I.L.R. 50 All 41. F. B.

(2) When it has failed to exercise a jurisdiction so vested,

(3) When it has acted in the exercise of its jurisdiction illegally or with material irregularity.

The present section is wider in its scope and permits revision in all cases where it is alleged that an order is illegal or improper.

Other remedy open.—When another remedy is open to a party e. g. an appeal or a suit courts are unwilling to entertain applications for revision.¹ It is the last resort of an aggrieved party.² But this rule has its exceptions and each case must be judged according to the circumstances peculiar to it. When another remedy is open but it is very inconvenient or where there has been gross injustice it is usual to grant relief in revision.³

Legality. Legality refers to correctness of the decision according to the law applicable to the facts of the case. In a revenue court therefore revision is entertainable when the decision is not in accordance with law. An error of law is thus a ground for revision in a revenue court although in a civil case mere error in law does not afford a ground for revision. As said above the section is purposely wide in its scope to enable higher authorities to set matters right without expense or trouble to private individuals.

Propriety.—Propriety implies the decision being proper in the circumstances of the case. A decision may be strictly legal but it may not be proper in the circumstances of a case. Findings of facts may thus be reopened in revision in exceptional circumstances if the revisional authority is satisfied that injustice has been done.

Appeal from an order in revision.—An appeal has been provided from an order in revision. Vide section 32 (4).

1. *Buddhu Misir v. Bhagirathi*.—I. L. R. 40 All. 216 *Irbasappa v. Basangawda*.—I. L. R. 44 Bom. 595;

2. *Sheoprasad Sing v. Kastura* A. I. R. 10 All. 119

3. *Aranechallam v. Sivalingam*.—A. I. R. 1927 Mad. 799; (*Rani Kulandai v. Indran Ramaswami* A. I. R. 1928 Mad. 416.

Proviso.—Notice is obligatory. When rights of private individuals are affected a notice is essential to the party likely to be affected.

At any time. There is no limitation for an application in revision though applications unnecessarily delayed may be rejected on that score alone.

Either on his own motion or an application of any party interested.—It is not necessary that the party aggrieved must move. Any person interested may file an application or the authorities named may take up the revision on their own initiative.

39. (1) Every Revenue Officer may, either on his own motion or on the application of any party interested, review any order passed by himself or by any of his predecessors in office and pass such order in reference thereto as he thinks fit :

- (i) if the Commissioner or Deputy Commissioner thinks it necessary to review any order which he has not himself passed, or if an officer subordinate to the Deputy Commissioner proposes to review any order, whether passed by himself or by any predecessor, he shall first obtain the sanction of the officer to whom he is immediately subordinate ;
- (ii) no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard ;
- (iii) no order from which an appeal has been made, or which is the subject of any revision proceedings shall, so long as such appeal or proceedings are pending, be reviewed ;
- (iv) no order affecting any question of right between private persons shall be reviewed except on the application of a party to the proceedings, and no application for the review of such order shall be entertained unless it is made within ninety days from the date of communication of the order to the party applying.

(2) For the purposes of this section the Deputy Commissioner shall be deemed to be the successor in office of any Revenue Officer who has left the district, or who has ceased to exercise powers as a Revenue Officer, and to whom there is no successor in the district.

(3) An order which has been dealt with in appeal or on revision shall not be reviewed by any Revenue Officer subordinate to the appellate or revisional authority.

Notes.

General.—Clause (1) of the section enunciates the general principle that every Revenue Officer has the power to review his own order. The generality of this provision is however modified by the provisos to the clause as follows:—

(1) A Revenue Officer subordinate in grade to the Deputy Commissioner can not review his order at will. His doing so is contingent on the sanction of his immediate superior. The reason for this appears to be to curtail the habit of passing orders carelessly.
(Proviso (1))

(2) No Revenue Officer, except the Governor-in-council, can review the order passed by his predecessor in office without the sanction of the officer immediately superior.
(Proviso (1))

(3) The Deputy Commissioner is to be regarded the successor in office of an officer who has been transferred from the district and for whom no successor is appointed. He is the successor in office also of an officer who has ceased to exercise powers conferred on him and for whom no successor is appointed.
(Clause (2))

(4) It is not every order from which review will be entertained. No order which is the subject of an appeal or revision will be touched in review pending the appeal or revision.
(Proviso (3))

(5) An order which has been dealt with i. e. either confirmed or reversed in appeal or revision cannot be reviewed by the first court. The reviewing authority is the appellate or revisional authority.
(Clause 3)

(6) An order affecting rights of private persons can not be reviewed by the revenue officer 'sui moto' and no such order can be reviewed if the application for review is delayed beyond 90 days of the communication of the order. (Proviso 4)

(7) No order will be reviewed without hearing the party interested in the order. (Proviso 2)

Grounds for review:—The section does not set out the grounds on which a review must be sought. It may therefore be sought on any ground but the most usual grounds are:—

1. discovery of new evidence not known before,
2. mistake or error apparent on the face of the record,
3. any other sufficient cause.

Limitation:—It should be noted that under this law there is no time limit for an application for review of an order. The period of 90 days is for orders between private individuals. When an order is between Government and an individual review can be filed even after 90 days. Similarly limitation starts from the date of the communication of the order to the party and not from the date of the order. The succeeding section says that provisions of the Limitation Act will be applicable to applications for review which means that:—

(1) an application filed beyond the period of limitation may be admitted if the applicant is in a position to satisfy the court that he was prevented from filing it by a sufficient cause. (section 5 of Limitation Act.)

(2) In computing the period of limitation the day on which the order was passed and the time requisite for obtaining a copy is to be excluded (section 12 Limitation Act.)

(3) In computing the period of limitation prescribed for any application the time during which the applicant has been prosecuting with due diligence another proceeding whether in a court of first instance or in a court of appeal against the same party for the same relief is to be excluded (section 14 of the Limitation Act.)

Copy of order must be filed:—It is necessary to file a copy of the order of which the review is sought with the application for review vide section 35.

Appeal:—An appeal lies under section 32 (4) against any order on review varying or reversing the original order. No appeal lies against an order rejecting the review. Vide sec. 33 (b).

Powers of review:—In a recent case¹ the Home member of the C. P. Government remarked that under the wording similar to subsection (1) of this section the powers of revenue courts in respect of review are wider than those possessed by civil courts under the Code of Civil Procedure; and that the right of the revenue courts to review their own orders or the orders of their predecessors is unrestricted.

40. The provisions of the Indian Limitation Act, 1908,
Application of shall apply to all appeals and applications
Act IX of 1908. for review under this Law.

Notes.

What is meant is that the provisions in the Limitation Act for condoning delay and for computation of time will apply. These have been outlined under sections 34 and 39. Periods of limitation for filing appeals or applications for review have been specified in sec. 34 and 39.

In the cases of applications other than applications for review the provisions of the Limitation Act will not apply and hence applications for substituting heirs of deceased parties can be made within reasonable time.

¹ *Tbaker Bijaya Bahadursing vs. Ranikirtibai* 14 N. L. J. 1 (Rev. Rulings).

CHAPTER V.

Land and land-revenue.

41. (1) Save as otherwise provided by any law for the time being in force all lands, public roads, lanes and paths, the bridges, ditches, dykes and fences on or beside the same, the beds of rivers, streams, nallas, lakes and tanks, and all canals and water-courses, and all standing and flowing water, and all rights therein which are not the property of persons, are, and are hereby declared to be the property of the Government.

Title of Government in all lands, public roads, etc., which are not the property of others.

(2) Where Government claims any right under sub-section (1) and the claim is disputed by any person, it shall be decided by the Deputy Commissioner, whose order shall, subject to the provisions of sub-sections (3) and (4), be subject to appeal and revision in accordance with the provisions of this Law, but shall not otherwise be contested before any court or other authority.

Procedure where Government's title is disputed.

(3) Where an order by the Deputy Commissioner made under sub-section (2), or an order in appeal therefrom or in revision thereof, is in favour of Government, any person aggrieved thereby may, notwithstanding anything contained in section 192, sub-section (2), institute a civil suit to establish his right, within a period of one year from the date of the communication to him of such order.

(4) Where a civil suit has been instituted under sub-section (3) against any order, such order shall not be subject to appeal or revision.

Notes.

This section which corresponds to section 37 of the Bombay Land Revenue Code embodies the common law doctrine of England that what does not belong to individuals belongs to the State.¹ When a person proves that he has been in

1. *Doe Dem Sheebkristo vs. East India Company* 6 M. L. A. 267; *Hanmantav v. The Secretary of State* L. L. R. 25 Bom. 287.

possession and enjoyment of land for a long time a presumption of ownership arises which throws upon Government the onus of showing that the land is not private property.¹

Section 110 of the Evidence Act and burden of proof.
In a suit between an individual and Government courts will ordinarily go upon the common law doctrine mentioned above but when the individual proves or it is admitted on behalf of Government that he is in possession for a long time the presumption of ownership arising from possession under section 110 of the Evidence Act will help the individual and Government would have to prove its title to the land. It would not be necessary for the person suing to show a title by possession for 60 years. But if possession of the individual be very recent the individual would have to show his own title to the property. In short this section does not override the provisions of section 110 of the Indian Evidence Act.²

Save as provided by any other law.—Section 38 of the C. P. Municipalities Act as applied to Berar provides that all streams of water, and all public streets belong to the Committee. Provisions in the Municipal laws are in the nature of exception to the general law stated in this section and when a Committee asserts that particular property is vested in it the provisions of law would be strictly construed and whatever is not covered by the wording of the Municipal law would be regarded as the property of the State under the wording of this section. Thus in Bombay it is held that roads vest in the Committees but the soil underneath does not belong to them. The only power which Municipal Committees have is to make repairs and keep properly cleansed such highways, and do such things upon them, as are necessary, for conservancy but they have

1. *In re Antaji Tambe* I. L. R. 18 Bombay 674; *The Secretary of State vs Jeethabhai Kalidas* I. L. R. 17 Bom. 293 at p. 299.

2. *Abashbai vs Secretary of State's* Second appeal No 171B, 1918; on the file of A. J. C. Nagpur decided on 17-3-1919. *In re Antaji Keshoo Tambe* I. L. R. 18 Bom. 674; *Hanumantrao vs. The Secretary of State* I. L. R. 25 Bom. 287; *Krishna Aiyar v. The Secretary of State* I. L. R. 63 Mad. 173.

no right to obstruct or divert them. They cannot permanently alienate any portion of the road.¹

Public roads, lanes and paths :—These vest in Government like other land subject to the rights of the public. In public streets the public have a permanent right of way extending to every portion of such streets and it would be an infringement of this right for Government to sell or grant any land belonging to the public street to an individual.

Beds of rivers, streams and all standing and flowing water :—Occupants and owners of land abutting on streams have certain rights in the water that flows by their land.² But they have no right to prevent Government from diverting that water or holding it up for irrigational purposes.³

Ownership of a stream or a river within an Inam village :—The ownership of the bed of a stream or river within the limits of an Inam village belongs to the Inamdar.⁴

Standing and flowing water. Although standing or flowing water belongs to the State every riparian owner has the right to take water from a stream that flows by without having to pay for it.⁴ Government can charge for water only when it does something to hold water or to make its use more convenient and cheap. Vide section 52.

Subsections 2, 3 and 4. These provisions are new. They are intended to provide a remedy for a speedy settlement of disputes between Government and private individuals. When a dispute arises the Deputy Commissioner is to decide it. The order of the Deputy Commissioner may be in favour of Government or may be against it. In the former case the aggrieved person has two remedies open to him. He may question the order on the revenue side by filing an appeal or revision or he may file a civil suit. The limitation for such a suit is one year from the time the order is communicated to the party. If the order is against Govern-

1 Sathes Bom. L. R. Code page 60; •

2 First Assistant Collector of Nasik vs. Shamji I.L.R. 7 Bom. 209.

3 Vinayakrao vs. The Secretary of State I.L. R. 23 Bom. 39.

4. First Assistant Collector of Nasik vs Shamji. I.L.R. 7 Bom. 209.

ment the only remedy open to it is that of appeal or revision. The right of Government to civil suit is barred as the order can not be questioned except in the way laid down in subsection 3. The idea is that under powers of appeal and revision vested in Revenue Officers, Government can always get a wrong order set aside. An unnecessary expenditure of public money is thus saved. If a private person wishes to file a suit without exhausting his remedies in the revenue courts he is at liberty to do so and when he files a suit an appeal or revision filed by him comes to an end as laid down in subsection 4.

The order of the Deputy Commissioner is not subject to review. The only remedies provided for are an appeal, a revision or a civil suit. So even in cases where the Deputy Commissioner thinks that he has passed a wrong order he has no power to review it.

Limitation.—When an appeal is filed the period of one year is to be counted from the date of last appellate order vide Proviso to subsection 2 of section 192.

Under the old law there was no period specifically fixed for suits against Government and it was therefore sometimes contended that suits for possession against Government by private individuals claiming lands as belonging to them were governed by Article 14 of the Limitation Act. The Court of Judicial Commissioner at Nagpur held that this article did not apply and that such suits were governed by Article 120 of the 'Limitation Act' and the period was consequently 6 years and not one year on the ground that the suit was not a suit to set aside an order of an officer of Government in his official capacity within the meaning of Art. 14 as the relief was claimed on the footing that the title being vested in plaintiff the order was 'ultra vires' or a nullity and need not be set aside.¹ This controversy is now set at rest by a definite provision that the suit must be brought within a year from the communication of the order.

Construction-Bombay decisions. In constructing this section as also other sections of the Code, Bombay decisions

1 The Secretary of State *V.* Bagmal 22 N. L. R. 147.

construing the provisions of the Bombay Land Revenue Code similar to the Berar Code are relevant.¹

42. Subject to rules made under this Law, the Deputy Commissioner may set apart unoccupied unalienated land for free pasturage for village cattle, for grass reserves, for the extension of the village site or for any public purpose; and land assigned specially for any such purpose shall not be otherwise diverted without the sanction of the Deputy Commissioner.

Assignment of lands for village grazing.

Notes.

For rules see Compilation pages 4-5.

Land set apart for a market cannot be diverted by a public body like a District Council for any other purpose e. g. for building a school or making a play ground without the sanction of the Deputy Commissioner.

Public purpose:—Setting apart land for such purposes as a burial ground, threshing floor, open air spaces, is setting apart for a public purpose.

Nature of assignment:—Such assignments are revocable and are in the nature of “licenses” within the meaning of chapter VI of the Easement Act and confer no right to hold land as against Government.²

Classification of land:—Unoccupied unalienated land situate within the limits of a village is divided into the following classes under rules framed under this section.

Class—E—Survey numbers assigned for free grazing not included in Forest area.

Class—F—Survey numbers assigned for village purposes other than free grazing such as Gothan (गोठान) Khalwadi (खलवाडी) Burial ground, playing fields, assessed grazing fields; land set apart for purposes of nature &c.

¹ Secretary of State Vs. Bagmal 22 N. L. R. 147; A. I. R. 1927 Nag. 10.

² Trimbak Gopal Vs. the Secretary of State I.L. R. 21 Bom. 684.

Class—G—Unculturable fields not included in any of the foregoing.

Class—H—Assessed fields available for cultivation.

Class—I—Areas such as village sites (गांवठाण) tanks, rivers, etc. not included in any survey number.

43. Grazing on Government waste lands, shall, subject to rules made under this Law, be regulated by the Deputy Commissioner.

Grazing on Government waste lands.

Notes.

The policy underlying regulation of grazing under this section is to extend the right of free grazing only to the cattle of the village or villages to which such lands belong or have been assigned.

A roving grazier who may choose to squat for a few months on the public ground of a village may not be allowed to have the advantage of this section. ¹ For rules see 'Compilation'—p. 5.

44. (1) Unless it is otherwise expressly provided in the terms of a grant made by Government, the right to all minerals shall vest in Government, which shall have all powers necessary for the proper enjoyment of such rights.

Government title to minerals.

(2) The right to all minerals includes the right of access to land for the purpose of mining and quarrying and the right to occupy such other land as may be necessary for purposes subsidiary thereto, including the erection of offices, workmen's dwellings and machinery, the stacking of minerals and deposit of refuse, the construction of roads, railways or tram lines and any other purposes which the Governor in Council may declare to be subsidiary to mining and quarrying.

Rights subsidiary thereto.

¹ The collector of Thana Vs. Bal Patil I. L. R. 2 Bom. 110.

(3) If the Government has assigned to any person its right over any minerals, mines or quarries, and if, for the proper enjoyment of such right, it is necessary that all or any of the powers specified in sub-sections (1) and (2) should be exercised, the Deputy Commissioner may, by an order in writing, subject to such conditions and reservations as he may prescribe, delegate such powers to the person to whom the right has been assigned :

Effect of assignment of Government's title to minerals.

Provided that no such delegation, other than a delegation of rights sufficient to allow a person to prospect for minerals, shall be made until notice has been duly served on all persons having rights in the land affected and their objections, if any, have been heard and considered.

(4) If in the exercise of the right herein referred to over any land, the rights of any persons are infringed by the occupation or disturbance of the surface of such land, Government or its assignee shall pay to such persons compensation for such infringement, and, in the absence of agreement, the amount of such compensation shall be calculated by the Deputy Commissioner, or, if his award is not accepted, by the civil court, as nearly as may be in accordance with the provisions of the Land Acquisition Act, 1894.

Compensation for occupation or disturbance of surface of land.

(5) No assignee of Government shall enter on or occupy the surface of any land without the previous sanction of the Deputy Commissioner, unless the compensation has been agreed upon or calculated by the Deputy Commissioner and tendered to the person whose rights are infringed.

(6) If an assignee of Government fails to pay compensation as provided in subsection (4), the Deputy Commissioner may recover such compensation from him on behalf of the person entitled to it, as if it were an arrear of land revenue.

Explanation.—In this section “minerals” includes any sand or clay which the Governor in Council may declare to have a commercial value or to be required for any public purpose.

Notes.

This section is based on section 218 of the C. P. Land Revenue Act.

Object of the section. In the Statement of Objects and Reasons to that Act it is said that the clauses of the sections are enacted so as to enable Government to delegate to proprietors and lessees its power of entry on land etc. and the right to mines &c. has been declared to include the right to enter on land for purposes subsidiary to mining. The section will also enable the D. C. to recover compensation for surface damage from assignees.

Ownership of minerals. This section declares that the right to minerals in all lands whether alienated or unalienated belongs to Government. An individual claiming this right has to show that his grant expressly gives it to him as a right to minerals would not be deemed to arise by implication.

The position with regard to the right to minerals of all classes of owners is explained in the following words by the Revenue Member in charge of the Bill. Vide Barar Legislative Committee Proceedings (1925) Vol. II pages 20-21 :—

"At present no class of owners has any right to the minerals. The members who were on the Select Committee I believe are aware, but the rest of the members of the Committee are not aware, possibly of the fact that a notification was issued at the time of the first settlement to the effect that occupancy rights do not include any right to the minerals. (This notification is printed at page 13 of Vol. III of the Non Judicial Book circulars of the Resident of Hyderabad Assigned Districts). Those rights were reserved to Government, so that occupants never acquired any right in the minerals. With regard to Jagirdars :—In the year 1905 when an application was made by a Madras Company to exploit coal in Wun Taluk Government considered the rights of the Ijardars and Jagirdars, because this application covered land in one Ijara and four or five Jagir villages. We wished to find out what rights the Jagirdars had. So the Local Government wrote to the Resident at Hyderabad and the Resident, on enquiry in His Exalted Highness the Nizam's office, was told that in Hyderabad it

was considered that Jagirdars had no title to minerals. Obviously Jagirdars can not be considered to have a right to minerals here when Jagirdars in Hyderabad have none.

Then as regards Ijardars:—The Rules of 1880 specifically declare that the right to minerals is reserved. Nothing was said on the subject in the Rules of 1865 and 1876. It might be argued that this change in the rules implies that Government had changed the policy and that in 1865 and 1876 it intended to leave the right to minerals with the surface rights. I have looked up the papers and I find that this was not the fact. Early in the seventies, the gold in the Wynaad territory began to be exploited and the question arose what right the owners held. The question was debated for no less than 7 or 8 years in England and in India and at the end of that period, the Government of India came to the conclusion, after taking eminent legal opinion that a holder in 'fee simple' had a right to minerals; but if the grant had been given to him on what was called the "ordinary settlement right" he had no right to minerals. That is the legal opinion on the question. The right to minerals in Ijaras was thus reserved; and that is the explanation of the entry in the Rules of 1880, expressly reserving minerals. It implied no change of policy and from the correspondence and from the terms of the lease it is clear that it was never intended to lease minerals to the Ijardars. The terms of the lease make it clear that the property was leased to Ijardars for agricultural development only. The terms on which the assessment is to be made make that clear. That the Ijardars accepted this position for many years is clear from the history of the events connected with the coal deposits in Wun Taluq. These deposits were first worked by Government in 1872. In an Ijara village a pit was sunk and coal was found. When the work began in 1872 certain objections were raised by the Ijardar who claimed that the surface of the land was damaged and feared that his income would be consequently diminished. He actually claimed compensation for the surface damage but did not raise any objection to the exploitation of the coal by Government. In 1904 certain Ijardars claimed royalty on stone from the Public Works Department. This claim was contested and was not pursued. Again in 1912 the same thing happened. On that occasion the Ijardars and

Jagirdars Association filed a formal claim in which they stated that they had a right to all minerals but for the present they only pressed their claim to stone, sand and murum. This claim was looked into by the Local Government. After looking into old records of the enquiry which arose out of the exploitation of gold in the Wynaad and in the subsequent enquiry in 1904, they came to the conclusion that the Ijardars have no right to any sort of minerals and when that declaration was made no action was taken by the Ijardars Association.

There is another definite and general refusal to all classes of minerals contained in a Book circular on the subject which lays down the manner in which minor minerals will be dealt with. I am convinced therefore that no class of holders in Berar has ever been given the right to minerals."

In pressing the provisions of the present section on the attention of the Committee the above remarks were endorsed by the Government of India in their Resolution (vide Berar Legislative Committee Proceedings 1927 page 115) in the following words.—

"Clause 44, as reported by the Legislative Committee seeks to appropriate the right to minerals to the holder of the surface rights unless under the terms of the grant which he holds these rights are expressly reserved to Government. There is however no doubt that occupants of unalienated land have no right to minerals. This was made clear at the time when the first land revenue settlement of Berar was in progress in 1865 by the issue of Notification which declared the reservation by Government of the right to all minerals in all unalienated lands; and the substance of that notification is embodied in section 67 of the existing Land Revenue Code (Land Revenue Code of 1896). As regards alienated lands neither the Waste Land Rules of 1865 nor the amended Rules of 1876 contain any explicit assertion that minerals are reserved to Government but the new form of waste land lease issued in 1880 contains a clause in which this reservation is clearly announced. The introduction of this new clause is no evidence that Government transferred the right to minerals in lands leased under the previous rules; it was rendered necessary because events elsewhere had shown the necessity

of making an explicit declaration on this point. This was made clear in the correspondence ending with the Government of India letter no. 219 of the 1st September 1879 in the course of which the Secretary of State laid down the principle that where no mention is made of mineral rights in a grant of waste lands, those rights can not be assumed to have been transferred with the land unless the grant is in "fee simple" and that a grant on "ordinary settlement" terms does not convey the right to minerals. As recently as 1905 it was ascertained by reference to His Exalted Highness the Nizam's Government that Jagirdars in Hyderabad territory have no right to minerals. It follows that alienees in Berar, who derive their title from the predecessors of His Exalted Highness, have no more substantial claim. The amended clause which the Governor General in Council now recommends will leave no doubt upon this point."

What is mineral :—Explanation to the section.

The term mineral has not been defined in the Code. In its generally accepted meaning it is an inorganic species or substance occurring in nature, having a definite chemical composition and usually a distinct crystalline form found below the surface of earth. Ordinarily sand or clay lying on the surface would not be considered a mineral and the Explanation attached to the section shows that only such sand or clay would be regarded as mineral as has been declared by Government to have a commercial value or to be required for any public purpose. In the absence of such declaration sand or clay on the surface would be the property of the holder of the land. The Government of India in their resolution quoted above say that they "consider it proper however that this general right of Government should in practice be relaxed to permit the use of minerals such as building stone, clay and sand free of charge by surface holders of agricultural land for their domestic or agricultural purposes".

Subsection 2 :—Right to minerals would be meaningless if they could not be approached. This subsection therefore enlarges the scope of the right so as to include other rights subsidiary to it viz. (1) the right of access to mines (2) right to store the mineral (3) right to store the refuse and (4) right to

do all other things ancillary to the extraction of the mineral and its conveyance to the market.

Subsection 3:—The subsidiary rights spoken of in subsection (2) can not be enjoyed without causing loss to the owners of land over which access is claimed or on which it is proposed to hold the mineral extracted. The exercise of the subsidiary rights is therefore made to depend on the payment of compensation to the owners suffering the damage. The Deputy Commissioner is to calculate the compensation in the first instance and if his award is not accepted the civil court is to determine it in accordance with the provisions of the Land Acquisition Act.

Subsection 4:—This subsection further protects the owners of land on whose lands subsidiary rights are claimed. The assignee of mineral rights can not enter on the land unless by an agreement between the assignee and the owner, compensation is agreed upon and paid or, the same is determined by D. C. and tendered to the owner. If neither of this has been done the assignee of mineral rights can enter on the land only with the previous sanction of the D. C. which he is not likely to give unless matters are urgent or compensation is determined and tendered.

Subsection 5:—This subsection is intended to define that the assignment of mineral rights carries with it the enjoyment of such subsidiary rights as are in the opinion of the D. C. essential for the enjoyment of the right to minerals.

Subsections 6:—This subsection provides a special remedy for the speedy recovery of compensation from the assignee of the mineral rights.

45. Except in so far as they are vested in persons, all trees, shrubs, brushwood and other natural products wherever growing shall vest in Government, and shall be disposed of in accordance with rules made under this Law.

Government trees and forest.

For rules see page 5 of the Compilation.

Notes.

General—Section 45-46—Trees and their ownership. This section deals with the ownership of trees apart from land on which

they grow. Land has been defined to mean in this Code to include all things attached to land. Under the old Code it expressly included trees. Thus when land belongs to a person every thing growing on it belongs to him. But ownership in trees is sometimes severed from land and this section says that trees when they do not belong to any individual belong to the State. Sections 46-47 define the right to trees with reference to the kind of the land. Thus in section 46 it is said that in unalienated land trees are to be considered to be part of the land to which they are attached so that when occupancy of land is disposed of, they go with the land. As regards 'alienated land' under section 47 the presumption would be that all trees wherever growing belong to the Jagirdar or Ujardar unless the ownership of trees is expressly reserved at the time of the alienation. Thus all forests or undergrowth etc. belong to the Jagirdar when situate within the limits of the Jagir.

Section 48 provides a special remedy for compensation for the unauthorised removal of trees. It is intended for Municipal Committees and District Councils as these are public bodies depending on money raised by taxation and should not therefore have to spend money and time on purposes which can be achieved otherwise.

Brushwood :—Brushwood includes bushes and all undergrowth, saplings etc.

Natural products growing :—These include gum, resin, honey, lac, catachu etc.

Shadow rights :—When the tree belongs to one man and land to another a question arises as to what compensation the owner of the land is to get for the portion of land thrown out of use by the shadow cast by the tree. Custom has regulated it to half the produce of the tree or to half the wood when it is dead. This right to compensation is generally known by the name of 'Shadow right' or 'Shade right.' It was very customary in olden days to plant trees especially mango trees on land belonging to another; and even now if trees are planted in another's land with that man's consent the owner of the land would be presumed to have 'shadow right' unless any thing to the contrary is agreed upon.

Shadow right has been held to be a right of recurring nature within the meaning of section 23 of the Indian Limitation Act so that suit for compensation for shadow right is not barred so long as the tree exists and shadow is cast. Vide *Konda v. Sonba* 3 Berar L. J. 73

Shadow right passes with the land as it is essentially a right for compensation for the use and occupation of land. Vide *Appaji v. Khushal* 7 N. L. R. 1

The 'lex loci' in this respect was summarised by a Non Judicial Book Circular as follows:—

"(A) Lex loci regarding fruit trees:—

- (a) Planters of fruit trees acquire a right of property in them superior to, and separate from, the right of occupancy of the land on which they stand;
- (b) Hence owners of fruit trees can alienate them at pleasure;
- (c) Hence also owners of fruit trees formerly retained the right of property in them after the land in which they stand has passed out of their hands or became waste;
- (d) The proprietor of a tree and occupant of the field in which it stands (Government being the occupant of waste fields) are equal shares in the usufruct of the tree. Vide Non Judicial Book circulars Vol III p. 44.

46. In unalienated lands, trees, shrubs, undergrowth and other natural products shall be deemed to be part of the land on which they are situated.

Occupant's right in trees.

Notes.

This section gives the occupant the right to trees growing on his land and it would seem that trees growing on the land marked in survey maps as village roads, but which land is included in the area of the survey number will belong to the occupant.

47. In alienated lands trees, shrubs, undergrowth and other natural products shall not vest in Government unless they were reserved to Government at the time the land was alienated.

Trees in alienated land.

Notes.

Trees on Inam or Jagir lands belong to the Inamdar or Jagirdar.

As regards the rights to trees between Tenants and Landlords, two propositions have been laid down by the Court of the Judicial Commissioner at Nagpur:—

(1) It is now well established that ownership in trees standing on tenancy lands is always with the landlord; and whenever such trees, or any part thereof are severed from the soil, under the general law, such trees and parts can be taken away by the landlord.

(2) It is equally well established that under the same general law, the tenant is entitled to the natural annual produce of such trees, namely fruits and flowers.

48. Any person who unauthorizedly fells and appropriates any tree or any portion thereof, or removes any shrub, undergrowth or other natural product which is vested in Government, or in a local authority, shall be liable to Government for the value thereof and shall also be liable, at the discretion of the Deputy Commissioner, to a penalty not exceeding five rupees, or ten times such value, whichever is greater, and such value and penalty shall be recoverable as arrears of land-revenue.

Recovery of value of trees, etc., unauthorizedly appropriated.

Notes.

District Councils and Municipal Committees are corporate bodies capable of holding property. They are therefore persons within the meaning of the word 'persons' in section 45. But for this provision these bodies would have been compelled to seek redress for damage to their trees in the ordinary way. But the ordinary method of compensation viz. by suit or prosecution is expensive and dilatory and is not enough to protect the trees planted along the side of roads by these local bodies. This section therefore gives these bodies a special remedy. A person

1 *Hiria vs. Mahomed Sirajuddin Khan*, 4 N. L. R. 104.
See also *Udesingh vs. Ganeram*, 5 N. L. R. 52.

damaging trees is liable to Government and the amount of damage recovered will be passed on to the local body concerned.

Civil Suit barred :—A civil suit to contest the award of the D. C. is barred under section 192. Under the old Act (section 46) and under the Bombay Act (section 43) the decision of the Deputy Commissioner or Collector was conclusive which term was defined to mean 'not liable to be challenged by a civil suit. The power of the D. C. to assess the value of the tree is implied by the words "shall also be liable." The wording of the old section (section 46) was explicit in this respect.

Levy of penalty :—Recovery of value of the tree would not bar a prosecution for the removal of the tree, but the levy of penalty would under section 26 of the General Clauses Act as penalty is in the nature of fine for doing a thing which is prohibited over and above the value of the property illegally appropriated and there can be no two punishments for the same act.¹

Natural product :—It should be noted that the word is not qualified and would therefore refer not only to natural products 'ejusdem generis' with trees but also to stones etc so that a person quarrying stone may be proceeded against for compensation and penalty under this section.

49. (1) All land, to whatever purpose applied and wherever situate, is liable to the payment of revenue to Government, except such land as has been wholly exempted from such liability by special grant of, or contract with Government, or under the provisions of any law or rule for the time being in force.

(2) Such revenue is called "land-revenue"; and that term includes all moneys payable to Government for land, notwithstanding that such moneys may be described as premium, rent, quit-rent, or in any other manner, in any enactment rule, contract or deed.

1. Hakim Bahadar Singh vs. Emperor 76 I. C. 689.

Notes.

This section enunciates the principle that land wherever situate and to whatever purpose applied, is liable to payment of revenue, unless expressly exempted as for example (1) Land in Jagir villages or Inam fields, and (2) Land in palampat villages which is only partially exempt. The fact that land is not taxed for a long time and no charge is made for its use or occupation is no ground for presuming its exemption from payment if and when demanded.¹ Right in land, that is to say, to its possession and enjoyment can be acquired by adverse possession for 60 years against Government, but right to exemption from payment of assessment can hardly be so acquired as adverse possession can in such case only run from the time Government made a demand.

The C. P. Land Revenue Act makes express provision in this respect by adding a clause to say that no length of occupation of any land shall release such land from liability to pay revenue. See C. P. Act Sec 56 (3). Bombay Code section 45 also says the same. The section runs as follows:—"But nothing in this Act shall be deemed to affect the power of 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."

Strict proof for exemption :—Strict proof must be given of the 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 is paid for many years are not enough to show that Government has forfeited its right to enhance the assessment in respect of such lands.²

1 Dattatraya Vinayak Joshi. C. P. Berar Rev. Bulings Vol. 5 (1931) page 3.

2 Shapurji Jivanji vs. The Collector of Bombay I. L. R. 9 Bom. 483.

50. (1) The assessment of land-revenue on any land shall be made, or shall be deemed to have been made, as the case may be, with reference to the use of the land—

Variation of land-revenue according to purpose for which land is used.

- (a) for the purpose of agriculture ;
- (b) as sites for dwelling houses ; and
- (c) for any other purpose.

(2) Where land assessed for use for any one purpose is diverted to any other purpose the land-revenue payable upon such land shall, notwithstanding that the term for which the assessment may have been fixed has not expired, be liable to be altered and assessed at a different rate by the Deputy Commissioner, subject to rules made under this Law.

(3) Where land held free from the payment of land-revenue on condition of being used for any purpose is diverted to any other purpose it shall become liable to the payment of land-revenue.

*Explanation:—*Where land is held as a site for a dwelling house, and a portion thereof is used for cultivation, such portion shall not be deemed to be diverted to another purpose,

(4) Where land is diverted and land-revenue is assessed thereon under the provisions of this section, the Deputy Commissioner shall also have power to impose a premium on the diversion in accordance with rules made under this Law.

For rules see Compilation p. 6-7.

Notes.

This section corresponds with section 52 of the old Act and section 48 of the Bombay Code. It enunciates the principle that the State has the right to vary the assessment according to the purpose for which the land is used. The reason behind the rule is that the State is entitled to any unearned increment which a man derives by putting land to a different use. Thus a field which has been given out for cultivation may be put to

the use of a factory a purpose which was never in the contemplation of parties when land was originally given out. See *Bomanji Ardeshir v. Secretary of State* A. I. R. 1929 P. C. 34.

The important change introduced in the section is the substitution of the word 'diversion' for the word 'appropriation' used in the old section. In a recent ruling the Bombay High Court observed "the word appropriation implied something more than temporary use and that therefore altered assessment cannot be fixed for stacking timber on agricultural land during fair season only.¹ The word diversion would imply permanent appropriation.

Subsections 2 & 3:—Holders of Inam lands have not been restricted by the terms of the grant to make any particular use of the lands. They hold them free of all assessment on condition that they maintain themselves or render the service for which the land is given. These lands are also not 'assessed' for any purpose. It seems therefore that in Inam fields and Jagir villages change in the use of the land would not entitle Government to alter assessment or to fix it anew. In Bombay the corresponding subsection is held inapplicable to Watan lands.²

Explanation:—Explanation to the section clears up the doubt that Bungalow compounds can not be used for agriculture. Though they are technically building land their use for garden or agricultural purpose will not be regarded as diversion.

Diversion from one purpose to another:—The reason for change in the assessment is according to the section the alteration in the purpose but when land is assumed to be of no purpose or use it would not be assessed if it is put to some use for instance lands such as deep pits, water courses scoured out by streams or other portion of land regarded as unarable (Potkharab) are included in the periphery of a survey number but are not assessed to revenue. If the occupant uses this land for agriculture he would not be assessed to revenue as an occupant is entitled to make improvements without being

1 The Secretary of State Vs. Laldas I. L. R. 34 Bom, 239.

2 Sathe's Bombay Land Revenue Code pages 115, 116.

charged for them vide section 57. Similarly if an occupant puts up farm buildings on agricultural land he can not be assessed to revenue as it is not a diversion within the meaning of this section-vide section 57.

In the case of land covered by a road for which deduction is made in the Survey number if such road falls into disuse or is abandoned the land covered by it can not be cultivated without a levy of assessment as the land was put to a purpose viz. road and is diverted to agriculture. Erecting substantial buildings in a place for brick kiln is a diversion.¹

51. On all lands on which the assessment has not been made under section 96, the assessment of land-revenue shall be made by the Deputy Commissioner in accordance with rules made under this Law.

Assessment by whom to be fixed.

Notes.

For rules see 'Compilation' pages 7-24.

52. Subject to rules made under this Law, the Governor in Council may fix rates for the use of water which has been made available in consequence of the construction, improvement or repair of any irrigation or other work by the Government. Such rates shall be liable to revision at such periods as the Governor in Council may determine, and shall be recoverable as land-revenue.

Rules for use of water.

Notes.

Patasthal rate:—At original survey irrigated land was divided into Motasthal (land irrigated by a Mot from a well) and Patasthal (land irrigated from a pat or irrigation channel.) Land which enjoyed the custom of taking water from a stream the water from which was held up by a 'bandhara' (a dam) by means of small channels was classed as Patasthal land. Such land was assessed at a higher rate. The assessment which is charged for the water factor in Patasthal land is really a water rate imposed for the use of Government water. The rate so

1. Mahamedbhai vs. Secretary of State 20 Bom. L. R. 22.

assessed was fixed as a part of the settlement could not be increased during the currency of the settlement. This Patasthal rate should not be confounded with the rate contemplated in this section.

Irrigation rate or water rate :—The difference between the Patasthal rate and rates contemplated under this section is explained in the following words :—

“When a Patasthal rate is imposed it is always imposed on land which is already irrigated, the advantage to be derived from irrigation is well known, the people who work the irrigation are skilled in using water and there is no reason to suppose that for a long time to come the water will be of greater value to the people or that they will be ready to pay a larger sum. That is the position in regard to assessing land already irrigated, but if one is to impose a water rate, the usual case will be that of a new irrigation work.” You can only introduce irrigation in a country where they are not used to it by fixing lenient rates to start with.” Berar Leg. Com. Proceedings 1925 Vol. II p. 39. Hence flexibility in rates is the essence of irrigation water rates.

Water rate when tenable :—Water rate can be levied under this section only when Government has done something for the supply of water not otherwise. If an occupant of a survey number takes water from a stream by means brought into existence by himself no water rate can be charged to him under this section. Drawing water by pumping installation over a river or a stream when it affects supply considerably may lead to a levy as water belongs to Government. In Bombay water is allowed free even in such a case for the first 25 years if the pumping operation does not affect any Government scheme of irrigation lower down the river.¹

CHAPTER VI.

The Grant, Use and Relinquishment of Unalienated Land.

53. Subject to the provisions of section 55 and to rules made under this Law, the right to occupy unoccupied unalienated land shall be disposed of by the Deputy Commissioner, who may require payment of a premium for such right or sell the same by auction.

Disposal of unoccupied land

Provided that, where the Deputy Commissioner disposes of the right to occupy unalienated land for any purpose for which the erection of a building is necessary, the grant shall be subject to the following conditions, namely:—

- (i) when applying for land, the applicant shall produce before the Deputy Commissioner plans and an estimate of the cost of the building he proposes to erect;
- (ii) if the application is sanctioned, the occupant shall commence the erection of the building and shall complete the same before such date as the Deputy Commissioner may, in accordance with such rules prescribe; and
- (iii) if the occupant fails to comply with any order of the Deputy Commissioner passed under this proviso, he shall cease to be entitled to the use of the land and his possession thereof shall be unauthorized within the meaning of section 65.

For rules see 'Compilation' Pp. 7-24.

Notes.

Section 53 deals with the disposal of unalienated land (i.e. land which is not Inam) which is not already given out to anybody. Subject to the directions contained in the rules the Deputy Commissioner may give it either on payment of a premium or he may auction it and give it to the highest bidder. Elaborate rules have been framed under this section for the grant of right to occupy unalienated land

and for this purpose land is divided into two categories according to the use it is put to. For grant of land for agricultural purposes application has to be made to the Tahsildar, who in case of competition, is empowered to dispose of it by public auction. The sale requires the confirmation of the Sub-Divisional Officer.

Building Sites:—Land suitable as building site is disposed of according as it is situate in unimportant or important villages i.e. villages with a population of more than 2000, or with a bazar or adjoining Railway stations. In the former the Patel of the village can allot sites upto one guntha and the Tahsildar upto 5 gunthas in villages upto 5000 population excepting villages adjoining railway stations. The Sub-Divisional officer is empowered to grant building sites in all other cases. In Railway station villages the sub-Divisional Officer alone can grant sites. A Register of vacant sites is maintained for all villages.

Nazul land & Nazul rules:—Unalienated land in municipal towns, used either for building purposes, or for purposes of public convenience such as roads, markets, or recreation grounds or which are likely to be used for such purposes in future, is called Nazul land. The more important portions of this land which are likely to be valuable for any special reasons such as their situation near a line of Railway or the like are marked off separately and are recorded by the Settlement Officer as 'reserved sites' or 'plots'. The Deputy Commissioner or an Assistant Commissioner 1st grade who is called "Nazul Officer" is empowered to dispose of Nazul land after consulting the Municipal Committee of the place by public auction subject to an upset price calculated on a scale prescribed. The purchaser has to pay land revenue on the plot at the rate of one anna per rupee on the premium and the revenue is liable to revision at settlements.

On payment of the price the purchaser becomes the 'occupant' of the land within the meaning of this Code.

"Reserved plots" referred to above can be disposed of by the Deputy Commissioner subject to the sanction of the Governor in Council.

Converted land :—Plots which have been diverted under section 58 of the Code from agricultural to non-agricultural use are known as “converted lands”. These converted lands or occupied survey numbers in municipal areas are not to be supposed as included in Nazul land.

Nazul Rules :—Rules framed for the disposal of Nazul land are called Nazul Rules and may be studied in detail from the Compilation of rules and notifications under the Code.

Proviso relating to building plots :—The proviso is added for the following reasons :—

“The object of the amendment is to obviate as far as possible, speculation in land and the raising of the price of land by occupants to their own advantage against the advantage of the general public. It is necessary that the D. C. should be able to ensure that when a man applies for land for building purposes he shall start building and complete it within a reasonable time. The condition will prevent an occupant holding up land suitable for building in a town until the demand becomes so strong that he is able to make a large profit on the transaction. With uncontrolled rights in building land a man can get land cheap and then hold it up till he gets an opportunity for holding the community to ransom. It has been pointed out that if the water supply of Berar towns is improved a keen demand for land is likely to spring up. It is not practicable for the D. C. to refuse to grant land till this keen demand actually arises, for such action on his part might check the healthy development of buildings. The alternative is to prescribe the condition now suggested. In hard cases, that is, in cases of delay for which the grantee is not to blame, the D. C. can always relax the condition. The plans and estimates are simply required to enable the D. C. to make a rough estimate of the time required to complete the building”¹

Crown Grants Act :—Building land as stated above is disposed of under Nazul Rules but there is nothing to prevent Government from disposing of particular plots subject to special conditions. Such grants are grants within the meaning of

Section 2 of the Crown Grants Act (XV of 1895) which covers transfers of every description. ¹ Consequently all provisions, restrictions, conditions, and limitations contained in any grant or transfer are valid and take effect according to their tenor notwithstanding any rule of law, statute, or enactment of the Legislature to the contrary. ² The provisions of the Transfer of Property Act do not therefore affect the conditions in the grant.

54. (1) The person who acquires the right to occupy land under section 53 is called an occupant of such land, and shall hold it in accordance with the provisions of this Law.

The occupant

(2) All persons who, prior to the commencement of this Law, have been granted rights in unalienated agricultural land under the style of "occupant", or have been granted or have held rights in unalienated non-agricultural land under the style of "occupant" or under leases which entitle them to hold in perpetuity, shall be deemed to be occupants within the meaning of this section, and all restrictions hitherto imposed on their rights shall henceforth be of no effect in so far as they may be inconsistent with the provisions of this Law.

Notes.

Persons who acquire rights to land whether for purposes of agriculture or for building under Section 53 above are occupants according to this Section. Sub-section (2) extends the status to persons who have been granted agricultural land, building land under the old law as occupants or under leases which entitle them to hold in perpetuity. Such lessees or occupants under the old law will hold land hereafter as occupants under this law and restrictions placed on them under the former law or by their leases will be regarded as of no effect.

The Select Committee explains the import of subsection (2) in the following terms.

1 Kallingal Moosa vs. Secretary of State. I. L. R. 43 Mad 65.

2 Section 3 Crown Grants Act.

"In subsection (2) of clause 54 we have made an important provision conferring full rights of an occupant on all persons who were granted permanent rights in unalienated lands prior to the commencement for this Act. These classes include certain occupants of agricultural land who were granted an occupant's right, or holders of permanent leases of non-agricultural land and persons who have held town-sites for long periods without leases".

About 1904 certain disforested lands and forfeited holdings were disposed of on condition that the holders would have restricted rights of property. Such holders now get the full rights of an occupant under this law. Their restrictions about enjoyment and disposal now cease.

The definition of occupant given in this section thus comprises, the following kinds of holders of land:—

- (1) Persons who have been granted agricultural land or building land under the old Code under the style of 'occupants'.
- (2) persons who have been granted agricultural land or a building land under leases which entitle them to hold in perpetuity.
- (3) Persons who get land for agricultural or non-agricultural purpose under Section 53 above.

Thus plot-holders of building land in municipal towns under what are called Nasul Rules or plot-holders in villages are all 'occupants' according to this definition.

'Occupancy' connotes unalienated land which is given out under certain terms and conditions. Persons holding alienated land like Inamdars, Jagirdars, Palampatdars and Ijardars under the Rules of 1865 are not occupants but holders only.

Tenants of Jagir villages where survey settlement is introduced :—The Code of 1896 conferred the rights of occupants on tenants in jagir villages in which survey settlement was introduced on the application in writing of the Jagirdar. Vide section 231 of that Code. These tenants are not occupants though they get all the privileges of occupants. In villages where survey settlement was introduced between

1865] and 1897 tenants did not get these rights as the Berar Settlement Rules were silent on this point. Vide *Ganpat v. Raje Laxmanrao* 26 N. L. R. 195. Vide also notes under section 71 below.

Old Khatedars or occupants of grazing fields:— Occupants or Khatedars who were given fields for the grazing of village cattle are not to be regarded as occupants. They are lessees only. Vide notes under section 55 (1) clause (c).

55. (1) The provisions of section 53 and section 54 shall
 Lessees from Government, not apply to—

- (a) land situated in the bed of a river;
- (b) land which the Governor in Council proposes to grant on favourable terms for the promotion of charitable, educational or social purposes;
- (c) land given out to persons on the fair assessment on condition that it shall be used only for grazing for the village cattle;
- (d) land found to be in the possession of persons with no title thereto and leased out to them for limited periods in order to avoid unnecessary hardships.

(2) In the exercise of his powers to grant land under this section the Governor in Council shall be subject to the control of the Governor General in Council.

(3) The Governor in Council may delegate any of his powers to grant land under this section to the Commissioner or Deputy Commissioner, and may make rules for their guidance in the exercise of their delegated powers, and prescribing conditions on which land granted under this section shall be held.

(4) All persons holding land granted under this section shall hold in accordance with the terms of the grant, which shall be deemed to be a grant within the meaning the Crown Grants Act, 1895.

Such persons are called lessees from Government.

For rules see 'Compilation' p. 25,

Notes.

Status of only two kinds is contemplated by the Code for unalienated land viz. that of an occupant and a lessee.

The criterion of the former is perpetuity of holding and that of the latter holding for time fixed or during the good will of the lessor. Agricultural land given out for cultivation and building land for erecting structures are generally held on perpetual tenure and hence sections 53 and 54 deal with holding of occupants. Land may however be held temporarily or for a special purpose or condition. This section deals with disposal of land of the basis of leases.

Crown Grants Act :—The gist of this enactment is that conditions which would be regarded as repugnant to the grant under the ordinary law of transfer viz. the Transfer of Property Act are valid in respect of grants by the Crown. Crown grants include all kinds of transfer and not necessarily those relating to the sovereign rights of the Crown.¹ Grants are to be interpreted according to the tenor of the terms and not according to the provisions of any other enactment.²

Clause (c) of Subsection (1) :—The system of allowing villagers to take up waste land for grazing at full survey rates has been in force in Berar from the commencement of the British Administration, and at the original settlement the fields were set aside for grazing on the same terms. The villagers themselves selected the individual whose name was to be entered in the 'Faisal Book' as their representative, and a remark was entered against every field thus allotted for grazing at full survey rates. Rules were prescribed under the old Code for such fields, which said that the 'khatedar' was not to cultivate the field and should he do so he may be evicted, the khatedar was to levy fees only from those who would pasture their cattle in the field and not from others, and that the khatedar's name was liable to be removed if three-fourths majority of the persons taking advantage of the field desired it,

1. *Kallingal v. Secretary of State*, I. L. R. 43 Md. 65; *Secretary of State v. Nistarani Annie Mitter* I. L. R. 6 Pat. 448.

2. Vide sections 2 & 3 of the Crown Grants Act.

But for this clause such a person would be an occupant within the meaning of Section 54 (2). This clause now defines the status of such persons as lessees and not as occupants within the meaning of the law.

Clause (d) subsection (1):—This clause is added to cover the cases of persons who are in unauthorised possession of land in towns and whom it is not necessary to evict at once. A common instance is the occupation of land in the outskirts of towns by squatters of low caste which is likely in future to be required for other purposes e. g. a residential suburb. These people have no title but they have been allowed to remain in possession for long periods and it would be harsh to evict them immediately. The course usually taken is to regularise their tenure by a lease for a term of years after which if the expected demand has arisen they can be evicted on payment of a much smaller compensation than would be the case if they were occupants.

56. Subject to his personal law, the rights of an occupant shall be permanent and transferable and on his death shall pass by inheritance, bequest or survivorship, as the case may be.

Occupant's rights heritable and transferable.

Notes.

Rights of an occupant:—This is a clear statement for the first time in the Code that the rights of an occupant are permanent heritable and transferable property. Berar Settlement Rules of 1865 described the status of an occupant in the following terms. (Berar Settlement Rule No. 5):—

“The occupant of a surveyed field or recognised share of a field, or number, shall not be deprived of his rights of occupancy in the said field or recognised share of a field, by any Revenue Officer, so long as he continues to pay the assessment due thereon. This right of conditional occupancy is declared to be a transferable and heritable property; and any person, lawfully and authorizedly in occupation of any land, at the expiration of a settlement lease, who shall consent to the rate which may be

assessed on his land at a revision of assessment, shall be continued in his occupancy without question."

The Code of 1896, in section 66, declared that an occupant had a right to hold his land in perpetuity on his paying the amount due on account of land revenue. It said nothing about the nature of the property, and the result was that occupants were held to be mere tenants by the Court of the Additional Judicial Commissioner at Nagpur in the case of *Baliram vs. Maruti*.¹ All doubts are now set at rest by the clear wording of this section. An occupant is now a proprietor or owner of his land subject however to certain restrictions. A strenuous effort was made by the Berar Legislative Committee to introduce the word 'owner' in describing the status of an occupant but the Government of India pointed out that:—

"The declaration maintained by the Legislative Committee that "an occupant is the owner of the land which he holds" is an indefinite expression, likely to lead to difficult and varied judicial interpretation. The rights of an occupant are defined throughout the chapter and it does not appear that the Committee intended by this declaration to give him any rights other than those so defined. The Governor General in Council therefore proposes the substitution of this clause which will be more definite and safer."

While this is so the status of an occupant has been understood as that of a proprietor from the earliest times as will be seen from the following words of Sir A. C. Lyall:—

"Subject to certain restrictions, the occupant is an absolute proprietor of his holding; he may sell, let or mortgage it or any part of it, cultivate it or leave it waste so long as he pays its assessment which is fixed for the term of the settlement, (usually 30 years) and may then be revised only on general principles; that is the assessment of an entire district or village may be raised or lowered as may seem expedient, but the impost may not be altered to the detriment of any occupant, on account of his own improvement".

1 *Baliram vs. Maruti* 6 N. L. R. 78.

"Of the restrictions on this principle some are intended to protect the rights of the Government, and to check the excessive sub-divisions of land the chief defect of a peasant proprietary system and the rest to protect the interest of persons other than the occupant who may have an interest in the holding. First if an occupant wishes to do anything which will destroy the value of his land, as to quarry in it, he must apply for the permission to do so and pay a fine to compensate Government for the prospective loss of assessment. Indeed the Berar occupancy tenure has many features resembling the copy-hold estate in the reservations of the manorial rights." (Berar Gazetteer by A. C. Lyall, Commissioner of West Berar 1870 page 96.)

Baden Powell while contrasting the words 'occupant' and 'owner' observes as follows :—

"Nothing whatever is said in the Revenue Code about the person in possession (on his own account) being 'owner' in the western sense. He is simply called the 'occupant' and the code says what he can do and what he cannot. The occupant may do anything he pleases to improve the land but he cannot, without permission do any thing which diverts the holding from agricultural purposes. He has no right to mines and minerals.

These are the facts of the tenure: you may theorize on them as you may please, you may say this amounts to proprietorship, or this is a 'dominium minus plenum'; or anything else'¹

At another place this author remarks :—

"Sir Richard Temple has aptly called the occupants rights a limited property, and Sir Lyall compares it to the tenure of an English copy-holder. The right of occupancy is (as before remarked) declared to be heritable and transferable property and the restrictions or conditions which apply to such occupancy are (1) the necessity of paying the revenue; failure to pay this causes the right to terminate 'ipso facto' although it is in the discretion of the Revenue Officer to adopt other coercive measures to recover the balance instead of absolutely ejecting the default-

¹ Land Systems in British India by Baden Powell Vol. I Pp.321-22.

ter. (2) The land may be improved, but cannot be destroyed or rendered unfit for agricultural purposes without express permission and perhaps a payment for it. This last condition is alone sufficient to diminish the full 'proprietary' right of Western law for the full owner may destroy if he pleases."

Rights and liabilities of an occupant under the Code may be summarised as follows :—

Rights	Liabilities.
1 to transfer, or will away or deal with the land as he likes. (sec. 56)	1 to pay land revenue and cesses section 49 and 131.
2 to make any improvements (section 57)	2 to repair boundary marks; (sec. 125)
3 to divert his land after notice. (section 58)	3 permit inspection (sec. 17)
4 to relinquish his occupancy.	4 furnish flag holders. (sec. 85)
5 to be entitled to trees (sec.46)	5 to inform acquisition of rights (section 116.)
6 to hold land without increase in the assessment during the currency of a settlement.	6 not to work mines or take out minerals of value. (sec. 44)
7 to preempt a share in a survey number.	7 to submit to a right of way in case of necessity. (sec 129)
8 to be entitled to alluvion sec. 67.	8 not to divert land without notice. (sec. 58, 59)
9 to have a person who diverts his land without his consent evicted. sec. 59 (4)	

57. An occupant of land held for the purpose of agriculture is entitled by himself, his servants, tenants, agents or other 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 use for the purpose aforesaid.

Explanation.—For the purposes of this section "farm building" shall include a dwelling house inhabited by the occupant, his dependants or servants.

Notes.

Improvements subject to the maxim 'Sic Uteri &c':—
 This section authorises the occupant to make improvements; but in exercising this right the occupant is subject to the general law viz. that every one must exercise his right in such a way as not to cause harm to any other person. Thus in diverting the course of a stream running through the middle of his field to one side of it the occupant must take care to see that the flood water of the stream does not spread into the fields of neighbouring occupants.¹

Farm Building:—The term "farm building" is ordinarily understood to comprise buildings erected for the storage of agricultural implements, or for sheltering cattle used in the cultivation of the land as well as houses occupied by occupants who themselves cultivate the survey number on which they stand, or by tenants who do the same or by servants of such occupants or tenants who are actually employed in the cultivation of the land.

The Explanation to the section:—In the Bill which was presented to the Berar Legislative Committee the Explanation read as follows:—

"For the purposes of this section 'farm building' shall include a dwelling house inhabited by the occupant, his dependents and servants, and *in the opinion of the Deputy Commissioner required for the convenient cultivation of the holding in which it is situated.*"

The Select Committee dropped the last passage referring to the opinion of the Deputy Commissioner and gave its reasons for doing so in the following terms:—

"We have made a small drafting amendment changing 'and' occurring after the word 'dependants' to 'or' and have deleted the references to the opinion of the Deputy Commissioner as we consider that this passage is unnecessary and is likely to discourage the desirable practice of cultivators living on their holdings."

1. Pamanuja Chariar vs. Krishnaswami I. L. R. 31 Mad. 169
 Mohanlal vs. Bai Jivkore I. L. R. 28 Bom. 471.

The plain intention of the legislature was to permit occupants to build on a portion of their own fields and occupy the structure for their own use. The wording in the Explanation as it now stands has no reference to convenience of cultivation; and so long as an occupant is an occupant from the plain wording of the explanation it would appear he would not be regarded as transgressing the law if he built on his own field and lived there himself. But in a recent case¹ where a pleader who was the occupant of a field had occupied a portion of his land for his own use, it was held that he went beyond his rights; and when it was contended before the Settlement Commissioner in appeal that he was authorised to build under the wording of this Explanation it was held that the term 'farm building' in section 57 of this Code did not include buildings which were not erected for the purpose of agriculture.

The Revenue Member upheld the view of the Settlement Commissioner and said the appellants' profession is that of a pleader and from the record of the case it was clear that the buildings were erected for residential purposes, the agricultural land in the survey number occupied by the appellant was upto last year always cultivated by lessees and that there was thus no connection between these buildings and the cultivation of land as contemplated by section 57. It is submitted that this view is not warranted by the wording of the Explanation and the reference to convenience of cultivation having been advisedly dropped by the Select Committee the occupant is entitled to live on his own field even if he does not cultivate it himself. The Explanation was added to widen the meaning of the section whereas the ruling in question tends to restrict it.

58. (1) If an occupant of land held for any purpose wishes to divert his holding or any part thereof to any other purpose, he shall apply for permission to the Deputy Commissioner who may, subject to the provisions of this section and to rules made under this Law, refuse permission or grant it on such conditions as he may think fit.

1. *In re Narayan Khanderao Phadke—C.P. & Berar Rev. Euling*
Vol: 5 page 23.

(2) Permission to divert may be refused by the Deputy Commissioner only on the ground that the diversion is likely to cause a public nuisance.

(3) Conditions may be imposed on diversion for the following objects and no others, namely, in order to secure the public health, safety or convenience, or in the case of land which is to be used as building sites, in order to secure that the dimensions, arrangement and accessibility of the sites are adequate for the health or convenience of occupiers or are suitable to the locality.

(4) If any land is diverted without notice being given to the Deputy Commissioner, the Deputy Commissioner on receiving information thereof may proceed in accordance with the provisions of sub-section (1) as if notice had been given, and he may also impose on the occupant of such land a penalty not exceeding one hundred rupees, which may be recovered as an arrear of land-revenue.

Procedure where
land is diverted
without notice.

For rules see 'Compilation' p. 26.

59. (1) If any land is or continues to be diverted after permission has been refused or if any condition imposed under section 58 is contravened, the Deputy Commissioner may serve a notice on the occupant of the land concerned directing such occupant, within a reasonable period to be stated in the notice, to use the land for its original purpose or to observe the condition, and such notice may require the occupant to remove any structure, to fill up any excavation, or to take such other steps as may be required in order that the land may be used for its original purpose or that the condition may be satisfied.

(2) If the occupant fails, within the period stated in the notice, to take the steps ordered by the Deputy Commissioner, the Deputy Commissioner may himself take such steps or cause them to be taken, and any costs incurred in so doing shall be levied from the occupant as an arrear of land-revenue.

Procedure where
land is diverted after
permission is refused
or in contravention
of a condition.

(3) If the occupant fails, within the period stated in the notice, to take the steps ordered by the Deputy Commissioner, or having taken the steps again diverts the land or contravenes the condition to which the notice related, or again diverts the land or contravenes such condition after the Deputy Commissioner has taken steps under subsection (2), the Deputy Commissioner may impose upon him a penalty not exceeding one hundred rupees, and where the diversion or the contravention of the condition is a continuing one, a further penalty, not exceeding ten rupees for each day during which the diversion or contravention is persisted in, and such penalties shall be recoverable as arrears of land-revenue.

(4) The Deputy Commissioner may also, on the application of an occupant and subject to rules made under this Law, summarily eject any person found in possession of any land which is being used for any purpose other than that for which it was last conferred by Government.

Ejection of third party for diversion of land.

For rules see 'Compilation' p. 27.

Notes.

These provisions are new. The Select Committee explains the principles underlying these provisions in the following terms:—

"We have recast these two clauses entirely. In view of the plain recognition in the Draft Law of an occupant's rights we are agreed that the power to eject an occupant for diverting his holding should no longer be retained. On the same principle we consider it undesirable to give to the Deputy Commissioner an unfettered discretion to refuse permission to divert. The principles underlying these two clauses as now drafted by us are:—

(a) that the occupant has a right to divert his holding but

(b) the diversion may be controlled by the authorities in order to secure the interests of the public.

In pursuance of these principles we have allowed the Deputy Commissioner power to refuse permission only when he anticipates that the diversion is likely to cause a public

nuisance, for instance, where the occupant proposes to erect a soap factory or a tannery in a field, adjacent to a residential area. We have similarly restricted the Deputy Commissioner's power to impose conditions and contemplate only conditions required to secure public health, safety, and convenience and to ensure that the authorities shall have some restricted power to guide the development of town extensions.

In order to secure that these restricted powers shall be real, we have given ancillary powers of enforcement to the Deputy Commissioner. We have required the occupant to give notice in every case of his intention to divert in order:—

(i) that the Deputy Commissioner may have an opportunity to exercise his powers of control, and

(ii) to prevent the evasion of any extra land-revenue which may be imposed under clause 50. We have attached a penalty to failure to give notice. We have also given the Deputy Commissioner power in cases of diversion, without notice to proceed as if notice had been given and power also to require that the land shall be restored to its original use.

Where any condition has been contravened we have given power to the Deputy Commissioner to require the occupant to observe the condition. These steps have to be taken within a period specified in the notice, and the Deputy Commissioner will have power to take the steps himself if the occupant refuses or neglects to do so. We have also added a penalty in order to strengthen the Deputy Commissioner's hands against a contumacious occupant."

Public Nuisance :—Public nuisance is not defined in the Code but it would be understood in the accepted meaning of the term and to include the following :—

Public or common nuisance is an offence against the public, either by doing a thing which tends to the annoyance of all the King's subjects, or by neglecting to do any thing which the common good requires. It is an act affecting the public at large, or some considerable portion of them ; and it must interfere with rights which members of the community might otherwise enjoy. Acts which seriously interfere with the health, safety, comfort or convenience of the public generally, or which tend

to degrade public morals, have always been considered public nuisances, e. g. carrying on trades which cause offensive smells, or intolerable noises, keeping inflammable substance like gun powder in large quantities; drawing water in can from a filthy source. They are dealt with by, or in the name of, the Crown.

The Indian Penal Code says that "a person is guilty of a public nuisance who does any act, or is guilty of an illegal omission, which causes any common injury, danger or annoyance, to the public or to the people in general who dwell, or occupy property, in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right".

Civil Suit.—Section 192 bars a civil suit against the decision of a Revenue Officer only when he acts under the terms of this law.¹ If an officer refuses permission or imposes conditions on grounds other than those set out in this section his action would be *ultra vires* and a suit to challenge it would lie. *Vide* section 192.

Subsection (4).—This subsection is a modified form of section 52, subsection (3) of the old law. This enables the occupants to save themselves from the penalties of diversion when it is done by trespassers or persons claiming through them. Thus if a lessee of an occupant builds on the land of an occupant the latter can petition to have the person turned out and himself restored to possession. But if a person does not change the purpose for which land was originally given the D. C. can not act under this subsection and can not turn out the trespasser.

Adverse possession against an occupant.—The occupant however can do so only so long as he retains the status of an occupant. If for instance he allows trespassers to come on the land and squat there for a period of twelve years the right of the occupant to the land is extinguished and he can not have recourse to this section to get revenue officers to do for him what he could not himself do by an action in a civil court. This

1 *The Secretary of State v. Bagmal* 22 N. L. R. 147.

subsection is not intended to give the revenue officers the power to oust persons who have been long in possession. It provides a remedy for occupants who are vigilant and who wish to save themselves from the consequences of penalties for diversion in the use of land.

Sections 58-59 inapplicable to 'alienated land':-Holders of alienated land in a khalsa village and Inamdars, Jagirdars, Palempatsdars and Ijardars under the Rules of 1865 are holders and not occupants within the meaning of section 54. Consequently they cannot acquire the rights or the disabilities of occupants. These sections are therefore not applicable to diversion of alienated land. These holders are also protected against any alteration of assessment under section 50 as the land they hold is not 'assessed' and do not hold it free 'on condition of being used for a specific purpose'.

60. Subject to rules made under this Law, the occupant may relinquish his rights, that is, resign them in favour of Government, but subject to any rights, tenures, encumbrances or equities lawfully subsisting in favour of any person (other than Government or the occupant), by giving notice in writing to the Tahsildar before the thirty-first day of March in any year, or before such other date as may be prescribed in this behalf; and such relinquishment shall have effect from the close of the current revenue year :

Relinquishment.

Provided that no rights which extend over less than a whole survey number or sub-division of a survey number may be so relinquished.

Notes.

Cf section 74 of the Bombay Land Rev. Code. For rules see 'Compilation' pp. 27-28.

61. If any sub-division of a survey number is relinquished under section 60, the Deputy Commissioner shall offer the right to occupy such sub-division at such premium as he thinks fit to the occupants of the other sub-divisions of the same survey number, and, if there be competition

Disposal of escheated and relinquished sub-division

among such occupants, he shall sell such right to the highest bidder amongst them. In the event of all such occupants refusing the same, the right shall be disposed of under section 53.

Notes.

For rules see 'Compilation' pp. 7.24.

The Deputy Commissioner has to fix a premium and then to offer it to holders of the sub-divisions to take the abandoned or escheated sub-division. If there is a competition amongst them he is to sell it to the highest bidder amongst them. If no sharer buys the share, offer is to be made to outsiders. This amounts to a kind of a right of pre-emption on relinquishment.

62. If any person relinquishes his rights to land the way to which lies through other land retained by him, any future holder of the land relinquished shall be entitled to a right of way through the land retained.

Right of way to
relinquished land.

Notes.

This is very necessary as otherwise the relinquished land can not be cultivated conveniently by the new holder.

63 (1).—If an occupant dies without known heirs, the Deputy Commissioner shall take possession of his holding, and may grant leases thereof for periods not exceeding one year.

Disposal of inter-
state holdings.

(2) If, after the expiry of three years from the date on which the Deputy Commissioner took possession, no claimant has established his title, the Deputy Commissioner may sell the deceased occupant's rights in the holding in the manner and subject to the conditions laid down in section 149, sub-section (1), and sections 150 to 162 so far as they are applicable.

(3) Notwithstanding anything contained in any Law for the time being in force a claimant who establishes his title in a holding which has been dealt with in accordance with the provisions of this section, shall be entitled only to the rents payable under sub-section (1) and the sale-proceeds realized

under sub-section (2), less all sums due on the holding on account of land-revenue and the expenses of management and sale.

Notes.

Section 68 of the old law authorized the Deputy Commissioner to sell the holding without waiting. This section is now amended in the interest of possible heirs. The sale is to be delayed for 3 years and the Deputy Commissioner has the power to manage the property only by yearly leases. These are made binding on the heir who establishes his title.

Subsection 3:—A person who intermeddles with the estate of a deceased is called an 'executor of his own wrong' or an 'executor de son tort'. He is answerable to the rightful heir to the extent of the assets which may have come to his hands. Section 303 and 304 of the Indian Succession deal with this subject. The law embodied in these sections is a general principle of law and is applicable to cases not governed by the Succession Act.¹ And this subsection is intended to take the management by the Deputy Commissioner out of the provision of these sections and says that the heir would be entitled only to rents payable under subsection (1). If the rent is not actually realised the Deputy Commissioner or Government can not be held liable; nor can the heir sue to have the sale held by the Deputy Commissioner set aside. The remedy of the heir under such circumstances is to have the sale stopped by an injunction on the Deputy Commissioner from a proper civil court. The heir cannot also question the cost of management, as his right extends only to the rents and sale proceeds under this subsection.

64 (1).—Any person who unauthorizedly takes possession of any unoccupied land which has not been alienated or any land set apart for any special purpose, shall be liable to pay—

Penalties for unauthorizedly taking possession of land.

(a) If such land forms part of an assessed survey number, the assessment of the entire number for the whole period of his possession, and

¹ Prayag Kumari Devi v. Sheo Prasad Singh. A. I. R. 1926 Cal. 1 at p. 50.

(b) if such land has not been assessed, a fair assessment for the said period, made in accordance with the provisions of section 51,

and shall also be liable, at the discretion of the Deputy Commissioner, to a penalty not exceeding ten rupees, or a sum equal to twenty times the amount of assessment payable by him for one year, if such sum be in excess of ten rupees, if he has taken possession of the land for purposes of cultivation and not exceeding such limit as may be prescribed in rules made under this Law, if he has used it for any non-agricultural purpose.

(2) For the purposes of sub-section (1), possession for a portion of a year shall be counted as for a whole year.

(3) Any person unauthorizedly taking possession of any such land may be summarily ejected by the Deputy Commissioner; and any building or other structure erected thereon, if not removed after such written notice as the Deputy Commissioner may deem reasonable, and also any crop on the land shall be liable to forfeiture by order of the Deputy Commissioner.

(4) Any property so forfeited shall be disposed of as the Deputy Commissioner may direct; and the cost of removal of any structure, earthwork or material erected or placed upon the land and of all works necessary to restore the land to its original condition shall be recoverable as an arrear of land-revenue from the person who unauthorizedly took possession of the land.

For rules see 'Compilation' p. 28.

Notes.

A comparison with section 59 of the old law which corresponds to this section will show that the law has been made stricter by doubling the penalty referred to in subsection (1)

Encroachments and the jurisdiction of Revenue officers:—This section authorises revenue officers to deal with encroachment on public lands not given out to individuals. It refers to encroachments on 'unoccupied unalienated land i. e.

land which has not been parted with in favour of Jagirdars, Inamdars etc. and land which is not in the occupation of any person by a right recognised by this law. Encroachments on Inam lands and on lands in the possession of occupants or lessees of Government cannot be dealt with by the revenue officers save in the exceptional case contemplated in section 59 (4).

Penalties.—An encroacher renders himself liable under this section to the following penalties:—

1. Compensation for use of the land
2. penalty for trespass
3. summary ejection
4. forfeiture of buildings and crops
5. payment of costs to restore land to its original condition.

Compensation for unlawful occupation.—The maximum of compensation for the unlawful occupation is fixed under clause (a) of subsection (1) to the amount of the assessment of the survey number if the land encroached upon is a part of an assessed survey number. Thus if the land encroached upon is a survey road running through the occupant's field the occupant may be called upon to pay the amount of assessment for the whole survey number. If on the other hand the land encroached upon is not a part of survey number assessed to revenue the Deputy Commissioner may charge an amount which he would fix as assessment under section 51. The encroacher pays the compensation at the rate thus worked out for the years that he has encroached. A portion of a year counts a year under subsection (2)

Penalty.—The encroacher renders himself liable to penalty in addition to the compensation referred to above. The penalty is to vary according to the purpose for which the encroachment was made. If it is for purposes of cultivation the penalty may be 20 times the assessment for a year, or rupees 10 if the encroachment is trifling. If it is on the other hand for building or other non agricultural purposes the penalty has to be on

a scale fixed by rules. Encroachments on Nazul lands or village sites would be dealt with under this scale.

Subsections (3) & (4)—Summary ejection.—The summary jurisdiction conferred by subsection 3 is confined strictly to unalienated unoccupied land i. e. land which is the property of Government.¹ This subsection is a reproduction of section 59. (3) of the old Code and it has been held under that section that the jurisdiction of a Revenue Officer to summarily eject encroachers is confined to lands which are Government lands. When the ownership of land is disputed the Revenue Officer has or can have no jurisdiction and any order passed by him directing ejection can have no effect as soon as it is declared that the land is of an individual.

Structures.—If the trespasser has erected structures he is allowed time to remove them and to restore the land to its original condition. If he fails to do so they are forfeited.

Crops.—In summarily removing the trespasser the Deputy Commissioner may forfeit the crops.

Costs.—The Deputy Commissioner has the power to levy costs of restoring the land to its original condition and to realise them as arrears of land revenue under subsection (4).

65. Any person unauthorizedly taking or remaining in possession of any land—
 Ejection of person unauthorizedly in possession of land.

- (a) to the use of which he has ceased to be entitled under any of the provisions of this Law, or
- (b) which is subject to the conditions of section 66, may be summarily ejected by the Deputy Commissioner.

Notes.

Section 64 refers to penalty for taking possession of unoccupied and unalienated land or any land set apart for a special purpose.

¹ The Secretary of State for India v. Bagmal 22 N. L. R. 247; A. I. R. 1927-Nag 10.

Section 65 refers to unauthorizedly continuing in possession of *any land* after the right to possess has come to an end.

66. (1) The Governor in Council may, by notification, apply the provisions of this section to land comprised in occupants' holdings and sites in the gaathan in the Melghat taluq as constituted in the year 1911 held by Gonds, Korkus and other aboriginal or backward castes or tribes,

Restriction of rights of transfer of certain backward classes in the Melghat.

(2) Land to which this section has been applied—

- (i) shall be transferable by lease for agricultural purposes only: provided that it may not be continuously alienated for a period exceeding one year in all;
- (ii) shall not be transferable in any other manner without the previous sanction of the Deputy Commissioner, given in accordance with rules made under this Law;
- (iii) shall not be liable to any decree or order for sale or foreclosure, and shall not be liable to be attached or sold in execution of any decree or order except in accordance with the provisions of this Law, and shall not vest in a court or in a receiver under the Provincial Insolvency Act, 1920, or under section 51 of the Code of Civil Procedure, 1908; and
- (iv) shall be held on such other conditions regarding cultivation or the residence of the holder as the Governor in Council may prescribe by rules made under this Law.

For rules see 'Compilation' p. 29

Notes.

The reasons for the insertion of this section are put forward in the following words in the Resolution of the Governor General in Council:—

" Clause 66 :—This clause deals with the restriction of the rights of transfer of certain backward tribes of the Melghat Taluk. The settlement operations now being carried out in this taluq have revealed the necessity of imposing conditions with regard to cultivation and residence, in order to protect these tribes from exploitation and expropriation. The Governor General in Council also recommends that the principle which the Committee has already accepted of giving special protection to aboriginals of the Melghat taluq should be extended to the aboriginal residents of the villages which were or may hereafter be transferred for administrative reasons to other taluqs."

CHAPTER VII

Alluvion and Diluvion.

67. (1) Alluvial land formed on any bank which adjoins unalienated land shall vest in the Government, but the occupant, if any, of the land adjoining such bank shall be entitled to the use of the alluvial land so added to his holding free from the payment of landrevenue during the current term of settlement, unless the area added to his holding exceeds one acre.

(2) When the area of alluvial land added to a holding exceeds one acre, and it appears to the Deputy Commissioner that the rights of an occupant in such land may, with due regard to the interest of the public convenience and public revenue, be disposed of, he shall offer such rights to the occupant of such holding at a premium which shall not exceed ten times the fair assessment of the land so formed. If the said occupant shall refuse the offer, the Deputy Commissioner may dispose of the land in accordance with the provisions of the Law.

(3) Where any unalienated holding is diminished in area by diluvion to an extent greater than one acre, the land-revenue payable on such holding shall be decreased.

68. (1) In alienated holdings which consist of entire villages all newly-formed islands, abandoned river beds and alluvial land shall be deemed to be an addition to the holding and shall be held subject to the same privileges, conditions or restrictions as the holding itself, and no additional land-revenue shall be payable in respect thereof during the current term of settlement.

Alluvion and diluvion in alienated villages.

(2) The land-revenue payable on an alienated village shall not be liable to be reduced during the currency of a term of settlement by reason of diluvion.

(3) Alluvial land formed on a bank which adjoins the holding of an ante-alienation tenant in a village which is not subject to the Berar Alienated Villages Tenancy Law, 1921, shall vest in the superior holder, but the tenant shall be entitled to the use of such land free from the payment of rent during the current term of settlement, unless the area added to his holding exceeds one acre.

Rights of ante-alienation tenants.

(4) When the area of alluvial land added to such holding exceeds one acre the superior holder may offer it to the tenant, who, if he accepts it, shall hold it as part of his holding, subject to the same rights as he has in his holding, and at an increase of rent equal to the fair assessment on the land added to the holding and subject to the payment of a premium which shall not exceed ten times such fair assessment. If the tenant shall refuse the offer he shall lose all rights in the land.

(5) Where the holding of an ante-alienation tenant in a village which is not subject to the Berar Alienated Villages Tenancy Law, 1921, is diminished in area by diluvion to an extent greater than one acre, he shall be entitled to claim a reduction in the rent payable on the holding.

69. (1) Alluvial land formed on a bank which adjoins a holding of alienated land, other than land in an alienated village, shall be deemed to be an addition to such holding and shall be liable to be assessed to land-revenue, subject to the same privileges, conditions or restrictions as

Alluvion and diluvion in alienated plots.

are applicable to such holding, but no land-revenue shall be payable in respect thereof during the current term of settlement unless the area added to the holding exceeds one acre.

(2) Where a holding of alienated land, other than land in an alienated village, is diminished in area to an extent greater than one acre, the land-revenue payable on such holding may be decreased.

70. (1) The Deputy Commissioner shall have power, subject to rules made under this Law, to assess all increases and reductions in land-revenue or rent which are required or permitted under this Chapter.

Power of Deputy Commissioner to make assessment and decide disputes.

(2) The Deputy Commissioner shall also have power to decide any dispute which may arise relating to the distribution of alluvial land among the various occupants, tenants and superior-holders claiming such land under the provisions of this Chapter.

For rules see 'Compilation' pp. 29-30.

Notes.

The Select Committee has explained the principles underlying this chapter in the following words :—

" Clause 70 as drafted makes no clear recognition of the principle that land revenue assessed on an alienated village is fixed for the term of the settlement and may not be altered on account of alluvion and diluvion. Again, we recognise that the addition of a valuable piece of alluvion to a holding is a piece of good fortune, and we do not think that the State should claim most of the benefit by asking for a premium from an occupant which may run up to fifty times the fair assessment. We have given the occupant his share of the good fortune and have reduced this multiple to ten. We have also given on ante-alienation tenant the same rights as an occupant, except in Ijar villages which are governed by the ' Berar Alienated Villages Tenancy Law. '

We have accordingly recast the whole of this Chapter. Clause 68 as drafted by us relates to both alluvion and diluvion in unalienated land. Clause 69 covers alluvion and diluvion

in alienated villages and clause 70 covers the case of alluvion and diluvion in alienated lands which are not part of alienated villages. Clause 71 relates to procedure and gives the Deputy Commissioner powers to decide disputes regarding alluvion between occupants, tenants and superior holders."

Alluvion defined:—Alluvion is described by Justinian as an imperceptible increase, and land is said to be acquired by alluvion when it is acquired so gradually that one can't say how much is added at any particular moment of time. But if by the violence of a river, a portion of land is added to the estate of an adjoining owner the land continues to be the property of the original owner. Accretion to be considered "gradual" must be by gradual, slow, and imperceptible means.¹

Right to soil submerged:—If private property be submerged and subsequently again left bare by the water it belongs to the original owner.²

Rights consequent on alluvion and diluvion:—
I. Alluvion:—

(i) In case of unalienated land:—

(a) land formed by alluvion belongs to Government but the owner of the land to which the accretion is made has the right to use it free of revenue during the period of the settlement that is running so long as the extent of the accretion is less than an acre. When it is one acre or more the D. C. may dispose of the land, the riparian owner having the first right to have it, on payment of a premium which may be any thing upto 10 times the assessment and on his agreeing to pay assessment which may be levied on it. (sec. 67).

(ii) In case of alienated land:—

(a) When the alienated land is a whole village land formed by alluvion belongs to the holder of the village in the same way as the rest of the village belongs to him, and he

1. *Narendra vs. Achhabai* I. L. R. 28 All. 647.

2. *Haridas vs. Secretary of State* I. L. R. 26 Bom. 49; *Thakurain Bitraj vs. Thakurain Sarfaraj* 7 Bom. L. R. 872.

is entitled to it free of revenue during the period of settlement current irrespective of area. He is given this privilege as he is not entitled to reduction in revenue owing to diluvion (sec. 68).

(b) The alluvion formed in an alienated village may be against the holding of an antealienation tenant or the land of some other tenant. In the former case the holder of the village and the antealienation tenant stand to each other in the same relation as Government and an occupant in an unalienated village. The antealienation tenant is entitled to free use of the alluvion during the settlement current provided that the area is less than an acre; but if it is one acre or more the holder of the village is entitled to dispose it of, the ante-alienation tenant having the prior right to have it on payment of a premium which is not to exceed 10 times the assessment and on his agreeing to pay fair assessment in respect of the added area. If the alluvion is against the holding of any other tenant the holder of the village may do any thing with it the tenant having no right to it whatsoever (sec. 68)

(c) When the alienated land is not whole a village but is a single plot the plot-holder is entitled to land in the same way as the rest of the plot and may enjoy it free of revenue during the current settlement when the area is one acre or less. (sec. 69)

II. Diluvion:—

(i) In case of unalienated land:—

(a) When the dimunition amounts to more than one acre the occupant is entitled to a reduction of revenue. If the area is less than that he is not entitled to any reduction (Sec. 67 (3)).

(ii) In case of alienated land:—

(a) the holder of a whole village is not entitled to any reduction on account of diluvion during the current settlement whatever be the area of dimunition. At a subsequent settlement reduction may be made irrespective of the area (Sec. 68 (2))

(b) In the case of an antealienation tenant he is entitled to reduction of revenue when the dimunition is more than one acre but not otherwise. (Sec. 68 (5))

(c) when diluvion occurs to a plot of alienated land, the plot-holder is entitled to reduction of revenue when the diminution is more than one acre; but not otherwise (Sec. 69(2)).

CHAPTER VIII

Landlords and Tenants.

71. Where there is no satisfactory evidence of the capacity in which a person in possession of land, in respect of which he pays anything in money, kind or service to the landlord, receives, holds, or retains possession of the same, it shall be presumed that he is in possession as tenant.

Status of persons paying rent to landlord.

Notes.

General:—It should be noted that this chapter does not apply to villages which were leased under the Waste Land Rules of 1865. The tenants in these villages are governed by the Berar Alienated Villages Tenancy Law. This chapter corresponds to Chapter VII of the old Code. The provisions contained in it have however been rearranged and to a considerable extent redrafted and made more definite. It should also be noted that the Transfer of Property Act which deals with leases does not apply to agricultural leases; whereas this Chapter applies to agricultural leases only.

Alienated Village:—The term "alienated" has been defined under section 2(2); and in a recent decision the Judicial Commissioner at Nagpur held that a village may be alienated within the meaning of this definition although there has been no grant in the soil by Government.¹ The Court concludes that this definition prescribes a certain minimum requirement and where that requirement is satisfied the definition is satisfied notwithstanding that the transfer may cover certain other interests over and above that contained in the minimum requirement.¹

¹ *Ganpat Vs. Raja Laxmanrao* 26 N. L. R. 195.

Effect of introduction of Survey settlement:—Under the old Law introduction of survey settlement in an alienated village resulted in conferring the rights of occupants on all holders of land in that village. Vide Section 221 of the Code of 1896. Section 220 of that Code said that the provisions of that Code relating to survey settlements were not to be applicable to any alienated village except for the purpose of determining and registering the proper full assessment on all lands included therein. Lands in alienated villages were surveyed and proper full assessment was put down on record. But this was mere survey and did not amount to the introduction of survey settlement which was a conscious act which required an application in writing from the holder of the alienated village. When on application in writing from a superior holder settlement was made it amounted to introduction of survey settlement and this step led to the conferral of the rights of an occupant on all tenants holding land in the village. There is no provision corresponding to this in the present law. But if in any village survey settlement has been introduced as aforesaid tenants therein would be clothed with the rights of occupants and by virtue of Section 54 (2) of this Code these rights would be recognized and the tenants would be treated as occupants not liable to eviction or enhancement of rent under the present Act.

In a recent ruling it has been pointed out that this conferral of rights was a special feature of the Code of 1896 and that the provision could not be construed retrospectively; and that as the Berar Settlement Rules of 1865 did not contain such a provision introduction of survey settlement between 1865 and 1st January 1897 when the Code of 1896 came into force would not result in giving the rights of occupants to tenants in the village.¹

Classes of tenants:—Broadly speaking tenants are of four kinds:—

(i) Tenants holding land from before the time when a village of which the land forms part was alienated by

¹ *Ganpat Vs. Raja Larmanrao* 26 N. L. B. 195.

Government to another person and such tenants are called antealienation tenants (Sec. 72).

(ii) Tenants of antiquity i. e. tenants who have been on the land from a very old time and the beginning of whose tenancy can not therefore be located with certainty.

(iii) Annual tenants i.e. tenants holding land for an indefinite period from year to year; and,

(iv) Ordinary tenants.

The first two kinds of tenants are mostly to be found in Jagir estates in Berar. The last two may be met with in all villages Jagir as well as Khalsa.

Ante-alienation tenant :—He is practically the owner of the land and is in the same position as an occupant in a Khalsa or unalienated village. The amount he has to pay depends not on the choice of the landlord Jagirdar but on what would be deemed by Government as the fair assessment at each settlement. Instead of paying the assessment to Government as revenue he pays it to the Jagirdar as rent and he is the tenant of the Jagirdar only on that account. His holding is transferable and heritable property. He can not be ejected from his land even for non-payment of rent though the rent is the first charge on the holding as land-revenue is on an occupant's holding in a Khalsa village. An antealienation tenant thus possesses the highest quantum of right to hold land amongst the several classes of tenants. Next to him is a tenant of antiquity. He has permanent leasehold interest in the land which is heritable and transferable. But his rent can be enhanced by the landlord after four months' notice to an extent which civil courts deem just and reasonable. He can be evicted for nonpayment of rent. He can not effect improvements after the commencement of this law and charge them against the landlord without his written consent.

Next comes the annual tenant—He has a terminable leasehold interest which can be terminated by three months' notice. His rent is the rent which he has agreed to pay when he entered into possession of the land. He can be ejected for nonpayment of rent. Last comes the ordinary tenant who holds for a definite period and for a definite amount and who

has no interest in the land beyond the period of tenancy. He can be ejected from the land as a trespasser without notice after the expiry of the period of lease.

This section corresponds to subsection (3) of section 78 of the old Code and lays down a presumption of law that when a man is found paying some money to another for the use of land or is rendering some service in return for its enjoyment it should be understood that he is holding the land as a tenant and not as a licensee. In Jagir villages it some times happens that a man is found in possession of land as a servant of the Jagirdar for generations. In such cases the law presumes the relationship of landlord and tenant and no other; and this presumption would hold good even if the land were unalienated land i. e. a field in a Khalsa village.

Difference between a lease and a license:—The reason why law draws a presumption of tenancy is inherent in the nature of possession held and enjoyed. Transferability and heritableness are the chief attributes discernable in the transaction. The possession has gone on in an exclusive manner and from father to son. This is consistent only with lease and not with license which creates no interest in land. The essential difference between a lease and a license is that in a lease there is a transfer of interest in land whereas in the case of a license there is no transfer of interest.¹ The interest of a lessee is assignable & heritable. Licensee's rights are not generally transferable.²

72. (1) A tenant who has personally or through his predecessors in title held land continuously in an alienated village or holding from a period anterior to the alienation or from the year 1865 on a rent equal in amount to the fair assessment shall be entitled to hold the land subject to the annual payment of rent equal in amount to the fair assessment on the land and free from any other charge on account of rent.

Such tenant is called an ante-alienation tenant.

1. Secretary of State vs. Karuna I. L. R. 35 Cal. 82, at page 93.
2. Gour's Law of Transfer Vol III pages 1823-26 (6th Ed.)

Explanation.—“Alienation” means an alienation made by the present Government, or by a former Government.

(2) The rights of an ante-alienation tenant are permanent and transferable, and on his death shall pass by inheritance or survivorship in accordance with his personal law; and he shall not be ejected from his holding by his landlord as such for any cause.

(3) The rent of an ante-alienation tenant shall be a first charge on his holding.

Notes.

This section and the next deal with a class of persons who are called tenants though their rights are superior to those of the tenants in the ordinary sense of the term and to get a correct idea of their status it is necessary to see how they came into being. Under the old Code these were known as ‘inferior holders’ as opposed to the Jagirdars and Inamdars who were ‘superior holders’. Inferior holders were persons who were entitled to the possession of the land as against the superior holders who were entitled to the revenue or rent in respect of the land. This terminology was borrowed from the Bombay Code. Under the present Code the term ‘inferior holder’ is dropped. They are now called tenants because some others have been called landlords. Jagirdars having established themselves as owners of the soil in villages persons in possession of land but inferior to them are naturally called tenants though as a matter of fact they never allowed to them. Baden Powell in his ‘Land Systems in British India’ gives the origin of these tenants in the following words:—

“In large Jagirs there would be villages where land is already held by the occupants of the land. In such cases the grant places the Jagirdar over their head; and the question arises was the Jagirdar meant to be owner and the existing holder to be regarded as only his tenants? It was admitted that the Jagirdar had the right to the waste numbers and might treat cultivators on them as he pleased and that he owned all that which would have belonged to Government had there been no grantees. *All occupants of land, however, who had held from a period antecedent to the grant, were to be*

treated as *occupants* of their holdings and from them the Jagirdars could not take more than the revenue assessed over the holdings."

The above remarks of the author are based on Rule XIX of the Berar Settlement Rules of 1865 which ran as follows:—

"Tenants on Jagir estates and Inam lands, who have occupied their land from a period antecedent to the grant of the Jagir or Inam *shall be* entitled to hold the said land at the survey assessment rates, should they claim to do so.

"Tenants whose occupancy dates from a period subsequent to the grant of the Jagir or Inam, shall make their own arrangements with the holder thereof and shall not be entitled to claim the rights of holding at survey assessment rates.

"Disputes regarding duration of tenancy under this rule and claims to hold at assessment rates, shall be triable in the Civil Courts."

This right to hold land at survey assessment rates was the same as the right of an occupant of Khalsa land as will be seen from Rule V of the Settlement Rules which ran as follows:—

"The occupant of survey field or recognised share of a field or number shall not be deprived of his right of occupancy in the said field or recognised share of a field, by any Revenue Officer, so long as he continues to pay the assessment due thereon. This right of conditional occupancy is declared to be a transferable and heritable property; and any person, lawfully and authorisedly in occupation of any land, at the expiry of the Settlement lease, who shall consent to the rate which may be assessed on his land at a revision assessment shall be continued in his occupancy without question."

Baden Powell describes the rights of an occupant as rights following out of "Survey Tenure" (see Vol. III page 368). This left no doubt as to the rights of an ante-alienation tenant. He possessed the rights of an occupant and he had a permanent, transferable and hereditary estate in his holding subject only to the payment of "Fair Assessment" i. e. the assessment which the occupant in a Khalsa village would be liable to pay if the

field was not situated in a village which was an "Alienated Village".

Subsection (2) and (3):—Subsection (2) of this section now definitely recognises this and what had been a matter of judicial interpretation so far is now a matter of statute law.

The tenant holds the property subject to his personal law. Hence a transferee acquires only the right title and interest of the tenant transferor and if the transfer is from a woman with limited interest the transferor's right to occupy would end on the death or remarriage of the woman.¹ The rent was held to be a first charge under the old law also.²

Proof required:—The Inam Investigating officers dealt with the claims of Jagirdars; but did not make enquiry regarding tenants; and there is no record of the fact if a tenant is an ante-alienation tenant. There is also no presumption under the general law that a tenant holds under a particular tenure. The ordinary incidents of the relation of Landlord and tenant are that a landlord is at liberty to charge any rent and after giving due notice to eject him. The burden of proof therefore is in the first instance, on the tenant who alleges that he is an ante-alienation tenant. He must prove the following³:—

- 1 that his possession dates from 1865,
- 2 or if the alienation was subsequent to 1865 that it dates from before the alienation.
- 3 that the possession was continuous and uninterrupted,
- 4 that he is paying uniform rent, and
- 5 that the rent is not in excess of the fair assessment.

Privity of estate:—In proving that the possession was continuous and uninterrupted it is necessary to prove that there was privity of estate whether by inheritance or purchase. It is a question of fact and cannot be the subject of legal

1 *Haji Begum v. Shankar Rao* 53. I. C. 543.

2 *Shamrao v. Sitaram Maharaj*, 18 N. L. R. 207 = A. I. R. 1923 Nag 5.

3 *Jaisiram Va. Hariharrao* 5 Berar L. J. 28 at page 30; *Ganpat va. Sambhava* 4 N. L. J. 235.

tion holding was held to be a charge on the holding.¹ The effect of this subsection is to make Article 132 of the Limitation Act applicable to suits for arrears of rent and not Article 110.

Limitation :—The ordinary period of limitation for a suit for rent is 3 years from the time the arrears became due under article 110. If the contract of lease is registered it is 6 years under article 116.² Under this section the period is 12 years.

Right of ante-alienation tenant & tenant of antiquity to divert land :—The land held by an ante-alienation tenant or tenant of antiquity is 'alienated land' and sections 50, 58 and 59 would not apply to it. The disability imposed on an occupant under those sections does not hold good in the case of these tenants. The antealienation tenant or tenant of antiquity is not prevented from using his land for any purpose he likes under the provisions of this law. But as these persons hold land for agricultural purposes principles underlying clauses (o) and (p) of section 108 of the transfer of property Act would apply and an antealienation tenant or tenant of antiquity would be liable in damages to his landlord for diverting land to non-agricultural use and the criterion for damages would be the same as in the case of occupants under this law. The fact that the rights are permanent, heritable and transferable property would not avail for as pointed out by the Privy Council; "it must be borne in mind that the essential characteristic of a lease is that the subject of it is one which is occupied and enjoyed and the corpus of which does not in the nature of things reason of the user disappear."³

Right to minerals :—The antealienation tenant or tenant of antiquity has no right to minerals vide section 44 and notes thereunder.

Denial of landlords title :—To set up a plea that a tenant is an ante-alienation tenant or tenant of antiquity is not to deny the landlord's title and can not work out forfeiture of tenancy. The denial must be unequivocal and unambiguous.

1 *Shamrao vs Shri Sitaram*, 18 N. L. R. 207.

2 *Tricomdas v. Gopinath* L. L. R. 44 Cal. 759 P. C.

3 *Rajkumar Thakur Girdharising v. Meghlal* I. L. R. 45 Cal. 87.

the Rules of 1865 was not entitled to claim the status of an ante-alienation tenant.¹

Explanation.—In view of the wording “or from the year 1865” really makes the Explanation unnecessary. A tenant who has been continuously in possession from 1865 and paying rent equal to fair assessment need not prove that his possession commenced previous to the alienation. In the case of alienations after 1865 there would be ample documentary evidence from Government records to show that land was enjoyed by a person from Government e. g. ‘Faisal Patraks’ or decisions by settlement officers at original survey in settling land with individuals. The law as it stood under the old Code necessitated the definition of alienation about the precise meaning of which there was some doubt. The Court of the Judicial Commissioner held in some cases that the alienation meant alienation by former Governments and that the present Government in admitting claims to Inams and Jagirs merely confirmed old rights and did not create new ones;² and the Explanation to this section also gives the same meaning to the word “alienation.”

This clause was amended both by the Select Committee and the Legislative Committee. The amendments made by the former defined the rights of the ante-alienation tenant. The Committee substituted a new qualification for the right viz the qualification of continuous tenancy on a rent equal in amount to fair assessment from a period anterior to alienation or from the year 1865 and the Explanation was pressed on the Committee to clear up the meaning of the word “alienation” more out of sentimental regard for the claims of the Jagirdars rather than the utility of it for the settlement of disputes.

Subsection (3) :—Subsection 3 was added by the Committee to enable the superior holder to pursue the land for the realization of rent. The trend of judicial interpretation was in the same way and rent payable in respect of an ante-aliena-

1. Parashram vs. Bapu 14 N. L. R. 111; Yeshwant vs. Shivappa A. I. R. 1923 Nag. 129.

2. Pandu vs. Baje Udbojirao 7 N.L. R. 100.

tion holding was held to be a charge on the holding.¹ The effect of this subsection is to make Article 132 of the Limitation Act applicable to suits for arrears of rent and not Article 110.

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1 *Shamrao vs Shri Sitaram*, 18 N. L. R. 207.

2 *Tricomades v. Gopinath* L. L. R. 44 Cal. 759 P. C. 1.

3 *Rajkumar Thakur Girdharising v. Meghlal* I. L. R. 45 Cal. 87.

Mere nonpayment of rent or even mortgaging the premises as belonging to the tenant does not constitute such a denial. The denial must be anterior to the filing of the suit. A denial made in the course of pleadings in a suit will not avail.¹

73. (1) Where, by reason of the antiquity of a tenancy in an alienated village or holding, no satisfactory evidence of its period is forthcoming, and there is no usage of the locality as to such period, the period shall, as against the landlord of the tenant, be presumed to be co-extensive with the duration of the tenure of such landlord and those who derive title under him.

*Tenants of anti-
quity.*

Such tenant is called a tenant of antiquity and his rights shall be heritable and transferable in accordance with his personal law.

Explanation.—“Antiquity” does not mean absolute antiquity, but means antiquity in reference to the difficulty of securing evidence.

(2) Such tenant shall, in the absence of any specific agreement, be entitled to hold at the rent payable or services renderable by the usage of the locality, or, if there is no such usage, at such rent as shall seem just and reasonable.

(3) The rent for the time being payable or the service for the time being renderable by such tenant shall, for the purposes of this section, be presumed to be just and reasonable till the contrary is proved.

(4) In determining what shall be considered a reasonable rent, a civil court shall not take into consideration as against such tenant the enhanced value of the property due to improvements effected by the tenant.

(5) When a civil court decrees the ejection of such tenant on the ground of nonpayment of rent, such court may consider whether the tenant has made improvements, and may pass a decree for ejection, subject to the payment by the

¹ *Bhiwaji vs Tukaram* 13 N. L. R. 11.

landlord of such sum as may be considered just and reasonable compensation for the unexhausted improvements :

Provided that no compensation shall be payable on ejection for any improvement effected, without the written consent of the landlord, after the commencement of this Law.

(6) Nothing contained in this section shall affect the right of the landlord (if he has the same by virtue of agreement, usage or otherwise) to enhance the rent payable or services renderable by a tenant of antiquity up to a limit which shall, in the judgment of the civil court, be just and reasonable.

Notes.

General:—The section now applies only to "alienated land." Section 78 (2) of the old Code also applied to alienated land there can therefore be no tenant of antiquity with respect to unalienated land as rights thereto can in no instance go further back than 1865 as survey work in Berar started about that year.

Reason of the law:—As already stated where a whole village was granted to a person no attempt was made by the British Government to ascertain the nature of tenancies existing in respect of lands comprised in the village. The enquiry was too big and complicated to be undertaken by Revenue or Executive officers of Government not trained in civil law. The Settlement Rule XIX provided for two cases; (i) Tenants who held land from a period anterior to the grant, and (ii) tenants holding from a period subsequent to the grant. A third class of cases was left out viz. tenants of whom it could not be stated whether they held from before or after the grant. It was not difficult to decide this question in 1864 or thereabout as evidence of the commencement of the tenancy was more readily available then. But as time advanced it became increasingly difficult to extend protection to tenants who were on the land from so long a time as to make it impossible for any one to say when they started their possession and under what terms they were allowed to be on the land. When lands were ample and had not increased in value there was little room for a landlord's or tenant's greed. But as

time advanced and country developed tendency on the part of tenants to stick to the land and that on the part of the landlord to drive them away increased and a rule of law became necessary, and this section was accordingly introduced into Berar Revenue Law. It was borrowed from the Bombay Land Revenue Code.

What the section enacts :—The section enunciates a particular presumption as to duration in cases of tenancies of a special kind. The usual presumption as to duration is that an agricultural lease would be supposed to be from year to year terminable with 6 months' notice and a lease for non-agricultural purpose is to be from month to month terminable with 15 days' notice (vide section 106 of the Transfer of Property Act). In the absence of proof of an express agreement as to permanency of the lease it must be presumed that the normal incident of the law of landlord and tenant applies viz that the landlord can both enhance rent and evict after proper notice.¹ The special presumption which this section asks courts to make in case of particular tenancies is that the duration shall be *coextensive with the grant* i. e. the tenancy will terminate when the grant terminates. As against the superior holder this practically amounts to say that the tenancy would be permanent but if the grant comes to an end by resumption or otherwise the tenancy also comes to end. This presumption is to be drawn in cases of tenancies only when their origin is rendered incapable of proof by long lapse of time, in other words when their commencement is 'lost in antiquity.' Directly it can be shown that a tenancy started at or after particular period of time the tenancy is not one in whose favour the presumption of this section can be drawn.²

It is not necessary to prove that a tenancy commenced in a particular year. It is sufficient if the origin can be traced to a period of time e. g. between 1830-1850. But there is a limit even to this. It would not do to say that the tenancy

1 Ganpat v. Sambhasiv. 4 N. L. J. 235.

2 Champat Gambhiriji v. Shree Balasahib Sanathan A. I. R. 1928 Nag 169 Narayan Ramchandra v. Pandurang I. L. R. 47 Bom. 4. Chikko v. Sidhanath I. L. R. 46 Bom. 687.

commenced some time between a hundred years.¹ To put the same thing in other words if it can be proved with certainty that a tenancy was not in existence till a certain point of time it cannot be averred that the origin of the tenancy is lost in antiquity and a tenant of such a holding will not get the protection afforded by this section 3.² Again the mere fact that a tenancy commenced subsequently to the commencement of the landlord's tenure does not prevent the application of this section.³

The crucial test:—What then is the crucial test. It is the inability of both the land-lord and tenant, arising not out of carelessness, negligence or indifference in the matter of establishing their case but solely by the long lapse of time, to prove when actually the tenancy started and what were the conditions in regard to its duration. When a man sees a state of things continuing for years he thinks it will continue for ever and the judge is allowed by this section to presume that the tenancy is not terminable at the wish of the landlord but that it would be permanent.⁴

Long and continued duration and inability to locate its origin owing to long lapse of time are the factors which go to establish a tenancy of antiquity. But how long and how ancient should that possession be is a question which has been the subject of much judicial discussion.

Explanation to the section:—The Explanation to the section only serves to give an indication. Each case must be decided with reference to the facts peculiar to it. Mere length of possession i. e. the mere fact that the tenancy is 40 or 48 years old is not a ground by itself for presuming that the evidence of the commencement and duration is not forthcoming;⁵ nor would the comparative recentness of the tenancy necessarily lead to a refusal of the privilege contemplated by the section.

1 *Shridharbhat v. Rama A. I. R. 1927 Bom 270.*

2 *Yeshavant v. Shivappa A. I. R. 1925 Nag 129. Parashram v. Bapu 14 N. L. R. 111.*

3 *Ramchandra v. Anant I. L. R. 18 Bom 433. Sidhanath v. Chiko Bhagvant. 63 L. Q. 935.*

4 *Junansingji v. Dola A. I. R. 1925 Bom 390.*

5 *Champat vs. Rala Sabab Sanathan A.I.R. 1928 Nag. 169; Pandu v. Baje Udhojirao 7 N.L.R. 100.*

A Bench of the Judicial Commissioners' Court refused to be bound by a rigid definition of the term. It observed "The factors determining the applicability of the section may differ so greatly in the district in which that case (*Kalidas vs. Bhaijan*)¹ arose from those obtaining in Berar, that we are not inclined to allow that decision to sway our opinion. The word "antiquity seems to us to be construed with reference to the nature of the history of the part of the country where the land is situated and the word used is not to be understood in its commonly accepted meaning of absolute antiquity in reference to the possibility of getting evidence. From this point of view it is obvious that the period would be far shorter in a district long under a British Administration where documentary evidence for many years past is available than in a part of the country known until comparatively recent times to have been in the hands of farmers of revenue to whom the Hyderabad Government had given on contract the right to collect revenue from landowners. The question for decision in these cases is "does the antiquity take the tenancy into a period when evidence of its commencement and duration is not available? Is it sufficiently antique to go back to a time when neither party can be expected to get evidence on the subject? If the tenant, for the burden of proof lies on him, can take the commencement of his tenancy into the mists of antiquity however recently those mists may have existed, the landlord must show that this section does not apply"² This was affirmed in a subsequent ruling.³

This view is now embodied in the Explanation and what has to be seen in each case is "does the antiquity take the tenancy into a period when evidence of its commencement and duration is not available."

Burden of proof:—The normal incident of the law of landlord and tenant is that the landlord can both enhance rent and

1 *Kalidas vs Bhaijan* I.L.R. 16 Bom. 649.

2 *Ganpat vs Sambashiva* 4 N. L. J. 235 & 241.

3 *Parasharam v. Bapu* 14 N. L. E. 111; See also *Deolia vs Baje Janardhan* 11 N. L. J. 21 ; A. I. R. 1928 Nag. 153.

eject a tenant after proper notice.¹ The ordinary presumption about the nature of a tenancy is that it is from year to year and not permanent.² As the Privy Council has recently pointed out it cannot now be doubted that when a tenant of lands in India, in a suit by his landlord to eject him from them sets up a defence that he has a right of permanent tenancy the onus of proving that he has such a right is upon the tenant.³ The burden of proof in the sense of introducing evidence is in the first instance on the tenant. He must lead evidence to show that:—

(i) His tenancy is very old. 40 or 48 years have not been regarded as sufficient.⁴

(ii) That he is in possession continuously and without interruption by a derivative title. In proving continuity the tenant must also establish privity of estate for there is no presumption of law that a successor came upon the land by a title derived from the predecessor.⁵

(iii) That he is paying uniform rent, though fixity of rent is not necessary to establish permanency of tenure.⁶

(iv) That the tenancy does not owe its origin to a contract or understanding with the landlord.

When this is done the burden is shifted to the landlord who has to explain the long duration of the tenancy and to show how the tenant came on the land. The recent Bombay case of '*Janardhan Narayan v. Laxman Mahadeo*'⁷ and cases of that kind show that the landlord is in a better position to show how a particular tenant came on the land. These cases are not

1 *Ganpat v. Sambhsiv*. 4 N. L. J. 235.

2 *Sheomangal v. Nanbalal*. 14 N. L. R. 3. *Kashiba v. Vithoba* 4 C. P. L. R. 55. *Jadoonath v. Palbadi* 4 C. P. L. R. 47.

3 *Naina Pillai v. Ramnathan* I. L. R. 47 Mad. 337.

4 *Champat v. Shri Balasahib Sansthan* A. I. R. 1928 Nag 169. *Pandu v. Raje Udhoji Rao*. 7 N. L. R. 100.

5 *Ramchand v. Ratannath Maharaj*. A. I. R. 1928 Nag. 99.

6 *Deolia v. Raje Janardhan* A. I. R. 1928 Nag 153. *Fakira v. Dattatraya Krishna* A. I. R. 1927 Nag 200.

7 *Janardhan Narayan vs Laxman Mahadeo* A. I. R. 1931 Bom. 302

authorities for the proposition that the initial burden of proof is on the landlord. In explaining the long possession of the tenant it is not sufficient for the landlord to say that the tenant's name is not borne on the list of tenants maintained by him for the village.¹

It is not enough for him to show that the tenancy commenced subsequently to the grant to him by Government.² It will not suffice for him to establish that the tenant has been paying varying rent for fixity of rent is not a necessary concomitant of permanency of tenure.³ The fact however that rent varied largely from time to time and that there has been a formal and annual lease in support of the tenancy will help him to prove that the tenant is not a tenant of antiquity.⁴ It would not help the landlord much to produce a *Kabulayat* purporting to be executed by the tenant agreeing that the tenancy is only for a year for this may be an unconscious act on the part of a tenant who is dealing with a powerful landlord.⁵ He must definitely prove what brought the tenant on the land. His inability to do so helps the tenant in proving that the origin of his possession is lost in the long lapse of time; and if in the light of evidence the court thinks that neither party can explain or locate the origin of the tenancy it concludes that there is no satisfactory evidence of the commencement of the tenancy and the period of its duration and protects the tenant from arbitrary eviction. The court attaches great importance to possession and when a tenant succeeds in showing his continuous possession for a sufficiently long time say 40 or 50 years it inclines in favour of permanency⁶ and the burden of proof is shifted to the landlord.⁷

1 *Deolia v. Raje Janardhan A.* L. R. 1928 Nag 153.

2 *Ramchandra vs Anant I.* L.R. 18 Bom 433. *Sidhanath vs Chiko Bhagavant* 63 I. C. 935.

3 *Deolia vs Raje Janardhan A.* I. R 1928 Nag 153.

4 *Fakira vs Dattraya Krishna A.* I. R 1927 Nag 200.

5 *Deolia vs Raje Janardhan A.* I. R 1928 Nag 153 *Ramchandra v. Abdul Rahiman I.* L. R. 45 Bom 303.

6 *Deolia vs Raje Janardhan.* A. I. R. 1928 Nag. 153.

7 *Maniklal vs. Bai Amma I.* L. 45 R. Bom. 350; *Bhagwan vs. Ganesh.* 3 *Berar Law Journal* 92; *Abdullakhan vs. Abhiman* 44 I.C. 531.

Result of case law:—An examination of the case law on the subject establishes the following propositions:—

(1) There is nothing to prevent a tenancy from year to year continuing for a century or even longer if neither the landlord nor the tenant chooses to put an end to it—*Gangabal vs. Kalapa I. L. R. 9 Bom. 419.*

(2) It is not necessary to prove that a tenancy commenced in a particular year. It is sufficient if the origin of the tenancy can be traced back to a definite period e. g. between 1830–50. *Narayan vs. Pandurang I. L. R. 47 Bom. 4.*

• But a period can not be interpreted to mean a period of 100 years. It is too long to be taken as a starting point of a tenancy. *Shripad Bhat vs. Rama A. I. R. 1927 Bom. 270.*

(3) The mere fact that a tenancy has commenced subsequently to the commencement of the landlord's tenure does not show that it is not of an ancient character. *Ramchandra vs. Anant I. L. R. 18 Bom. 433 ; 63 I. C. 935.*

(4) Where a tenant proves his tenancy by title deeds which take it to an antiquity behind which none can trace its origin e. g. when a tenant proves that he is in possession from 1835 the tenant is entitled to the presumption of antiquity. *Juvansingji vs. Dola A. I. R. 1925 Bom. 390.*

(5) Rent notes executed by tenants who are entitled to the benefit of permanent tenancy, will not ordinarily avail a landlord as no permanent tenant would consciously enter into rent notes if he had been fully aware of their legal significance. *Juvansingji vs. Dola A. I. R. 1925 Bombay 390.* A *Kabuliat* executed by a tenant in favour of the landlord does not amount to lease within the meaning of the word in the *Transfer of Property Act* and so it can not displace the tenancy in existence prior to the execution of the *Kabuliat*. In other words a *kabuliat* can not operate as a new contract of tenancy substituted by common consent in place of the original contract (tenancy of antiquity) so as to lead to the inference that the future relations of the parties would thereafter be regulated by the new contract. Such *Kabuliat*s are at best admissions which could be explained. *Deolia vs. Raja Janardhan A. I. R. 1928 Nagpur 153.*

(6) A tenant who has been paying enhanced rent may be a tenant of antiquity. It is not always the case that permanency of tenure must necessarily carry with it permanency of rent. *Deolia vs. Raje Janardhan A. I. R. 1928 Nag. 153; 5 N. L. R. 100.*

(7) Presumption which section 78 (2) (now section 73) authorises a court to draw has no reference to the individual. It relates to the period as regards the intended duration for which any particular land is held in tenant right. This incident of antiquity attaches to the land and runs with it. *Deolia vs. Janardhan A. I. R. 1928 Nagpur 153.*

(8) Mere absence of the name of the tenant in Jagirdar's papers is of no consequence. *Deolia vs. Raje Janardhan A. I. R. 1928 Nagpur 153.*

(9) Antiquity must be construed with reference to the nature of the history of the part of the country where the land is situated and to the possibility of getting evidence and not in its commonly accepted meaning of absolute antiquity. If the tenant can take the commencement of his tenancy within the mists of antiquity however recently those mists may have existed the landlord must show that section 78 (2) now section (73) does not apply. *Ganpat vs. Sambhashiva 4 N. L. J. 235. Parasharam vs. Bapu 14 N. L. R. 111.*

(10) Where possession for more than 40 years is shown a tenant may be protected. *Deolia vs. Janardhan A. I. R. 1928 Nagpur 153.*

Usage as to period:—The presumption of permanency arises only in the absence of a usage to the contrary. The evidence of the usage as to period would have to be given by the landlord.

Rights of the tenants of antiquity:—Second para to subsection (1) defines the rights of the tenant as transferable and heritable property. The view of law under the old code was also the same.¹

¹ *Bhiwaji vs. Tukaram 13 N. L. R. 11; Haji Begum v. Shankar Rao 53. I. C. 543.*

Right to divert land & right to minerals:—For right to divert land for nonagricultural purpose and right to minerals see notes under section 72.

Subsections, 3, 4, and (6):—These subsections deal with the question of rent a tenant is called upon to pay for the use of the land. They lay down the following rules:—

(1) In the absence of a specific agreement or of usage, a tenant is entitled to the use of the land on payment of what is just and reasonable rent.

(Subsection 2.)

(2) Whatever the tenant happens to pay will in the first instance be presumed to be just and reasonable.

(Subsection 3.)

(3) The landlord has the right to have the rent enhanced upto a limit which is just and reasonable.

(Subsection 6.)

(4) This right of the landlord is a general right and exists apart from custom or usage. No tenant can claim to hold on a particular rent. In decreeing enhancement or determining the question if what is being paid by the tenant is just and reasonable, improvements made by the tenant are to be ignored i. e. if a tenant has made an improvement by cutting a channel from a river-bed to his field at his own cost he is to get the benefit of this, and rent cannot be enhanced on account of the fact that he is getting double crop by irrigation - subsection 4.

(5) Enhancement of rent cannot be claimed except after 4 months' notice served under section 75.

Just and reasonable rent:—What is just and reasonable rent is a question of fact to be determined according to the circumstances of each case. But in each case the court must see that the two elements viz. justness of the amount and its reasonableness are fulfilled. For instance a landlord may be entitled to demand rent upto the income which is left over to the tenant after defraying the cost of cultivation and after paying himself a wage for his personal exertion in cultivation and supervision. Though such a claim may be just it is certainly not reasonable. What is paid for land of equal

fertility in the neighbourhood is a good index of the maximum that a landlord can reasonably claim. The minimum is the rate of Government assessment on similar land. The 'Berar Alienated villages Tenancy Law' which deals with the question of relation of Ijardars and their tenants fixes another minimum viz. three times the Government assessment (vide section 50 of the Berar Alienated Villages Tenancy Law) A third element which the court has to consider in such cases is the fact that the liability to pay the rent is thrown on the tenant irrespective of the character of the crop-season. A permanent tenant cannot reasonably be called upon to pay the same amount which an ordinary lessee for a year or two may be expected to do.

In second appeal $\frac{1}{17} \frac{1}{14}$ B Narayan vs. Banabai decided on 29—3—15 the Judicial Commissioner's Court observed as follows:—

"The plaintiff (Banabai) has succeeded in carrying the tenancy back into mists of antiquity to a period when evidence of its commencement or duration cannot be expected. She is entitled to hold at a just and fair rent at a figure that lies between survey assessment and rack rent.

Subsection 5 Improvements:—A tenant of antiquity is a permanent tenant and as such it is natural that he should think of making improvements in his holding to get more income. But though he is permanent he is liable to ejection under certain circumstances and a question arises as to what is to be done as regards improvements in case the tenant is ordered to be ejected. This subsection gives the answer and says that the landlord has to pay the value of the improvements as it obtains on the day of the ejection. Improvements have been defined in section 2 subsection (6). This section talks of 'unexhausted improvements.' From the definition of 'improvements' in section 2 (6) one finds that improvements are either permanent or temporary. Kacha wells etc. are temporary improvements and are not to be regarded as improvements within the meaning of the definition. This subsection however draws another distinction. Improvements according to the subsection may be those which get exhausted or those which do not get exhausted by time. Manuring a field or cleaning it

of weeds fall under the first category. The effect of the former lasts for 3 years and of the latter for at least two years if not more; and this section lays down that a civil court, before ejecting a tenant, has to see if there are any improvements the benefit of which will go to the landlord after the ejection of the tenant. If it is so the landlord has to pay the cost of the benefit. The civil court has also to consider under the 'proviso' to the section if the unexhausted improvement is made before or after the commencement of this law. If it is after the commencement of the Act the tenant is not entitled to compensation unless he has obtained the consent of the landlord in writing.

The Select Committee gives the justification of the proviso in the following words:—

"We have amended subclause (5) in order to make it applicable only to those improvements which have been carried out with the consent of the landlord, or were carried out before the commencement of the Act. This was done to give effect to the opinion of the majority that these tenants should not be allowed to make improvements on their holdings and so to make the process of ejection difficult and expensive for the landlord."

In this respect the tenant of antiquity in a Jagir village is in a worse position than the one in an Ijara village to which the 'Berar Alienated Villages Tenancy Law' applies.

The necessity of landlord's consent does not find place in that law. If the rights of the tenant are permanent, heritable and transferable this is a serious drawback on his holding. The landlord would not ordinarily consent to improvements or would do so only on consent money being paid. The tenant can not even plant trees which would be an improvement within the definition of the term in section 2 (6) of this Act. The tenant's right to remove improvements is not taken away by the section. The court has inherent power to grant time for their removal. The tenant's general right to remove improvements is now contained in clause (h) of section 108 of the Transfer of Property Act. The amended clause enables the tenant to remove improvements whilst he is in possession but not afterwards. The Law Commissioners who recommended

this amendment say "we think it would be consistent with justice if the tenant is allowed to remove fixtures so long as he is in possession of the property even though the tenancy has come to an end." It is immaterial according to them whether the tenant vacates voluntarily or is compelled to vacate by process of law. The Courts would thus be justified in decreeing eviction from a date which will enable the tenant to take away his improvements.¹

Agreement to be in writing:—The agreement has to be in writing and would require adequate stamp and may also have to be registered if the improvement is likely to exceed Rs. one hundred in value.

Improvements by tenants in general:—There is no specific provision in this chapter relating to improvements by tenants in general. The Transfer of Property Act does not in terms apply to agricultural leases but the principles, outlined in Section 108 of that Act have been held to be applicable to agricultural leases as embodying the principles of justice, equity and good conscience.² The tenant's rights may be summarised as follows:—

(i) The lessee may use the property as a person of ordinary prudence would use if it were his own.

(ii) He must not use or permit another to use the property for a purpose other than that for which it was leased. A field given out for cultivation can not be used for propagation of 'lac.'³ But a field given out for cultivation may be used for growing betel leaves or other garden produce,⁴ as both these are agricultural purposes.

(iii) He must not fell or sell timber, pull down or damage buildings belonging to the landlord, or work mines or quarries

1 Seth Mohanlal v. Chaudhari Chunilal 2 N. L. R. 4. Thacher Kavil v. Noor Mahomed 66. I. C. 48.

2 Sitabai vs. Sambhu Sonu I. L. R. 38 Bom. 716. Shrinivas v. Banga Swami 25 I. C. 812.

3 Hiria vs. Mahomed Sirajuddin Khan 4 N. L. R. 104.

4 Loola v. Pyare 12 N. L. R. 57

or commit any act which is permanently destructive or injurious to the property.

(iv) He may erect buildings or structures on the land for agricultural purposes, but not for the purpose of trade or manufacture or for being let out.

(v) He may make any improvement but can not charge the landlord unless he has done it with his consent. ¹

(vi) He may plant trees and take their produce or their wood but can not pull down the trees or timber belonging to the landlord.²

(vii) Whatever improvements he makes or whatever fixture he attaches he is entitled to remove so long as his possession over the land continues notwithstanding the fact that his tenancy has come to an end.

These principles are to be found in the several clauses of section 108 of the Transfer of Property Act. and as pointed out by the Bombay High Court hold good in cases of agricultural tenancies.

Right of tenant of antiquity to trees:—The tenant of antiquity is entitled to cut the trees standing on the land he holds as a tenant.

Subsection 6:—It is not always the case that permanency of tenure must necessarily carry with it permanency or fixity of rent. The Code has by enacting this clause expressly reserved the right of the landlord to enhance rent payable by a tenant of antiquity subject of course to its being just and reasonable.³

Denial of landlord's title:—See notes under sec. 72 before.

Section 72 & 73 difference in:—A defendant tenant can take alternative & inconsistent pleas & plead that he is an ante-alienation tenant or a tenant of antiquity. If he proves possession from 1865 he will get the benefit of sec 72. But if

¹ Seth Mohanlal v. Chaudahri Chunilal 2 N. L. R. 4. Ismail Khan Mahomed v. Jaigus Bibi I. L. R. 27 Cal. 570.

² Sitabai vs. Sambhu Sonu I. L. R. 38 Bom. 716.

³ Deolia vs. Raje Janardhan A. I. R. 1928 Nag. 153.

his possession has commenced thereafter and is not accounted for he gets the benefit of sec. 73.

74. (1) Save as otherwise provided in this Law, when a tenant is in possession of land and no agreement exists relating to the period of his tenancy such tenant shall be deemed to be an annual tenant holding from year to year and each year shall be the agricultural year.

(2) such annual tenancy shall, in the absence of any special agreement in writing, require for its termination a notice in writing given by the landlord to the tenant, or by the tenant to the landlord, at least three months before the end of the agricultural year at the end of which it is intended that the tenancy should cease.

Notes.

General:—This section deals with a class of persons who are in possession of land of another with his consent but for no definite period. In such cases the tenancy is to last from year to year and can be put an end to only by notice. This section applies to all lands whether alienated or unalienated.¹ If a man is let into possession of agricultural land and no agreement for the period of tenancy exists the tenant will be entitled to hold the land as an annual tenant. He holds for a full agriculture year i. e. from 1st. April to 31st. of March (vide section 2 (i)).² An annual tenancy comes into existence in two ways (i) by contract or (ii) by implication of law. When a landlord puts a man in possession of his land without specifying the period of tenancy he creates annual tenancy which will run on for any number of years until it is ended by notice given by the landlord. It comes into existence by implication of law when a man enters in to possession for a definite period, but continues on the land after expiry of the period and the landlord signifies his assent to such continuance by acceptance of

1 *Jenu v. Fakira* 13 N. L. B. 181.

2 *Meghji v. Dayalji Lal* I. L. B. 48 Bom. 341. Section 116 of the T. P. Act.

rent or otherwise. In such circumstances the tenant is said to be 'holding over' and no period being fixed he gets the right to hold on from year to year. Annual tenancy arising by implication of law is said to apply only to original tenants and not to their representatives. Therefore a representative of a tenant whose term of lease has expired is liable to ejection as a trespasser.¹

Status of an annual tenant:—An annual tenant has a transferable interest in his tenancy² as transferability is a common feature of every property. Vide section 108 (j) of the Transfer of Property Act.

No agreement exists:—The Select Committee says the words "no agreement exists" have been inserted "to secure that the section may apply to tenants holding over".

Forfeiture of tenancy by denial of landlord's title:—An annual tenant can not lose his status simply by refusing to pay rent or by refusing to execute a rent note. Such an attitude of the tenant will not put an end to the relationship of landlord and tenant. It is only an unequivocal denial of landlord's title made before a suit that puts an end to the tenancy. (*Bhiwaji v. Tukaram* 13 N. L. R. 11).

Requirements of a valid Notice:—An annual tenancy can be terminated only by a notice. It is not necessary if there be an agreement that notice will not be required to terminate it. The notice must conform to certain essentials to be valid in law. These are:—

- (1) It must be in writing.
- (2) The writing must bear the signature of the person giving it or some person authorised by him to sign on his behalf. The section does not mention signature but that is what is obviously intended. The writing must indicate from whom it emanated and the signature is the best evidence of it. A pleader is competent to give or receive it on behalf of his client.³

¹ *Kumar Kamakhya v. Ram Dukaba* A. I. R. 1928 P. C. 146.
Charan Mahton v. Kumar Kamakhya, A. I. R. 1925 Pat. 357.

² *Bhiwaji vs. Tukaram* 13 N. L. R. 11.

³ *Bhojabbai vs. Hayem Samuel* I. L. R. 22 Bom 754.

(3) It must be given by the landlord or tenant; meaning thereby that if there are more persons than one included in the term 'landlord or tenant' notice must be given by or on behalf of all landlords or tenants. A notice by only one of several landlords or tenants is not valid.¹ But a notice by a Managing Jagirdar on behalf of himself and his cosharers will be valid!² not-with-standing an objection on the part of the other cosharers.³ But one cosharer can give a valid notice to quit and sue in ejectment as regards his own share.⁴

(4) It must be of full 3 months [preceding] the expiry of the agricultural year i. e. 31st. of March. The last day on which the notice must reach the party concerned is therefore 31st of December.

(5) It may be sent by post or tendered personally, see section 23 before. A notice proved to have been properly directed and posted is to be presumed to have reached the person to whom it is directed. This presumption is strong in the case of registered letters.⁵

Fresh notice when unnecessary:—When a valid notice is given a second or fresh notice is not required merely because more than a year has elapsed since the giving of notice.⁶ No notice is necessary in the case of a tenant for one year only.⁷

Notice for enhancement of rent no bar to notice for ejectment:—Notice given by landlord for enhancement of rent under section 75 of this code is no bar to his giving a notice to the annual tenant to vacate the land. The landlord has a right to ask for the rent of the land to be enhanced,

1 Balaji vs. Gopal. I. L. R. 3 Bom. 23. Shaikh Karamatali v. Hanumandas 34 I. C. 56.

2 Narayan v. Syed Bahadur 44 I. C. 723.

3 Dewaji Kunbi v. Syed Amirullah 10 N. L. J. 253.

4 Totaram Kasar v. Kutubuddin A. I. R. 1929 Nag 207.

5 Haribur Banerji v. Ramshashi Roy. I. L. R. 48 Cal 458 P. C. Ramchandra. v. Baghoji 17 N. L. R. 25. Ramchandra v. Laxman 63 I. C. 762.

6 Narayan. v. Syed Bhadur 44, I. C. 723.

7 Keshev. v. Mansha 14 N. L. R. 129. Balkrishna v. Raghunath A. I. R. 1926 Nag:201.

and it is impossible to suggest that mere issue of a notice of enhancement bars the landlord's resort to action for ejection if that is otherwise legally open to him.¹

75. The rent of a tenant holding otherwise than under an express agreement shall not be enhanced without notice in writing served by the landlord upon the tenant at least four months before the commencement of the agricultural year in which the enhancement is to take effect.

Enhancement of rent.

Notes.

Applicability of the section.—This section applies to all kinds of tenants whose tenancy has commenced without an express agreement and would therefore apply to tenants of antiquity referred to in section 73. The landlord has the right to enhance the rent even if the tenancy is permanent.²

Period of notice.—With regard to period of notice the Select Committee observes. —

"We consider a period of 4 months is sufficient for a notice of enhancement. The period of 'notice to quit' under clause 75 (now sec. 74) is three months, so that with a four months' period of notice to enhance, the landlord and tenant will have a month in which to discuss the proposed enhancement. If they do not come to an agreement the landlord will then be in a position to serve his three months' notice on the tenant to quit."

Difference between notice to quit and notice of enhancement.—The difference of notice under this section and section 74 has been pointed out by the Nagpur High Court in the following terms.—

"A notice to quit under section 79 (sec. 74 of the present code) unconditionally determines the tenancy, but a notice under section 78 (8) (sec. 75 of this Code) if not complied with is not intended to have that effect, in as much as the tenan

¹ *Devaji Kumbi v. Syed Amirullah* 10 N. L. J. 253. = A. I. R. 1928 Nag 84.

² *Deolia vs. Raja Janardhan* 11. N. L. J. 31; A. I. R. 1928 Nag 153.

has a right to appeal to the court for a decision as to whether in its opinion the enhancement is just and reasonable. A tenant is to be evicted for not paying the enhanced rent only after it has been determined to be just and reasonable by the court."¹

Once a notice of enhancement is given, a fresh notice is not required to him or his transferee as mere lapse of time is no indication of waiver of notice by Landlord.¹

Formalities and medium of serving of notice. :—Notice through revenue agency is not necessary. For formalities of notice and the medium through which it may served vide notices under section 74.

76 A tenant other than an ante-alienation tenant, may, in the absence of a written agreement to the contrary, be ejected by order of a civil court for non-payment of rent.

Ejectment of tenants.

Notes.

This is a reproduction of the concluding part of section 78 (4) of the old Berar Land Revenue Code and applies to all tenants except ante-alienation tenants. Rent being the consideration of the lease the tenant is bound to pay the same, but mere non-payment of rent does not put an end to tenancy. The usual modes by which a lease is determined are specified in section 111 of the T. P. Act which may be taken as a guide. This section adds another to the category and lays down that a lease may be regarded as terminated and a tenant may be evicted for non-payment of rent, notwithstanding the fact that the term of the lease has not expired. In other words forfeiture by non-payment of rent will be read as a term in every lease transaction unless there is a specific agreement in writing to the contrary. This provision for eviction is discretionary and cannot be regarded as an abrogation of the principle that provision for ejectment for non-payment of rent is penal in its nature and a party may be relieved against it. The courts have therefore been ever loth to enforce such provision literally.

¹ Naryan vs. Syed Bahadur 44 I.C. 723.

From very early times courts have felt bound to relieve tenants from the consequences of their own acts, as it is the duty of every court of equity to protect the weak and improvident from being made the victim of their own foolish and inflexible contracts.¹

The section enables the landlord to claim eviction for non-payment of rent. It does not fetter the discretion of courts as courts of equity to relieve a tenant against forfeiture for non-payment of rent. It will be refused only if the tenant has done some thing not to deserve consideration in equity.²

The landlord would have to show that the failure is contumacious before ejection can be decreed. He would have to prove that the lessee has flagrantly violated his duty to pay rent for a long time, or has attempted to commit waste, or that the land is held at such a low rent that the withholding of rent could not but be regarded as the result of conspiracy or design. The word used in this section is "may" and not "shall" which preserves the full force of the doctrines of equity prevailing in proper cases. So strong is the inclination of courts to relieve against forfeiture that this relief is allowed even in execution of decrees passed on compromises.³ The power of relieving against forfeiture for nonpayment of rent is made applicable to agricultural leases independently of section 114 of the Transfer of Property Act.⁴ Even a sublessee is protected from eviction in the exercise of this power.⁵

Delay in payment.—To justify ejection non-payment of rent must amount to absolute failure to pay on demand and mere delay would not amount to non-payment within the meaning of this section.

1 *Arjun v. Narayan*; 19 N. L. R. 50; A. I. R. 1923 Nag. 193
Varanasi v. Ramabrahman A. I. R. 1928 Mad. 250
Krishnaji v. Sitaram I. L. R. 45 Bom. 300.

2 *Krishnaji v. Sitaram*. I. L. R. 45 Bom. 300. *Arjun v. Narayan*. 19 N. L. R. 50.

3 *Nagappa v. Venkat Rao* I. L. R. 24 Mad. 265. *Krishna Bai v. Hari Govind* I. L. R. 31 Bom. 15.

4 *Ramkrishna v. I. P. Fernandez* A. I. R. 1927 Mad. 239.

5 *Ahmed Husain v. Biaz Ahmad* 25 L. C. 186.

77. The provisions of this chapter shall not apply to any village which is subject to the Berar Alienated Villages Tenancy Law, 1921.

Exclusion of *izara* villages.

Notes.

The relations between landlords and tenants in the *Ijara* villages leased under the Waste Land Rules of 1865 are governed by the special law known as the 'Berar Alienated Villages Tenancy Law.' This chapter deals with tenants in other villages and a suggestion was made to have one law for all tenants before the Berar Legislative Committee but the special features of the tenancy law in *Ijara* villages could not be conveniently incorporated into this law and it was also revealed in the discussions that the basis of the two sets of provisions are so different as not to be reconciled in one law. The predominant feature of the *Ijara* Tenancy law is the constant recourse to revenue officers for the settlement of disputes. The rents of the permanent tenants are to be fixed by settlement officer, and are not to be below three times the fair assessment. Tenants can effect improvements without the consent of the landlord and mere non-payment of rent is not a ground for eviction. The provisions of this law in these respects are different.

CHAPTER IX.

Revenue-Survey and Settlement.

78. The operations carried out in accordance with the provisions of this chapter in order to determine or revise the land-revenue payable on lands in any local area are called a "revenue-survey."

Definitions of "revenue Survey", "settlement" and "term of settlement."

The results of the operations are called a "settlement", and the period during which such results are to be in force, is called the "term of settlement".

79. (1) Whenever the Governor in Council thinks that a revenue-survey should be made of any local area, he shall publish a notification to that effect, and such local area shall be held to be under such survey from the date of such notification until the issue of a notification declaring the operations to be closed :

Notification of proposed revenue-survey.

Provided that where the revenue-survey is to include lands situated in towns and held for purposes other than agriculture, such notification shall not be published until the proposals of the Governor in Council as to the fixation of land-revenue and the term of settlement for such lands have been published for objection in accordance with rules made under this law ;

(2) Such notification may extend to all lands generally in the local area or to such lands only as the Governor in Council may direct.

80. The Governor in Council may appoint a Settlement Commissioner who shall, subject to the control of the Governor in Council, control the operations of the revenue-survey.

Settlement Commissioner.

81. (1) The Governor in council may appoint an officer, hereinafter called the Settlement Officer, to be in charge of a revenue-survey, and as many Assistant Settlement Officers as he thinks fit.

Settlement and Assistant Settlement Officers.

(2) All Assistant Settlement Officers appointed in any local area shall be subordinate to the Settlement Officer.

82. (1) The Governor in Council may invest any settlement Officer or Assistant Settlement Officer with all or any of the powers of a Deputy Commissioner under this Law, to be exercised by him in such cases or classes of cases as the Governor in Council may direct.

Powers of Settlement and Assistant Settlement Officer.

(2) The Governor in Council may invest any Assistant Settlement Officer with all or any of the powers of a Settlement

Officer under this Law or any other enactment for the time being in force.

83. The Settlement Commissioner, a Settlement Officer and an Assistant Settlement Officer shall be deemed to be Revenue Officers for the purposes of Chapters III and IV and section 192, and for these purposes—

Settlement Officer to be revenue Officers for certain purposes.

(a) the Settlement Commissioner shall be deemed to be a Commissioner; and

(b) the Settlement Officer shall be deemed to be a Deputy Commissioner.

Notes.

Chapter III relates to procedure of Revenue Officers and Chapter IV to appeals, revisions and reviews; and Settlement and Assistant Settlement Officers therefore will be governed by the same law of procedure and of appeals as other revenue officers; and the Settlement Commissioner is to be regarded as possessing the powers of a Commissioner and a Settlement Officer those of a Deputy Commissioners for these purposes.

84. Subject to the orders of the Governor in Council the Settlement Officer may exclude from the revenue-survey any land to which it may not seem expedient that such survey should be applied.

Settlement Officer may exclude any land from revenue-survey.

85. The Settlement Officer may by special order or by general proclamation posted at the *chaudi*, call upon all holders of agricultural land in a village and other persons in possession thereof to assist in the measurement or classification of the lands to which the revenue survey extends by furnishing flag holders and, in the event of a necessity for employing hired labour for this or other similar objects incidental to the operations, may assess the cost thereof with all contingent expenses, on the lands surveyed with help of such hired labour, and the amount so assessed shall be recoverable as an arrear of land-revenue due on such lands.

Power to require assistance from landholders.

Notes.

This section relates to provision requiring holders of land to supply flag holders and render assistance in other ways for the survey of lands. It was sought to be deleted as it might result in hardship to holders. But it was pointed out that in the absence of this provision the Settlement staff would have to be augmented largely by the addition of a number of menials who would prove more expensive than labour employed in the manner provided by this section, and whose presence in villages under survey would inevitably cause inconvenience to the inhabitants far greater than what would result from the existing method of providing labour.

86. Subject to rules made under this Law, the

Formation of survey numbers and villages.

Settlement Officer may—

(a) divide the lands to which the revenue-survey extends into survey numbers and group the survey numbers into villages; and

(b) recognize existing survey numbers, reconstitute survey numbers, or form new survey numbers :

Provided that, except as hereinafter provided, no survey number comprising land used for agricultural purposes shall henceforth be made of less extent than a minimum to be prescribed for the various classes of land by rules made under this Law.

For rules see 'Compilation' pp. 30-31

87. Notwithstanding the provisions of section 86, when

Separate demarcation of land diverted or specially assigned.

any portion of agricultural land is diverted under the provisions of section 58 to any non-agricultural purpose, or when any portion of land is specially assigned under section 42, or when any assessment is altered on any portion of land under sub-section (2) of section 50, the Settlement Officer may make such portion into a separate survey number or sub-division of a survey number;

88. (1) The Settlement Officer may sub-divide survey numbers into as many sub-divisions as may be required in view of the acquisition of rights in land or for any other reason.

Division of Survey numbers into sub-divisions.

(2) The division of survey numbers into sub-division and the apportionment of the assessment of the survey number amongst the sub-divisions shall be carried out in accordance with rules made under this Law and such rules may provide limits either of area or of land-revenue, or both below which no sub-division shall be recognized :

Provided that the total amount of the assessment of any survey number shall not be enhanced during the term of settlement unless such assessment is liable to alteration under the provisions of this Law.

For rules see 'Compilation' p. 32.

Notes.

Powers given by these sections can be exercised by the Settlement Officer while Settlement operations are in progress and by the Deputy Commissioner afterwards during the term of settlement. Vide section 105.

89. The area and assessment of survey numbers and sub divisions of survey numbers shall be entered in such records as may be prescribed by rules made under this Law

Entry of survey numbers and sub-divisions in records.

For rules see 'Compilation' pp. 32-35.

Notes.

Records maintained under this section are not land records within the meaning of Chapter X. These records are special settlement records. The records prepared by the Survey Department at the original survey and Settlement are:—

1 Pahani Sud—A statement (like the khasra in C. P.) showing a list of fields with serial numbers and the name of occupants at the time of survey.

2 Original village revenue survey map,

3 Akarband—Statement showing the rate per acre and assessment of each number in a village.

4 Wasul Baki Patrak—statement showing old village numbers called "Maji" numbers, names of fields, area of fields in bighas, and old assessment, with corresponding survey numbers, area and assessment. Thus the statement formed a kind of 'balance sheet' (whence the name) between the previous and the present order of things.

5 Faisal Patrak—register showing the persons who were admitted and recorded at the time of the settlement as 'occupants' with area and assessment.

6 Phod Patrak—statement showing the area of each cultivator when there are more than one in a survey number.

7 Inam Patrak—statement showing list of revenue free or 'alienated' holdings.

8 Co-sharer's register.

9 Statement showing the land set apart for village grazing and for other village common purposes.

10 Statement of fields where co-sharers' disputes exist.

11 List of Babulban and other forest tracts set apart by the Survey Department.

12 Tipan Book—field book showing the offsets of fields and the distance marked from one offset to another.

13 Mojni Book—Area book.

14 Prati Book—classer's book showing the classification of the soil of a field and other details regarding the nature of the soil of a survey number.

15 Bagait Takta—statement showing garden land.

16 Classer's Register.

The records maintained according to revision survey are:—

- 1 Akarband.
- 2 Pahani Sud.
- 3 Faisal Patrak.

- 4 Wasul Baki Patrak.
- 5 Inam Patrak.
- 6 Phod Patrak.
- 7 Classer's register.
- 8 Bagait Takta.

90. (1) The Settlement Officer shall, in the case of every inhabited village, ascertain and determine with due regard to rights in land, the area to be reserved for the residence of the inhabitants or for purposes ancillary thereto, and such area shall be deemed to be the village site.

(2) A building site of reasonable dimensions in the village site of an unalienated village shall not be liable to the payment of land-revenue if such site is occupied by an occupant, agricultural artisan, agricultural labourer, patel, patwari, village mahar or jaglia who holds land or works in such village or in a village usually cultivated from such village.

Notes.

Village site:—The words "Every inhabited village" would show that sites in Ijara and Jagir villages are also included. See proceedings of the Berar Legislative Committee 1925 Vol. II pages 108–112 from which it will be seen that an attempt was made to restrict the provision to village sites in unalienated villages, but it failed.

Subsection (2):—This is inserted with a view to secure a reasonable area to certain inhabitants of a village for their houses free of land revenue. If agricultural lands are to be taxed it is but fair that those who pay the tax should be given reasonable facilities to make money wherewith to pay the tax. A reasonable area for a house free of land revenue is therefore a necessity. The extent of reasonableness is to be decided by revenue authorities with reference to the circumstances of each case. The extent of cultivation, the cattle possessed and the size of the family are some of the elements to be considered. Civil suits to question the decision of a Settlement Officer under clause (i) of this section are barred. Vide section 192 clause (g)

94. For the purposes of assessment the villages of each taluq or part of a taluq comprised in the area to be assessed shall be formed into groups, and in forming such groups regard shall be had to physical features, agricultural and economic conditions, and trade facilities and communications; and a single scale of assessment rates shall be applied to all villages in the same group :

Provided that a taluq shall comprise not fewer than two groups.

Notes.

Land is classified variously for various purposes. For example, it is divided into districts and sub-divisions of district called taluks for administrative purposes. For purposes of revenue, land is divided into survey numbers, villages and groups. A survey number is the smallest unit a Settlement officer thinks of for purposes of assessment, a village is an aggregate of survey numbers, and a group is an aggregate of a few villages enjoying similar advantages. The idea in forming villages into groups is to introduce uniform rates of assessment.

The 'Joint Report' of Messrs Wingate, Goldsmid and Captain Davidson made in 1847 to the Bombay Government explains the purpose and importance of forming groups in the following terms :—

"It now remains for us to point out what we deem to be the best mode of fixing the absolute amount of assessment to be so distributed. The first question for consideration is the extent of territory for which a uniform standard of assessment should be fixed. This will depend upon the influences we admit into consideration with a view to determine the point. Among the most important of these influences may be ranked climate, position with respect to markets, agricultural skill and the actual condition of the cultivators. The first of these may be considered permanent, the second and the third more or less so; and the fourth in a great measure, temporary. And as our settlements are intended to be of considerable duration there is an obvious advantage in regulating the assessment by considerations of permanent character, or,

at least such as are not likely to undergo very material change during the term of years (generally thirty) for which it is to endure.

In determining then, upon the extent of country to be assessed at uniform rates, we are of opinion that the more permanent distinctions of climate, markets and husbandry should receive our chief attention. We should not think of imposing different rates of assessment, on a tract of country similarly situated in respect of these three points, in consequence of the actual condition of the cultivators varying in different parts of it.

Each collectorate being divided into districts (talukas) of which the management and records are distinct, it is an obvious advantage to consider the assessment of each of these divisions separately. And were the points bearing on the distribution of the Government demand alike in all parts of any such division, one standard of assessment would be suitable for the whole. But this is seldom the case; and there is usually such marked distinction between different portions of the same district, as to require the assessment to be regulated with reference to these. The first question then in proceeding to the assessment of a district is to ascertain whether such distinctions exist and to define the limits over which they prevail. This, however, will seldom be a task of much difficulty or involving any very minute investigation; as marked differences only, calling for an alteration in the rates of assessment require notice, and within the limits of a single district three to four classes of villages would generally be found ample for this purpose."

'Physical feature':—Nature of the country with reference to mountains and hills and climate and rainfall is what is meant.

'Agricultural condition' has reference to what kinds of crops are raised and the degree of skill in husbandry that people in a tract exhibit.

The proviso is inserted in the hope that the Settlement Officer shall make a thorough investigation into the economic agricultural, and other conditions of the taluk before he classifies the villages into groups (Select Committee Report).

92. The Settlement Officer shall have power to make a fair assessment on all lands whatsoever to which the revenue-survey extends, whether such lands are liable to the payment of land-revenue or not.

All lands liable to assessment.

Notes.

Fair assessment, assessment, & land revenue:—For the difference between 'fair assessment,' 'assessment' and 'land revenue' see notes under subsection (2) to section 97.

All lands whatsoever:—For exemption etc. see notes under sec. 49 ante.

93. (1) The fair assessment of all lands shall be calculated in accordance with the principles and restrictions set forth in this section.

Principles of assessment.

(2) No regard shall be had to any claim to hold land on privileged terms or to demand from a tenant thereof any special rent.

(3) Regard shall be had in the case of agricultural land to the profits of agriculture, to the rents paid by tenants, to the sale prices of land and to the principal moneys on mortgages, and in the case of non-agricultural land to the value of the land for the purpose for which it is held.

(4) The fair assessment on land used for non-agricultural purposes shall not exceed fifty per centum of the estimated rental value of the land.

(5) Where an improvement has been effected at any time in any holding held for the purposes of agriculture by or at the expense of the holder thereof, the fair assessment of such holding shall be fixed as if the improvement had not been made.

(6) Except for special reasons to be approved in each case by the Governor in Council, no increase in the fair assessment on land held for the purpose of agriculture shall be imposed in excess of the following scale, namely:—

(a) on a survey number—**one hundred per centum.**

- (b) on the total fair assessment of a village—sixty-six per centum,
- (c) on the total fair assessment of a group—thirty-five per centum :

Provided that no increase of such assessment exceeding thirty-five per centum on the total revenue of the group shall be sanctioned, except in the case of a group composed of villages which were previously subject to two or more scales of assessment rates and are, at the time of assessment, subject to the same scale of assessment rates ; and in all such cases the increase shall be reduced to an amount not exceeding thirty-three per centum for such period not exceeding fifteen years and in such manner as the Governor in Council may think fit :

Provided further that no increase in the fair assessment on a survey number, village or group, whereof the assessment has been twice revised at a survey-settlement or revenue-survey, shall be imposed in excess of sixty, forty and thirty per centum respectively.

(1) When, at a revenue-survey other than one governed by the second proviso to sub-section (6), the Governor in Council considers that the circumstances of a group justify the imposition of the maximum enhancement, the settlement Officer shall make his calculations as if the rate of such maximum enhancement were thirty-three per centum, but if the result of his operation discloses an enhancement not exceeding thirty-five per centum the Settlement Officer shall not be bound to re-assess the group.

Notes.

(Principles of assessment. :—Principles of assessment as enunciated in this and the next section may be summarised as follows :—

(A) :—Agricultural land. :—

(1) Regard is to be had to the land to be assessed and not to the special considerations on which it was given out for cultivation.

(2) Assessments are to be made with reference to the profits of agriculture and not with reference to the means, caste, or condition of the cultivators. This was the principle which the East India Company laid down for the guidance of its officers. Land is to be assessed according of its inherent capabilities as shown by the soil classification, and not in accordance to what is being taken out of it by the employment of additional capital and skill.

In revising assessments regard is to be had to profits of agriculture ascertained on a consideration of the following factors. :—

- (a) range of actual profits ascertained on enquiry from year to year on the lines indicated in section 94,
- (b) rents fetched by the land,
- (c) sale price of the same; and
- (d) money people are prepared to advance on a mortgage of the same.

(3) Improvements made by holders of land are to be ignored and the land is to be assessed as if improvement had not been effected, the idea being that the benefit of improvement is not to be curtailed by demanding a larger share for the increased productivity of the soil.

(B):—Non-agricultural land.

(1) assessment of land revenue on lands used for purposes other than agriculture is to be based on the estimated rental value of the land.

(C):—Limits of assessment.

(1) (a) Agricultural land :—In the case of agricultural land increase in assessment is limited to the following scale in the first 2 revision surveys.

On a survey No. ...	100 p. a.
" Village. ...	66 p. a.
" group. ...	35 p. a.

The maximum of 35 p. a. may however be exceeded in the case noted in Proviso (a) to subsection (b) of this section.

(b) In the case of the 3rd revision settlement or the 4th assessment including the first or original assessment and all subsequent assessments the scale is to be as follows:—

Survey Number ...	60 p. c.
Village. ...	40 p. c.
Group. ...	30 p. c.

(c) The group rate of assessment is ordinarily to be 33 per cent as mentioned in subsection (7) of this section for it is not the policy of Government to treat 35 p. c. as the maximum limit in ordinary cases. The limit to be aimed at is mentioned in subsection 7 viz 33 per cent. The Settlement Officer is bound to make his preliminary calculations so as to secure 33 per cent enhancement. But settlement operations in a group are very numerous and complicated, and it is impossible for him to make his preliminary calculations so accurate as to ensure that, in the final result, the total enhancement shall not exceed 33 per cent. The policy of the law is therefore to require the settlement officer to aim at 33 per cent but not to require him to resettle the whole group if his final results show a total enhancement of over 33 per cent but less than 35 per cent. To put the matter shortly, he is allowed a 2 per cent margin of error.

(2) Non-agricultural land:—

The limit of enhancement in the case of non-agricultural land is governed by the rule that the assessment is not to exceed 50 p. c. of the estimated rental value of the land.

Revision settlements:—It should be noticed that the section makes no distinction between first or original settlements and revision settlements and the reason is that in Berar there are practically no lands which have to be settled for the first time. Occasionally lands which are disforested have to be assessed and in such cases principles of assessment can not differ materially from those involved in revision settlements. In these the Settlement Officer is to consider the net profits of agriculture as disclosed by the enquiry under section 94 and by his own investigations. The principles governing revisions are then what are now in vogue namely to ascertain whether the existing demand has been paid without difficulty and what alteration has occurred in the value of the land since the demand was last fixed. This alteration can be definitely ascertained

from the records of leases, sales, mortgages, and they give a sufficiently accurate indication of the corresponding alteration in the profits of agriculture. The rates deduced from these materials can be checked by their applications to individual holdings for which reliable figures have been obtained by the enquiry under section 94. It should be further noted that while the maximum is fixed no attempt is made to fix the minimum and it is also not said that assessments fixed should have reference to any definite share of the profits of the land. The Government of India indicate the reasons for this in their Resolution of 1902 in the following words.

"The truth is that the assessment is subject to so many complicated and varying conditions that any attempt to reduce it to an exact mathematical proportion either of gross or net produce would not only be impracticable but would lead to the placing of burdens upon the shoulders of the people, from which, under a less rigid system if sympathetically administered, they are exempt. Nor must be the influence of the personal equation be ignored. The more the officers of Government know of the people and the more intimate their mutual relations become, the less likelihood is there of severity in the enforcement of public dues. In no official relation does a member of the public service come into such close contact with the people as the settlement work; and it can not be his desire to aggrive those among whom he is spending some of the most laborious years of his life, or to initiate a settlement which after a short interval will break down. Assessments can not be dictated by a theorist in his study; they elude dogmatic treatment, and can only be safely worked out by the settlement officer in the village and on the field. While they may admit of statistical analysis, they are liable to be hampered by premature statistical definition."

94. (1) With effect from the commencement of this Law, the Governor in Council shall take steps to institute and shall cause to be constant-ly maintained, in accordance with rules made under this Law, an inquiry into the profits of agriculture and into the value of land used for agricultural and for non-agricultural purposes.

Inquiry into the profits of agriculture and the value of land.

(2) For the purpose of determining the profits of agriculture the following elements shall be taken into account in estimating the cost of cultivation, namely,—

- (a) the depreciation of stock and buildings,
- (b) the money equivalent of the cultivator's labour and supervision,
- (c) all other expenses usually incurred in cultivation on the land which is under inquiry, and
- (d) interest on the cost of buildings and stock and on expenditure for seed and manure, and on the cost of agricultural operations paid for in cash.

(5) The Settlement Officer shall take into consideration the information collected in the course of this inquiry when framing his proposals for assessment rates.

Notes.

The result of the enquiry made under this section is to be taken into consideration by the settlement officer when framing his proposals for assessment rates. The advantages of having the enquiry into profits by officers other than those connected with the settlement work are obvious. If the enquiry is to be done by the settlement officers about the time of the settlement there is every reason to suppose that the information would be unreliable as cultivators would naturally incline towards minimising profits; whereas if the enquiry was to be unconnected with settlement the inquiring officer can get reliable results as he would be able to get the assistance of prominent cultivators. He would moreover have a free hand to inquire from whom he pleases and when he pleases. The scheme as sketched out by section 93 and 94 in their present form is this:—

“The settlement officer would consider whether the present revenue has been paid easily or with difficulty. If he finds it has been paid with ease he would then consider whether the value of the land, as indicated by the value set on it by persons who lease or buy it, has increased or decreased since the last settlement. Having done this he would deduce the land revenue which he would check by comparing it with the net

profits of certain holdings regarding which he believes he has been able to get reliable information."

95. (1) Where the revenue-survey relates to lands held for the purpose of agriculture, the Settlement Officer shall place his proposals for assessment rates before a local committee.

(2) Such local committee shall consist of all members of any local board having jurisdiction under the Central Provinces Local Self-Government Act, 1920, in any part of the local area to which the revenue-survey extends, and also such other members as the Governor in Council may, by general or special order, specify.

(3) The Settlement Officer shall make a record of any proposals or criticisms made by the local committee, and shall submit such record, along with his final proposals for assessment rates, to the Governor in Council, who shall publish them for objection, and may confirm them with such alterations as he may think fit.

(4) Where the revenue-survey relates to lands held for purposes other than agriculture the Settlement Officer shall submit his proposals for assessment rates to the Governor in Council, who may before confirming them, alter them as he thinks fit.

Notes.

Section 95 does not require the Settlement Officer to submit detailed proposals of all assessments he has to make. In practice this is not feasible, as all that the Settlement Officer can and does do is to submit his general proposals for assessment rates for a group, and when these are sanctioned by Local Government he proceeds to apply them by a process of mere arithmetic to the various holdings according to their relative productivity as indicated by the soil classification in "Bhag annas." Before submitting his proposals to the Local Government the settlement officer is to submit them to a local Committee consisting of the members of Local Boards and others. He is required to note their objections and criticisms and to forward them with his remarks for consideration to the Local Government. The idea

of submitting the proposals to a local Committee is to associate people with the difficult task of assessment and give them opportunity to criticise the proposals. On receiving the proposals of the Settlement Officer the Local Government has to publish them again for objections. This is a second opportunity to people to place their views before Government. A third opportunity for the people is to have them discussed in the Local Legislative Council by means of resolutions. After the rates are sanctioned by Local Government the Settlement Officer works out the assessment of each individual holding according to the principles enunciated in section 96. It should be noted that the procedure indicated in this section applies to assessment of agricultural lands. For other lands provision is made in the proviso to section 79 (i).

96. (1) On a holding consisting of unalienated land the assessment shall be the fair assessment as calculated on the assessment rates finally sanctioned under section 95.

Determination of assessments.

(2) In alienated villages in which proprietary title has been conferred under the Waste Land Rules of 1865, the assessment on a village shall be half the total fair assessments on the culturable lands in such village, as calculated on the assessment rates finally sanctioned under section 95.

(3) Before fixing the assessment on other alienated lands the Settlement Officer shall ascertain whether the terms of the grant made or conferred by Government are being observed. If he finds they are being observed he shall fix the assessment in accordance with the terms of the grant and of the assessment rates as finally sanctioned under section 95. If he finds they are not being observed he shall report the circumstances for the orders of the Governor in Council and shall fix the assessment in accordance with his orders.

(4) All assessments so made shall be subject to the limitations prescribed in section 93.

Notes.

Subsection (1):—Assessment on Khalsa fields is on to the scale sanctioned by the Local Government and worked

out by means of a "Jantri" (table of arithmetical calculations) and according to the comparative productivity of the soil as shown by the soil classification.

Subsection (ii):—This relates to Ijaras of 1865 and lay down that assessment in these villages shall be half the amount deduced on each field in the village according to the scale sanctioned by Government.

Subsection (iii):—This provision is new and applies to Jagir and Inam lands. Before exemption from payment of assessment is claimed the Jagirdar or Inamdar has to satisfy the Settlement Officer that the purpose of the grant is being fulfilled. If he cannot do so he has no right to expect the holding to be exempted from payment of assessment. The settlement officer has only to report; final decision rests with the Local Government.

According to the Inam Rules of 1859 Inams have been divided into the following classes:—

Class 1—Personal Jagirs.

- .. 2—Grants or endowments to religious or charitable institutions, and for service therein.
- .. 3—Personal or subsistence grants.
- .. 4—Grants by former Governments for service.
 - (i)—as pargana service grants whether in money or land whether rendered or discontinued.
 - (ii)—as village service grants whether in money or land for service now performed in the revenue or police or discontinued.
- .. 5—Inams or huqs enjoyed by artisans and others for services rendered to the village communities such as carpenters, blacksmiths, barbers, priests, dhers &c.

In classes 1 & 3 the terms of the grant would be the maintenance of the family. If therefore an alienation has been made and the land has passed out of the family the alienee who is a stranger cannot expect the rent free concession.

In classes 2 & 5 service has to be rendered or the institution has to be maintained. If this is not being done the concession may be recalled. As regards class 4 in the majority of cases the service is discontinued and grant is now made as a sort of political pension for the maintenance of the family and so if land given rent free has passed out of the family it may be liable to assessment.

97. (1) When the assessment on any land has been fixed in accordance with section 96, notice thereof shall be given in accordance with rules made under this Law; and such notice shall be called the announcement of the settlement.

Announcement
of settlement.

(2) The assessment on any land, as finally announced under this section, shall be the land-revenue payable annually on such land during the term of the settlement unless it is modified in accordance with the provisions of this Law.

For rules see 'Compilation' pp. 32-35.

Notes.

General :—After assessment is worked out for each individual field the same is communicated to the persons concerned by a general notice. This communication is an announcement of settlement. It is in theory an offer on the part of Government to the holder that it is prepared to allow him to hold the land on condition that he agrees to pay the amount. If he agrees the contract is complete and the agreement so completed by an offer and acceptance is the contract of settlement, in other words the final result of the Settlement Officer's operations.

Subsection (2) :—This subsection says that the amount so announced is the land revenue due from each holding. It is well to remember that the terms fair assessment "assessment" and "land revenue" are names assigned to the results of the operation in the three different stages of the work of settlement. 'Fair assessment' is the amount which in the opinion of settlement officer can fairly be charged on a holding after taking the productivity of the holding into consideration. 'Assessment' is the amount which the Local Government thinks may be levied on each holding; and 'land revenue' is the amount which is

finally fixed on each holding by the order of the Local Government after announcement.

98. The term of a settlement shall commence from the beginning of the revenue year next following the date of announcement or from the expiry of the previous term of settlement, whichever is later.

Introduction of settlement.

Notes.

Revenue year means the year commencing on the 1st August vide Sec. 2 (II).

99. During the first year of the term of settlement any occupant who is dissatisfied with the new assessment shall, on relinquishing his rights in his holding in the manner prescribed by section 60 on or before the 31st March, receive a remission of any increase imposed thereby.

Remission of enhancement to occupant who relinquishes.

Notes.

Sections 98 & 99 :—As we have seen above settlement is an agreement between two parties - the Government and the private individual and section 98 lays down that the contract shall come into operation from the first day of August following the date of announcement or if the previous settlement expires on any later date than from such later date. Since the settlement derives its binding character from the fact of its being accepted by an individual it is obvious that the individual must have an option of refusing the proposal and section 99 reserves him the option and extends the period during which he may exercise his option. Supposing that the new settlement were to begin from 1st of August 1932 the individual has the option to refuse till 31st of March next. If he makes up his mind to refuse the settlement Government foregoes the increase in the assessment on the holding which became due from 1st August. This contract of settlement is terminable on the part of the individual at any time, since, as we have seen the individual is set at liberty to relinquish his holding by giving a notice in writing to the Tahsildar as laid down in section 60. The settlement when accepted is however binding on Government for a definite term which is fixed by the next section,

100. The term of a settlement shall be fixed by the Governor in Council, and shall not be less than thirty years :

Term of settle-
ment.

Provided that—

- (i) any assessment may be reduced in such manner and to such extent as the Governor in Council thinks fit, for any period, not exceeding fifteen years, from the date on which the assessment takes effect;
- (ii) when the circumstances of a local area are such that a fresh assessment is in the opinion of the Governor in Council, inexpedient, or when the completion of a new assessment has from any cause been delayed, the Governor in Council may, at the expiration of the term of settlement, extend it with reference to such local area for such further period as he may think fit ;
- (iii) for agricultural land the term of settlement as finally fixed under this section shall not exceed thirty-five years, except with the sanction of the Governor General in Council ;
- (iv) the term of the settlement in the Melghat taluq may be less than thirty years.

Notes.

Settlement for a term is known as Temporary settlement as opposed to the Permanent Settlement in Bengal. These "temporary settlements" date from 1822 and owe their origin to the celebrated Regulation VII of 1822. This Regulation said nothing about the duration of the settlement. Government fixed from time to time from motives of policy and convenience such term as was thought fair. The term of 30 years was fixed not by law but by executive order; and this term has now become very general for temporary settlements. The object is to give to the proprietor the benefit of a solid property, encourage improvements by securing to him the benefit of all increase during the term of the settlement; and of avoiding also the trouble and expense of a too frequent repetition of

the process of assessment. The corresponding section of the old Code said that assessment may be fixed for a term of years not exceeding thirty in the case of lands used for agricultural purposes only and not exceeding ninety in any other case. In Berar as in Bombay the term has been 30 years, though to suit the convenience of settlement operations a term shorter by a year or two may have been fixed for particular villages or taluqs. Prior to the survey settlement fields were let out annually to ryots but the standard period of settlement was raised to 30 years by Rule 1 of the Berar Settlement Rules of 1865 which said: "With a view to the improvement of the country and the people, the assessment now introduced by the Superintendent, Revenue Survey, has been fixed by Government for a period of 30 years viz. from to" This section recognises and fixes the term of settlement at 30 years certain except in the cases mentioned in the three provisos. No option is now left to Government to reduce the term on any account. It is generally supposed that a fixity of the term of settlement is beneficial to the cultivating raiyat. The Government of India lay down their policy with regard to this question in the following terms by their Resolution No. 1 of 16th January 1902.

"When the land is fully cultivated, rents fair, and agricultural production not liable to violent oscillations it is sufficient if the demands of Government are readjusted once in 30 years i. e. once in the lifetime of each generation. Where the opposite conditions prevail, where there is much waste land, low rents, and a fluctuating cultivation or again where there is a rapid development of resources owing to the construction of roads, railways or canals, to an increase of population or to a rise in price the postponement of re-settlement for so long a period is both injurious to the people, who are unequal to the strain of a sharp enhancement and unjust to original taxpayer who is temporarily deprived of the additional revenue to which he has a legitimate claim."

Proviso (i) deals with cases where enhancement has been sharp and Govt. thinks that it should be eased. In such cases liberty is reserved to Govt. to reduce assessment for a period not exceeding 15 years.

Proviso (ii) and (iii) :—

The joint effect of these two provisos is to give Government the power to extend the period of settlement by another 5 years. If it is proposed to go beyond this period sanction of the Government of India is necessary.

101. Where settlement operations are closed under section 79 all applications and proceedings then pending before the Settlement Officer shall be transferred to the Deputy Commissioner who shall have the powers of a Settlement Officer for their disposal and in the exercise of such powers he shall be subordinate to the Settlement Commissioner.

Power of Deputy Commissioner to complete unfinished proceedings.

Notes.

This section is inserted in order to give the Deputy Commissioner power to bring to a close any case or proceeding which the Settlement Officer may have left unfinished. It sometimes happens that towards the end of a revenue survey practically the whole work is completed, but only a few old cases are still left undecided. In this case it is undesirable to continue the expense of maintaining a settlement officer and all his staff in the district when the Deputy Commissioner could conveniently finish the work.

102. The Deputy Commissioner may at any time during the term of a settlement correct any error in the area or assessment of any holding due to mistake of survey or arithmetical miscalculation :

Power of Deputy Commissioner to correct errors.

Provided that no arrears of land-revenue shall become payable by reason of such correction.

103. During the term of a settlement the Deputy Commissioner shall exercise the powers of a Settlement Officer under sections 85, 86, 87, 88 and 90, and in the exercise of such powers he shall be subordinate to the Commissioner.

Power of Deputy Commissioner during the term of a settlement.

Notes.

This section gives the Deputy Commissioner power to determine matters which call for decision during the currency of the settlement.

104. The Governor in Council may, during the term of a settlement, invest any Revenue Officer with all or any of the powers of a Settlement Officer under this Chapter, within such area and subject to such restrictions, and for such period as he may think fit.

Power to grant powers of a Settlement Officer during the term of a Settlement.

Notes.

This section is intended to cover the case where an officer is put on special duty to inquire into a matter, investigation of which will necessitate the powers of a Settlement Officer and which cannot be conveniently undertaken by the Deputy Commissioner himself or by the Sub-Divisional officer.

105. Rules may be made under this Law regulating generally the conduct of a revenue-survey.

Power to make rules.

Notes.

For rules see 'Compilation' pp. 32-37

CHAPTER X.

Land Records.

106. (1) The Governor in Council may appoint to each district as many persons as he thinks fit to be Superintendents of Land Records and Assistant Superintendents of Land Records, and may delegate to the Settlement Commissioner, Commissioner or Deputy Commissioner his power of appointing them.

Superintendents and Assistant Superintendents of Land Records.

(2) Superintendents of Land Records and Assistant Superintendents of Land Records shall be deemed to be Revenue Officers for the purposes of Chapter III.

Notes.

General :—This chapter provides for the appointment of an establishment for the maintenance of Land Records and reproduces substantially the provisions of chapter VIII A of the Berar Land Revenue Code of 1896 regarding the preparation and maintenance of Record of Rights.

Chapter III referred to in subsection (2) deals with the procedure of revenue officers.

107. (1) The Governor in Council may appoint to each district as many persons as he thinks fit to be revenue inspectors and measurers, to supervise the preparation and maintenance of the land records, and may delegate to the Settlement Commissioner, Commissioner or Deputy Commissioner his power of appointing them.

(2) The Deputy Commissioner may divide each taluq into revenue inspectors' circles, may alter the limits of any existing circle, and may create new or abolish existing circles.

Notes.

Sections 106 and 107 provide for the establishment of a Department of Land Records on a regular basis. Records required to be maintained by this chapter are called land records : vide section 2 (8).

108. A record-of-rights shall be prepared and maintained in every village and such record shall include the following particulars :—

- (a) the names of all persons, other than tenants, who are holders of land ;
- (b) the names of all ante-alienation tenants, tenants of antiquity and permanent tenants ;

- (c) the nature and extent of the respective interests of such persons and the conditions or liabilities, if any, attaching thereto ;
- (d) the rent or land-revenue, if any, payable by such persons ;
- (e) such other particulars as may be prescribed by rules made under this Law,

For rules see. 'Compilation' pp. 38-53.

Notes.

General.—Record of rights in a real and comprehensive manner was introduced in Berar in the year 1912 when chapter VIII-A was added to the Code of 1896. Prior to that no authentic record of rights existed. In the beginning when it was decided that Berar should be settled on the Bombay principle of raiyatwari tenure an attempt was made to introduce Record of Rights on the model of the North Western Provinces. Rules known as "Berar Sub Tenancy Rules" were promulgated by the Resident. But no requisite machinery was provided and some confusion resulted, and the record itself so far as it went, was useless. The Code of 1896 recognised only the registered occupant or khatedar. But as time and society advanced the unreality of the Khatedar system became manifest. The entire agricultural situation became obscured and the Famine Commission of 1901 strongly advocated the introduction of the system of Record of Rights. Value of land increased and with it also increased the number of transfers of shares in survey numbers. In these circumstances it was impossible to regard the Khatedar or the registered occupant "responsible" for the payment of his co-occupants as the Code of 1896 purported to do. But the formalities of law had to be complied with and in case of default it was upon him that the batteries of Government, in the shape of notices had first to be turned, and only on his failure to satisfy the demand could recourse be had to the real defaulter. In other ways also the Khatedar system was a nuisance, e. g. in the issue of taccovi, for which a record of actual possession was necessary; the circumlocution involved by the provision of law which compelled the consent of the

Khatedar before land could be converted to a non-agricultural purpose and others of a like nature. But confusion became worse confounded when, as often was the case as noticed by the court of the Judicial Commissioner in the cases reported in 8 N. L. R. 76 and 7 N. L. R. 164 the nominal Khatedar was either deceased or had disposed of his interest in the land. The Khatedar was in many cases a man of straw and it mattered little to the occupants or the village accountant whether he existed or not. Further the law imposed no penalty for failure to keep the record up-to-date. Hence it often happened that the Khata might run on for years, without change, in the name of a dead man. Similarly if the Khatedar, for whatever reasons, neglected to effect a formal transfer by rajinama and kabuliat in favour of a successor, the law had no power at all, to compel him to do so; and, as the name of Khatedar was in itself something of a social distinction nothing was commoner than to find individuals who had long lost any real connection with their land clinging desperately to the shadow of their former glory and obstinately refusing to surrender it. For these and similar reasons the Khatedar system had outgrown its usefulness. The Record of Rights system was therefore introduced on the Bombay model.

The old "Khatedar" system has thus been replaced by the Record of Rights. The importance of Record of Rights in Berar and a general idea of the various stages of it are described in Part II chapter II of the Berar Land Records and Survey Manual. But it would not be out of place here to state the six important stages through which a new acquisition of right has to pass before it finds a place in the Register of the Record of Rights. They are:—

(1) Information of the acquisition of right has to be conveyed to the village Patwari; and so in the case of acquisition of rights otherwise than by a registered instrument an obligation is cast on the person acquiring the right to convey the information to Patwari. When it is by registered deeds information is supplied to the Patwari by the Sub-Registrar at the end of a month regarding every transaction that has taken place in the month. Vide section 109.

(2) On receipt of information as aforesaid the Patwari is to note it in what is called "Mutation Register" i. e. a register in which changes are to be noted, and to give the change wide publicity by placing it in the village chawadi and by issuing notices to all concerned; see sec. 110 (2).

(3) If objections to the proposed change are received they are noted in what is called a "Dispute Register"; see sec. 110 (3).

(4) Objections are decided by the Tahasildar or Naib Tahasildar; see section 110 (4).

(5) Entry in the Mutation Register is certified. Section 110 (5).

(6) Entry certified is then copied in the Register of the Record of Rights of the village.

This section enjoins a record of rights for every village except such as may be exempted under section 121 below.

Clause (c):—

This covers the cases of agreements relating to maintenance.¹

Clause (e):—

Other particulars include rights to trees on the land.²

109. Any person acquiring any right or interest in land required by or under section 108 to be entered in the record-of-rights shall report orally or in writing his acquisition of such right to the patwari within three months from the date of such acquisition, and the patwari shall at once give a written acknowledgment for such report to the person making it, in a form to be prescribed by rules made under this Law :

Provided that—

(1) when the person acquiring the right is a minor or is otherwise disqualified, his guardian or other person having charge of his property shall make the report to the patwari.

1. *Fakirya vs. Talei* 57 I. C. 271.

2. *Mt. Bulki vs. Dagdia* 2 N. L. R. 336;

- (ii) any person acquiring a right by virtue of a registered document or under a decree of a civil court shall be exempted from the obligation to report to the patwari.

Explanation I.—The rights mentioned above do not include an easement or a charge, not amounting to a mortgage of the kind specified in section 100 of the Transfer of Property Act, 1882.

Explanation II.—A person, in whose favour a mortgage is redeemed, or paid off, or a lease is determined, acquires a right within the meaning of this section.

Explanation III.—For the purpose of this Chapter the term "Patwari" includes any person appointed by the Deputy Commissioner to perform the duties of a patwari under this Chapter.

Notes.

Penalty for neglect to furnish information is provided for by section 117.

Explanation II. 'A person in whose favour a mortgage is redeemed' contemplates the case of a second mortgagee paying up the first mortgagee and acquiring his i. e. the first mortgagee's rights.

Explanation III. This explanation is added in order to cover the case of certain areas in which there may be no Patwari to perform the duties required of a Patwari under this chapter.

110. (1) The patwari shall enter in a register of mutations every acquisition of right of the kind specified under section 108 which is reported to him under section 109 or otherwise comes to his notice.

Register of mutations and register of disputed cases.

(2) Whenever the patwari makes an entry in the register of mutations, he shall at the same time post up a complete copy of the entry in the *chaudi* or other place appointed by the Deputy Commissioner, and shall give written intimation to all persons appearing to him to be interested in the mutation.

(3) Should any objection to an entry made under subsection (1) in the register of mutations be made either orally or in writing to the patwari it shall be the duty of the patwari to enter the particulars of the objection in a register of disputed cases. The patwari shall at once give a written acknowledgment for the objection to the person making it in the form prescribed by rules made under this Law.

(4) Every entry in the register of mutations shall be tested, and, if found correct, or after correction, as the case may be, shall be certified by, and objections entered in the register of disputed cases shall be disposed of by such officers and in such manner as may be prescribed by rules made under this Law.

Entries in register of mutations how to be certified.

(5) Entries in the register of mutations, when duly certified, shall be transferred to the record-of-rights in the manner prescribed by rules made under this Law.

(6) An entry in the record-of-rights shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.

Presumption of correctness of entries in record-of-rights.

Notes.

Subsection (2):—"Other place appointed by the Deputy Commissioner". These words have been added so as to give the Deputy Commissioner power to appoint a place to be the Chaudi in urban areas where there is no chaudi.

Subsection (6):—This subsection embodies what is known to English Lawyers as a 'rebuttable presumption of law. It compels the Court to accept an entry in the record of right as correct until it is disproved or as the Privy Council puts it where it is contended that an entry in the record of rights is wrong it lies on the contending party to prove that it is wrong and not on the opposite party to prove that it is right'. The subsection thus enunciates a rule of evidence viz. that the court will call upon the party who challenges the entry to show

1 Shrinath Ray v. P. Uday Nath A.I.R. 1923 P.C. 217 Dattatraya v. Amrut; A.I.R. 1926 Nag 55; Daulat v. Ramappa A.I.R. 1926 Nag 197.

how the entry is wrong. In other words it relates to the burden of proof and sets the party in whose favour the entry is in an advantageous position so far as proof goes and nothing more. The effect of the entry is not to confer rights where none existed. An adverse entry in the record of rights even if allowed to remain unchallenged does not extinguish the right of the party against whom such entry has been made.¹ The entries in the record of rights are not the foundations of title but are mere items of evidence;² and so when the matter is investigated by the Civil Court and the parties adduce their evidence on the point in controversy the entry loses its weight when the evidence discloses no foundation for it.³

Effect of entry:—An entry in the record of right in evidence of possession⁴ and both civil and criminal Courts can treat the entry as strong proof of the party being in possession.⁵

The Record of rights is a village Register containing names of all occupants and holders of land other than tenants i. e. persons in possession of land either actually or through a tenant or mortgagee together, with a statement of the right, title and interest of each occupant or holder and incumbrances; if any on the land. The record also contains information as to the number of trees and wells in each field and the existence of the rights of other persons or the public.⁶ An entry concerning any of these particulars will be presumed to be correct and so the presumption would apply to trees on the land,⁷ and arrangement of maintenance agreed upon and recorded in the record.⁸ The entry however is not to be regarded as presumptive proof of title for as pointed out by the Nagpur High Court it can not supply the place of a title deed. Thus if after the death of a Mahomedan father the names of his two sons are recorded as

1 *Fateh Alisah v. Muhammad Baksh* I.L.R. 9 Lah 428; A.I.R. 1928 Lah 516.

2 *Wali Mohamud v. Mohammad* A. I. R. 1930 P. C. 91.

3 *Kiranchandra v. Shrinath* A. I. R. 1927 Cal. 210.

4 *Mohamad Sujat v. Mt Chandbi* A. I. R. 1927 Nag 41

5 *Satischandra Sen v. Krishna Kumar* 34 C. W. N. 957

6 *Berar Land Records and Survey Manual* chap II p. 37 (1917ed.).

7 *Buliki v. Dagdia* 2 N. L. J. 326.

8 *Fakira v. Tulai* 57 I. C. 271.

successors to the exclusion of the sister the sister will not be supposed to have lost the right and the purchaser from the two brothers alone can not be heard to say that he acquired the interest of the sister also.¹

The Privy Council has expounded the nature and the effect of entries in mutation or record of rights in the following words.

"It is an error to suppose that the proceedings for the mutation of names are judicial proceedings in which the title to and proprietary rights in immoveable property can be determined. They are nothing of the kind as has been pointed out times innumerable by the Judicial Committee. They are much more in the nature of fiscal inquiries instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immoveable property may be put into occupation of it with greater confidence that the revenue for it will be paid. Orders in mutation proceedings are not evidence that the successful applicant was in possession as sole legal owner in a proprietary sense to the exclusion, for example of the claims of other members of the family as coowners or for maintenance or otherwise as revenue² authorities have no jurisdiction to pronounce upon the validity of such a claim."

These observations have been followed in Nagpur.³ The upshot of all these rulings appears to be that Civil Courts will regard entries as correct so far as prima facie proof of possession goes but would refuse to be guided by any inference as to title without examining them in the light of the law.

Thus a mortgagee in possession can not by getting himself recorded as owner defeat the right of the mortgagor to redeem.³ But although the order does not per se create a title

1 *Nirmansingh vs. Thakur Lala Rodra Pratap* A. I. R. 1926 P. C. 100.

2 *Madhorao vs. Laxmibai* A. I. R. 1927 Nag. 406 *Mahammad Sujat vs. Mt Chandbi* A. I. R. 1927 Nag. 41.

3 *Goder v. Nimandin* 120. I. C. 469.

if it is accompanied or followed by overt act of possession it may give rise to an adverse inference of an assertion of hostile title. ¹

Bona fide purchaser relying on entries:—Where the revenue entries show a person as the sole proprietor of certain land and there are *no other circumstances* leading the purchasers of such land to go behind the revenue records and make any further enquiry the vendees would be fully protected by the principle underlying section 41 of the Transfer of Property Act. ² But if there are circumstances which put the purchaser on guard and justify further enquiry a purchaser will not be so protected. ³

An entry:—Presumption about:—Presumption of correctness applies to the whole entry i. e. to all the details set out in the various columns of the record of right register and not merely to land. It relates to details set out in clauses (a) to (d) of sec. 108 above and also to such other particulars as many be prescribed by rules. ⁴

111. The civil courts shall have jurisdiction to decide any dispute to which Government is not a party relating to any right which is recorded in the record-of-rights.

Jurisdiction of civil courts.

Notes.

Suits against Government are barred by the words "to which Government is not a party". Suits between individuals for declaration are not barred.

112. (1) The plaintiff or applicant in every suit or application, as hereinafter defined, relating to land shall, on or before the date of the first hearing or the date appointed for the return of process, as the case may be, file a certified copy of the latest entries in the record-of-rights relating to such land:

Certified copy of record-of-rights to be annexed to plaint or application.

1 Balkisansingh v. Goviudsingh A. I. R 1928 Nag. 252.

2 Muhammad Din v. Mt Sardar Bibi A. I. R 1927 Lah 666.

3 Mohammad Sujat v. Mt. Chand Bibi A. I. R. 1927 Nag 41.

4 Bulki v. Dagadia 2 N. L. J. 326.

Provided that no copy need be filed with an application for execution of a decree if a copy of the latest entry has already been filed in the proceedings leading up to such decree.

(2) If the plaintiff or applicant fails so to do for any cause which the court deems sufficient, he shall produce such certified copy within a reasonable time to be fixed by the court; and if such certified copy is not so produced, the suit or application shall be dismissed but the dismissal thereof shall not of its own force preclude the presentation of a fresh plaint in respect of the same cause of action or of a fresh application in respect of the same subject matter.

(3) After the disposal of any case in which a certified copy of any such entry has been recorded, the court shall communicate to the Deputy Commissioner any error appearing in such entry and any alteration therein that may be required by reason of the decree or order, and a copy of such communication shall be kept with the record. The Deputy Commissioner shall in such case cause the entry to be corrected in accordance with the decree or decision of the court so far as it adjudicates upon any right required to be entered in the record-of-rights or register of mutations. The provisions of this sub-section shall apply also to an appellate or revisional court.

Provided that in the case of an appellate or revisional decree or order passed by the court of the Judicial Commissioner, the communication shall be made by the court from which the appeal lay or the record was called for.

(4) In this section —

- (a) "suit" means a suit to which the provisions of the Code of Civil Procedure, 1908, apply;
- (b) "application" means an application—
 - (i) for the execution of a decree or order in a suit
 - (ii) for the filing of an agreement stating a case for the opinion of the court under the Code of Civil Procedure 1908;
 - (iii) for the filing of an agreement to refer to arbitration under paragraph 17 of the second schedule to the said Code;

- (iv) for the filing of an award under paragraph 20 of the said schedule;
- (v) of any other kind to which the Governor in Council may, by notification, direct that this section shall apply ;
- (c) an application shall be deemed to relate to land if the decree or other matter, with respect to which the application is made, relates to land ;
- (d) a suit relating to land shall not be deemed to include a suit wherein the only claim is against a tenant for arrears of rent.

Notes.

Considerable hardship was caused by the old law which required copies being filed along with the plaint or application. It often took long to obtain a copy of an entry; and as without a copy presentation of the plaint was not proper the plaintiff was handicapped by not being able to apply for an interlocutory order for attachment before judgment. The present section gets over the difficulty by allowing plaints etc. being filed without copies and by requiring their being filed on or before the first hearing of the case.

Subsection (4) Clause (d):—There is no reason to require the production of a copy in suits in which the only relief asked for is the payment of arrears of rent. The point in requiring copies being produced in courts is to test the accuracy of the entries and as a decree in rent suit pure and simple cannot possibly result in a correction of the record of rights the provision has been cut out from the present Code.

113. When any document purporting to create, assign or extinguish any title to or any charge on land used for agricultural purposes is registered under the Indian Registration Act, 1908, the Registering Officer shall send intimation to the patwari of the village in which the land is situate in such form and at such times as may be prescribed by rules made under this Law.

Intimation of transfers by Registering Officers.

Notes.

This section is inserted to legalise the practice of informing the Patwari of any new acquisition of rights.

114. The Deputy Commissioner may, 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 record-of-rights.

Correction of clerical errors.

115. In addition to the record-of-rights, there shall be prepared for each village such other land records as may be prescribed by rules made under this Law or by or under any other enactment for the time being in force.

Land records.

116. (1) Any person, whose rights, interests or liabilities are required to be, or have been, entered in any record or register under this Chapter shall be bound, on the requisition of any Revenue Officer or patwari engaged in compiling or revising the record or register, to furnish or produce for his inspection, within one month from the date of such requisition, all such information or documents needed for the correct compilation or revision thereof as may be within his knowledge or in his possession or power.

Obligation to furnish information as to title.

(2) A Revenue Officer or patwari, to whom any information is furnished, or before whom any document is produced under sub-section (1), shall at once give a written acknowledgment thereof to the person furnishing or producing the same and shall endorse on any such document a note under his signature stating the fact of its production and the date thereof.

117. Any person neglecting to make the report required by section 109, or furnish the information or produce the documents required by section 116, within the prescribed period shall be liable, at the discretion of the Deputy Commissioner, to a penalty not exceeding twenty-five rupees, which shall be recoverable as an arrear of land-revenue.

Penalty for neglect to furnish information.

118. Subject to rules made under this Law, any Revenue Officer, revenue inspector, measurer, or patwari may, for the purpose of preparing or revising any map or plan required for or in connection with any record or register under this Chapter, call upon any holder of land to point out the boundaries of his land and may employ hired labour, and distribute the cost thereof among the holders concerned.

Requisition of assistance in preparation of maps and record-of-rights.

Notes.

It is economically unsound for Government to employ a labour squad for measuring sub-divisions formed here and there after survey settlement operations are over. It is further very important that owners of the sub-divisions should be present in the field to point out boundaries. If only one owner turned up it may happen that he would show a wrong boundary to cover a greater area for himself. Power has, therefore been given to compel persons to be present to point out boundaries and save a great deal of trouble in future. Power has also been given to Revenue authorities to employ hired labour and to distribute the cost, as this is the cheapest way of doing things after the survey settlement operations are over.

119. (1) In addition to the cost of hired labour, if any, assessed under section 118, such measurement fees shall be payable as may be prescribed by rules made under this Law to cover the cost of the preparation and revision of any map or plan required for or in connection with the record-of-rights or mutation register, and shall be recoverable as an arrear of land revenue due in respect of the land to which such map or plan relates.

(2) In addition to such measurement fee a separate Parcha fees. fee, to be prescribed by rules made under this Law, may be charged for each original entry in the record-of-rights, in return for which a certified copy of the entry shall be given; and such fees shall be recoverable as an arrear of land-revenue.

(3) In fixing such fees regard shall be had to the actual cost of the preparation of the record-of-rights and of the measurement work.

Notes.

Subsection (a):—‘Original entry’:—By introducing this word free grant of copies is restricted to first entries in the first or original record of right. Entries consequent on subsequent changes are not covered by this section and hence entries by way of correction of the original entry are not to be charged for nor are copies to be supplied to the person in whose favour mutation takes place. Copies can of course be obtained on payment in the usual way.

120. Rules may be made under this Law—

Power to make rules for land records and the land records staff.

(a) prescribing the duties of Superintendents of Land Records and Assistant Superintendents of Land Records ;

(b) regulating the appointment of revenue inspectors and measurers, and their qualifications, duties, punishment, suspension and dismissal :

(c) regulating the preparation, maintenance and revision of land records required for the purposes of this Law.

121. The Governor in Council may, by notification, direct that this Chapter or any provision thereof shall not apply to any specified local area or to any lands or any class of villages or

Exemption from provisions of the chapter.

lands.

Notes.

This is to cover the case of backward tracts like the Melghat and of special classes of villages such as jagirs.

CHAPTER XI.

Boundaries and boundary marks—Survey marks.

122. The boundaries of all villages, and, in unalienated villages, the boundaries of survey numbers, sub-divisions of survey-numbers and fields, shall be fixed, and all disputes re-

Determination of certain boundaries.

lating thereto shall be decided, by the Deputy Commissioner, subject to rules made under this Law.

For rules see 'Compilation' p. 54.

Notes.

Boundaries of survey numbers and their subdivisions in an alienated village are left out as the village as a whole is regarded as one holding, and the Deputy Commissioner cannot have reliable guide to decide boundary disputes in these villages as boundaries are not required to be maintained correctly as is the case with fields in unalienated villages.

All disputes to be decided by the Deputy Commissioner.

This will show that a civil suit is barred.

123. (1) If the several parties concerned in a dispute relating to any boundary specified in section 122 agree to submit the settlement of boundary dispute by arbitration. thereof to an arbitration committee and make application to that effect in writing, the Deputy Commissioner 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 Deputy Commissioner, the committee so nominated or a majority of the members thereof arrive at a decision, such decision, when confirmed by the Deputy Commissioner, shall be final;

Provided that the Deputy Commissioner may remit the award or any of the matters referred to arbitration to the re-consideration of the same committee for any of the causes set forth in paragraph 14 of the second schedule to the Code of Civil procedure, 1908.

(2) If the Committee appointed in the manner aforesaid fails to effect a settlement of the dispute within the time specified, the Deputy Commissioner shall, unless he sees fit to extend the time, decide the dispute.

Notes.

An important adjunct to the survey is the creation of official boundary marks to the fields measured. These are essential as in their absence the continual changes due to

encroachments, divisions etc. would in a short time result in a complete failure in correspondence between the survey measurements and the facts as found in the field. The system in force in Berar is borrowed from Bombay and this provision for decision of disputes is also borrowed from Bombay vide sections 118 and 119 of the Bombay Land Revenue Code.

Proviso :—Reasons stated in paragraph 14 of the second schedule of the Civil Procedure Code 1908 are :—

(a) that the award has left undetermined any of the matters referred to arbitration or where it determines any matter not referred to arbitration, unless such matter can be separated without affecting the determination of the matters referred.

(b) that the award is so indefinite as to be incapable of execution.

(c) that an objection to the legality of the award is apparent on the face of it.

124. (1) Where a boundary has been fixed under the provisions of section 122 or section 123, the Deputy Commissioner may summarily eject any person who is wrongfully in possession of any land which has been adjudged in the settlement of a boundary not to appertain to his holding or to the holding of any person through or under whom he claims.

(2) Where any person has been ejected from any land under the provisions of sub-section (1) he may, within the period of one year from the date of the ejection, institute a civil suit to establish his title thereto :

Provided that the Government, or the Deputy Commissioner, or any Revenue Officer as such, shall not be made a party to such suit.

(3) The Deputy Commissioner may at any time make an order for a redistribution of land-revenue which in his opinion should be made as a result of the decree in a civil suit instituted under sub-section (2), and such redistribution shall take effect from the beginning of the revenue year following the date of the order.

Notes.

This section is borrowed from the Bombay Code and it is a necessary corollary to the settlement of a boundary dispute. It differs however from the Bombay Code in three respects. It drops the words 'at any time' which figure in the Bombay section as it is thought that the Deputy Commissioner will do it immediately on the passing of the order. It contains subsections (2) and (3) which do not appear in the Bombay section. Sub-section 2 provides for a civil suit. The idea is that a person who has been ejected by the D. C. from the portion of the land may succeed in establishing a title in the civil court. The civil suit is to be between two private parties. The Govt. or the revenue officer passing the order is not to be a party to the suit. This does not mean that when the boundary dispute is between Govt. and the private person the latter is debarred from suing the Government. When a field owned by an individual adjoins Govt. land and a dispute arises over a boundary provisions of section 41 will apply and the remedies provided therein will be available to the individual aggrieved. The section is discretionary and the D. C. may not eject a person if in possession for a long time as possession itself is title; and the person can not be said to be in wrongful possession.

Subsection 3:—This subsection empowers the D. C. to allocate revenue on the land according to the decision arrived at. It is equitable that the person who gets land should bear the burden of paying the revenue. The clause does not provide that a retrospective effect should be given to the order for the distribution of the revenue and so the order can direct payment of the revenue only in the future.

125. (1) The boundaries of—

- | | |
|--|--|
| Construction of
boundary marks of
villages, survey
numbers and hold-
ings. | (a) all villages, |
| | (b) all survey numbers in unalienated villages, and |
| | (c) all holdings of ante-alienation tenants, tenants of antiquity and permanent tenants in alienated villages, |
- shall be demarcated by boundary marks which shall, subject

to the provisions hereinafter contained, be of such specification and shall be constructed and maintained in such manner as may be prescribed by rules made under this Law.

(2) Where the rules prescribe boundary marks of a specification different from that prevailing in any village, the new specification shall not be enforced in such village except upon application to a Revenue Officer made by the holders of not less than three-quarters of the occupied land in the village.

When such application is made the Revenue Officer shall have new boundary marks constructed throughout the village and shall distribute the cost thereof proportionately among the holders of land in the village in accordance with rules made under this Law.

The share of each holder shall be recoverable as an arrear of land-revenue.

(3) Every holder of land shall be responsible for the maintenance and repair of the boundary and survey marks erected thereon.

Responsibility for maintenance of boundary and survey marks.

For rules see 'Compilation' pp. 54-57.

Notes.

Subsection (1).—It is clear that boundary marks are required under this subsection only for the boundaries of villages, for the boundaries of survey numbers in unalienated villages, and for the holdings of tenants with permanent rights in all such villages. No boundaries are by law required for survey numbers in alienated villages, the reason being that the village as a whole is considered as one holding.

Subsection (2).—This subsection provides for the case where the boundary marks in a village are of the old pattern and it is desired that they should be constructed again on a new pattern. This provision is made with special reference to the introduction of the "single boundary mark system." It should be observed that a change in the pattern will not be made except on the application of the holders of three quarters of the occupied land in the village.

126. (1) After the end of November in each year the **patel of the village shall give written notice to every holder on whose land the boundary or survey marks are defective, calling upon him to put them into proper repair before the first day of March following.**

Enforcement of repair of boundary or survey marks.

(2) After the first day of March in any year a Revenue Officer may cause any defective boundary or survey mark to be properly repaired and shall recover the cost of repair from the holder or holders responsible for the maintenance of such boundary or survey mark, together with a penalty which may extend to one rupee for every boundary mark so repaired.

Such cost and penalty shall be recoverable as arrears of land-revenue.

Notes.

This section provides a somewhat elaborate system whereby each holder will have ample notice of any deficiency in his boundary marks before the Revenue Officers have power to enter upon his land and repair the boundary marks at the cost of the holder. A simple penalty of a rupee for each boundary mark which is left defective, even after the period of notice has expired is also provided for.

127. (1) The Deputy Commissioner may, on the application of a party interested, demarcate the boundaries of a sub-division in a survey number, and construct boundary marks thereon.

Demarcation of boundaries of sub-divisions.

(2) Rules may be made under this Law regulating the procedure of the Deputy Commissioner in demarcating the boundaries of sub-divisions, prescribing the nature of the boundary marks to be used, and authorising the levy of fees from the holders of land in a demarcated sub-division.

(3) Sub-divisions demarcated under the provisions of this section shall be deemed to be survey numbers for the purposes of section 125.

For rules see 'Compilation' p. 58.

128. (1) If any person willfully destroys or injures, or without lawful authority removes, a boundary or survey mark lawfully constructed he may be ordered by the Tahsildar to pay such fine, not exceeding fifty rupees for each mark so destroyed, injured or removed, as may, in the opinion of the Tahsildar, be necessary to defray the expense of restoring the same and of rewarding the informant, if any.

Penalty for destruction, injury or removal of boundary or survey marks.

(2) The imposition of a fine under this section shall not bar a prosecution under section 434 of the Indian Penal Code.

Notes.

Section 434 of the Indian Penal Code refers to mischief by destroying or moving a land mark fixed by a public authority.

Subsection (2) is designed to put it beyond question that the levy of a fine by a Revenue Court will not bar a prosecution under section 434 of the Indian Penal Code. Section 26 of the General Clauses Act (X of 1897) or section 25 of the C. P. General clauses Act will not prevent a second fine or imprisonment being imposed by a criminal court as clause (1) of the section does not make the act of destruction or injury an offence within the meaning of the Code. The clause empowers the Tahsildar as a Revenue court to recover from the offender merely the cost necessary for restoring the boundary. It does not make the act punishable by a criminal court. The fine is in the nature of compensation for restoring the boundary mark.

129. (1) The Deputy Commissioner may inquire into and decide claims by persons holding land in a survey number to a right of way over the boundaries of other survey numbers.

Rights of way over boundaries.

(2) In deciding such claims the Deputy Commissioner shall have regard to the needs of cultivators for reasonable access to their fields.

(3) Any person who is aggrieved by a decision of the Deputy Commissioner under this section may, within a period

of one year from the date of such decision, institute a civil suit to have it set aside or modified.

Notes.

General :—Dhuras or boundary strips between two survey numbers have been declared to be private property and they can not therefore be used for passage as of right.¹ This section is therefore inserted to meet a rapidly growing evil. When pressure on land was negligible, cultivators found little trouble in gaining access to their fields, as Dhuras were broad and waste land frequent. Nowadays, however, there are many tracts in Berar where every square inch of cultivable land has been taken up and many occupiers whose fields have been in their possession for generations find themselves cut off from access thereto. Dhuras are reduced to the narrowest permissible limits and there is no interspersed waste land. The difficulty is obviously one which cannot be adjusted by civil litigation among the occupants and the only solution seems to be to permit the revenue authorities to deal with disputes on the spot in a reasonable and equitable manner.

Subsection (2) :—The discretion of the Deputy Commissioner is not limited by the provisions of the civil law. He is at liberty to give to a cultivator who has not a reasonable access to his field a right of way over the boundaries of his neighbours, which under the civil law he may not be able to establish.

Subsection (3) :—The party aggrieved by the order of the Deputy Commissioner can have it set aside by a suit to be filed within a year. It would appear that the only ground on which the Deputy Commissioner's order can be set aside by a civil court is that it contravenes the provisions of subsection (2). It enables the Deputy Commissioner to grant a right of way if he is satisfied that such a relief is necessary in the light of the needs of the cultivators for reasonable access to their fields. In other words a civil court can set aside the order only when it finds that the order of the Deputy Commissioner is perverse and against the interest of cultivators. Convenience of

1. Surajmal vs. Arjun (1925) C. P. and Berar Revenue Bulings page 41.

cultivators is the gist of the jurisdiction of the Deputy Commissioner and what the civil court will have to consider is whether the order of the Deputy Commissioner is not warranted by the prime need of cultivation. The question before the civil court will not be if the right of way has been acquired as an easement by 20 years open user but if the way is necessary to afford reasonable access to a cultivator to his fields.

130. The Governor in Council may, by notification, declare that any or all of the provisions of this Chapter shall not apply to any village or class of villages, or that any such provision shall apply only as modified by such notification.

Power to exempt from operation of this Chapter.

Power to exempt from operation of this Chapter.

CHAPTER XII.

Realization of Land-Revenue.

A.—Payment of land-revenue.

131. The land-revenue assessed on any land shall be a first charge on that land and on the crops, rents and profits thereof.

Land-revenue a first charge on land.
First charge :—The idea of making land revenue a first charge is to make every person who comes to own the land or to have any lien on it responsible for the payment of revenue. Sales held in satisfaction of this first charge will prevail against any subsequent sale.¹ The remedy of a charge holder is to have the property put up to sale and money due recovered out of the sale proceeds. Vide section 100 of the Transfer of Property Act.

Charge on crops, rents and profits :—Compare sections 166-169 which secure a lien to Government. Under these sections the Deputy Commissioner is authorized to prevent the removal of crops without payment of revenue due, to prevent reaping of the crop, and to keep watchmen and to charge the cost to the owner of the field or the crop. This section enables

¹ Puthia Valappil vs. Veloth Assencor I. L. R. 25 Mad. 732.

Government to follow the crops for payment of revenue and have rents or profits appropriated towards satisfaction of land revenue due.

132. (1) The following persons shall be primarily liable for the payment of the land-revenue assessed on a holding—

Responsibility for payment of land-revenue.

- (a) in an occupant's holding, the occupant thereof;
- (b) in a holding consisting of alienated land, the superior holder thereof and his co-sharers;
- (c) in a holding consisting of land leased from Government, the lessee thereof.

(2) When there are more than one occupant, superior holder, co-sharer or lessee in a holding, all such occupants, superior holders, co-sharers or lessees, as the case may be, shall be jointly and severally liable to the payment of the land-revenue assessed on such holding.

Notes.

These two sections provide that the land revenue shall be collected in all ordinary cases from the person who is recognised by Government as having a title in the land; but they afford further facility to Government to collect the revenue from any person in possession of the holding, if the person primarily responsible defaults.

In fixing the responsibility on certain persons primarily the idea is to lay down definitely which persons are really responsible for payment of revenue.

A person, who is not so primarily liable and who is not in possession, is not bound to pay the revenue and if he does so voluntarily, he would not be entitled to recover it from the person really liable.¹

133. In case of default by any person who is primarily liable under section 132, the land-revenue, including arrears, shall be recoverable from any person in possession of the land: Provided that such person shall be entitled to credit for

¹ *Jesinbhai vs. Hataji I. L. R. 4 Bombay 79.*

the amount recovered from him in account with the person who is primarily liable.

Notes.

Any person in possession:—Person in possession may be a mortgagee or lessee or even a trespasser. See notes under sec. 132.

134. (1) The land-revenue payable on account of a revenue year shall fall due on the first day of that year.
Dates on which land revenue falls due and is payable.

(2) Rules may be made under this Law providing for the payment of land-revenue in instalments and on dates (hereinafter referred to as prescribed dates) subsequent to the first day of the revenue year and such rules may prescribe the persons to whom and the places whereat such instalments shall be paid.

(3) Any period elapsing between the first day of the revenue year and any date fixed for the payment of land-revenue by such rules shall be deemed to be a period of grace, and shall not affect the provisions of sub-section (1).

For rules see ' Compilation ' pp. 7-24 ; and p. 58 ;

Notes.

This section makes a distinction between the date on which revenue falls due and the date on which it must be paid. The intention is to give Government a legal claim to land revenue on the first day of the revenue year, and at the same time to give it power to frame rules for the payments of land revenue on dates suited to the convenience of agriculturists in the various tracts. A perusal of Part C of this Chapter will show the need for this distinction.

The person and the places to whom and at which payment is to be made:—This section gives the Local Government the power to frame rules as to the persons to whom and the place at which the land revenue is to be paid. Usually the person is the patel of the village and the place is the village chawadi and if there is no chawadi the place where the patel usually collects the revenue. A question arises if payment into the Tahsil would amount to good payment.

On the principle that the State is the Creditor and the landholder the debtor in respect of the land revenue it would appear that payment into Tahasil and to the Tahasildar who is the agent of the State is good. But since the Legislature has authorized Government to fix places and persons payment contrary to the provisions of the rules would not be valid. To meet public convenience however Government would be well advised to provide in the rules permitting payments into Tahsil and to introduce the system of revenue money orders similar to that which now obtains in the Central Provinces. The Select Committee appointed to frame this law has endorsed these suggestions.

135. Any land revenue due and not paid on or before the prescribed date becomes therefrom an arrear, and the persons responsible for it, whether under the provisions of section 132 or of any other section, become defaulters.

Definition of "arrear" and "defaulter."

136. (1) Where a patel or patwari receives a payment from any person on account of land-revenue or on account of any sum of money recoverable as an arrear of land-revenue, he shall grant a receipt for such sum in the form prescribed by rules made under this Law.

Patel or patwari bound to give receipt

(2) The granting of such receipts in the prescribed form shall be deemed to be a duty of the patel or patwari for the purposes of the Berar Patels and Patwaris Law, 1900.

For rules see 'Compilation' p. 59.

Notes.

This makes it obligatory on a patel or patwari now to grant receipts and negligence on his part in this respect would be punishable under the Patel and Patwaris Law.

137. If any instalment of land-revenue is not paid on or before the prescribed date, the Deputy Commissioner may impose a penalty in accordance with a scale to be prescribed by rules made under this Law:

Penalty for default of payment of land-revenue.

Provided that no such penalty shall be imposed for the non-payment of any instalment, the payment of which has been suspended by the order of Government, in respect of the period during which the payment remained suspended,

For rules see 'Compilation' p. 59.

Notes.

The portion in the corresponding section of the old Code authorising the Deputy Commissioner to realise the entire amount of the land revenue due from the defaulter for the current revenue year is deleted in the present section. The Deputy Commissioner can now realise only the instalment in respect of which default is made with a penalty according to the scale prescribed by rules.

138. (1) Where the superior holder or co-sharer in any alienated village, for which a record-of-rights is maintained under Chapter X, has paid, under pressure of process, any land-revenue due by any other superior holder or co-sharer in the village, he may, within six months from the date of such payment apply in writing to the Deputy Commissioner to recover such amount on his behalf.

Recovery through Deputy Commissioner of revenue paid on behalf of co-sharer in *isara* village.

(2) The Deputy Commissioner may reject such application, or after satisfying himself that the amount claimed, or any part thereof, is due and after giving the person against whom the claim is made an opportunity to show cause, may, subject to rules made under this Law, recover, as if it were an arrear of land-revenue, such amount, with costs and interest, from the person held by him to be liable for the same.

(3) No appeal shall lie from an order under this section but any person affected by such order may institute a suit in a civil court to establish the right which he claims :

Provided that Government or any Revenue Officer shall not be made a party to such suit.

(4) If the civil court decides that no arrear was due, and any immovable property has been sold for the recovery of the arrears, such sale shall become void,

(5) No person on whose behalf the Deputy Commissioner proceeds to recover an arrear under this section shall thereby be relieved of his responsibility for any arrear of land-revenue due by him.

Notes.

This section is new and is based on the model of section 157 of the C. P. Land Revenue Act of 1917 and is intended to afford a summary method of recovery to those persons who have been forced by a process to pay up arrears due by their co-sharers in alienated villages.

In any alienated village for which a record of rights exists:—These words confine the operation of the section to villages for which a record of rights exists viz. Ijara villages and other Jagir villages for which a record of rights has been prepared. The reason is that while it is equitable that superior holders should be assisted in recovering revenue from defaulting co-sharers whose share of the demand they have themselves paid, this is possible only in villages where there exists a reliable record of co-sharers and their shares. Without such record complicated and lengthy disputes may arise regarding liability, which it would be beyond the province of revenue officers to decide. At present such a record is maintained for Ijara villages only but it may be prepared at some future time for other alienated villages; and when it is so these villages would also get the benefit of this provision.

Subsection (2):—The Deputy Commissioner has the power to reject the application. But this is not to be arbitrary the discretion must be exercised in a sound and reasonable manner.

Subsection (3):—Order of the Deputy Commissioner is not appealable, but can be set right in revision if it is arbitrary.

139. (1) The Governor in Council may grant remission or suspension of land revenue in years in which crops have failed in any area, and such remission or suspension shall be determined in accordance with rules made under this Law,

Remission or suspension of revenue on failure of crops.

(2) Every order made by a Revenue Officer under such rules shall be final.

For rules see 'Compilation' pp. 61-62.

Notes.

Hitherto grant of remissions and suspensions of land revenue in times of crop failure was an act of grace on the part of the Local Government. This section is intended to make a clear declaration of policy that payers of land revenue are entitled to a remission or suspension in a bad year. Much of the force of the section is however taken away by the words "in accordance with rules made under this law" in the first subsection and by the whole of the second subsection. Rules lay down under what circumstances remission or suspension should be granted and subsection 2 makes the decision of a Revenue Officer whether a case falls under the rules or not final and not liable to be questioned in a civil court. (vide clause (f) of section 192.)

B.—Recovery of arrears.

140. A statement of account, certified by the Deputy Commissioner or by the Tahsildar, shall, for the purposes of this Chapter, be conclusive evidence of the existence of the arrear, and of the person who is the defaulter.

Certified account to be evidence as to arrear and defaulter.

Notes.

Conclusive evidence:—When a fact is stated to be conclusive evidence it means that no evidence would be allowed for the purpose of disproving it. Compare section 4 of the Indian Evidence Act I of 1872. But an alleged defaulter may lodge a protest and prove in a suit that no arrears were due. Vide section 144.

141. The Deputy Commissioner may recover an arrear of land-revenue by any one or more of the following processes, namely:—

- (a) by service of a written notice of demand on the defaulter;
- (b) by attachment and sale of the defaulter's movable property;

- (c) by attachment and sale of the holding on which the arrear is due;
- (d) by arrest and detention of the defaulter or his imprisonment in the civil jail;
- (e) in the case of alienated holdings consisting of entire villages or shares of villages, by attaching and taking such holdings under management :

Provided that—

- (i) the processes specified in clause (b) shall not permit the attachment and sale of the following articles, namely:—
 - (a) the necessary wearing apparel, cooking vessels, beds and bedding of the defaulter, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;
 - (b) tools of artisans and, if the defaulter is an agriculturist, his implements of husbandry and such cattle and seed as may, in the opinion of the Deputy Commissioner, be necessary to enable him to earn his livelihood as such; and
 - (c) articles set aside exclusively for the use of religious endowments;
- (ii) the process specified in clause (d) shall not be issued against any female, minor, lunatic or any person exempted from personal attendance in a civil court.

Notes.

Two important changes have been brought about by this section, viz. (i) under the corresponding section of the old Code (section 119) immoveable property, other than the land in respect of which default was made, could be attached and sold. The present section by clause (c) restricts the attachment and sale only to the holding in respect of which the default has occurred. Other immoveable property cannot now be seized and (ii) forfeiture of holding cannot now be affected for nonpayment of revenue, the underlying idea being that Government is entitled to the land revenue only and that

therefore the remedy should be sale (not forfeiture) so that Government should be able to recover its arrears and the owner of the land to get the balance of the sale proceeds.

Personal ornaments:—Amongst Hindus the chief personal ornaments not to be parted with during the lifetime of the husband are "Mani" (gold bead worn round the neck) and Mangalsutra (the auspicious gold necklace worn round the neck) and silver rings worn on the toes of the feet.¹

Religious endowment:—Endowment is the dedication of property by gift or devise to religious or charitable uses. A religious endowment is one which has for its object the establishment, maintenance, or worship of, an idol or deity or any object or purpose subservient to religion. The clause makes no distinction between public and private endowments and articles reserved for the use of such endowments are exempt.

142. The costs of issuing and enforcing any process specified in section 141 shall be deemed to be land-revenue assessed on the holding in respect of which the arrear is due, and shall be recoverable as part of that arrear.

Costs recoverable as part of arrear.

143. The processes specified in section 141, clauses (a), (b) and (d), may be enforced either in the district in which the default has been made or in any other district.

Enforcement of processes in other districts.

144. (1) If proceedings are taken under this Chapter against any person for the recovery of an arrear of land-revenue or of any sum recoverable as such, he may, at any time before property is knocked down at a sale pay the amount claimed and may, at the same time, deliver a protest signed by himself or by his authorized agent to the Revenue Officer taking such proceedings, and thereupon they shall be stayed.

Payment under protest and suit for recovery.

(2) Any person complying with the provisions of sub-Section (1) may institute a suit for the recovery of the money so paid and in such suit may, notwithstanding anything contained in section 140, prove that nothing

1 *Mt. Mithebai v. Bhikari Lala* 2 C. P. L. R. 42; at p. 44.

was due or that the amount due was less than the amount for the recovery of which the proceedings were taken.

(3) Government shall not be made a party to any suit brought for the recovery of money paid under sub-section (1), unless the arrear or sum was payable to Government.

Notes.

For moneys recoverable as arrears of land revenue vide section 164.

Subsection (3):—Cesses due to local authorities like the District Councils and Municipal Committees are recoverable as arrears of land revenue. These sums are not due to Government as such. In these and in similar cases where money is not due to Government, it is not to be joined as a party.

145. (1) Attachments and sales of movable property under this Chapter shall be made as nearly as may be, according to the law for the time being in force for the attachment and sale of such property under the decree of a civil court.

Attachment and sale of movable property.

(2) Attachments of immovable property under section 141 shall be made, as nearly as may be, according to the law for the time being in force for the attachment of such property under the decree of a civil court.

Attachment of immovable property.

(3) After an attachment has been made, any private transfer or delivery of the property attached or of any interest therein shall be void as against claims enforceable under the attachment.

Notes.

Sections 60 to 63 of the Code of Civil Procedure (Act V of 1908) relate to attachments in general; and Order 21 Rules 43 to 53 of the same Code give detailed provisions for the attachment of moveables; while Rule 54 of the same Order mentions the provision for the attachment of immoveable property. Rules 63 to 73 contain the general provisions for sales and Rules 74-81 the special provisions for sale of moveable property and rules 82-96 for sale of immoveable property.

Subsection (3):—This corresponds with section 64 of the Code of Civil Procedure, A private transfer under this subsection is not absolutely void, but void only as against claims enforceable under the attachment.¹ The transfer passes property but the transferee cannot set up the transfer as a defence to the attachment.

Private transfer:—This means a voluntary sale, gift, mortgage or lease in contravention of the order of attachment and not the enforced execution of a conveyance or assignment in obedience to a decree.²

146. (1) If any claim is set up by a third person to property attached or proceeded against under the provisions of this Chapter, the Deputy Commissioner shall inquire into the claim and may admit or reject it.

Claim by third party to property attached or proceeded against.

(2) The person against whom an order is made under sub-section (1) may institute a suit to establish the right which he claims to the property attached or proceeded against, but, subject to the result of such suit, if any, the order shall be final.

Notes.

Final:—The word 'final' would show that no appeal lies from the order. Vide section 32 (1) which says that an appeal will lie 'save where the order is declared to be final.' The order may however be revised.³ The order is final whether it is given after enquiry or in default of the appearance of parties.⁴

Suit-imitation:—It is not obligatory on a party to file an objection petition. He may question the sale by a suit. An objection is an additional remedy furnished by law which a litigant may or may not adopt.⁵ The limitation for a suit to set aside a revenue sale is one year from the time the sale is confirmed under art. 13 (c) of the Limitation Act whereas the limitation

1 Anand Lall v. Gullodhur 17 W. R. 313; P. C. Nathu Mal v. Gangaram 63 I. C. 108.

2 Kurban Ali v. Ashraf Ali I. L. R. 4 All. 219 at 225, 226 F. B.

3 Marotirao v. Govind A. I. R. 1929 Nag 356. Haji Divan v. Bhav Singh A. I. R. 1927 Nag. 266. 10 N. L. J. 155.

4 Wamandhar v. Kamta Prasad 22 N. L. B. 94.

5 Kanhayalal v. National Bank of India I. L. R. 40. Cal 598 P. C.

for setting aside an order under this section would be one year from the date of the order under art. 14 with the result that if the litigant chooses to file an objection he must challenge the order by suit within one year from the date of the order. If he files an objection and the order is against him he can not ignore the order and attack the sale after his limitation for the suit has expired. ¹

147. (1) Every warrant for the arrest of a defaulter shall direct the officer named therein to bring such defaulter to the Tahsildar's office, if he does not pay the arrear by a date fixed in the warrant.

Arrest and detention of defaulter.

(2) If, when the defaulter is brought to the Tahsildar's office the arrear is still unpaid, the Tahsildar may order him to be placed before the Deputy Commissioner, or may detain him at the said office for a period not exceeding ten days, unless within such period the arrear is paid, and may then, if the arrear is still unpaid, cause him to be taken before the Deputy Commissioner.

(3) If the arrear is still unpaid, the Deputy Commissioner may issue an order to the officer in charge of the district civil jail, directing him to confine the defaulter therein for such period not exceeding three months from the date of the order as the Deputy Commissioner thinks fit, unless the arrear is paid within such period.

Imprisonment of defaulter in civil jail

(4) When any defaulter detained in custody or imprisoned produces before the Deputy Commissioner, Tahsildar or officer in charge of the jail, as the case may be, security sufficient to cover the arrears due by him and all costs incurred, he shall forthwith be set at liberty.

148. (1) If an attachment has been made under section 141, clause (e), the Deputy Commissioner shall issue a proclamation declaring the attachment to be in force, and shall take the attached village or share of a village under management.

Attachment and management of alienated village.

¹ *Baghunath Prasad v. Kanis Rasul I, L. R. 24 All. 467.*

(2) Such management shall ordinarily be effected through the agency of a co-sharer in the village who, in the opinion of the Deputy Commissioner, is most likely to discharge the duties properly, and is able to produce security to the satisfaction of the Deputy Commissioner for the proper discharge of his duties.

Failing any such co-sharer, the Deputy Commissioner may take the village under his own management, or may appoint any suitable person as agent.

(3) During the continuance of such attachment the defaulter and any co-sharers shall be excluded from possession of the village or share of a village attached, and the Deputy Commissioner or the agent appointed by him shall have all the rights of the said defaulter and co-sharers to manage the same and to realize the rents and profits arising therefrom, and shall be bound by all their liabilities as superior holders or co-sharers to any tenants thereof.

(4) The surplus profits of such village or share, after defraying the cost of the attachment and management, shall be applied, first, to the payment of any land-revenue becoming due in respect thereof during the continuance of such attachment, and next, to discharging the arrear for the recovery of which the attachment was made.

(5) The attachment shall continue until the arrear is paid or realized from the profits of such village or share or the Deputy Commissioner reinstates the defaulter in possession.

Notes.

Subsection (2).—This is inserted with the idea that a co-sharer in the village should ordinarily be asked to manage in preference to an outsider as he is likely to manage it better than an outsider and this arrangement is in the interest of Government and of the village generally.

Subsection (3).—Once the village is taken over in management by the Deputy Commissioner, the defaulter and his co-sharers both lose their possession.

Relation of Government after attachment.—After attachment the rights of the defaulter are in abeyance and

Government occupies the position of a trustee in respect of the village.

Subsection (5) :—This subsection declares that the attachment is to continue until the arrear is paid or realized from the profits. The defaulter is thus at liberty to offer the payment of the arrears due and to claim possession, and so long as the attachment continues the Deputy Commissioner can not sell the village as that would be interference with the rights of the defaulter not authorized by this subsection.

149. (1) If the sale of any immovable property has been ordered under section 141 (c), the Deputy Commissioner shall issue a proclamation of the intended sale specifying the property to be sold, the land-revenue, if any, assessed thereon, the arrears due, the time and place of sale and any other particulars which the Deputy Commissioner may think necessary.

(2) All such sales shall transfer the holding free of all encumbrances imposed on it, and all grants and contracts made in respect of it, by any person other than the purchaser.

Proclamation of sale of immovable property.

Sales to confer un-encumbered title.

Notes.

Subsection (2) is new. Revenue sales confer on the purchasers an absolutely unencumbered estate. Previous liens, if any, are wiped out by the sale and the purchaser at the auction gets a clear title. This has been done as a consequence of abolishing forfeiture for realizing land revenue. This provision is also intended to cover the extreme situation in which it is not to the interest of the defaulter to pay his arrears. In such a case this provision ensures that the encumbrancer will come forward and pay the arrears.

Encumbrance :—Encumbrance has been defined to mean a claim, lien or liability attached to property, a charge or mortgage upon real (immoveable) or personal (moveable) estate. Sales for arrears of revenue would thus wipe out even maintenance charges.

Any person other than the purchaser:—This sub-section makes a distinction between encumbrances, contracts and grants by purchasers and by persons other than such purchasers. Encumbrances, grants and contracts by persons other than the purchaser are wiped out and the purchaser is to get a clear title. But if the purchaser himself is the author of the encumbrances, grants or contracts it is evident that he is not to be protected against his own acts. If the defaulter were for instance to become the purchaser he does not get the property freed from the encumbrances etc. on the ground that a party cannot be allowed to take advantage of his own wrong and also on the ground of the equitable doctrine that "subsequent acquisitions feed the estoppel".¹ Compare section 43 of the Transfer of Property Act.

150. (1) Every sale of immovable property shall be by public auction held either by the Deputy Commissioner or by a Revenue Officer appointed by him in this behalf.

Sale how, when and by whom to be held.

(2) No such sale shall take place on a Sunday or other authorized civil court holiday, or until after the expiry of at least thirty days from the date on which the proclamation thereof was published.

(3) The officer holding the sale may, from time to time, postpone it for reasons to be recorded.

Notes.

Subsection (3):—The Revenue Officer conducting the sale is now required to put down the reasons for postponing the same. This is done in order to secure greater regularity in the conduct of sales. If the sale is postponed to more than 7 days a fresh proclamation is necessary. Vide section 158.

Special Procedure in Revenue Sales—reasons for:— It may be noticed that in the matter of attachment Revenue Courts are allowed to follow the practice in force in Civil Courts. See subsection (3) of section 145 above. But in the matter of publication and conduct of sales Revenue Courts have their own procedure in considerable detail because

¹ *Jannadee vs Paiku* 10 N. L. R. 470.

it is inconvenient for Revenue Officers to have to refer to a law and to rulings based thereon with which they are not familiar and it would be still more inconvenient to regulate the procedure of revenue officers by orders under the Civil Procedure Code which might at any time be altered without reference to Revenue authorities. (Statement of Object and Reasons, of the C. P. Land Rev. Act).

151. No Revenue Officer shall either in person or by agent, in his own name or in the name of another, or jointly or in shares with others, purchase or bid for, any immovable property which is being sold under the provisions of this Chapter.

No Revenue Officer to bid.

Notes.

This section corresponds to section 140 of the C. P. Land Revenue Act and erects a statutory bar against all Revenue Officers bidding in auction sales under this Act. Compare with this Rule 73 of Order 21 of the Civil Procedure Code, Act V of 1908, which bars officers of court from bidding at court sales and also see section 136 of the Transfer of Property Act which prohibits officers and legal practitioners from trafficking in actionable claims. The section does not lay down the consequence but it is obvious that in the eye of the law the bids are absolutely void and pass no title to the purchaser as he is prohibited from purchasing.¹

This is a disqualification created in the case of a revenue officer within the meaning of section 11 of the Indian Contract Act.

Revenue Officer:—For the definition of “revenue officer” see section 2 (10); and section 3. Patels and Patwaris would not be revenue officers within the meaning of this section.

152. If the arrear in respect of which the property is to be sold is paid at any time by any person before the lot is knocked down, the sale shall be stayed.

Sale to be stayed when arrear paid.

¹ *Lochmi Narain vs. Fateh Bahadur* I. L. R. 26 All. 106.

153. (1) The person declared to be the purchaser shall deposit immediately twenty-five per centum on the amount of his bid and, in default of such deposit, the property may be offered to the next highest bidder at his highest bid.

(2) If such offer is not made or accepted, the property shall forthwith be re-sold; and the costs of the first sale and any deficiency of price which may occur may be recovered from the defaulting purchaser by the Deputy Commissioner as an arrear of land revenue. Any sum recovered as deficiency shall be deemed to be part of the sale-proceeds.

Notes.

Compare Rule 83 Order 21 of the Code of Civil Procedure—Revenue sales differ from the civil court sales in this respect that the Revenue Officer is authorized by this section to offer the property to the next highest bidder and a resale takes place only if the officer does not make the offer or the next bidder does not accept the offer to purchase it at the bid made by him. In civil court sales the property has to be resold and there is no option to offer it the next highest bidder.

Any sum recovered as deficiency is deemed to be part of the sale proceeds so that the owner of the property for whose default the property was put up to sale gets the benefit vide section 162.

154. (1) Unless an application has been made under section 155, the full amount of purchase-money shall be paid by the purchaser on or before the fifteenth day from the date of the sale and, if the purchase-money is not so paid, the deposit, after the expenses of the sale have been defrayed therefrom, shall be liable to be forfeited to Government and the property, shall be re-sold and the defaulting purchaser shall forfeit all claims to the property, or to any part of the sum for which it may subsequently be sold.

(2) If the proceeds of the sale which is eventually made are less than the price bid by such defaulting purchaser, the amount of deficiency may be recovered from him by the

Deposit by purchaser.

Purchase-money when to be paid and effect of default.

Deputy Commissioner as an arrear of land-revenue; and such amount shall be deemed to be part of the sale-proceeds.

(3) In case the deficiency is not recovered the loss may, if the Deputy Commissioner so directs, be made good out of the deposit forfeited under sub-section (1).

Notes.

Deposit shall be liable to be forfeited.—The deposit is liable to be forfeited but need not be forfeited in every case. The law in this respect in revenue sales is the same as in sales under civil court decrees. Vide rule 86 Order 21 of the Civil Procedure Code. On resale one of the following things must happen :—

(a) the property may fetch more money, or

(b) it may fetch less.

The defaulting purchaser is not entitled to the excess but is liable for the deficiency under this section as it lays down that the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold. The defaulter is liable to a double penalty viz. of losing his 25% deposit and of making good the deficiency.

Subsection (3).—Subsection (2) empowers the Deputy Commissioner to recover the deficiency from the defaulter independently of the deposit. It is only when the deficiency cannot be recovered from the purchaser, that the deposit is to be appropriated towards the loss under this subsection (3).

155. (1) Where immovable property has been sold under this Chapter, any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale may, at any time within thirty days from the date of sale, apply to the Deputy Commissioner to have the sale set aside on his depositing,

Application to set aside sale on deposit of arrear, etc.

(a) for payment to the purchaser, a sum equal to five per centum of the purchase-money;

(b) for payment on account of the arrear, the amount specified in the proclamation of sale as that for

the recovery of which the sale was ordered, less any amount which may have been paid since the date of the sale on that account; and

(c) the costs of the sale.

(2) If such deposit is made within thirty days from the date of the sale, the Deputy Commissioner shall pass an order setting aside the sale:

Provided that, if a person applies under section 156 to have such sale set aside, he shall not be entitled to make an application under this section.

Compare rule 89 Order 21 of the Civil Procedure Code.

Who can apply :—The persons who can apply under this section are :—

(1) the owner, or

(2) any person holding interest in the property by virtue of a title acquired before the sale e. g. a lessee, mortgagee, Coaharers, coheirs, mortgagees, lessees are all interested in the property.

The words "owning the property or holding an interest therein" have been interpreted to apply a person who can be proved as owning the property at the date of the application or holding interest in it on that date by virtue of a title pre-existing i. e. by a title acquired before the auction sale. The words 'owning' or 'holding' in the above expression indicate a present subsisting interest or ownership of the applicant at the date of the application.¹

Deposit within 30 days :—The provisions relating to deposit and an application within 30 days must be strictly followed. But unlike the Civil courts, Revenue Courts possess greater powers to confirm or reject a sale. Section 159 proviso empowers the D. C. to set aside a sale for any satisfactory reason; and so these provisos relating to deposit may be interpreted liberally in favour of the defaulter. Thus a mistake in the amount to be deposited if bonafide or a mistake

¹ Oakar v. Dhaning, A. I. R. 1928 Nag110.

if the Court was open or closed on the 30th day may be condoned:

Sale in separate lots:—Where property is sold by separate lots it is not open to a defaulter to apply under this section to set aside the sale of only some of such lots. The application must be to set aside the sale of all lots.¹

Date of Sale:—The date of sale is the date on which the property is put up for sale and knocked down to the highest bidder and not the date on which the sale is confirmed.² If the final bid remains unaccepted for some days by the sale officer the period of 30 days runs from the time the bid is accepted.³

156. At any time within thirty days from the date of sale any person whose interests are affected by the sale may apply to the Deputy Commissioner to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting it and the Deputy Commissioner may, after giving notice to the persons affected thereby, pass an order setting aside the sale and may order resale; but no sale shall be set aside on such ground unless the applicant proves to the satisfaction of the Deputy Commissioner that he has sustained substantial injury by such irregularity or mistake.

Notes.

Compare Order 21 rule 90 of the Civil Procedure Code and commentaries thereon. Sale can be set aside under this section if the following conditions are present and not otherwise:—

- (1) there must be material irregularity or mistake,
- (2) It must be in publishing or conducting the sale,
- (3) The applicant must have suffered substantial injury by the irregularity or mistake.

¹ Kripanath v. Ram Lakshmi I. C. W. N. 703.

² Chowdhry Kesri Sahay v. Giani Ray I. L. R. 29 Cal. 626.

³ Munshi Lal v. Ram Narain I. L. R. 35 All. 66.

Material Irregularity in publishing the sale:—Sections 150 and 151 lay down the particulars for publishing the sale. A mistake in any particular will vitiate the sale. The method of issuing proclamation is laid down in section 24 and non-compliance with any particular may result in setting aside the sale if the error has resulted in substantial loss. Vide section 25. The following have been held to be material irregularities :—

- (1) Omission to specify in the proclamation the extent of the property to be sold, or the revenue assessed on it. ¹
- (2) omission to affix a copy of the sale proclamation. ²
- (3) omission to have a beat of drum. ³
- (4) holding sale before expiry of 30 days. ⁴
- (5) not specifying the time or the hour of the sale. ⁵
- (6) omission to issue fresh proclamation when a sale is adjourned for more than 7 days, section 159.

Any further material irregularity 'ejusdem generis' with these alleged in the application have to be taken notice of if substantial loss is caused ⁶.

Substantial injury:—Material irregularity or mistake by itself alone is no ground for setting aside the sale. There must be substantial injury brought about by the irregularity. Substantial injury must be proved and will not be assumed. ⁷ Grossly inadequate price coupled with material irregularity or mistake would however be regarded as sufficient to bring the case within the latter part of the section and to set aside the sale, for what is necessary under the latter part of the

1 Athappa Chethy v. Ramkrishna I. L. R. 21 Mad. 51; Madarash v. Palaniappa I. L. R. 23 Mad. 628.

2 Laxmi Narayan v. Mukundram 48 I. C. 611 (Nag). Tasudduk Rasulkhan v. Ahmad Husain I. L. R. 21 Cal. 66 P. C.

3 Trimbak Raoji v. Nana I. L. R. 10 Bom. 504.

4 Ramji Patil v. Karkaji A. I. R. 1924 Nag 293.

5 Narhar v. G. M. Buti 15 N. L. R. 125.

6 Sadashivrao v. Umaji A. I. R. 1927 Nag. 319.

7 Ramji Patil v. Karkaji A. I. R. 1924 Nag. 293. Tasudduk Rasulkhan v. Ahmad Husain I. L. R. 21 Cal. 66 P. C.

section is that the Deputy Commissioner must be satisfied that the applicant has sustained substantial injury.¹

Mistake or fraud:—It is difficult to understand why "fraud" should have been omitted from this section. Previous law on the subject viz. (section 148 of the old Berar Code and the corresponding section of the Bombay Code allowed relief on the ground of fraud. The next section viz. 157 subsection (2) permits a civil suit for setting aside a sale on ground of fraud and it is presumed that if an applicant is able to prove fraud to the satisfaction of the D. C. the officer will himself set aside the sale under proviso to section 159.

Estoppel:—An applicant who knows of the irregularity or mistake and who lies by and allows the sale to proceed would be estopped from impeaching the sale on the ground of irregularity.²

Any person whose interests are affected:—This expression is of a wider import than the one used in the previous section. It would include not only the person owning the property but also any person who stands to lose by the sale.³

157. (1) If no application under section 156 is made within the time allowed therefor, all claims founded on irregularity on the ground of irregularity or mistake shall be barred.

(2) Nothing in sub-section (1) shall bar the institution of a suit in the civil court to set aside a sale on the ground of fraud or on the ground that the arrear for which the property is sold was not due.

Notes.

The jurisdiction of Revenue court is exclusive: Vide section 192 below. A civil suit will lie only when it is permitted and to the extent that it is permitted. Clause (1) of this section bars all claims on the ground of irregularity or

1 Sheo Rutton Singh v. Net Lal Sahu I. L. R. 30 Cal. 1.

2 Arunachellam v. Arunachellam I. L. R. 12 Mad. 19 P. C. Uttamohandra v. Khetra Nath I. L. R. 29 Cal. 577.

3 Dhirendra Nath v. Kamini I. L. R. 61 Cal. 496.

mistake and a civil suit will lie only on the ground that fraud was committed in publishing or conducting the sale or on the ground that the arrear for which the property was sold was not due.

The mistake in arrears against property.—If the arrears are due against S. No. 15 of a village belonging to X and if S. No. 150 of the same village which belongs to Y is sold, the remedy of a suit is open to Y as the arrear for which the property (*viz.* S. No. 150) is sold was not due against S. No. 150. But cases of mistakes like these would be rectified by an application to the D. C. and the D. C. can set aside sales even after 30 days of the sale but before confirmation under section 159. Moreover before filing a suit a party is required to exhaust his remedies on the revenue side by appeals under subsection (2) of section 192.

Where the actual amount of revenue remitted by money order reached the collectorate in time but the remitter made a mistake in the towji number and the name of the registered proprietor, but was right as to the names of the estates and the amount of revenue payable in respect thereof the Calcutta High Court held that it was the duty of the officer of the collectorate to rectify the mistake and not to put up the property to sale which, if held, would be without jurisdiction and ought to be set aside.¹

Fraud.—Fraud should be distinguished from irregularity in conducting or publishing the sale. Fraud is something dishonest or morally wrong.²

In respect of proof of fraud the Privy Council observes as follows in a recent case. "Charges of fraud and collusion must be proved to be established facts or inferences legitimately drawn from those facts taken together as a whole. Suspicious, surmises and conjectures are not permissible substitutes for those facts, or those inferences, but that by no means requires that every puzzling artifice or contrivance resorted to must necessarily be unravelled, cleared up and made plain. If this were not so many a clever and dexterous knave would escape".³

1 *Hamid Hossein vs. Mukhdum* I. L. R. Cal. 292.

2 *Paresh Nath vs. Hari Charan* I. L. R. 38 Cal. 622.

3 *Baa Behari vs. Satish Kanta* A. I. R. 1923 P. C. 73.

158. No sale, after postponement for a period exceeding seven days under section 150, and no re-sale under section 154 or 156 shall be made until a fresh proclamation has been published as prescribed in section 149.

Proclamation before re-sale.

159. On the expiration of thirty days from the date of the sale, if no application under section 155 or section 156 has been made or if such application has been made and rejected, the Deputy Commissioner shall make an order confirming the sale :

Confirmation or setting aside of sale.

Provided that, if the Deputy Commissioner has 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.

Notes.

Proviso :—The proviso gives absolute and unlimited powers to Deputy Commissioner to set aside a sale in proper cases. He need not wait for an application under sections 155, 156 nor is he bound to uphold the sale on the rejection of applications made. He can set it aside on any ground 'sui moto' and the only requirement of law is that he has reason to think that the sale ought to be set aside. This discretion though wide is not arbitrary. "Discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles." "Discretion loses all title to the name when it descends to mere caprice or in fact becomes indiscretion." In setting aside the sale the Deputy Commissioner has to put down his reasons in writing. If he does not set aside the sale of his own accord or if it is not set aside as a result of the applications he is bound to confirm the sale.

160. If the sale of any property is set aside under section 155, 156 or 159, any amount deposited by the original purchaser shall be repaid to him.

Refund of purchase-money when sale is set aside.

161. If the sale of any immoveable property has been confirmed, the Deputy Commissioner shall put the purchaser in possession of such property, and shall grant him a certificate, specifying the date on which the sale is confirmed, the property sold and the name of the purchaser.

Purchaser to be put in possession and given certificate.

Notes.

Shall put him in possession :—The mode of delivery of possession and powers possessed by revenue courts for placing a party in possession are identical with those of civil courts: Vide section 30 before. Order 21 Rules 95 and 96 of the Code of Civil Procedure contain the provision for giving possession to auction purchasers and rules 35 and 36 of the same Order are provisions for delivery of possession generally. Powers of courts to deal with resistance to delivery of possession are embodied in rules 97 to 103 of the same order. Revenue courts have the power to investigate into claims of bonafide claimants to continue in possession or to be restored to possession under section 146, and a civil suit is permissible under subsection (3) of section 30.

Sale certificate :—Sale certificate must be written on a stamp paper to be supplied by the purchaser. The amount of stamp fees is regulated by Article 18 of schedule I of the Indian Stamp Act II of 1899.

The title of the auction purchaser dates from date of the confirmation of the sale under the wording of this section. Under the Code of Civil Procedure the title of the purchaser is made to relate back to the date of the sale by the provisions of section 65 of the Code. In the absence of such express provisions in the Revenue Law title can only vest from the date when the sale is confirmed. Until such confirmation there is no sale and no transfer of property. The purchaser is therefore entitled to the profits of the property only from the date of confirmation and the original owner has a right to such profits till the confirmation. Section 156 of the old Code said so expressly.

Name of purchaser :—Suff that the purchaser is only a benamider is not now barred as it was under sec. 152 of the old Code.

Variance between Sale certificate and proclamation of sale :—If there is variance between the certificate and the proclamation of sale property as disclosed in the latter would pass to the purchaser.¹

162. The proceeds of every sale under this Chapter shall be applied, firstly, in satisfaction of the arrear on account of which the sale was held and of the expenses of such sale and, secondly, to the payment of any other arrear payable to Government by the defaulter, and the surplus, if any, shall then be payable to him, or where there are more defaulters than one, to such defaulters according to their respective shares in the property sold :

Provided that the surplus shall not be paid to the defaulter or defaulters until after the expiry of two months from the date of the sale in the case of moveable property, or from the date of the confirmation of sale in the case of immoveable property.

Notes.

Proviso :—The proviso has been added in order that persons having a claim against these proceeds may have an opportunity to take suitable action in Civil Courts before the money disappears. This is a concession to encumbrancers who otherwise might lose all chance of getting a share in the defaulter's assets.

163. Notwithstanding anything in Section 132 or section 133, the person named in the certificate of title as purchaser shall not be liable for land revenue payable in respect of the land for any period previous to the date of the sale.

164. The following moneys may be recovered as far as may be under the provisions of this Chapter in the same manner as an arrear of land-revenue :—

Moneys recoverable as an arrear of land-revenue.

¹ Balvant Babaji vs. Hirachand I. L. R. 27 Bom. 334.

- (a) all royalties, water-rates, cesses, fees, charges, premia, penalties, fines and costs payable or leviabie under this Law or any other enactment for the time being in force relating to land-revenue;
- (b) all moneys falling due to Government under any grant, lease or contract which provides that they shall be recoverable in the same manner as an arrear of land-revenue;
- (c) all sums declared by this Law or any other enactment for the time being in force to be recoverable in the same manner as an arrear of land-revenue; and
- (d) any sum ordered by a liquidator appointed under sub-section (1) of section 42 of the Co-operative Societies Act, 1912, to be recovered as a contribution to the assets of a society or as the cost of liquidation:

Provided that no action shall be taken on application for recovery of a sum specified in clause (d), unless such application is accompanied by a certificate signed by the Registrar appointed under section 3 of the Co-operative Societies Act, 1912, that the sum should be recovered as an arrear of land-revenue.

Notes.

Clause (b):—If the contract, grant or lease does not contain the express stipulation that money due may be recovered as arrear of land revenue it cannot be recovered under this section even though money is due to Government.

It should be noted that the processes available for realization of sums recoverable as arrears of land revenue can only be (1) sale of moveable property under clause (b) of section 141, arrest and detention of defaulter under clause (d). Immoveable property of the defaulter can not be touched as clause (c) of section 141 is inapplicable to cases of demands other than arrears of land revenue proper.

165. Every person who may have become a surety under any of the provisions of this Law, or under any other enactment or any grant, lease or contract whereunder the sum secured is recoverable from the principal as an arrear of land-revenue, shall on failure to pay the amount or any portion thereof which he may have become liable to pay under the terms of his security bond, be liable to be proceeded against under the provisions of this Chapter as if such amount or portion thereof were an arrear of land-revenue.

Recovery of mon-
neys from surety.

Notes.

This section declares that the remedies against the principal debtor are available against the surety. They are:—

1. Attachment and sale of moveable property as mentioned in clause (b) of section 141 and subject to proviso (1) of that section.

2. Arrest and detention and imprisonment in civil jail as mentioned in clause (a) of section 141 and subject to proviso (2) of that section.

Discharge of surety:—Sections 133, 134 and 135 of the Indian Contract Act IX of 1872 contain the provisions as to when a surety is discharged from his obligations and as the liability of the surety is based on a contract these provisions will apply to cases of sureties under this law also. All that this section declares is that the remedies available against the principle debtor are available against the surety, but if the surety is otherwise discharged from his obligations this section would not revive his obligations.

C.—Government's lien on crops.

166. When the crop, or any portion of the crop, of any land is sold, mortgaged or otherwise disposed of, whether by order of a civil court or other public authority, or by private agreement, the Deputy Commissioner may prevent its removal from the land until any land-revenue due thereon has been paid.

Precautionary
measures for secur-
ing the land-
revenue.

167. The Deputy Commissioner may—

Deputy Commissioner may prevent reaping or removal of crop, appointing watchmen, if necessary.

- (a) require that the crop growing on any land liable to the payment of land-revenue shall not be reaped until a notice in writing has first been given to himself or to some other officer to be named by him in this behalf, and such notice has been returned endorsed with an acknowledgment of its receipt;
- (b) 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) cause watchmen to be placed over any such crop to prevent the unlawful reaping or removal of the same, and 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.

168. The Deputy Commissioner's orders under either

Notification and enforcement of Deputy Commissioner's orders under section 167.

clause (a) or clause (b) of section 167 may be issued generally to all the holders of land liable to the payment of land-revenue to the Government in a village, or to individual holders only.

(2) If the order is general, it shall be made known by public proclamation.

(3) If the order is to individual holders, a notice thereof shall be served on each holder concerned.

(4) Whoever disobeys any such order after the same has been so proclaimed or a notice thereof has been served upon him, or abets, within the meaning of the Indian Penal Code,

the disobedience of any such order, shall be liable, at the discretion of the Deputy Commissioner, to 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.

169. The Deputy Commissioner 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 sell such portion thereof as may be necessary for the realization of the land-revenue due and of all costs, and release the rest.

170. If, at any time before a crop or portion thereof is sold under section 169, any person interested pays the costs incurred by Deputy Commissioner and furnishes security to the satisfaction of the Deputy Commissioner for the payment of the revenue due, the Deputy Commissioner shall stay further proceedings and release the crop.

Notes.

These provisions are borrowed from the Bombay Land Revenue Code. As a rule recourse should only be had to the precautionary measures under these sections in extreme cases. An indiscreet use of the powers given by them would lead in many cases to great hardships.

(Government Resolution of Bombay Government No. 680 dated 30th. January 1892.)

The provisions of section 166 and the last sentence of section 170 make it clear that these sections are intended to be used only in the case of current demands.

CHAPTER XIII.

Jaglia and Mahar Cess.

171. (1) To provide for the remuneration of jaglias and village mahars the Governor in Council may levy a cess at such rate as he may by notification prescribe:—

Cess on agriculturists.

Provided that such rate shall not exceed twelve pies on each rupee of the amount on which the cess is to be calculated under this section.

(2) In an unalienated village such cess shall be payable by the occupants or, in the case of alienated plots, by the holders thereof, and shall be calculated on the fair assessment of each survey number; and, where a survey number contains sub-divisions, the total amount of the cess in respect thereof shall be distributed among the sub-divisions in accordance with rules made under this Law.

(3) In a village in which the proprietary title has been conferred under the Waste Land Rules of 1865, half the cess calculated on the fair assessment of the village shall be payable by the superior holder and the other half by tenants other than ante-alienation and permanent tenants:

Provided that—

(i) the superior holder may recover from ante-alienation tenants and permanent tenants the full cess calculated on the fair assessment of their holdings as though it were a part of their rent;

(ii) the cess recoverable from tenants other than ante-alienation and permanent tenants shall be apportioned among them in proportion to the rent payable by each.

(4) In any other alienated village such cess shall be payable by the superior holder and shall be calculated in an unsurveyed village on the fair assessment of the village and in a surveyed village on the fair assessments of all the survey numbers in the village:

Provided that the superior holder may recover from ante-alienation tenants the cess calculated on their rents, and from other tenants a share of the balance of such cess in accordance with the following provisions :—

- (a) the total amount so recoverable shall bear the same proportion to the total cess demanded as the total amount of the tenants' rents other than ante-alienation tenants' rents bears to the aggregate amount of those rents and of the rental value of the land in the occupation of the superior holder and his co-sharers. Such rental value shall be calculated at an amount per acre equal to the average rent per acre paid by tenants other than ante-alienation tenants in the village in which the land is situated ;
- (b) the total amount recoverable shall be apportioned among the tenants in proportion to the rent paid by each ;
- (c) any sum recoverable from the tenants under the foregoing provisions shall be recoverable as if it were a part of the rent payable by them.

(5) A superior holder who levies from a tenant, anything in excess of the amount legally recoverable under this section, shall, on the application of such tenant, be liable, by order of the Deputy Commissioner, to pay as penalty a sum not exceeding ten rupees, or if double the amount of the sum levied in excess exceeds ten rupees, not exceeding double such amount; and such sum shall be paid to the tenant as compensation.

Penalty for
excess levy.

For rules see 'Compilation' p. 63.

Notes.

Village service Jaghias and mahars :—This is an attempt to modernise the system of levying cesses for the village service. The old system of paying the village mahars was by means of a customary due called "Baluta" (a share in the corn and garden produce of a village given to its officers.)

The village service in Berar along with the rest of the Maratha country consisted of the Patel and Patwari and 10 others who together were known as 'Bara Balutedars'. They were:—

- (1) Patel
- (2) Patwari or Kulkarni
- (3) Wadhi (carpenter)
- (4) Khati (blacksmith)
- (5) Garpagari (hail averter)
- (6) Mahar
- (7) Chambhar (currier)
- (8) Kumbhar (potter)
- (9) Mahali (barber)
- (10) Warthi (washerman)
- (11) Gurao (one who cleans the temple)
- (12) Joshi (astrologer)

These 12 balutedars were paid by a share in the corn grown by every cultivator every crop season and were in turn to render service to the payers of corn. The village was thus a self contained unit and the service was paid annually by corn. These twelve people had a hereditary right or haq to be in the village to perform the service and get the remuneration in corn. Of these 12 two survived the ravages of time viz the village joshi and the village mahar. With the advent of the British Administration the services of the mahar were retained and he was paid by the villagers in the customary manner of a share in the corn. It was usually 4 seers of corn or one paili per acre of cultivated land. As the price of corn rose to an abnormal height during the great War pressure was brought on Government to change the system and to pay the mahars in money. A Committee was appointed by Government to examine the question and it recommended reducing the number of mahars, regularising the service, and paying it in cash. A resolution in the Reformed Council was also passed asking Government to do away with the Baluta system with the result that payment in cash was substituted for the system of paying by baluta.

Jaglias :—These are village watchmen and are of recent origin. Sir Betram Standen Revenue Member to C. P. Government explained their origin in the following terms:—

“About the year 1865 it was thought necessary to establish some system of village police agency. It was thought that the best agency would be the village mahar. At the same time it was either not realized that they might be required to perform this service in addition to the service which they then performed in consideration of the receipt of the baluta or else it was thought they would not be sufficiently paid by that source of income. With that idea it was decided that the village police should be recruited from the watandar mahars and paid by a cess. This system was not given effect to, because mahars refused to accept posts in this new establishment. It was in 1875 found necessary to regularise the system and in this way the double system arose; that is to say we had the old system which in Indian Government times was not supported by Government in any way but depended entirely for its existence on public opinion in the village.” (This was the Mahar service). In addition to that we had the new village police service of Jaglias.”¹

Recovery :—The cess described in this section can be recovered as land revenue under section 164 (a). The liability is worked out on each holding and process of recovery contemplated by clause (c) of section 141 is therefore available in case of default.

Subsection (2) :—Unalienated land. In case of unalienated land the cess is payable by the occupant and in case of more occupants than one in a survey number the liability is distributed amongst all the occupants according to the size of their subdivisions and in pursuance of rules framed by Government.

Subsection (3) :—Ijaras of 1865. In Ijaras of 1865 the Ijardar and his co-sharers are liable to pay only half of the cess calculated on the fair assessment of the village. It should be remembered that the fair assessment in this case is not land

revenue. The fair assessment of village may be rupees 1000 but the Ijardar has to pay only half of this viz. rupees 500 as land revenue. The Jaglia and Mahar cess will be calculated on the full sum of fair assessment but the liability is divided between the Ijardar and his tenants. The Ijardar is liable to pay only 500 annas. The remaining amount is recoverable from the ordinary tenants i. e. tenants other than antealienation or permanent tenants. Proviso (i) to this subsection lays down that the antealienation and permanent tenants do not escape the cess. They are liable for it not to Government but to the Ijardar and it is recoverable not as land revenue, but as part of the rent.

Proviso (ii):—This lay down that ordinary tenants are liable in proportion to the rent payable by them. Let us assume that in a village of 1865 Ijara the cess comes to 1000 annas and let us assume that there are two antealienation tenants the fair assessment on whose fields comes to rupees 50 and there are three permanent tenants the fair assessment on whose lands also comes to rupees 50. Let us also assume that there are only ten tenants who cultivate lands and pay ten rupees each to the Ijardar.

The liability of each class of person in a village of this kind would work out as follows:—

The Ijardar—annas 500

The ten ordinary tenants will be responsible to pay the other 500 annas. The antealienation and permanent tenants undoubtedly pay but are not liable to Government for the cess. In other words their quota goes to relieve the Ijardar in respect of his half share of the cess. If the land cultivated by tenants in an Ijara village is small the tenants as a body have to pay a larger amount of cess as compared with the Ijardar. The Ijardar is thus in an advantageous position as compared with a Jagirdar and the tenants in an Ijara village are in a worse position than the occupants in Khalsa villages in as much as the latter have to pay on the fair assessment of the lands held by them whereas the Ijara tenants have to make up the half amount of the total cess due on the village in proportion to the rent they pay to the Ijardar. The arrears of the cess, as we have

already seen are recoverable as land revenue and as pointed out above the balance due from an Ijardar can be realized by the attachment and sale of the Ijara. The amount due from tenants can be recovered by sale of moveables or by arrest, detention and imprisonment in civil jail or by sale of the leasehold rights if the lease is for more than a year.

Subsection (4):—Deals with Jagirdars. The case of holder of small plots of alienated land in unalienated villages is dealt with in subsection (2). In Jagir villages the liability is single and undivided. The holder i. e. the Jagirdar is responsible for the entire amount of cess and the extent of the amount is determined by the fair assessment noted against the survey numbers in the village. The Jagirdar has however the right to reimburse himself from all tenants in the village. He has the right to recover the cess from antealienation tenants calculated on the fair assessment (which is the rent) assessed on the lands in the possession of such tenants. He can recover the cess from other tenants but not the whole amount. If he is cultivating some survey numbers and the rest are in the possession of tenants then the rule of distribution is that he is to pay for lands in his possession in the same proportion as he desires other tenants to pay for their lands. Clause (a) and (b) of the proviso lay down the provisions of this distribution. The provisions will be best explained by an illustration. Let us assume the fair assessment on a Jagir village is rupees 1000. The total cess will then be 1000 annas. The Jagirdar is responsible to pay this amount to Government. Let us assume there are two antealienation tenants whose rents (or fair assessment on whose lands) amount to rupees 50 the jagirdar can recover 50 annas from these tenants the balance to be recovered is 950 annas. To determine the liability for this let us assume that tenants excluding antealienation tenants pay collectively a sum of rupees 500 as rent for cultivating 100 acres. The average rent in the village is thus rupees 5 per acre. If the Jagirdar is in possession of 100 acres the rental value of his lands will be estimated at rupees 5 per acre or rupees 500 in all. The Jagirdar will then be able to recover half of 950 annas from tenants and will have to bear the other half. The half recoverable from tenants is to be distributed amongst the tenants in the proportion of rent paid by each.

Clause (c) of the proviso lays down that the amount of cess is to be recovered from tenants as a part of rent and the provisions of section 76 can be availed of for the recovery.

Subsection (5):—lays down the penalty for excess levy by the Ijardar or Jagirdar. The penalty is recoverable as arrear of land revenue under section 164 (a). The whole of the penalty is to be paid to the tenant as compensation.

172. (1) In areas which are not municipalities or notified areas constituted under the Central Provinces Municipalities Act, 1922, the Governor in Council may, to provide for the remuneration of jagllas and village mahars, in addition to any cess levied under section 171, levy a cess on income derived from non-agricultural sources in accordance with the following scale, namely:—

Cess on non-agricultural incomes.

- (i) from all persons in receipt of an annual income from such sources exceeding five hundred, but not exceeding two thousand rupees—a cess not exceeding two rupees per annum,
- (ii) from all persons in receipt of an annual income from such sources exceeding two thousand, but not exceeding five thousand rupees—a cess not exceeding five rupees per annum; and
- (iii) from all persons in receipt of an annual income from such sources exceeding five thousand rupees—a cess not exceeding ten rupees per annum.

(2) Where a person is in receipt of income from non-agricultural sources which arises in two or more places, he shall be assessed once only on his total income from such sources.

(3) The Governor in Council may make rules regulating the assessment and collection of cesses under this section.

For rules see 'Compilation pp. 63-64.

Notes.

The cess under this section is in addition to the cess payable under section 171 and is in respect of nonagricultural income earned in rural areas.

It should be noted that the liability is on all persons living in areas which are not municipalities or notified areas and is in respect of income derived from nonagricultural sources any where. A man may be living in a village and carrying on trade or profession within the limits of a municipality yet he is liable to pay. But a man living within the limits of a municipality and carrying on trade or profession in a village is not so liable. Note also that areas for which Sanitation Panchayats under Sanitation and Public Management Act or Village Panchayat Act exist are not excluded from the operation of this section.

Alienated villages :—Superior holders in alienated villages are liable to pay the cess referred to in this section. If a superior holder disputes his liability to pay the cess it lies on him to show how the case is taken out of the application of this section.¹

Rules under the section-interpretation of :—Rules have been framed by the Local Government under this section and they have been the subject of judicial interpretation; and it is held² :—

- (1) That a chavdi is none the less chavdi even if it accommodates a school.
- (2) That verification of assessment registers by revenue officers in December is in order.
- (3) That it is not compulsory to give notices of assessment to each individual assessee.

1. Ramohandra vs. Israbho 4 N. L. J. 42 A. I. R. 1922 Nag. 168.

2. Vishnu vs. Secretary of State A. I. R. 1929 Nag. 345.

CHAPTER XIV.**Pre-emption.**

173. For the purposes of this Chapter an "occupant in
Definition of a survey number" means a person having
"occupant in a the right of an occupant, whether in his
survey-number." sole right or jointly with others, in that
survey number, or in any portion of it.

General (1) Object of preemption.—The device of preemption of agricultural lands is one which admittedly leads to much litigation, but it has several powerful arguments in support of it. It has the effect of placing an agriculturist in a favourable position for the acquisition of lands contiguous to, or in the immediate neighbourhood of, his own holding. It has the effect of saving him to some extent from being outbid by the absentee, and by the money-lender. It encourages a competent and thrifty cultivator to extend his holding and it tends to keep agricultural lands within a family, or group of families or within a village group. It has tendency to strengthen the corporate life of a village. It has also the effect of consolidating holdings and thereby facilitating cultivation and it is with these objects in view that the present Law strengthens and extends the existing rights of preemption.

The law as it stood under the old Code was not free from ambiguity and was easily evaded. Many cases were noticed, of leases for a term of 100 years and over, which were virtually sales and yet were not subject to the law of preemption. The law then extended only to transfers by private sale, and by foreclosure. In order to make the right of preemption on sale or mortgage effective in practice, it was deemed necessary to extend the rights to cover long leases and usufructuary mortgages. (vide Statement of Objects and Reasons).

(2) Origin of the right.—This right of preemption owes its origin to the Mohamedan Law of preemption. The Mohamedan Law made no distinction of race or creed and accordingly during the Mohamedan period it was administered in India as the Common Law of the land applicable alike to Hindus and Mohamedans. Berar had been a Mohamedan

territory since the second decade of the 14th century and it is no wonder that the law of preemption became the law of the land even under the British administration though such law does not exist in the adjoining territory of the Bombay Presidency. ¹ The Berar Settlement Rules and the Berar Subtenancy Rules which were sanctioned by Government of India in 1865 recognised the right of preemption. Rule X of the Subtenancy Rules said "co-sharers have the right of preemption as regards co-sharers" (H. A. D. Non-judicial Book Circulars Volume III page 17). The Settlement Rules VII and VIII printed at page 10 of the H. A. D. Non-judicial Book Circulars Volume III read as follows:

Rule VII :—"When two ryots hold a field and one of them relinquishes his share or dies without heirs, the share thus lapsing is to be offered in the first instance to the other sharer before it is offered to any other party."

Rule VIII :—"When there are more sharers than two in a field and any of them relinquishes a share or dies without heirs it should be offered as above to the shares in the first instance beginning, in the event of their failing to settle the matter amongst themselves, with the largest sharer, and so on to the least."

In a ruling (no. III) printed at page 18 of the said volume the Resident at Hyderabad observed that the right of preemption had always been recognised and acted on in Berar. The Law, though of Mohamedan origin is now the territorial law and the provisions as now embodied in this Code are to be treated as exhaustive on the matters in respect of which it declares the law; and provisions regarding preemption are therefore strictly construed, in as much as they derogate from the general principle that everyone is free to contract as he pleases for the disposal of what belongs to him.²

Occupant :—The definition of occupant contained in section 54 is enlarged here for purposes of preemption so as to

1 Ganpatsa vs. Jumabhai—2 N. L. B. 150 at 155;

Mt. Baijai vs. Irbbhan—5 N. L. B. 136 at 139.

2 Mt. Baijai vs. Irbbhan 5 N. L. B. 136 at 139.

include owners of shares, divided or undivided, in a survey number or any portion of it. Thus

1. Members of a joint family,
2. Co-sharers, and
3. Co-heirs,

whether in the survey number or in a subdivision of it are all to be regarded as occupants in a survey number for purposes of preemption. A person need not be an individual. The C. P. General Clauses Act (C. P. Act I of 1914) defines a person to include any company or association or body of individuals whether incorporated or not; and in a recent case the Judicial Commissioner has held that a joint Hindu family is to be regarded as an occupant and can maintain a suit for preemption and is to be treated on same footing as a single individual occupant.¹

The occupant may be a juridical or a living person. A temple holding unalienated land is an occupant² and has a right of preemption.

Survey number is defined in section 2 (13). It includes portions of land formed into or recognised as survey numbers and also portions of land which a Deputy Commissioner recognises as survey number after the survey operations are over by virtue of power vested in him under section 105.

Any portion of it:—This wording is wide enough to include subdivisions of survey number. 'Subdivision of a survey number' is defined in section 2 (12). It is important to remember that "recognised subdivisions of survey number popularly known as Paiki numbers are now included in the definition of sub-division with the consequence that they are now portions of a survey number and are subject to the right of preemption. If a holder of a Paiki number sells his land to a person who is not an occupant in the survey number of which the Paiki number has been shown as a part other occupants in the survey number will have a right of preemption. 9 N. L. R. 16 and 14 N. L. R. 51 which laid down that

¹ *Kisan vs. Sitaram* A. I. R. 1925 Nag. 160.

² *Bakaram vs. Hiralal* A. I. R. 1923 Nag. 96.

there was no right of preemption in respect of a Paiki numbers are no longer good law.

Who can preempt:—As to persons who can preempt see notes under section 174.

A person claiming preemption must be an occupant on the day when the transfer objected to takes place. If he acquires the right of an occupant at a date subsequent to the transfer he is not entitled to claim preemption on the ground that his predecessor in title had the right of preemption and that the right of preemption has passed to him. In other words a right to sue for preemption which has already accrued cannot be transferred to an entire stranger. The right is a personal one and is not transferrable.¹

174. (1) The rights conferred by this Chapter upon the occupants in a survey-number in respect of transfers of interests in that survey-number shall be deemed to be rights of pre-emption within the meaning of paragraph (vi) of section 7 of the Court-Fees Act, 1870, and of article 10 of the first schedule to the Indian Limitation Act, 1908, and they shall be enforceable only in the manner and to the extent provided in this Chapter.

(2) Such rights shall arise only in respect of unalienated lands held for agricultural purposes.

(3) Such rights shall not arise when an occupant in a survey number transfers his interest or portion thereof to another occupant in that survey-number, or when the transfer is made with the consent previously obtained in writing, of all the occupants in the survey-number :

Provided that where any occupant in a survey-number refuses his consent to any transfer, the rights of pre-emption of other occupants in the survey-number shall not be extinguished by reason of any consent they may have given.

(4) When any right of pre-emption in any interest in a survey-number has been enforced under any of the provisions

1. *Ramji vs. Mt. Muktai* 8. N. L. R. 62.

of this Chapter, any transfer of such interest made subsequently to the transfer in respect of which the right arose, shall be voidable at the instance of the occupant enforcing that right.

(3) Where land situated in more than one survey-number is transferred, rights of preemption shall arise independently in regard to the portions of such land contained in each separate survey-number.

Notes.

Subsections (i) and (4) of this section are based on Agra Preemption Act 1922 sections 3 and 24.

This section collects together the incidents of the right of preemption. But the section is not exhaustive.

Nature of the right :—Justice Mahamood describes the nature of the right of preemption in the following words which have been quoted with approval by the Court of the Judicial Commissioner at Nagpur:

“Preemption is a right which the owner of certain immoveable property possesses as such, for the quiet enjoyment of that immoveable property, to obtain *in substitution* for the buyer, proprietary possession of certain other immoveable property not his own on such terms as those on which such latter immoveable property is sold to another person.”¹

Preemption therefore is a mere right of substitution, or as said in a recent case it is a right that the preemptor's name be inserted for that of the vendee in the original saledeed between the vendee and the vendor.² It is not a right of repurchase. The successful preemptors are not representatives of or do not claim under the original vendee.³

The implications of this doctrine are as follows :—

(i) In a preemption suit the court can not enquire into the title of the vendor. Preemptor must take the same risk as the vendee and must pay the same price.⁴

1 Govind Dayal v. Brij Mohan Lal L. R. 7 All. 775;

Abdul Razak v. Jagoba, 7 C. P. L. R. 117 at 120.

2 Shiwaji v. Ratiram A. I. R. 1926 Nag. 171.

3 Sharif Hussain v. Nur Shah A. I. R. 1929 Lah. 589.

4 Afzal Hussain v. Huran Bibi A.I. R. 1929 All. 598.

(2) The Preemptor is not bound by the decree against the vendee as he does not claim through the vendee.

(3) Covenants of indemnity which are personal and which do not run with the land can not be enforced by the preemptor against the vendor. ¹

(4) A preemption of the property of a joint family must take the property subject to the right of the minor coparcener to avoid the transaction on the ground of want of legal necessity. ²

(5) The right of preemption is a personal one and does not run with the land so that when a person purchases a preemptor share he does not acquire the right of the preemptor to preempt along with the share purchased. ³

(6) It can not be set up as a defence to a suit for possession against him. The right must be established by him as *plaintiff* in a separate suit; ⁴ as it is only a vested and ascertained right which could be pleaded as an answer to any suit and the right to preempt does not give such vested right. ⁵

(7) The trees standing on the land and all rights of easement appertaining to the land pass with the land on preemption. ⁶

(8) The preemptor is entitled to enforce the covenants running with the land. The implied covenant for title is one which runs with the land and therefore is enforceable by the preemptor and hence he can claim compensation for breach of warranty of title as any vendee under a private sale can. ⁷

Primary and Secondary right of preemption:—Jurists talk of right of preemption as primary and secondary. They say as an owner in a survey number the primary right exists

1 Mt Banti v. Mandu I. L. B. 9 Lah. 659. A. I. B. 1929 Lah. 357.

2 Waman v. Vishnu A. I.R. 1928 Nag. 151.

3 Ramji v. Muktai 8 N. L. B. 62.

4 Bhivsan v. Gulabchand 1 Berar L. J. 8; Bapu v. Anand; 9 N. L. B. 143 at 144.

5 Ramchand v. Durgaprasad 26 I. L. B. 26 All 61 at 65-66; Pertapsingh v. Ratanasingh 32 P.R.1884; Narhar v. Gullu 27 N.L.R. 354.

6 Balabdes v. Anandrao 47. I. C. 654.

7 Abdul v. Kisan A. L. B. 1931 Nag. 166.

in him even before the transfer and the secondary right comes into existence when the transfer takes place. The primary right is dormant so long as there is no transfer, but it exists nevertheless. The transfer is the infringement of this primary right and gives rise to the secondary right of enforcing preemption.

Court fees in preemption suits:—Subsection (1) of this section says that the right of preemption conferred by this Code is to be regarded as the right of preemption within the meaning of the Court Fees and Limitation Acts. Paragraph VI of section 7 of the Court Fees Act says that the court fee in preemption suit is according to the value of the land computed in accordance with paragraph V of that section. In other words court fees in preemption suits are to be the same as in suits for possession. The land in respect of which preemption is claimed may fall in one of the following categories:—

- 1 It may be an undivided but a definite fractional share in a whole survey number e. g. a $\frac{1}{4}$ or any other fractional share of a survey number,
- 2 it may be specific plot say 1 acre 5 gunthas to the East of a Survey Number,
- 3 it may be a portion of a survey number recorded in the record of rights as a sub division or 'Pot Hissa',
- 4 it may be a definite or fractional share of a sub-division, or
- 5 it may be a specific plot in a subdivision.

What should be the court fees payable in each of these cases is to be found out from clause (b) of paragraph V section 7 of the Court Fees Act which shows how values in suits for possession of land are to be reckoned. It runs as follows:—

"Where the land forms an entire estate or definite share of an estate, paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid," (i. e. as mentioned in clause (a) viz. forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue)

"and such revenue is settled but not permanently five times the revenue so payable." It would be seen from this that the Court Fees Act draws a distinction between a "definite share" and "a part" of an estate separately assessed with revenue in Collector's Books and 'part' not so assessed.

A definite share has been interpreted to mean a half or one third or any other fractional share.¹

It is said to include "an undivided tangible fraction of an estate as distinct from a defined demarcated plot."² Any portion of an estate can in a way be said to be a "definite share" as it is possible to work out mathematically, what fraction it would be of the estate but as is pointed in this ruling what is meant by "definite share" is undivided tangible fraction which is dealt with as fraction and not which can be worked out as fraction. This ruling points out the absurdity of a smaller piece having to pay larger court fees and having the benefit of a trial in a higher court than would be the case if the suit were to relate to the entire estate but points out the reason of the law in the following words³ :—

"It seems to me that the view of the person who drafted the section in fact was that whenever you can calculate with reasonable certainty the amount of revenue payable on a plot you should take 5 or 10 times the revenue and in default of any possibility of measuring the revenue then you must in the last resort have recourse to the inconvenient and cumbersome method of valuation by the market value." The soundness of this view was upheld by the Madras High Court in the appeal preferred against this decision.⁴

The Allahabad High Court held in a case in which 11 bighas 11 biswas out of 17 bighas and 6 biswas were sold and which were described in the sale deed as specific plots, that the land sold was not a definite share of an estate.⁵ The Calcutta

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- 1 *Kandaswamy v. Subbai* 77 L. C. 781.
 - 2 *Kandaswamy vs. Subbai* 77 L. C. 781.
 - 3 *Godavarti Mangamma vs. Godavarti* 33 L. C. 683.
 - 4 *Godavarti vs. Godavarti Mangamma* 47 L. C. 543.
 - 5 *Chandhan vs. Bishensingh* L. L. R. 33 All. 630.

High Court in a case for possession of 5 Mahals out of 32 Mahals held that the suit was not for a definite share¹.

The Nagpur Judicial Commissioner's Court in an unpublished ruling Miscellaneous application No. 24 of 1907 decided by Batten A. J. C. on 26-11-1907 held "The appellant is not suing for a fractional share of a survey number. What he is suing for, may happen to be and in fact must be a fraction of the land in area but is not a 'fractional share' of the estate since he is suing for it as a separate plot" The court fees were therefore held to be payable on the market value of the plot.

There is thus a consensus of authority on the point that a "definite share" must be a fractional share or in the words of the Madras High Court "an undivided tangible fraction of an estate."

If the land sued for is not a definite share it may be a part of it but in order to have the benefit of the valuation under clause (b) of paragraph V quoted above the part must be recorded in the Collector's books as separately assessed with revenue. As pointed out in the notes under section 108 relating to record of right, the record of rights introduced by this Code is a record of liability also, and when a portion comes to be recorded in the record of rights as a separate subdivision of a survey number it answers the description of the "part of an estate recorded in the Collector's register as separately assessed with such revenue" within the meaning of paragraph 5 of the Court Fees Act. Consequently value for purposes of court fees is to be 5 times the assessment shown against the subdivision.

When the portion of land is not a definite share nor is it a part separately assessed with revenue in Collector's books it falls within the wording of clause (d) of paragraph V of section 7 and the value is to be the market value of the land.

The following conclusions may therefore be deduced in this connection:—

1. Chandi Narayan vs. Anantok De I. L. R. 41 Cal. 812.

I. Ascertain from the plaint as it is worded if the suit is for possession of "a definite share" (meaning thereby a half or one third or some such undivided tangible fraction of the survey number). If it is so then the value for purpose of court fees is to be taken to be 5 times the proportionate assessment on the share.

II. If the land in suit is not a definite share as defined above but is only a part, it is to be found out if the part is a subdivision and recorded as such in the record of right. If it is the value is 5 times the assessment noted against the subdivision.

III. But if the part is not a subdivision separately recorded as aforesaid the case does not fall within clause (b) of paragraph V of section 7 of the Court Fees Act. The Court fees would therefore be payable on the market value of the land under clause (d) of paragraph V of the said enactment. In the 5 categories enumerated above the value for purposes of court fees would be as follows:—

For categories (1), (3), (4) the value would be 5 times the proportionate assessment; and in categories (2) and (5) the value would be the market value of land. Category (iv) which refers to a part of a subdivision is provided for by Government of India Notification. No 4650 5/10 Sep. 1889 Para A (18) which regulates court fees in suit for possession of a part separately assessed to revenue.

Time with reference to which market value is to be computed. :—In suits for possession market value contemplated in clause (d) of paragraph V of section 7 of the Court Fees Act is market value on the day when the suit is filed; but a suit for preemption stands on a different footing says the Lahore High Court, and in suits for preemption the market value is with reference to the time of the sale impeached and not the one at the time of the suit.¹

Appeal :—For purposes of court fees in appeal² see L.L. R. 40 All. 353 and I. L. R. 6 All. 488.

1. Sher Mumhammad vs. Ahmad A. I. R. 1924 Lah. 380.

2. Abinashchandra vs. Shekhar Chand I. L. R. 40 All. 353.

Limitation for suits for preemption:—Art. 10 of the Limitation Act lays down the period of limitation in preemption suits. But it should be remembered that the benefit of minority or other legal disability is not available in preemption suits; and the suit must be instituted within a year. The starting point for limitation as stated in Art. 10 is two-fold:—

- 1 When the purchaser takes physical possession of the whole of the property sold; or
- 2 When the property does not admit of physical possession then from the time the sale is registered.

But there is nothing which would prevent him from suing earlier i. e. immediately after the sale takes place. ¹

The intention of the law of limitation is not to create a right but to interpose a bar to the enforcement of remedies. ² So a preemptor may sue as soon as the sale is complete but he is bound to sue within one year of the purchaser taking physical possession of the property.

Meaning of physical possession:—Physical possession means personal and immediate possession. ³

Physical possession of the whole of the property:—By section 175 (5) right of preemption arises in respect of each survey number separately but yet under the wording of the first part of the Article 10 if three shares in three survey numbers are sold by one sale deed and possession is taken by the purchaser on different dates the starting point for limitation would be the last date on which possession is taken by the purchaser. When actual physical possession is taken of different portion of land on different dates limitation begins to run from the last date when the purchaser is in possession of all the property. ⁴

1 *Hazari Ram vs. Shankar Dial* I. L. R. 3 All. 770.

2 *Harl Nath vs. Motbur Mohan* I. L. R. 21 Cal. 9 at p. 18 P. C.

3 *Batal Begum vs. Mansurali* I. L. R. 20 All. 315, confirmed by P. C. in I. L. R. 24 All. 17. *Jairam vs. Sitaram* 16 N. L. R. 57 at 40.

4 *Jaikaram vs. Ganga Dhari* I. L. R. 3 All. 175, *Bhali vs. Emamali* I. L. R. 4 All. 179.

Prior possession does not matter:—A purchaser entering into possession prior to the sale deed cannot plead that possession as a bar to a suit.¹

Purchaser taking possession but losing it afterwards:—Similarly if the purchaser once takes possession but the vendor or somebody else dispossess him and he regains possession by suit period of limitation will be counted from the time when the purchaser first entered into possession under the sale.²

Capable of physical possession or not capable of such possession:—The fact whether property sold is capable of physical possession or not is to be determined by the nature of the property conveyed and not by the ability or inability of the vendor to place the vendee in actual physical possession from whatever cause that inability may arise.

Thus if at the time of the sale the property sold is in the possession of a trespasser and the vendor obtains possession from him by suit a preemptor's suit within one year from the date the vendee secures possession would be in time.³

But property does not admit of physical possession in the following cases:—

- (a) a share of an undivided joint family estate,
- (b) property in the possession of a usufructuary mortgagee,
- (c) property in the possession of a leasee,
- (d) property in the possession of an intermediate holder.⁴

Limitation for preemption suits in cases of foreclosure or usufructuary mortgage or lease:—Article 10 of the Limitation Act deals with preemption in respect of a sale only. It has no application to other cases. The article of the Act applicable in all other cases is Article 120; and the period is 6 years.⁴

1 *Ram Pears vs. Rup Lal* 88 P. R. 1918.

2 *Ramscoob vs. Nann* 34 P. R. 1871.

3 *Jairam vs. Sitaram*. 16 N. L.R. 37 F. B.; *Jagamaya Dasi v. Tulsa* I. L. R. 48 All. 12.

4 *Batul Begam vs. Mansur ali* I. L. R. 20 All. 315 F.B.; Confirmed by P. C. in I. L. R. 24. 17. *Jairam vs. Sitaram* 16 N. L. R. 37 F. B.

Subsection (1) and Subsection (2):—Extent of preemption. The right of preemption as recognised by this law is not unlimited. It is enforceable only in the manner and to the extent provided in this chapter. The Code is therefore to be treated as exhaustive both in respect of the extent of the right and the manner or method of its enforcement. It cannot be supplemented by the Mohomedon or any other law. Such was the view of the law under the old Code also.¹

The right is limited in respect of property, of the transactions or transfers that give rise to it, the persons in whose favour it arises and the manner in which it is to be enforced. These limitations may now be examined in some detail,

(1) **As to property:—**The right is limited to transfers of "unalienated land held for purposes of agriculture". If it is not "unalienated" or not held for purposes of agriculture there can be no preemption. Thus there is no preemption in respect of building plots or land converted into building plots or in respect of land diverted to a purpose other than agriculture.

Held for purposes of agriculture:—Land acquired from Government under section 53 of this law is generally for purposes of agriculture and a diversion can be effected only under the terms and conditions of section 58 of this law. The expression "held for purposes of agriculture" therefore means held by an occupant for purposes of agriculture. As soon as land is diverted to other purposes it ceases to be agricultural land and preemption cannot therefore be claimed in respect of it. If a share of a survey number is diverted to a non-agricultural purpose i. e. for a ginning factory and is then sold to a stranger the other occupants in the survey number would not be able to claim preemption in respect of the land so converted as it is not held for purposes of agriculture. The converse of this is however not true i. e. the holder of a share of land diverted to a non-agricultural purpose continues to be an occupant of a share in the field within the meaning of sections 54 & 173 and can enforce preemption in respect of other shares sold by the occupants to strangers.

¹ *Mt. Rajai vs. Irbban* 5 N. L. R. 136 at 139. *Ramchandra vs. Bupchand* 23 N. L. R. 94.

No preemption in share of trees:—The property sold must be land held for purposes of agriculture. If it is not land as defined in the Code there can be no preemption. Thus if the owner of a share (in mango trees) sells his share neither the occupant of the land on which the trees stand nor any other sharer in the trees has the right to preempt the share sold.¹

Preemption of Paiki numbers—Paiki numbers were 'recognised divisions of survey numbers' and under the old Law there could be no preemption in their case.² They are now subdivisions of a survey number under S. 2 (12). A transfer of the specified type of these numbers would give rise to preemption.

Preemption of Jagir or Inam Lands:—The right of preemption attaches to "unalienated land". There can therefore be no right of preemption in respect of lands which are Jagir or Inam lands which are "alienated lands".³

When a Jagirdar mortgages or sells or leases his share in the Jagir fields another cosharer Jagirdar can not sue for preemption. Similarly the land belonging to *antealienation tenant* and the holding of the tenant of antiquity is 'alienated land' and there can be no preemption in respect of these lands also.⁴

Section 187:—of the Code however enables Government to extend the right of preemption to alienated villages and when this is done preemption would arise in respect of the transactions specified in the notification and to the extent mentioned therein.

Preemption in Ijara Villages:—Ijara villages leased under the Rules of 1865 are "alienated land" and preemption is ordinarily barred under this section. But section 187 of this Code enables Government to extend the provisions of this chapter to any class of alienated villages and these provisions have now been extended to all alienated villages leased under

1 *Raoji vs. Ragho* 24 N. L. R. 171; A. I. B. 1928 Nag. 324.

2 *Suryabhan vs. Renai* 14 N. L. R. 51; *Mt. Gangu vs. Chandu* 9 N. L. R. 16.

3 (i) *Shrawanji vs. Gujabrao* 2 Berar L. J. 115.

4 *Arjun vs. Sitaram* 57 L. O. 265.

the Waste Land Rules of 1865, in which proprietary rights have been conferred by Government.¹

If proprietary right is not conferred and the Ijardar has chosen the Patilki rights it is obvious that there can be no preemption nor can there be preemption in respect of Ijaras leased out under other Rules. Under the old law there was no preemption in cases of Ijara lands.²

Antealienation tenants in Ijara villages.—Tenants in Ijara villages are governed by the provisions of the Berar Alienated Village Tenancy Law and Section 43 of that Law permits preemption in respect of the land of an antealienation tenant when any part of the land is transferred by sale, foreclosure, or relinquishment in favour of a specified person.

The right accrues to co-tenants and in their default to the landlord. It may be noted that in these cases there is no preemption in cases of leases, usufructuary mortgages or exchange as it is under this law.

(ii) **As to transfers.**—Before the right of preemption can arise in respect of transfers the following conditions must be fulfilled:—

(a) There must be a complete transfer enforceable at law. Mere agreement of transfer will not be sufficient. Thus in the case of sale the right of preemption can arise only on a complete sale taking place and not on a mere making of contract of sale.³

(b) The transfer must be real and intended to convey title. If it is bogus or not intended to operate there can be no preemption.⁴

Oral evidence admissible to prove real nature.—To show the real nature of the transaction it is open to the parties to a preemption suit to lead oral evidence as sec. 92 of the

1 C. P. Govt. Notification No. 218 XII dated 21-1-1931.

2 *Shrawanji vs. Gujabrao* 2 Berar L. J. 115.

3 *Tukaram Jagappa vs. Urkade* A. L. R. 1924 Nag. 327 *Letaji vs. Krishnaji* A. L. R. 1929 Nag. 224.

4 *Turabkhan vs. Bhagai* 2 Berar Law Journal 44.

Evidence Act does not operate as a bar. The preemptor not being a party to the transaction evidence is admissible to prove the real nature of the contract between the parties and so the preemptor, vendee & vendor are permitted to prove the real nature of the transaction by extrinsic oral or documentary evidence.¹

(c) The transfer must amount to one of the following kinds:—

- 1 A sale.
- 2 Foreclosure of property.
- 3 Usufructuary mortgage.
- 4 Lease for a period exceeding 15 years or containing a covenant for renewal whereby the total period of successive leases would exceed 15 years.
- 5 Exchange when it does not result in the consolidation of land held by either party.

It is not forbidden to a person to circumvent the law of preemption by taking a transfer which falls short of a sale;² and when a question arises if the transfer is of the kind contemplated above the proper method to decide is to construe the document and if it falls short of any of the transfers specified above there can be no right of preemption.³

The name given by parties to a deed is immaterial.⁴ It is the substance of the transaction and the object of it that is to be seen.

The following transfers have been held not to give rise to preemption:—

- 1 Transfer by way of ante-nuptial settlement.⁵
- 2 Transfer which amounts to Hiba-bil-ewaz.⁶

1. *Gangabai vs. Fandoo* 4 N. L. R. 115. *Mahammad Ishaq vs. Mt. Fatim-un-nissa* A. I. R. 1928 Oudh 472. *Gajadhar Prasad vs. Manrakhan* A. I. R. 1922 Oudh 156.

2. *Parottam Dass vs. Abdul Rahman* A. I. R. 1927 Oudh 576. and also p. 40.

3. *Sarfaz Singh vs. Balesbwar Prasad* A.I.R. 1928 Oudh 103.

4. *Thakur Iarising vs. Buldeo Singh* L. L. R. 10 Cal. 792 (801) P. C. *Tirugnopal vs. Ponnammal* 58 L. C. 228 P. C.

5. *Narayan vs. Vithoba* 11 N. L. R. 34.

6. *Mohamoodbi vs. Chinnumiya* 2 Berar L. J. 118. *Parottamdas vs. Abdul Bahman* A. I. R. 1927 Oudh 576.

- 3 Transfer of share of trees and not of land. ¹
- 4 Transfer which is in settlement of a claim for Mehr or Mehrnama which does not indicate the amount of Mehr. ²
- 5 Relinquishment effected by a reversioner after the death of a Hindu widow of his right to get back property from a vendee to whom the widow had sold. ³

Involuntary transfers:—Transfers of the kind outlined above are all voluntary transfers; and it would indicate that in the case of involuntary transfers i. e. transfers by order of courts in satisfaction of decrees cannot be called transfers by an occupant and would not give rise to a right of preemption. ⁴ Voluntary transfers are the result of the volition of parties and are contracts willingly entered into. If the will of the transferor is absent in the transfer it is said to be 'in invitum' i. e. against the will of the party. In Punjab sale has been defined for purposes of preemption not to include a sale in execution of a decree for money or of an order of a civil, criminal, or revenue court or a revenue officer.

In a recent case the characteristics of an involuntary or compulsory sale are described as follows. "A compulsory sale is defined as a sale which is forced upon an unwilling vendor and in which neither the purchaser is a man of his choice nor the terms of sale including the price are fixed by any contract with him, the sale being ordered by court, conducted by its officer and subject to its approval before being treated as final. The sales such as those for public purposes under the Land Acquisition Act, those in execution of decrees or those made to equalise a partition or those made for recovery of arrears of revenue, rent or public demand can certainly be characterised as involuntary or compulsory sales"⁵

1 *Raoji vs. Ragho* 24 N. L. R. 171.

2 *Mahitapkhan vs. Mt. Aababi* 20 N. L. R. 126; A. I. R. 1923 Nag. 123 *Talibali vs. Kaizer Fatima Begum* A. I. R. 1927 Oudh 204.

3 *Nehale Ram vs. Pannum Ram* A. I. R. 1927 Lah. 147. *Kalyan vs. Desram* I. L. R. 49 All. 468 A. I. R. 1927 All. 361.

4 *Maidabi vs. Tojhai* 4 N. L. R. 138.

5 *Abdul vs. Kisan* A. I. R. 1931 Nag. 166.

The following have been held to be involuntary transfers:—1 Sales in satisfaction of mortgage decrees.¹

2 Sales held by Receivers in partition suits by order of court.¹

3 Compromise of claim resulting in certain transfers.²

Voluntary transfers:—The undermentioned transfers are voluntary transfers though they are by order of court.

1 Sale by courts in execution of a decree for specific performance of a contract of sale. The court is here carrying out what the party at fault should have done.²

2 Sales by Official Receivers of the property of insolvents.⁴

(iii) **As to persons who can preempt:—**This law gives the right of preemption to an occupant who has been defined to mean a person having a right to a share in a survey number or in a portion of it in his sole right or jointly with others. The test is the existence of the right and not possession of the property in respect of which the right exists. So the owner of a share though not in possession can preempt. Similarly the right may be a defeasible right. So long as the right subsists a claim for preemption will be sustained. It is on this account that a preemptor must possess the right to preempt at three crucial points of time⁵ viz.

i. The time when the transfer took place

ii. The time when the suit is filed and

iii. The time when the suit is decreed by the first court in his favour. A defendant is permitted by law to plead a new

1 *Maidabi vs. Tejbai* 4 N. L. R. 138

2 *Masihuddin vs. Maturam* L. L. R. 1 Lah 109; *Kheman vs. Aladad* 18 I. C. 957.

3 *Tukaram-Jagobba vs. Ukarda* A. I. R. 1924 Nag. 327, 76 I. C. 374.

4 *Kesheo vs. Pandurang* A. I. R. 1929 Nag. 363. *Sheobaram Singh vs. Mt. Kulsam-un-Nissa* I. L. R. 49 All. 367 P. C.

5 *Ramgopal vs. Piarilal* I. L. R. 21 All. 441.; cited in *Ganpatrao vs. Joomabhai* 2 N. L. R. 150. *Baldeo Misir vs. Ramlagan* I. L. R. 45 All. 709. *Ramchandra vs. Rupchand* 23 N. L. R. 94. *Sewaram vs. Aziz, Khan* A. I. R. 1924 Lah. 613 *Janakibai vs. Soma* 3 N. L. R. 287.

ground of defence which has arisen after the institution of the suit.¹ But the Allahabad High Court thinks that a preemptor losing his right after the passing of the decree in his favour can not be non-suited in the appellate stage of the case.²

The undermentioned persons have been held to possess the right to preempt:—

1 **Divided share-holder:—**Owner of a divided share in a survey number can preempt. It is not confined to persons who have an undivided share.³

2 **Co-occupant not in possession can:—**So long as his right to claim possession subsists a co-occupant is entitled to claim preemption though he is not actually in possession of his share in the land and though the vendor and vendee may deny his title to a share.⁴

3 **A Member of a Joint Hindu Family:—**When a manager of a joint Hindu family sells a part of the joint family property for necessity and the sale thus becomes binding on the other coparceners a question arises if another member of the coparcenary can institute a suit for preemption. The Allahabad High court holds that when the sale is for necessity and therefore binding on the coparceners all coparceners are reduced to the position of vendors and as such they can not institute a suit for preemption.⁵

The Oudh Court dissents from this view and in a recent Full Bench case has come to the conclusion that there is nothing to prevent a coparcener from suing to preempt. It concludes that the fact that the sale is binding would not deprive the coparcener of another right which he possesses by the fact of his being a shareholder.⁶

Under the Berar Law and under the wording of section 173 which defines an occupant for purposes of preemption it

1. Civil P. C. O. S. R. 8.

2. Baldeo Misir vs. Ramlagan I. L. R. 45 All. 709

3. Bapu vs. Maruti 9 N. L. R. 135.

4. Tapaji vs. Sayaji 6 N. L. R. 86.

5. Pratap Narainsingh vs. Shiam Lal I. L. R. 42 All. 264.

6. Himanchal Singh vs. Ajodhya Singh A. I. R. 1929 Oudh 265 F. B.

would appear that the Oudh view should prevail in Berar. It has been held in two cases that a coparcener possesses an independent right of preemption¹ and this right can not be lost to him by the sale which may be held binding on him. As pointed out by the Oudh Court the preemptor in such cases accepts the sale and there is no reason why he should not be allowed to exercise his right which he possesses independently of the sale by another coparcener.

4 A doner from a cosharer Hindu widow is entitled to preempt so long as the gift is not avoided at the instance of next reversioner.²

5 A Hindu woman succeeding as heir to an estate can preempt though she may have only a life estate in the inheritance.³

6 The occupant need not be an individual in flesh and blood. A juridical person like a temple can preempt.⁴

7 The person claiming to preempt must be an occupant on the day of the transfer. If he acquires the right of an occupant at a date subsequent to the transfer he can not claim preemption on the ground that his predecessor in title had the right. The right is personal and can not be acquired by transfer.⁵

As to manner of enforcement:—Provisions relating to the manner of enforcement are spread over sections 175 to 178 and sections 188 to 184. Preemption is in the nature of a restriction on the free transfer of property and if the owner wishes to get rid of this fetter he is required by law to conform to some formalities. He is to offer the property in the first instance to the person entitled to preempt and for that purpose is required to serve a notice on him of his intention to transfer. Section 175 deals with the notice. It is to contain the interest proposed to be transferred

1 Motirao vs. Bhikanrao 59 I. C. 601. Sonaji vs. Radhika 2 Berar L.J. 114.

2 Muhammad Nasir vs. Boshan A. I. R. 1926 All. 479. Bakaram vs. Hiralal A. I. R. 1923 Nag. 96.

3 Mt. Ishar Devi vs. Sheo Ram A. I. R. 1925 Lah. 83; I. L. R. 5 Lah. 35.

4 Bakaram vs. Hiralal A. I. R. 1923 Nag. 96.

5 Banaji vs. Mt. Muktai 8 N. L. B. 62.

and the amount for which it is to be transferred. It is to be served by registered post through the Tahasildar and is to be given to every person whose name appears in the record of rights or register of mutation as an occupant in the survey number. It is to be posted at the village chavdi and is also to be proclaimed by beat of drum in the village in which the number is situated or in any village from which it is cultivated.

On receipt of the notice the preemptor has the option to accept the proposal and to deposit the amount specified with the Tahasildar within two months. This done an enforceable contract comes into existence by the offer and acceptance and the preemptor gets the right of specifically enforcing the same. It is not however necessary that he must sue for specific performance. If the owner of the property is willing to execute the conveyance it is not necessary for the preemptor to have recourse to a law suit.¹ The law having laid down the manner of serving notice, no other kind of notice will avail. This was the view under the old law also.²

If the preemptor however thinks that the price stated in the notice is not fair he is at liberty to institute a suit for preemption at a fair price under section 182 without making the deposit. This he has to do within two months of the service of the notice. In the case of a proposed sale the transferor has the liberty to intimate to the Court before issues are framed that he does not wish to proceed with the sale and thereupon the Court has to dismiss the suit making the owner responsible for all costs incurred by the preemptor in the suit. If the preemptor does not deposit money or sue within two months of the receipt of the notice his right to preempt is at an end. He is deemed to have waived it. In the majority of the cases however the owner prefers to transfer without giving notice to the preemptor in which case he is at liberty to sue for preemption.

Subsection (3):—The very object of preemption is to keep off strangers and it is not therefore permitted when the transfer is to a co-occupant or if it is to a stranger when it is

1 Fais Mahammad vs. Mahamud Ismail, A. I. R. 1924 Lab. 651.
Dharam Singh vs. Kirpal Singh A. I. R. 1925 Lab. 31.

2 Begu vs. Anand 9 N. L. R. 143.

with the unanimous consent of all other co-occupants in the field.

Transfer in favour of a co-occupant and a stranger :— When the transfer is to a co-occupant and a stranger jointly it is not to a cooccupant within the meaning of this subsection and the right of preemption would not be barred.¹

Consent in cases of joint Hindu families :—A joint Hindu family as a juridical person is an occupant but if the names of the coparceners have been shown as occupants in the record of right or register of mutations it is advisable to obtain the consent of all so shown. If a vendor however chooses to depart from the procedure laid down in the Code and to rely on the consent, he and his vendee should be careful to see that the substituted precaution viz. the consent of the manager in place of the consent of persons named as occupants is such as will bind all concerned. There is no presumption that when a manager does a certain act he does it in the capacity of the manager.²

The Proviso :—The proviso is added to prevent the rule of estoppel operating against the consenting occupants when the transfer is not with the consent of all occupants.

Subsection (4) :—Advantage is sometimes taken of the provision of law that a transfer to a co-occupant does not give rise to preemption; and instances have happened when stranger vendees, on discovering that the person entitled to preempt is going to sue for preemption, hasten to resell the property to the vendor or to another co-sharer in the field. This subsection is enacted to counteract this device to defeat the right of preemption when once it has accrued.

Thus if A transfers his land to B, a stranger, on the 1st of January 1931 and on learning that C the co-occupant is going to file a suit for preemption induces B, to retransfer the property to him, and it is accordingly retransferred to him on 1st of May 1931, and the preemptor files his suit on the 1st of September 1931 a question may be raised if C's right to preempt is not lost:

1 *Sakharam vs. Sheoram* 21 N. L. B. 189.

2 *Motiram vs. Bhikarao* 59 I. C. 601.

It was at one time supposed that the cause of action which C had to go to court is extinguished and C should be nonsuited. This subsection settles the controversy and lays down that no transfer subsequent to the transfer which gave rise to preemption would have the effect of defeating the right. Even prior to this subsection the same view prevailed in Berar. "Once the right given by the Code has accrued it must hold good", said the Court of the Judicial Commissioner at Nagpur, "in the absence of any provision permitting it to be affected by an act of any party against whom it is enforceable."¹

And this is so whether the transfer is before the suit or after the decree for preemption.²

The view of the Allahabad High Court to the contrary in L. L. R. 20 All. 247 and 30 All. 467 has no application to Berar.

Has been enforced:—The enforcement takes place when the preemptor deposits the money stated in the notice or when he files a suit questioning the fairness of the price stated or when he claims preemption by suit when no notice is given to him of the transfer.

Subsection 5—Partial preemption:—Partial preemption is not allowed by law and as the Privy Council pointed out in a recent case a stranger purchaser cannot be required to submit to a partial preemption nor is he entitled to demand it.³ The reason of the rule as stated by Justice Mahamood is that by breaking up the bargain, the preemptor would be at liberty to take the best portion of the property and leave the worst part of it with the vendee.⁴

The rule against the partial preemption was recently examined by the Allahabad High Court and it has been laid down that it is the duty of the preemptor to claim preemption in respect of the whole of that part of the property sold as to which

1 Ganpatsa vs. Jeomabhai 2N. L. R. 150. Mt. Raiji vs. Irbhan 5 N. L. R. 136. Ramchandra vs. Rupchand 23 N. L. R. 94. Bapu vs. Bhonaji 18 N. L. R. 202.

2 Lataji vs. Krishanji A. I. R. 1929 Nag. 224.

3 Mahamad Wajid⁶ Alikhan vs. Puran Singh A. I. R. 1929 P.C. 58.

4 Durga Prasad vs. Munshi I. L. R. 6 All. 423.

he has a right. If the vendee has included properties in which the plaintiff has no right the preemptor is entitled to exclude them. But he must nevertheless claim preemption in respect of the whole of that part with regard to which he has a right.¹ This subsection is along the line of this rule and says preemption shall arise independently for portions of land contained in each separate survey number. Thus if a vendor sells shares in three survey numbers in two of which another person holds shares this latter person will be at liberty to preempt the portion in one survey number only, and would not be bound to institute the suit for both the portions which he can preempt. But the rule against partial preemption will still operate and prevent him from claiming preemption of a part only of the share in the survey number sold by the vendor. He must claim to preempt the entire share in anyone or more of survey number sold. In Berar each survey number is regarded as a separate estate. If the sale-deed does not specify the price of each portion in a survey number separately the preemptor will be called upon to pay the market price of the portion of which preemption is sought.

Transfer of Property Act and warranty of the title in preemption sales:—Preemption sale is only a voluntary sale and warranty of title implied by section 55 of the Transfer of Property Act is a covenant which runs with the land and the preemptor can take advantage of this warranty and ask the vendor to make good the warranty by compensating him for the loss of land. Provisions of the Transfer of Property Act do not apply to preemption sales only so far as the formalities are concerned. Other provisions such as those contained in Section 55 apply to preemption sales.²

175, (1) The notices referred to in sections 176, 177 and 178 shall be given through the
 Mode of service of notices. Tahsildar, who shall send a copy of the notice by registered post to every person whose name appears in the record-of-rights or register of mutation as an occupant in the survey-number concerned,

1 Mohindra Man Singh vs. Maharaj Singh I. L. R. 45, All. 72.

2, Abdul vs. Kisan A. I. R. 1931 Nag. 166.

and shall also cause a copy to be posted at the *chaudi*, and the contents thereof proclaimed by beat of drum in the village in which the survey-number is situated or in any village from which it is cultivated.

(2) When the Tahsildar has complied with the provisions of sub-section (1), all occupants in the survey-number concerned shall be deemed to have been duly served with notice of the intended transfer.

(3) The date of service of such notice shall be deemed to be the date on which the registered letter would be delivered in ordinary course of post, or on which the copy of the notice was posted in the *chaudi*, or on which the proclamation was made by beat of drum, whichever is latest.

Notes.

This section lays down the specific manner and method of serving a notice to avoid preemption. No other kind of notice would therefore suffice. This was also the view under the old Law.¹ The Select Committee amplifies the necessity of the several clauses of this section in the following words:—

“For the sake of precision in the service of notice we have redrafted this clause. The procedure we adopt will be that a person requiring to give notices will make an application to the Tahasildar, who will send the notice by registered post to every occupant in the survey number whose name appears either in the record of rights or in the register of mutations. The Tahasildar shall also cause a copy of the notice to be posted up in the *chaudi*, and have the contents of it proclaimed by beat of drum. Once these steps have been taken we provide in subclause (3) that it shall be deemed that all occupants in the survey number have been properly served. We admit that there may possibly be a case where an absentee occupant does not receive notice, but we consider it, in the public interest, that he should lose his rights of preemption than that the whole transaction should be delayed on his account. It is not in the public interest that preemption should be delayed

¹ *Bapu v. Anand* 9 N. L. R. 143.

or rendered uncertain by too meticulous an observance of an absentee's rights. The correct policy is that the cultivating occupant alone should be studied.

We have also added a new sub-clause, defining the date on which service is to be presumed. This is important, as it determines the beginning of the period during which an occupant in a survey number may exercise his rights of pre-emption."

The date fixed by clause (3) is material also from the point of view of section 182 (3) as this date would be regarded as the starting point of limitation for the suit under section 182 (2).

Notice to joint family :—Under sec. 206 of the old code it was necessary to give notice "to all other cooccupants" and it was held that notice to the manager of the family was sufficient.¹ This section now requires notice to be given to 'every person whose name appears in the record of rights or register of mutation as an occupant;' and if the members of family have been named in the registers as occupants it would be obligatory to serve notices on them all. A notice on the manager under such circumstances will not be enough.

176. (1) Whenever an occupant in a survey-number proposes to sell the whole or any portion of his interest, he may give notice of his intention to all other occupants in the survey-number, intimating the extent of the interest to be sold and the price at which he is willing to sell.

Pre-emption on proposed sale.

(2) Any other occupant in the survey-number may, within two months from the service of notice, deposit with the Tahsildar the price specified therein, for payment to the occupant proposing to sell, and shall thereupon have the right to purchase the interest at such price.

(3) An occupant who has given notice under sub-section (1) may, by written application made to the Tahsildar, withdraw it at any time before any deposit has been made under sub-section (2) and thereupon the Tahsildar shall not accept any deposit.

¹ Motiram vs. Bhikanrao 59 I. C. 601.

Notes.

Subsection (1):—The manner of giving notice is given in the preceding section. The contents of the notice must be (i) the interest proposed to be sold (ii) the price for which it is going to be sold. On receipt of the notice the occupants in the survey number have an option. They may deposit the price and claim the transfer or they may challenge it by a suit to be filed within two months of the service of notice on the ground that the price was exorbitant and not fixed in good faith. If they do neither their right of preemption is lost by waiver. Vide section 180. Where, however a certain portion of property is excluded and the price is reduced and the purchaser is a new person, the person having right of preemption should be approached afresh and his refusal obtained. Circumstances having changed the preemptor will not be estopped from asserting his right of preemption.¹

Subsection (2):—Two months are to be counted from the date mentioned in section 175 (3). Section 9 of the C. P. General Clauses Act, (C. P. Act I of 1914) allows deposit being made on the next opening day of the court or office.

Subsection (3):—The Select Committee says :—“ We have added a third sub clause entitling the occupant who proposes to sell his holding to change his mind and to give the Tahasildar notice that he does not wish to proceed with the sale. He will be entitled to do so if a deposit has not already been made.”

177. (1) Whenever a mortgagee by conditional sale obtains a final decree for foreclosure against the interest, or any portion thereof of an occupant in a survey-number, he may give notice to all the other occupants in that survey-number, intimating the extent of the interest foreclosed and the amount declared to be due by the final decree.

(2) Any other occupant in the survey-number may, within two months from the service of notice, deposit with the Tahsildar the amount specified therein for payment to the

¹ Panjab Sugar Mills vs. Lachhman Prasad I, L. R. 51 All. 1046; A. I. R. 1930 All. 77.

mortgagee, and shall thereupon have the right to purchase the interest foreclosed at a price which shall comprise the amount deposited together with the interest on the principal sum secured by the mortgage, at the rate specified in the mortgage deed, from the date of the notice to the date of the deposit.

Notes.

"Within two months" :—see notes under the preceding section.

"At the rate specified in the mortgage" :—The rate which the preemptor has to pay is the contract rate in the mortgage deed and not the rate which courts may have fixed on other consideration. In mortgage decrees courts are bound to allow contract rate upto the date fixed for payment in the preliminary decree; but they have a discretion to vary it for the period thereafter.¹ The preemptor has to deposit the amount declared to be due by the final decree. On this deposit he gets the right of having the property foreclosed transferred to him on a further payment of sum equal to the interest at the contract rate on the principal amount of the mortgage only. He has not to pay interest on the remainder of the amount declared to be due by the final decree. The rate in the deed is the first rate not the enhanced rate payable on default to pay on due date. The occupant has an option here also. He may instead of depositing money file a suit within 2 months of the service of the notice under section 182 (1) (b) below.

178. (1) Whenever an occupant in a survey-number transfers his interest, or any portion thereof, by usufructuary mortgage, or by a lease for a period exceeding fifteen years or containing a covenant for renewal whereby the total period of the successive leases shall exceed fifteen years, the mortgagee or lessee may give notice to all other occupants in the survey-number, intimating the extent of the interest transferred and the principal amount of such

Pre-emption on lease or usufructuary mortgage.

¹ *Sheoppa vs. Rukhms* 5 N. L. B. 7 N. L. B. 14,

Pyarolal vs. Ramratan

mortgage or the premium if any, and rent and period of such lease.

(2) Any other occupant in the survey-number may, within two months from the service of notice, deposit with the Tahsildar the sum specified therein, if any, and declare his intention to acquire such mortgage or lease, and shall thereupon have the right to acquire for such sum, if any, the rights and liabilities of the mortgagee or lessee, as the case may be.

Notes.

Clause (2) "within 2 months" see notes under section 176. The occupant has the option of filing a suit without depositing the amount. Vide section 182 (1) (c).

179. (1) When a right of preemption is claimed by more than one occupant in a survey number the priority is pre-emption, prior right shall belong—

(a) If the interest transferred is a share in or portion of a sub-division of a survey-number, to the occupant in the sub-division who is most nearly related to the occupant whose interest is being transferred, or if no occupant is related to him, to the occupant who has the largest interest in the sub-division;

(b) If no occupant in the sub-division wishes to exercise the right of preemption under clause (a) or if the interest transferred is not a share in or portion of a sub-division, to the occupant in the survey-number who is most nearly related to the occupant whose interest is being transferred, or, if no occupant is related to him, to the occupant who has the largest interest in the survey-number.

(2) If two or more occupants are equally entitled to the right, the person to exercise it shall be determined by lot.

Notes.

Nearness of relationship and failing that the quantum of interest held, are the criteria for determining priority amongst rival claimants for preemption.

Most nearly related :—The words are to be understood in their ordinary sense and not in the restricted meaning of the law of inheritance. Of the occupants entitled to claim preemption the court has to find out who is most nearly related occupant. Consanguinity according to the personal law of the party may be a useful guide but it is not to be the criterion. Thus a sister's son may not be recognised as a relation for purposes of inheritance but he is certainly a nearly related person for purposes of priority. The Berar Settlement Rules or Sub Tenancy Rules above did not fix priority on ground of relationship. The criterion then was the quantum of interest. The point of relationship was introduced for the first time by the Code of 1896 and the provision was borrowed from the Oudh Laws Act section 9. Priority in this section is given to "cosharers in order of their relationship and in interpreting these words the Oudh Court has held (1) that the expression "order of relationship" refers to a relationship arising from consanguinity from a common stock and not from marriage.¹ According to this view the wife of the vendor or co-wife was not held entitled to preempt.² (2) that the relationship contemplated was legitimate relationship; and hence illegitimate relations would not be preferred.³ (3) the relationship is not confined to relationship through males only.⁴

(4) that the test laid down by the words is nearness in point of relationship and not the position of the parties in the line of inheritance.⁵ It is submitted that the very wide wording adopted in the Berar Law does not justify a restricted meaning being put on the test of priority and all that has to be seen is that the preemptor is one who is most nearly related to the vendor and that it does not matter if he is qualified for inheritance or not. A wife for instance would be preferred in Berar as she would be the most nearly related person.

Nearness of relationship it is obvious must be judged from the point of view of the claimant himself. So if the

1 Karam Husain vs. Raghbir Dayal 4 Oudh cases 397.

2 Karam Husain vs. Raghbir Dayal 4 Oudh cases 397.

3 Durga vs. Man 17 O. C. 250.

4 Jafri Begam vs. Gulab Kuar 7 O. C. 6 See also 14 O. C. 193.

5 Muhammad Syad Khan vs. Kamiz Fatim 14 O. C. 193.

claimant dies during the pendency of a suit and is succeeded by a person who is relatively more distant than the rival claimant the suit would fail.¹

Largest interest.—In the case of a joint Hindu family the quantum of interest by the several members together is to be considered and not the individual shares of the individual members of the family. The joint family is a juridical person and as such is an occupant. Thus if a family consisting of three members possesses a $\frac{1}{4}$ share in a holding and another in the same subdivision has a $\frac{1}{4}$ share, the family and the person are equally entitled to preempt and priority in such a case is to be determined by lot.²

Clause (2).—The method of determining the issue by lot is undoubtedly primitive and empirical and may sometimes land litigants into expenses. But in Berar the idea seems to be to aim at consolidation of holding more than dividing the estate into further parts by providing that claimants equally entitled should share equally. It is obvious that a claimant having a preferential claim for preemption can succeed against another person even if the latter has his claim ripened by a preemption decree.³

Suit by rival preemptors.—When more than one occupant are entitled to preempt every occupant who thinks he has a better right than the other is likely to file a suit. To such a suit the vendee and persons entitled to claim preemption are proper parties to enable the court to adjudicate finally between all parties interested in preemption. When there are several suits against the same vendee in respect of the same transfer the court has the power to consolidate the suits under section 151 of the Code of Civil Procedure by adding rival preemptors as defendants in one suit.⁴ The Agra Preemption Act (XI of 1922) has specifically provided for consolidation of suits in section 18 which runs as follows:—

1 Pratap Sing vs. Daulat I, L. R. 36 All. 63.

2 Kisan vs. Sitaram A. I. R. 1925 Nag. 160.

3 Sheo Shankar Lal. vs. Fatab Muhammad 93 I. C. 371.

4 Kali Charan vs. Manodabala 17 C. W. N. 526, Kaahi Nath vs. Mukhta Prasad I, L. R. 6 All. 370.

“When more suits than one are pending for preemption in respect of the same transfer, the plaintiff in each suit shall be made a defendant in each of the other suit and the suit shall be consolidated and disposed of by a single decree which shall determine the extent and the order in which and the terms and conditions under which, each plaintiff shall be entitled to preemption. It shall not be necessary for any party aggrieved by such decree to file more than one appeal or application for review.”

The concluding sentence of the section lays down a rule which has been now accepted as good law even in provinces where the law of preemption is silent on the point. This view is certainly conducive to convenience and saves double appeals by every defeated party one in his own case and the other in the other case filed by other preemptor. ¹

180. After notice has been given in accordance with section 175, any occupant in the survey-number concerned who fails to make the deposit or declaration required by sections 176, 177 or 178 and fails to bring a suit under section 182, shall be deemed to have waived his rights of preemption in regard to the transfer to which the notice relates.

Loss of right of preemption.

Notes.

This section corresponds with section 207 of the old Act and is intended to secure that a person who has a right of preemption and has received notice of the transfer should exercise his right within a reasonable time or lose it. The intention is to avoid litigation and promote security of title.

Sections 14 and 15 of the Agra Preemption Act are also along these lines. These sections as also sections 176, 177 and 178 of this Code are permissive. They give the cosharer, transferor a power to give notice to get rid of the right to preempt. When such a notice is given in the required form and is not followed by action the right is lost under this section. But this does not mean that in no other case can a

¹ *Jogal Kishor vs. Chammo* 85 P. R. 1905, F. 'B. *Bahraichi vs. Tribeni Sing* 100 I. C. 450; *Lachmi vs. Bulli*, I. L. R. 8 Lah. 384; F. B.

co-sharer, preemptor be estopped from claiming his right¹ It may be lost in the following cases:—

(i) **Loss of Status by preemptor:**—The preemptor must not only be an occupant on the day of the transfer but must continue to be so till the passing of the decree in his favour. If he loses his status as an occupant during the litigation, the defendant is at liberty to plead the fact that plaintiff's right to maintain the suit is gone and that he should be nonsuited.² In a recent case in Allahabad it is pointed out that the preemptor must establish his right to preempt on three important dates viz the day of sale, the day on which the suit is brought and the day of the judgment by the first or the trial court. Loss of right after passing of the decree by the first court would not affect.³

(ii) **Improvement in vendee's status:**—If the vendee is a stranger on the date of the sale, subsequent acquisition by him of the status of a co-occupant will not help him. This is now established beyond doubt.⁴

(iii) **Estoppel:**—There is nothing in the law of preemption as enunciated in this chapter to show that a preemptor may not be precluded by the rule of estoppel from asserting his right.⁵ The case of *Bapu vs Anand*⁶ does not lay down anything to the contrary. The preemptor, in this case, was a surety to a mortgagor and in the suit on the mortgage he was impleaded as a party. He did not set up the right to preempt as a defence, and after the preliminary decree for foreclosure was passed did not care to redeem. The property was consequently foreclosed upon which he claimed it by preemption. The foreclosing mortgagee resisted the suit on two grounds, the first being that the plaintiff was estopped from beginning the suit as he ought

1 *Ranjit Singh vs. Bhagwati Singh*, I. L. R. 48 All. 491.

2 *Civil Pro. Code O. 8. R. 8*; *Ram Gopal v. Piarital* I. L. R. 21 All. 441. *Ganpat vs. Joomabhai*, 2 N. L. R. 150.

3 *Baldeo Misir v. Ramlagan Shukul* I. L. R. 45 All. 709; *A. I. R.* 1924 All. 82.

4 *Ramchandra v. Bupchand* 23 N. L. R. 94.

5 *Nathu vs Thakubai* 1 N. L. J. 253.

6 *Bapu vs. Anand* 9 N. L. R. 143.

to have advanced his claim to preempt as a defence to the mortgage suit, and the second being that the fact of his being a party to the foreclosure decree was sufficient notice to the plaintiff, who was therefore bound under section 208 (of the old Code) to deposit the amount due with the Tahsildar. The Court of the Judicial Commissioner ruled out the first ground by saying that failure to plead the right to preempt as a defence to the mortgage suit did not amount to 'res judicata' on the authority of two Allahabad decisions.¹ Against the second ground the Court held that the duty of giving notice was on the foreclosing mortgagee and as he did not give the required notice the right of plaintiff to preempt could not be extinguished. The applicability of section 115 of the Evidence Act was not discussed. The doctrine of estoppel enunciated in that section applies to all sets of cases including preemption cases.²

Whether a particular representation or conduct amounts to estoppel is a question of fact, to be determined with reference to the facts of that case but the following instances may serve as illustrations:—

- (1) If the vendee purchases at the request of the preemptor the preemptor is estopped. Similarly when the preemptor leads the vendee to believe that he is agreeable to the purchase the preemptor would be estopped.³
- (2) A previous refusal by the preemptor to buy on the ground that he had no money may estop him.⁴
- (3) There will be no estoppel against a writer of deed or the attesting witness by the mere fact of his writing or attesting the deed, for there is no duty

¹ Ramchandra vs. Durgaprasad, I. L. R. 26 All. 61; Idaratkhan v. Ilahi Baksh I. L. R. 27 All. 78.

² Syed Oon Muhammad vs. Bint Zohra 87 I. C. 414. Ranjit Singh vs. Bbagwati Sing I. L. R. 48 All. 491.

³ Chaitu vs. Niaz Begum 205 P. L. R. 1910; Fateh Chand vs. Kirpa Singh 48 P. h. 1912.

⁴ Muhammad vs. Muhammad Ali 92, I. C. 289.

cast on either to speak out at the time.¹ But it would be otherwise if he takes an active part in bringing about the sale.²

- (4) A preemptor mortgagee accepting his mortgage money from the vendee is not estopped.³
- (5) A man may be present at the time of sale and the mere fact that he does not there announce his intention to preempt would not estop him. But if he were to refuse to buy the right may be lost.⁴

(iv) **Waiver,—acquiescence or relinquishment** :—There is nothing in the law of preemption to prevent a person from waiving or relinquishing his right to preempt.⁵ But the waiver must be unconditional and unequivocal. Thus a refusal to purchase the property at a particular price can not be deemed to be a refusal to purchase it at a lower price.⁶ Where however a preemptor has previously expressed his clear intention not to preempt the property on any account and has waived his objection in an unequivocal language to the property being sold to the vendee he is estopped personally from preempting afterwards even though the exact share or price at which it was going to be sold was not mentioned to him. But where circumstances have completely changed e.g. where certain portion of property is excluded and the price is reduced previous refusal of the preemptor to buy the whole property at a bigger price would not be construed as a waiver.⁷ Waiver may be by express words or conduct; and once the right is waived it would operate for all time.⁸

1 *Shah Bodhraj vs. Sunder Singh* 100, P. R. 1885; *Banga Chandra vs. Jagat Kishore* I. L. R. 44 Cal. 186 P. C. *Lakhpatri vs. Ram Bodh Sing* I. L. R. 37 All. 350.

2 *Shib Dial vs. Inderchand*, 106 P. R. 1916.

3 *Kanchi Ram vs. Bhaja Ram* 69, I. C. 648. *Bajsnath vs. Ram-dhart*, I. L. R. 35, Cal. 402, P. C.

4 *Mahammad Baksh vs. Hussein Baksh* 7, P. R. 1912.

5 *Nathu v. Thakubai* I. N. L. J. 253.

6 *Basira Bibi v. Sheikh Ala A.* I. R. 1929 All. 453.

7 *Punjab Sugar Mills v. Lachman Prasad* I. L. R. 51 All. 1046.

8 *Patechwari Pratap v. Sitaram A.* I. R. 1929 P. C. 259; *Bhagatram v. Raghuvar Dial A.* I. R. 1925 Lah. 57; *Arjamandkhan v. Shankar Lal A.* I. R. 1925 Lah. 359 F. B.

(v) **A preemptor joining a stranger with him:**—Where a preemptor joins with himself a stranger in seeking to enforce his right he forfeits his right;¹ the reason being that a person can not claim a right which he has himself violated nor can he be allowed to complain of an injury in which he has himself acquiesced.² The very object of preemption is to exclude strangers and by joining a stranger the preemptor defeats the very object of the law.

This view however has not commended itself to the Punjab and Oudh Courts. The former Court observes "it may be quite just to say to a preemptor you alone had a preferential right to purchase but you and a stranger together had not" but it is quite unjust to say to him you have a preferential right to sue the defendant but you have forfeited it by the erroneous belief that your coplaintiff had an equal right.³ These Courts permit the plaint to be amended and to allow the cosharer plaintiff to continue the suit. It would be difficult in Berar to follow the Allahabad view and defeat preemption. The preemptor may find it necessary to sell a portion of his own share in a survey number some time after the objected sale and yet it may be very necessary for him to preempt the share sold. In such a case it would be necessary to join the person to whom the property has been sold and as this person would be a stranger with reference to the date of the objected sale it would be necessary to nonsuit the plaintiff if the Allahabad rule was to be followed.

181. A notice given and a deposit made under section 176 or 177 or a deposit and declaration made under section 178 shall be deemed to be a valid contract for the sale and purchase of the rights concerned, and may be enforced by either of the parties thereto, by a suit for specific performance by the party giving the notice, or by a suit for pre-emption by the party making the deposit.

1 Dwarka Singh v. Sheo Shankar I. L. R. 48 All. 810.
 2 Bhawani Prasad v. Damru I. L. R. 5 All. 197.
 3 Sharaf vs. Pir Baksh, 83 P. B. 1893. See also Kathale's Law of Preemption p. 467-468.

Notes.

Suit for specific performance and for preemption. Court fees and Limitation:—A suit by the vendor against the person making the deposit is a suit for specific performance. As such the court fees would be on the amount of consideration according to para X of section 7 of the Court Fees Act ; and limitation for the suit would be 3 years under Article 113 of the Limitation Act whereas a suit by the preemptor co-occupant is a suit for preemption and as such court fees would be governed by para (VI) of section 7 of the Court Fees Act and limitation would be regulated by Article 10 of the Limitation Act and is 1 year only.

182. (1) In addition to the rights conferred by sections 176, 177 and 178, the rights of pre-emption of an occupant in a survey-number shall include the right to pre-empt for a fair consideration, and such occupant may sue to enforce such right on the following grounds:—

Suit to pre-empt for a fair consideration.

- (a) in the case of a proposed sale under section 176 that the price stated in the notice was not fixed in good faith;
- (b) in the case of foreclosure under section 177, that the amount stated in the notice was not due by the terms of the final decree, or that it exceeds the market value of the interest foreclosed;
- (c) in the case of a usufructuary mortgage or lease under section 178, that the principal amount, or the premium, or the rent stated in the notice was not fixed in good faith.

(2) A suit may be brought under this section without the deposit or declaration required by sections 176, 177 or 178 having been made.

(3) Such suit shall be dismissed if it is not instituted within two months from the service upon the plaintiff of notice in accordance with section 175.

(4) When it is proved that any price, principal amount, premium or rent exceeds the figure which the interest sold, mortgaged or leased would fetch in the market, the court shall presume that such price, principal amount, premium or rent was not fixed in good faith and shall fix a fair consideration,

(5) Where such suit relates to the proposed sale of the whole or any portion of an occupant's interest in a survey-number, such occupant may at any time before the issues are framed intimate to the court that he does not wish to proceed with the sale, and thereupon the court shall dismiss the suit and order such occupant to pay all costs therein.

Notes.

General:—The three sections which give rise to the right of preemption are sections 176, 177 and 178 and the rights conferred by these are (i) to have a notice of the intended transfer and (ii) to deposit the necessary amount. But the whole of the law of preemption would be negatived if the preemptor were not at liberty to show to courts that the proposed price was fictitious and that it was put down to prevent him from exercising his right of preemption. This section gives that right and it lays down that a preemptor, even after the receipt of notice, need not deposit the amount but may go to a court of law and exercise his right to preempt on payment of fair price. Clauses (a), (b) and (c) of subsection (1) of the section lay down that the preemptor may challenge the price stated in the notice as one not fixed in good faith in the case of a sale, usufructuary mortgage and a lease, and that in the case of final decree that the amount stated in the decree was not due by the terms of the decree or that it exceeded the market price of the land foreclosed.

Subsection (2) lays down that he need not make a deposit, but may bring a suit to challenge the price.

Subsection (3) says that the limitation for such a suit is two months from the service of notice.

Subsection (4) lays down a rule of presumption viz. when the preemptor establishes that the price stated is in excess of the market value of the land it would be presumed that it was not fixed in good faith.

Subsection (5) enables the defendant vendor to terminate the suit by intimating to the court that he does not wish to sell his land.

Subsection (2) :—The Select Committee says "it does not seem fair to deprive an occupant who seeks to exercise his rights of preemption from exercising these rights if he does not make the deposit required but claims in court that the price is exorbitant, we think he should still be allowed to exercise these rights and have given him the option either of making the deposit or of filing a suit without making the deposit."

Subsection (3) Suit within two months :—It should be remembered that suit would be barred if filed after two months and courts have not power to extend limitation under provisions of section 5 of the Limitation Act. Month means a month reckoned according to the British Calendar. Vide section 2 (32) of the C. P. General Clauses Act I of 1914. If the last day of the 2nd month is a court holiday the plaint is in time if filed on the next opening day of the court. Vide section 9 of the C. P. General Clauses Act.

Subsection (4) shall presume :—According to section 4 of the Evidence Act the expression "shall presume" means that a court shall take a fact as proved unless or until it is disproved. The effect of this provision is that when the plaintiff proves that the price fixed is in excess of the market value the burden is shifted to the defendant to show why he paid a higher price. There may be good reasons for him to pay it e. g. that he wanted the land for a special purpose for which the land was eminently suited or that the land was in close proximity of his own land and that it was therefore advantageous to him to have it though at a higher price. The real intention of this provision is not to rule out payment of a price in excess of the market value. It merely enunciates a rule of evidence to show clearly that the burden of introducing evidence is on that party who does a thing out of the way and it should not be difficult for him to disclose the real state of affairs as all facts are within his personal knowledge.¹

¹ Mardan Khan vs. Mahmoodi Khan, I. L. R. 4 Luck 396 ;
A. I. R. 1930 Oudh 101.

Subsection 5:—This is added so as to give an occupant who proposes to sell his land a chance to retract his mind. "He must do so" says the Select Committee "by intimation to the court at any stage before the issues are framed and a necessary condition will be that he must pay all costs".

Fair consideration and price:—For notes on the topic of fair price see notes under section 183.

183. (1) When an occupant in a survey-number transfers his interest or any portion thereof by any of the transfers contemplated in sections 176 and 178 or suffers a final decree for foreclosure as contemplated in section 177 to be passed against him and no notice has been given as required by these sections, the other occupants in the survey-number shall have a right to pre-empt the interest transferred.

(2) Such right may be enforced by civil suit, and in all such cases the court shall have power to examine the transaction and fix a fair consideration for the interest to be pre-empted.

Notes.

This section refers to cases where the transferor does not choose to give notice of the intended transfer to the sharer in the survey number and such cases are most common. It is very rarely that a transferor goes to the length of giving a notice. He is in need and naturally wishes to complete the transaction as quickly as possible. The transferor does not mind the trouble of a suit for it means no loss to him except the costs of litigation for which he takes care to provide himself when he enters into the bargain. This section thus relates to transactions which are very common in Berar. The occupants in the field have the right to preempt for a "fair price" by a suit, and the courts have been given the power to examine the transaction and fix a fair consideration for the interest to be preempted. To such a suit the same provisions as regards limitation, court fees, etc. apply as in the cases of preemption after notice.

Rule enunciated in subsection (4) of section 182 will apply in this case as well and if the vendee can show that he had

good reason to pay more than the market price the court will fix the fair consideration after taking those facts into consideration.

Criteria for fair price:—The Agra Preemption Act of 1922 lays down the following rule:—

17 (1) "When in any suit on the basis of sale the court finds that the plaintiff has a right of preemption but that the ostensible price was not the actual price it shall proceed to ascertain the actual price and shall pass a decree for preemption on payment of such price.

(2) In such cases the burden of proving the actual price shall lie on the vendee, and in the absence of satisfactory proof the court shall proceed to ascertain the market value of the property and shall pass a decree for preemption on payment of the value so found.

(3) When in any suit on the basis of a foreclosure decree the court finds that the plaintiff has a right of preemption but that the amount of the decree has been inflated by fraud or collusion exceeds the market value of the property, it shall proceed to ascertain such market value and shall pass a decree for preemption on payment of the value so found".

The above is helpful under the Berar Law also to indicate the scope of the examination of the transaction by the court and to fix the price for preemption.

Fair consideration or price:—We have already seen that preemption is really right which a co-occupant possesses of being substituted in the place of the vendee or transferee and it therefore follows that he can claim this only if he is prepared to pay the amount which the vendee has in fact and in reality paid to the vendor viz. the owner of the property. Every owner of property possesses the elementary right of transferring it at the highest value he can get for it, and prima facie the consideration in the deed is to be taken as the true consideration.¹ The onus of proving that the recital in the sale deed is not correct and that the amount stated was not really paid is,

¹ *Mekhan Sing vs. Jaban Kumar* 47 I. C. 97.

in the first instance, on the preemptor plaintiff. He can show that the price stated is in excess of the market value of the land. On the day of the transfer, and as soon as he has shown this he gets the aid of the presumption declared in subsection (4) of section 182. It is then for the vendee to show how and why he paid a higher price. There may be special reasons and if he proves them he would be taken to have discharged the onus that shifted on to him and he would be entitled to get the price he paid for the land. The price stated in the deed may be less than the market value but yet it may not be the amount for which the bargain was really struck between the parties. The vendee may inflate the price just to make it difficult for the preemptor to buy. The plaintiff may allege and prove that the price stated was not fixed in good faith and he may claim to preempt for a fair consideration. The rules for payment of price may therefore be stated as under:—

(1) Price stated in the deed would be taken as correct *prima facie*.

(2) The plaintiff preemptor must prove that it was not fixed in good faith.¹

(3) If it happens to be in excess of the market value his task is lightened by the aid of the presumption of law being in his favour.

(4) If and when the preemptor proves that price stated is in excess of the market value it is for the defendant vendee to show that there were special reasons for his paying the value stated in the deed.²

(5) If apart from the market value of the property there are circumstances to show that the price stated was not intended to be paid, the preemptor is called upon to pay only fair price for the land.

(6) That courts are called upon to determine fair consideration only when the price is shown to have been fixed in bad faith.

1 *Asaf-ud Daula vs. Abdul Ghafar* A. I. B. 1927 Oudh 361; *Abdul Ghafur v. Kamaluddin* I. L. B. 49 All. 682.

2 *Shamrao vs. Sheik Imam* 15 N. L. B. 130; *Shivaji vs. Ratiram*, 89 I. C. 768; *Abdul Ghafur v. Kamaluddin* I. L. B. 49 All. 689.

(7) When price stated is found to be unreal the courts should ascertain what was actually paid and this found out the vendee can not claim to have more. It is only when what was paid cannot be determined that the preemptor can be called upon to pay the market value which in the absence of anything else is the fair price.¹ The market value is with reference to the date of transfer and not the date of the decree.

The following observations in I. L. R. 9 All 471 are helpful in understanding these rules. This was a case where the price mentioned in the deed was rupees 775. The preemptor contended that similar land in the neighbourhood was sold for rupees 475. The vendee and vendor led no evidence to prove what was the real price fixed between them. The trial court came to the conclusion that the price in the sale deed was not the true contract price and found apparently without any evidence that rupees 475 was the contract price or market value.

“Under these circumstances” says the court “we have to consider what should be done in this and in similar cases. It appears to me that in cases of this kind, when the judge has come to the conclusion that the price alleged in the sale deed is not the true contract price, and where he cannot ascertain what, in fact, was the contract price, he should ascertain, if possible, what was the market price at the time of the sale, and for these reasons. In the cases I am supposing, the vendor and the vendee either refuse to disclose by their own evidence what was the true price, or their evidence, with regard to the price, for some good reasons cannot be believed. In such cases it is frequently impossible for the plaintiff to give direct evidence as to what the true contract price was, because, in cases in which a fictitious price is inserted in the sale deed, it is done with the intention of defeating the rights of the persons entitled to preemption, and the true contract price is concealed. It cannot be expected that in such cases the plaintiff would be able to give direct evidence of the actual contract price. It appears to me that in these cases the plaintiff should be prepared with the

¹ Abdul Ghafur v. Kamal Uddin I. L. R. 49 All. 689 Yahir Uddin v. Ali Hussain A. I. R. 1929 Oudh 244; Natha Singh v. Sander Singh 92 I. C. 258.

best evidence he can obtain as to what was the market value of the share at the time of the sale. It would be doing no injustice to the vendor or the vendee, who refused to disclose what the true price was, or whose evidence for some good reason is not believed, to treat the market value, which a prudent man would give for the share, as the price which was most probably agreed upon. In such cases the judge should ascertain what was the market value at the time of the sale, and accept that market price as the probable price agreed upon between the parties." ¹

Burden of proof as regards market price:—It should be noted that it is the plaintiff's business in a preemption suit to lead evidence to show what the market value of the property would be. The following remarks in the above case (I. L. R. 9 All. 471) are noteworthy.

"It is a part of the plaintiff's case to show either what was the actual contract price or to give substantial evidence on which the Judge can act, showing what was the market value. It is necessarily a part of the plaintiff's case that the price should be fixed by decree of the judge for unless the judge is in the position to fix the price, it is obvious that the decree would be ineffective and a nullity. In future, in cases similar to the present, if the plaintiffs are not prepared to give substantial evidence, on which a judge can act, as to the market value, these plaintiffs will deserve to have their cases dismissed."

The fact that the price entered in the deed is higher than the market price would be very strong evidence to show that the price was fictitiously entered.²

If one item of the consideration is found to be fictitious the entire consideration is deemed to be fictitious and courts grant preemption on market value.³

The burden of proof of market value lies on the plaintiffs. If they fail to discharge it and the defendants produce no evidence

1 *Agarsingh v. Raghu Raj Singh* I. L. R. 9 All. 471; *Hudarsingh v. Nankos* 6 O. C. 327; *Abid Alikhan v. Har Prasad* A. I. R. 1929 Oudh 486.

2 *Mardankhan vs. Mahmoodi Khan* A. I. R. 1930 Oudh. 101.

3 *Abid Alikhan vs. Har Prasad* A. I. R. 1929 Oudh 486.

upon which the courts can ascertain the true market value the plaintiff can only obtain preemption upon payment of sum admitted by the defendants as the market value or failing that the sum mentioned in the deed. But the plaintiffs can not in any case be compelled to pay more than what is stated in the deed.¹

Exorbitant or fancy price:—The mere fact that price paid is in excess of the market value or that it is a fancy price would not help the preemptor to get the property at market value. In the absence of any evidence (i) to prove that the price fixed was not meant to be paid or (ii) that it was fixed with the intention of making the preemptive price higher so as to defeat or fetter preemption or (iii) that the amount was paid under an arrangement that a portion of it would be handed back or (iv) that the vendor should receive credit for it in some other way, the preemptor would be bound to pay the price paid by the vendee to the vendor.² The test is not whether the price stated is in excess of the market value but that it is not fixed in good faith.

Payment before Sub Registrar:—If a preemptor gives evidence to the satisfaction of the court that price stated is far in excess of the market value the court is justified in arriving at its own conclusion as to what was the real consideration notwithstanding that it is proved that amount was paid before the Sub Registrar.³

Payment of price in private:—Payment of a large amount of consideration in private is indicative of the fact that it was not intended to be paid; and it shifts the burden of proof on the vendee that what was paid was really intended to be paid.⁴

Sale in satisfaction of old debts:—When the sale is not for cash but is in lieu of debts owed the question arises if the preemptor is bound to pay the entire amount of debts which

1 Ram Udeh v. Sheo Harakh A. I. R. 1928 Oudh. 384.

2 Shiwaji v. Ratiram 89. I. C. 768; A. I. R. 1926 Nag. 171.

3 Ram Sarup v. Karam Ulla Khan I. L. R. 36 All. 464.

4 Shiwaji v. Ratiram 89 I. C. 768; A. I. R. 1926 Nag. 171.

formed the consideration of the sale or only the market value of the land. In *Jagatsingh vs. Baldeo Prasad* I. L. R. 43 All. 137 the Allahabad High Court holds that a preemptor is not bound to pay anything more than the market value of the land and the same rule would seem to hold good in Berar in cases of sales as in cases of foreclosure under clause (b) of subsection (1) of this section. The question to be seen is what did the vendee actually pay. In cases of old debts he gives up the debt and the value of the debt due is clearly limited to the value of the property. Supposing the debt is due on a mortgage none would have given the mortgagee anything more for the transfer of his rights than the market value of the land. It is therefore clear that the price which the vendee paid is not the amount due on the face of the mortgage but the amount recoverable under the bond from the security viz. the market value of the land. In cases of old debts it is not the arithmetical total of the debts but the present or market value of the property that a preemptor has to pay.¹

Time-barred debt :—If the time-barred debts are included in the consideration it would be hardly regarded that the consideration was fixed in good faith for a time-barred debt is practically of no value.²

Price of preemption in cases of foreclosure :—Under clause (b) the preemptor can challenge the price only on two grounds (i) that the price demanded was not due by the terms of the final decree or (ii) that it exceeds the market value. The final decree is undoubtedly good evidence on the question of the amount due. But the preemptor, not being a party to the decree can show that the amount in the decree was not due on the mortgage. It should be noticed that on a strict interpretation of the wording of the clause it is possible to contend that the preemptor is not at liberty to show that the amount of the decree was not really due under the mortgage; and that he is restricted to the plea that the amount stated in the notice is not what the final decree gave and that he can not go behind the decree to show that the amount was not due on the

1 *Amirkhan v. Shankar A. I. R. 1925 Nag. 194; 78 I. C. 218.*

2 *Jagatsingh vs. Baldeo Prasad I. L. R. 43 All. 137.*

mortgage. Such, however, does not appear to be the intention. The wording of section 211 clause (i) (b) of the old Code left no room for doubt. The wording used then was as follows:—

“(d) In the case of a mortgage, that the amount claimed by the mortgagee was not really due on the footing of the mortgage and was not claimed in good faith and that it exceeds the fair market value of the property mortgaged”.

Foreclosure amount in excess of the market value:—
The preemptor can claim to preempt on payment of market value when the amount stated in the final decree is in excess of the market value of the land foreclosed. If the law were to be otherwise a good device would have been left open to defeat the right of preemption and there is no hardship to the mortgagee for the money value of his mortgage security is the market value of the land.

Apportionment of price for defect in vendor's title:—
The principle underlying preemption being substitution a preemptor is bound to take the title which the vendee was ready to take, and he is not entitled to put the vendor on proof of his title to the property which he purports to sell. He is not entitled to say to the vendor, “I will take all the property to which you prove you have a title but I will not take property which you fail to prove belongs to yourself.”

But this does not mean that a vendor is entitled fraudulently to insert property to which he has no title in the sale deed for the purpose of inflating the price and the rule applies only to cases when the vendor has or bonafide thinks he has some title, not necessarily a perfect title, to the property.¹ In *Shamrao vs. Sheik Imam* 15 N. L. R. 130² plaintiff Shamrao had become owner of a half share in 3 fields. The remaining half belonged to one Bhagwan and his brother Baliram. Bhagwan alone sold the half share belonging to himself and his brother Baliram to Sheik Imam. Plaintiff Shamrao purchased from Baliram his $\frac{1}{2}$ share and got a decree for it and as

1 *Sahodra Bibi vs. Bageshwari Singh* I. L. R. 37 All. 529.

2 *Shamrao vs. Sheik Imam* 15 N. L. R. 130.

an occupant in the field filed a suit for preemption in respect of the $\frac{1}{2}$ share which belonged to Bhagwan. The sale of $\frac{1}{2}$ share by Bhagwan was for rupees 1500 out of which Rs. 500 were cash and Rs. 1000 were for paying off a previous mortgage lien on the property. The preemptor contended that as Bhagwan was entitled to only $\frac{1}{2}$ share and as he could sell only $\frac{1}{2}$ share he should be allowed to preempt on payment of half the price paid by the vendee to the owner of the property viz. rupees 250.

The High Court held relying on *Madhub Chandra vs. Tomee Bewah* 7 W. R. 210 (1867)¹ held that no proportionate abatement can be allowed in the case as it is contrary to the wording of the enactment, as Bhagwan was in possession of $\frac{1}{2}$ share on the date of sale and as he managed to keep his brother out of possession for 6 years and he had thus a possessory title over his brother's share. It was not proved in the case that the purchaser had the price put in the deed just to inflate the price and the High Court remarked that it cannot be assumed that the defendant paid the price for $\frac{1}{2}$ share of Baliram with knowledge that the title of his vendor was open to doubt with regard to the $\frac{1}{2}$ share of his brother Baliram. "The Berar Code allows the Court" said the Judge "to determine the market value only when price has not been fixed in good faith". The ratio decidendi therefore is that in cases where there is no question of malafides and the purchaser pays the money actually to the owner under the belief that the vendor can convey a good title to him the preemptor must pay the full price even if there be any defect in the title of the vendor. As a person claiming to exercise his right of preemption he must take the bargain as it was made and any apportionment of purchase money is unwarranted. The Punjab High Court took the same view in a recent case.² The Allahabad High Court has taken a different view, and under circumstances very similar to those in 15 N. L. R., 130 has come to the conclusion that it is inequitable that the preemptor should be made to pay the full price when the vendor was not entitled to the entire property purported to be sold.³

1 *Madhub Chandra vs. Tomee Bewah* 7 W. R. 210.

2 *Bishan Singh vs. Bishni* 53, I. C. 566.

3 *Mahammed Latif vs. Govind Singh* I. L. R. 5 All. 382.

Preemptor's right against the vendor for warranty of title:—Though the preemptor can not claim apportionment of price against the vendor for defect in vendor's title his remedy against the vendor for being indemnified for defect in title continues. The implied covenant for title runs with the land and is therefore enforceable by the preemptor in whom the property vests. Hence the preemptor can claim compensation for breach of warranty of title as a vendee under a private sale can. The Transfer of Property Act may not apply to preemption sales so far as the formalities are concerned but the preemptor is entitled to the benefit of warranty of title implied by Section 55 of the Act.¹

Claim to recover part as owner and part as preemptor:—The rule that there can be no apportionment of price is however subject to one exception. Thus where a person sues to recover part of the property sold by the vendor as owner and to recover the remaining part on the ground that he is entitled to preempt such a suit would not be bad for misjoinder of causes of action² and the owner will be allowed to preempt on payment of proportionate price. As the Allahabad High Court points out consideration in such a case must be regarded as spread over the entire property and that it would be inequitable and unjust to decree the plaintiff's claim for part of the property as owner if he is to be compelled to pay the whole consideration.³

184. Where an occupant in a survey-number transfers his interest or any part thereof for a consideration which consists in whole or in part of land, the other occupants in the survey-number shall have a right to pre-empt the interest transferred.

(2) Such right may be enforced by civil suit, and in such suit the court shall first examine the whole transaction whereby the exchange was effected, and if it appears that it

1 Abdul vs. Kisan A. I. R. 1931 Nag. 165.

2 Bhagwati Sarau vs. Parmesbar Des. I. L. R. 36 All. 476.

3 Abdul Anis vs. Mariyan Bibi I. L. R. 49 All. 219.

effected a consolidation in the land held by either party to the transfer it shall dismiss the suit.

(3) If the court does not dismiss the suit under subsection (2) it shall proceed therewith and shall have power to fix a fair price for the interest to be pre-empted.

Decree in suit for pre-emption,

Notes.

This section is entirely new and the reasons for enacting this are explained by the Select Committee in the following words:—

“ We are informed there is a widespread practice of defeating the present law of preemption by means of exchanges whereunder a large area of land is exchanged for practically a full cash consideration plus a small area of land. Such transactions come within the legal definition of exchange, but are for all practical purposes a sale and we do not consider it advisable to leave such a large loophole for the evasion of law. We have therefore included this new clause giving rights of preemption in cases of exchange, but we have limited the right so that it may not operate in cases where there has been a genuine exchange of land with the intention of consolidating the holding of either or both of the parties to the transaction. In such cases we have given the court power to enquire into the transaction and to dismiss the suit if it finds that a genuine consolidation has been effected.”

Subsection (2):—This subsection operates as an exception to the general rule enunciated in subsection (1). The latter subsection allows preemption generally on all transactions of exchange. The former subsection viz. subsection (2) says that preemption would be disallowed if on examination of the transaction the Court finds it was not entered into with the idea of a “consolidation in the land held by either party to the transfer.”

Difference between a sale and an exchange:—The difference between a sale and an exchange is pointed out as follows. An exchange implies an interchange of property with another, and except in so far as the price may not be payable in

money, the rights and obligations attaching to an exchange are analogous to those of a sale. These rights and liabilities are enforceable between the parties to the exchange *inter se*. Third persons can not be substituted in the place of either of them, because they can not give what does not belong to them. The intrinsic value of the property given in exchange, as distinguished from its market value, would moreover, vary according to the purpose or necessity for which the exchange was effected. The price which a person receives for the property exchanged, is represented by the value of the property he gives and the convenience which he secures for himself. The latter can not be valued in money.¹

It is this convenience which parties to the exchange or either of them secures that distinguishes a genuine exchange from a sale and when such is the case the court will disallow preemption. It may be the convenience of cultivation or the consolidation of holding. In either case it is "consolidation in the land held by either party to the transfer." Thus if A exchanges his share in a survey number with B and acquires from him another land which it is more convenient for him to cultivate and B gives his land as he thereby secures another portion of land which is contiguous to his land mutual convenience of cultivation is served and there is a genuine exchange.

Subsection (3).—For fair price and consideration which go to determine the same see notes under sections 182 and 183.

185. (1) The provisions of sub-rule (1) of rule 14 of Order XX of the First Schedule to the Code of Civil Procedure, 1908, shall apply to decrees in pre-emption suits under this Chapter; and for this purpose—

Decrees in suits
for preemption.

- (a) the phrase "purchase-money" shall be deemed to include any sum admitted by the parties or found by the court to be due by the plaintiff as the price of a sale, the amount due on a final decree for foreclosure (together with interest, if any), the

principal amount of a usufructuary mortgage, and the premium of a lease; and

(b) the deposit of a sum of money with the Tahsildar under the provisions of section 176, 177 or 178 shall be deemed to be payment of such sum into court.

(2) Where any sum of money has been paid into court or deposited with the Tahsildar the decree shall specify to whom such sum shall be paid.

(3) The court may also take all steps which in its opinion may be necessary for the proper disposal of the suit, including the enforcement of the execution of a sale deed, and the delivery of a deed of transfer to the party entitled to the possession thereof.

Notes.

General:—This section says that the provisions of the Code of Civil Procedure relating to preemption decrees contained in Order 20 rule 14 would apply to claims for preemption arising under this law. It is obvious however that the whole of the adjective law relating to suits would be applicable to suits for preemption. It would be beyond the scope of this work to deal exhaustively with all matters relating to procedure in preemption cases; and an attempt is made below to focus attention only on some of the very important matters that crop up in preemption suits. For an exhaustive study the student must consult standard works.

Joinder of parties. Plaintiffs:—Order 1 rule 1 of the Code of Civil Procedure governs the joinder of plaintiffs and all persons may be joined as plaintiffs in whom any right to relief is alleged to exist whether jointly or severally or in the alternative. Thus all sharers in a survey number may join in a suit to preempt without asking the court to determine their rights 'inter se'.¹ If the plaintiff has a legal right it is unnecessary for the court to consider that he is set up by a

¹ *Mahammad Wajid Ali Khan v. Puren Singh* L. L. R. 51 All. 267 P. O.; A. L. R. 1929 P. C. 58.

stranger,¹ or that he is suing benami for another. If the right of preemption resides in an unregistered association all members of the association must join as plaintiffs or the leave of the Court must be obtained under Order 1 rule 8 by some to sue on behalf of all.

Defendants:—If the vendor is in possession he is a necessary party, otherwise he is not.² The rule relating to joinder of defendants is contained in O. I. R. 3. When the vendee against whom preemption is claimed has sold his share it is necessary to join the transferee as a defendant.³ Party-defendants must be added within the period of limitation. If property is sold to two persons and only one is joined in time the whole suit is barred because of the late joinder of a necessary party.⁴

But if a party is joined in time but there is some defect e. g. where a party is joined but being minor his guardian is appointed after limitation the defect is not fatal to the suit.⁵

Joinder of causes of action or alternative relief:—There is nothing to prevent the plaintiff in a suit for preemption setting up a claim for possession of the property on the ground of ownership.⁶

Death of parties:—If a plaintiff preemptor dies the suit can be continued by his heir e. g. a widow.⁷ Similarly the suit can be continued against the heirs of the vendee. The legal representatives of the deceased vendee must however be brought on record within time, otherwise the suit would be barred against all defendants.⁸

1 *Abhainandan Prasad v. Pashpat Nag*, I. L. R. 47 All. 470.

2 *Harbans Tiwari v. Tota Sahu* I. L. R. 36 All. 14.

3 *Set Narayan v. Badrinath* 9 A. L. J. 211.

4 *Jwala Das v. Gopal Lal* 58 I. C. 355 *Jaijai Ram v. Darshan Lal* A. I. R. 1921 Oudh 252.

5 *Harlal sing vs. Rudra sing* I. L. R. 49 All 869.

6 *Bhagawati Saran vs. Parmochar Das* I. L. R. 36 All. 476;

Afzal Hussain vs. Haran Bibi A. I. R. 1929 All. 398.

7 *Umrao Singh vs. Mt. Mohan Kuar* A. I. R. 1927 All 699.

8 *Imam Uddin vs. Sadarnath Rai*, I. L. R. 32 All. 804.

Abatement of suit:—If one of several plaintiffs suing for preemption dies and his heirs do not join in the suit as plaintiffs the suit does not abate.¹ But if vendee files an appeal against a decree for preemption but does not bring the heirs of a deceased respondent plaintiff on record within limitation and the appeal is decided in his favour, the legal representatives of the deceased respondent against whom the appeal abated are not bound by the appellate decree and would be entitled to exercise the right of preemption against the vendee for the whole of the estate.²

Valuation for Court fees and Jurisdiction:—The plaint has to contain a clause giving the valuation of the claim for court fees and for jurisdiction in accordance with O. 7 rule 1 of the Civil Pro. Code.

Court fees:—For valuation for court fees see notes under section 174.

Jurisdiction:—Rule III of the rules framed by the Local Government under the Suits Valuation Act says that the value for jurisdiction in preemption cases will be computed in the same way as in suits for possession and the rule for the latter kinds of suits is:—

(a) When land is held on a settlement for a period not exceeding 30 years and pays full assessment to Government the value for jurisdiction is to be a sum equal to 10 times the survey assessment.

(b) When land is held on permanent settlement or on a settlement for a period exceeding 30 years and pays full assessment a sum equal to 20 times the assessment.

(c) When the whole or any part of the survey assessment is remitted—the valuation is to be a sum computed under (a) or (b) above in addition to 20 times the assessment of the portion of assessment so remitted.

(d) In other cases the market value of land. Clause (b) above is practically inoperative in Berar for preemption as there is no land held on permanent settlement or on a settlement

1. Mahadeo Singh vs. Talib Ali I. L. R. 50 All. 792.

2. Wajid Alikhan vs. Puran Singh I. L. R. 51 All. 267 P. C.

exceeding 30 years. Clause (c) would apply to preemption in cases of land in Ijara villages leased under the Rules of 1865.

Valuation in appeal:—Jurisdiction for purposes of appeal follows the jurisdictional value of the suit. The rule has been laid down by the Nagpur Court in the following terms. For the purposes of determining the proper appellate Court in a civil suit, what is to be looked at is the value of the original suit, that is to say, the amount or value of the subject matter of the suit, and that such amount or value of the subject matter of the suit must be taken to be the value assigned by the plaintiff in his plaint and not the value as found by the Court unless it appears that either purposely or through some gross negligence the true value of the suit has been altogether misrepresented in the plaint.¹ Value for purposes of court fees may change according to relief claimed but the value for jurisdiction remains the same.²

Preemption as a defence—Res judicata:—The right of preemption can not be pleaded as a defence to a suit for possession and consequently failure to plead it as a defence would not operate as res judicata.³ The reason is that it is only a vested and ascertained right which could be pleaded as an answer to a suit. The right of preemption being inchoate gives no such vested right to co-sharers as to entitle them to resist the claim for possession.

Hence it has been held that a preemptor does not lose his right to preempt on a foreclosure without notice to him simply because as defendant he did not choose to redeem.⁴

Personal nature of the right:—The right of preemption is of a personal nature⁵ and a mortgagor can not object to foreclosure because the mortgagee has failed to give the notice of foreclosure to the co-occupant.⁶

1 Chunalal vs. Kisandas A. I. R. 1926 Nag. 71.

2 Olpherts vs. Arjundas 9 N. L. R. 112; Dhiraj Singh vs. Rajaram 6 N. L. R. 164.

3 Narhar vs. Gulla A. I. R. 1931 Nag. 110, 27 N. L. R. 354.

4 Agyaram vs. Deorao 8 N. L. R. 161.

Bapu vs. Anand 9 N. L. R. 143.

5 Banji vs. Muktai 8 N. L. R. 62.

6 Gangoo vs. Sakharan 3 N. L. R. 84.

Court of Wards Act and preemption suit:—Now that the Court of Wards Act is extended to Berar it is necessary to note that a suit relating to the property of a ward can not be brought without two months notice to the Court of Wards Vide sec. 26 of the Court of Wards Act as applied to Berar.

Cause of action:—Where by a sale deed certain land was transferred and subsequently second deed was executed in which it was stated that the land in the first sale-deed was wrongly described and that for correcting the mistake the second deed is executed it is not the second deed that supplies the cause of action but the first one.¹

Effect of filing a suit:—A preemptor when he institutes preemption suit can not question the alienation which gives rise to preemption on the ground that it is void for want of consideration as the preemption suit amounts to an admission of the validity of the alienation.²

Decree in preemption Suits:—Subsection (i) of this section directs that the provisions contained in Rule 14 sub-rule (1) of Order 20 of the Civil Procedure code will apply to preemption decrees. The rule refers to preemption on sale alone and clause (a) of subsection (1) of this section adds that the expression "purchase money" will include, money due on other transactions which give rise to preemption under the provisions of this law.

Rule 14 Sub Rule (1) of Order XX runs as follows:—

(1) Where the court decrees a claim to preemption in respect of particular sale of property and the purchase money has not been paid into court the decree shall:—

(a) specify a day on or before which the purchase money, shall, be so paid, and

(b) direct that on payment into court of such purchase money, together with the costs (if any) decreed against the plaintiff, on or before the day referred to in clause (a) the defendant shall deliver possession of the property, to the plaintiff,

1 Sheo Narayan vs. Khaderu A. L. R. 1926 Oudh 475.

2 Kisan Singh vs. Amarsingh 118 I. C. 910.

whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase money and the costs (if any) are not so paid, the suit shall be dismissed with costs.

Sub rule (2) of the Rule has not been extended as it would have little application to preemption cases in Berar. Priority in preemption is fixed by section 179 above. Rival claims are not therefore likely to be decreed as contemplated by this sub-rule. When separate suits are instituted by different persons claiming to preempt in preference to other claimants courts have the power to consolidate the suits by the general power vested in courts as indicated before and by the wording in subsection 3 of this section which empowers the courts to take every step necessary for the proper disposal of the suit.

Principal points in preemption decrees:—Under Sub-(1) of the rule Rule quoted above the decree in preemption suits directs three things:—

- (i) that the price fixed for preemption shall be paid on or before a specified date.
- (ii) that the title of the preemption will accrue from the day of payment of the price and not earlier.
- (iii) that in the event of non-payment of the price fixed and costs by the appointed day the suit shall be dismissed.

Deposit of preemption price:—The payment of the full amount is necessary. If the amount is short even by one anna it is not a payment in full and will not be taken as such. It is the duty of the decree-holder to take all precautions to make sure that the requirements of the decree are strictly complied with. Section 148 of the Civil Procedure Code is not applicable and courts will have no power to condone the deficiency.¹ The preemptor is entitled to deduct costs allowed to him by the decree against the vendee.²

¹ Kanhayalal vs. Mohammad Shafi Khan 18 I. C. 600 Rahmat Khan vs. Nawab Khan A. I. R. 1925 Lah. 91.

² Iari vs. Gopal Saran I. L. R. 6 All. 351 Kapuria vs. Wali Muhammad I. L. R. 2 Lah. 294; A. I. R. 1922 Lah. 294.

If the preemptor has paid in the full money but his creditor attaches it and takes away a part of it the preemptor must pay in the deficit before applying for possession of property.¹

Date of deposit :—The deposit must be made on or before the date fixed by the Court. If it is not so done the court has no power to extend time for payment under section 148 of the Civil Procedure Code.² This is the view of the Nagpur High Court. Other High Courts are not unanimous on the point. Lahore and Madras³ agree with the Nagpur view while Patna⁴ takes a different one. The Allahabad High Court in its earlier rulings held the same view as the Nagpur High Court but in its later rulings seems to take a different one.⁵

If the last day of the time given for deposit happens to be a holiday on which the court is closed, money may be deposited on the next day the court opens.⁶

Conditional deposit—when it is not :—When the deposit is made it is none-the-less a compliance with the decree because the preemptor files an application with it that the amount may not be given to the vendee till the disposal of his appeal.⁷

If the plaintiff however withdraws money from court and thereby fails to keep in deposit the money due to the vendee the decree is not complied with and the suit is liable to be dismissed.⁸

A preemption decree was obtained by plaintiff subject to payment of purchase money within two months but the plaintiff failed to comply with the condition. In appeal the appel-

1 Sheogopal vs. Najib Khan I. L. R. 36 All. 398.

2 Ambadas vs. Laxman 19 N. L. R. 8; affirmed in 25 N. L. R. 110.

3 Rahmat Khan vs. Nawab Khan A. I. R. 1925 Lah. 91; Dharmaraja vs. Shrinivasa I. L. R. 39 Mad. 876.

4 Abu Muhammad vs. Mukut Pratap 34 I. C. 85.

5 Saranjan vs. Ram Bohal I. L. R. 35 All. 456; Girdharising vs. Bhupal Singh I. L. R. 45 All. 456.

6 Himmum vs. Fauja A. I. R. 1921 Lah. 6 F. B. M. Muhammad Jan vs. Shiam Lal I. L. R. 46 All. 328; 1924 All. 218.

7 Abid Ali Khan vs. Har Prasad A. I. R. 1930 Oudh 13.

8 Tiwari vs. Ramadhar A. I. R. 1925 Oudh 98.

late court set aside the preemption decree. The plaintiff then filed a second appeal in which the decree of the first Court was restored but time was not extended for payment of the money, it was held that the preemptor decree-holder was not entitled to get possession as he had not complied with the condition laid down in the first court decree.¹

Power of the Appellate Court to extend the time:—We have seen above that Section 148 of the Code of Civil Procedure does not enable a Court to extend time fixed by the decree. But this does not mean that the appellate court has no power to fix another date for payment of the price of preemption. Under Order 43 Rule 33 of the Civil Pro. Code the appellate court has power to pass such further order as the justice of the case may require and in virtue of this provision it has been held that the appellate court may fix another date for payment.² But the mere filing of the appeal cannot have that effect. If there is a variation in the amount to be paid it is reasonable that the preemptor should get time to do what he could not have done before.³ Similarly if the price fixed by the first court is found to be excessive the appellate court may fix a date for the preemptor to pay the amount fixed by it.⁴ As the Chief Court in Punjab pointed out "a preemptor is given a very special and peculiar right which over-rides the ordinary rights of contract and if he asks the Court to give effect to that right, he must be careful to see that he complies consistently with his honest pleas with the decree the court grants him. He may well believe that the court which passed the decree in his favour has erred in estimating too highly the value of the property and he is, of course, at liberty to contest that estimate by appeal. But he must recognise that the appellate court will not as of right grant him an extension of time within which to pay any further sum which that court finds to be justly payable by him and if in point of fact, he has paid no money into court or has made no

1 *Sakkram Das vs. Nazar Muhammad* I. L. R. 6 Lah. 316; A. I. R. 1925 Lah. 380.

2 *Jaggar Nath vs. Jaku* I. L. R. 18 All. 223.

3 *Debi Saran vs. Gupta* I. L. R. 36 All. 514.

4 *Waryam Singh vs. Mahtab Singh* 21 P. R. 1925.

tender of a sum to the court or if he has paid or tendered a sum which is unreasonably small he cannot expect an extension of time, power to grant it being only exercised in favour of a preemptor whose conduct is bona fide."

(ii) **Accrual of the preemptor's title:**—A successful preemptor is vested with the rights of the vendee whom he dislodges not from the date of the decree but from the date on which he satisfies the conditions of the decree viz. when he pays the preemptive price.¹ So the vendee can remove the crops before the preemption money is paid into court but after it is paid he has no right to them. As soon as the preemptor pays the money he becomes the owner of the land with its legal incident viz. the crop attached to it,² even if the decree is silent about it.

(iii) **Dismissal of the suit:**—The consequence of non-payment is the dismissal of the suit; but it is not to be supposed from this that a second decree has again to be drawn up on failure to pay as directed. The decree that the court passes is neither conditional nor preliminary and no final decree is called for.³ The decree as passed is capable of execution and if the preemptor complies with the condition of payment he can apply for execution of the decree and for possession of the property.

No need for conveyance:—The decree is for possession and no conveyance deed is therefore necessary to vest the property in the preemptor.⁴ The preemptor has the right on obtaining possession to have his name substituted in the Record of right.

Preemptor cannot transfer the decree:—We have seen above that the title of the preemptor dates from the day of payment. Until payment is made as directed the title which is in

1 Akram Khan vs. Aziz Khan A. I. R. 1923 Lah. 451. Baghubir Sing vs. Jodha Sing I. L. R. 45 All. 482.

2 Bapu vs. Vithoba A. I. R. 1923 Nag. 327. Beliram vs. Hari-chand A. I. 1921 Lah. 30; Puttasing vs. Baldeoing A. I. R. 1928 All. 667.

3 Abid Alikhan vs. Har Prashad A. I. R. 1930 Oudh 13.

4 Begum vs. Muhammad Yakub I. L. R. 16 All. 344.

the vendee is not dislodged and so the preemptor cannot sell or transfer the decree;¹ nor can the decree be attached in execution. The interest of the preemptor is merely contingent till the payment is made. The transferee cannot execute the decree.

Purchase money not liable to attachment:—Money paid into court in a preemption suit cannot be taken out of court by a creditor of the man who pays it so long as the suit is pending or unless the result is that the person who paid the money is held entitled to withdraw it. Money paid into court, by plaintiff in preemption to be paid over in a certain event to the defendant in the suit, is in the custody of the court until the result of the litigation is finally known.² Money paid into court cannot be withdrawn by the preemptor himself nor can it be attached as against the vendee also.³

Liability of preemptor to pay consideration not paid:—Vendor is entitled to recover the price fixed which is not actually paid by the vendee as part of the unpaid purchase money from the preemptor.⁴

Acceptance of deposit by vendee does not amount to estoppel:—Withdrawal by the vendee of the money paid does not debar him from appealing against that decree.⁵ Such a conduct does not amount to estoppel.⁶

Preemptor bound to pay previous incumbrances:—A preemptor is bound to pay the amount of mortgage which was mentioned in the sale-deed under which he is preempting as part of the consideration.⁷ The preemptor takes the property subject to its burdens as the vendee took it and as we have seen above the provisions of the Transfer of Property Act apply to preemption.⁸

1 *Mebar Khan vs. Gulam Rasul A.* I. R. 1922 Lah. 300; *Ram Sahai vs. Gya I.* L. R. 7 All. 107.

2 *Abdus Salam vs. Wilayat Alikhan I.* L. R. 19 All. 256; *Sheo Gopal vs. Najib Khan I.* L. R. 36 All. 398.

3 *Haider Hussain vs. Ghasiti Bibi II* I. C. 227.

4 *Abdus Samad vs. Abdur Bauf A.* I. R. 1929 All. 780.

5 *Mehdi vs. Mt. Nadran A.* I. R. 1929 Lah. 137.

6 *Mt. Qudrat-un-nissa Bibi vs. Abdul Rashid I.* L. R. 48 All. 616.

7 *Bechan Singh vs. Kishan Lal I.* L. R. 44 All. 345.

8 *Abdul vs. Kisan A.* I. R. 1931 Nag. 166.

Preemptor takes property subject to the risk of the sale being set aside:—A vendor sold his property for Rs. 1400 and this property was preempted by a preemptor; the vendor's son brought a suit for setting aside the sale on the ground that the sale was not binding against him. It was found that out of Rs. 1400 the consideration for the sale Rs. 200 were not for family benefit. The Allahabad High Court held under these circumstances that the son was entitled to get back the property on reimbursing the preemptor for what was paid for family benefit.¹

Suit not always necessary for preemptor:—It is not necessary for a preemptor to file a suit for enforcing his right. He can do so without the intervention of the Court.² A preemptor may be willing to pay a higher price in order to avoid uncertainties of litigation and if he does settle with the vendee in this way it would not be right to say that he has not exercised the right of preemption.³

Preemptor not bound to preempt:—It cannot also be said that it is always desirable to preempt. Failure to exercise that right will not be regarded as a breach of trust on the part of a trustee so far as the beneficiary is concerned.⁴

Preemptor's obligation to pay for improvements:—As a general rule a purchaser of immoveable property subject to the right of preemption who has effected improvements in spite of the preemptor's warning not to do so is under no circumstances entitled to recover their market value but he might be allowed to remove them if that could be done without injuring the property, because these are not improvements made in good faith. There is a defect of title in that the purchase is liable to be defeated by the suit of a preemptor. Where no claim is made for a long time there might be an equity against compelling the purchaser not to improve his property on the mere chance of a claim for preemption being made but where notice of claim is given without loss

1 Dwarka Ram vs. Ghulia Pande I. L. R. 45 All. 429.

2 Faiz Muhammad vs. Muhammad Ismail A. I. R. 1924 Lah. 651.

3 Dharam Singh vs. Kirpal Singh A. I. R. 1923 Lah. 31.

4 Balaji vs. Balkrishna A. L. B. 1930 Nag. 182.

of time within three weeks of the sale and the suit itself is filed within 3 months of the date of sale the defendant would not be entitled to recover the price of his improvements.¹ In a recent case the Lahore High Court says the preemptor's right to claim compensation for improvements depends upon the circumstances proved in each case. If it be established that he made them bonafide he is entitled to compensation. If however they are made in anticipation of a suit for preemption then he is not entitled to it.²

The rule as to compensation for improvements is contained in Section 51 of the Transfer of Property Act and conditions necessary to enable a person to claim compensation are:—

- (i) that the transferee must believe himself to be absolutely entitled to the property improved upon.
- (ii) such belief must be in good faith.

These conditions can hardly be fulfilled by a vendee in a preemption suit. He knows that he has only a defeasible title and as pointed out by the Nagpur High Court improvements cannot be claimed unless it is shown that the person to be saddled with the value of improvements acquiesced in the transfer.³ The only circumstances in Berar, therefore, which would entitle a vendee to claim value of improvements, are that the vendee was encouraged directly or by implication by the preemptor in making the improvements.

Subsection (3):—This was inserted for the following reasons:—

"It is desirable sometimes that title deeds should be taken from one man who has no title and given to the man to whom the title has been awarded. Further, under the chapter as now drafted, it is possible for preemption to be effective before any transfer has been made of any kind. Thus in cases of sale,

1 *Batu Singh vs. Tara Singh* 122 P. R. 1907.

2 *Fateh Muhammad vs. Hakim Khan* A. I. R. 1936 Lah. 629.

3 *Jagdishwar vs. Jankibai* A. I. R. 1936 Nag. 304.

when a man intends to sell his holding he gives a notice and the co-occupant may make a deposit and preempt the holding. In this case there is no transfer and no title deed and the plaintiff will be left in the somewhat anomalous position of basing his title on a decree which directs him to pay money. It is therefore proposed to make some further generalised provisions empowering the court to enforce the execution of a sale deed where necessary and to deliver deeds of transfer to the person properly entitled thereto, and to take any other steps which in its opinion may be necessary for the proper disposal of the suit."

186. Rules may be made under this Law regulating the procedure of Tahsildars in giving and publishing notices and in receiving and disbursing deposits made under sections 176, 177 and 178.

Power to make rules.

187. (1) Notwithstanding anything contained in section 174, sub-section (2), the Governor in Council may, by notification, extend the application of the provisions of this Chapter to any class of alienated villages.

Power of Local Government to extend application of chapter to alienated villages.

(2) Such notification shall be subject to the condition of previous publication as if it were a draft published under the provisions of section 22 of the Central Provinces General Clauses Act, 1914.

(3) Where such notification has been finally published in respect of any class of alienated village, then for the purposes of this Chapter the villages shall be regarded as a survey-number and the superior holder and each of his co-sharers as an occupant in the survey-number :

Provided that nothing in this section or in any notification made thereunder shall create any right of transfer which does not already exist.

Notes.

This section is new. It is inserted to enable Government to extend the provisions of preemption to Jagir villages. The Select Committee says in this connection :-

"We have introduced this new clause in order that the Local Government may apply the provisions of this chapter relating to preemption to alienated villages whenever it feels that it is in a position to do so with the approval of the superior holders concerned. We have therefore provided that no notification shall be issued applying these provisions until it has been published for previous objection."

Preemption in Ijara village of 1865.—This chapter is now extended to all villages leased under the Waste Land Rules of 1865 in which proprietary rights have been conferred by Government.¹

CHAPTER XV.

Miscellaneous.

188. Subject to such conditions and to the payment of such fees as may be prescribed by rules made under this Law, all revenue records, maps, and land records which have been prepared or are required to be prepared or kept under this Law or any other enactment for the time being in force, shall be open to the inspection of the public at reasonable hours, and certified extracts therefrom, or certified copies thereof, shall be given to all persons applying for the same.

Inspection and copies of maps and land records.

For rules see 'Compilation' pp. 64-88

Notes.

This confers on the public the right of inspection of Revenue records. Under section 76 of the Evidence Act certified copies granted by Revenue courts and officers are admissible for proof of public documents.

¹ C. P. Notification No. 218-XII-of 21-1-1931.

189. All records which have been, or may be, prepared by any hereditary officer or village officer in pursuance of the duties of his office or by order of the present or former Government, are hereby declared to be the property of Government, and the Deputy Commissioner is hereby empowered to demand their production.

Government's
ownership of cer-
tain records.

Notes.

This is borrowed from the Bombay Hereditary officers Act (III of 1874).

The idea seems to make all old documents connected with the administration of revenue public property. This section would make old documents public documents and their production on demand by the Deputy Commissioner is intended to protect them from being tampered with for private ends.

190. (1) If alienated land has been granted on condition that the holder shall render certain services or incur expenditure for the benefit of the community or any section thereof, and the holder fails to render such services or to incur such expenditure to the satisfaction of the Deputy Commissioner, or, if the holder transfers the land in such a manner that, in the opinion of the Deputy Commissioner, the purpose of the grant is likely to be defeated, the Deputy Commissioner may declare such land to be forfeited.

Forfeiture or as-
sessment of alien-
ated land on breach
of conditions of
tenure.

(2) Land forfeited under this section shall vest in Government free of all encumbrances and shall be regranted on the original conditions in accordance with rules made under this Law.

(3) If the services or expenditure contemplated by the grant are not required for the benefit of the community or any section thereof, the Deputy Commissioner may declare such land to be liable to pay fair assessment.

For rules see 'Compilation' p. 83.

Notes.

This section is new; and in the Statement of Objects and Reasons the necessity of inserting it in the Code is explained in the following words:—

"The policy of this clause is not, that Government should be in a position to interfere unnecessarily in the management of religious trusts, but to secure that when land granted for religious or charitable purposes is misappropriated or its income is misapplied the public may be in a position to request the Deputy Commissioner to resume the grant and to make a fresh grant to a trustworthy person. It is hoped that this clause will avoid the necessity of much troublesome litigation. This conception is not a new one as it is contained in Inam Rule IV."

From this it is obvious that the section is intended mainly to govern grants called "Religious and charitable grants or endowments covered by Rule IV of the Inam Rules or Inams of class 2nd. But the wording of the section is wide enough to apply to Inams of class 5th. i. e. Inams enjoyed by artisans and others for services rendered to the village communities such as carpenters, blacksmiths, barbers, etc.

Rule IV of Inam rules runs as follows:—

If the Inam was given for religious or charitable objects, such as for the support of temples, mosques, colleges, choultries, or other public buildings or institutions, or of the person rendering the service, it will be continued to present holders and their successors, so long as the buildings or institutions are maintained in an efficient state, and the service continued to be performed according to the conditions of the grant."

Paras 2 and 3 of Instruction 7 of the Instructions regarding Inams and Jagirs issued by the Local Government and printed as Revenue Circular section VI Serial No. 2 in Vol. II of the Berar Revenue Book Circulars explain the scope of subsection (1) of this section.

Service grants are inalienable under rule XIV (2) of the rules and, if a grantee alienates his grant, Government is entitled to resume it. But the object of a service grant is to

maintain the institution for whose service it is granted, and if this object can satisfactorily be attained by a reasonable arrangement, resumptions would not ordinarily be enforced. Each case must be dealt with on its own merits. Where the Inam was granted for services rendered to the community and alienation has resulted in a discontinuance of these services, the alienee may be ejected under section 57 of the Berar Land Revenue Code and the Inam regranted free of encumbrances to any person or persons willing to perform the service.

It has been held repeatedly in Berar that the term "successor" referred to in Inam Rule IV does not necessarily imply only heirs or lineal descendants, but includes also any person appointed to succeed. In case of neglect, therefore, on the part of the holder of a service grant to perform the stipulated service, the Deputy Commissioner may, on his own authority, resume the Inam and regrant the same to any successor he may deem proper, the fact being invariably reported to the Commissioner."

Rule VII of the Inam Rules which applies to Inams held by artisans runs as follows :—

"Inams enjoyed by artisans and others for service rendered to the village communities will be treated as hereditary grants and confirmed to the holders and their heirs *subject to the continued performance of the particular service* for which they were granted; but where the service is no longer required or the grant is in excess of the service rendered, the case will be dealt with according to the rules above prescribed for the imposition of Government quit rent."

Subsection 3 of this section is inserted to enable the D. C. to see that service is performed or the land pays its proper share of assessment to the State.

It is obvious that the rule can have no application to grants to Deshmukhs, Deshpandes and other servants of former Governments whose services have been discontinued by Government.

Civil suit to contest the Deputy Commissioner's order under this section is barred. Vide section 192 (1) (b).

191. Notwithstanding any custom whereunder a cess contribution or due has been levied in any village, no cess, contribution or due shall henceforth be leviable unless it is—

- Village cesses.
- (a) a cess, tax, toll or fee leviable by or under any enactment for the time being in force; or
 - (b) a payment for consideration received or to be received.

Notes.

In the days of the later Mogul Rule, the revenue was revised, not by any regular process of revaluation but by the expedient of adding on cesses to the existing totals. These cesses were called by various names. The standard sum still borne on the book as representing the last measurement and assessment was known as 'asal tumar' (असल तुमर) and the further imposts were called (अबवाब) abwab or Siwai (सिवाई). In course of time the practice fell to a lower depth still. The State gave up all control and merely bargained with local and influential men in certain tracts of the country for the largest sum they could reasonably expect to realize and left them to get out of the people what they could. These cesses which were subterfuges for increasing assessment were abolished by the Regulation of 1793 in Bengal and the same policy was followed in Berar by Rule II of the Berar Settlement Rules which said that the assessment was inclusive of cesses which term of course was meant to cover cesses levied by former Governments.

This section is intended to prohibit the levy of a village cess unless it be one imposed by some law or is in payment of consideration received or to be received. Kalash fees, (fees for worshipping the water pot before celebrating a marriage) Ghanavati fees of running an oil press etc. are no longer leviable.

The old Code contained the following definition of the term "village cess":—

"Village cess includes any cess, contribution or due which is customarily leviable within a village and is neither

a payment for the use of private property, or for personal service nor imposed by or under any enactment for the time being in force. This definition has been dropped from this Code as the section itself is supposed to give an idea of what is prohibited. The old Code prohibited such levies and it was held that "kalash" fees fall under the definition of "village cess" and as such would not be leviable except with the sanction of the Resident.¹

192. (1) Except as otherwise provided in this Law, or in any other enactment for the time being in force, no civil court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the Governor General in Council, the Governor in Council or any Revenue Officer is by this Law, empowered to determine, decide or dispose of; and in particular and without prejudice to the generality of this provision, no civil court shall exercise jurisdiction over any of the following matters:—

Exclusive jurisdiction of revenue authorities.

- (a) any claim against the Government relating to lands held under treaty, or lands granted or held on political tenure;
- Matters expressly excepted from jurisdiction of civil court.
- (b) any claim against the Government to lands referred to in section 190 or relating to the assessment, forfeiture or regrant of such lands;
- (c) any question as to the validity or effect of the notification of a revenue-survey or any question as to the term of a settlement;
- (d) the amount of land-revenue assessed under this Law or any enactment for the time being in force;
- (e) any claim against the Government to hold land free of land-revenue, or at less than the fair assessment, or to be assigned in whole or in part the land-revenue assessed on any land;

¹ *Tukaram v. Yeshvant* 3 *Berar Law Journal* 17; *Baliram v. Sakharani* 3 *Berar L. J.* 18.

Provided that nothing in this section shall bar the jurisdiction of the civil courts in respect of the interpretation of any sanad, grant, contract or recorded order conferring a right to hold land free of land-revenue or at less than the fair assessment.

- (f) any claim against Government or against a Revenue Officer for remission or suspension of land-revenue or for a declaration that crops have failed in any year;
- (g) any claim to modify a decision determining a village site made by a Settlement Officer or Deputy Commissioner;
- (h) any claim to modify a decision regarding the distribution of alluvial land made by the Deputy Commissioner under section 70;
- (j) any claim against the Government to have any entry made in any land records or to have any such entry omitted or amended;
- (k) any question regarding the demarcation of boundaries or fixing of boundary marks under Chapter XI;
- (l) any claim against the Government connected with, or arising out of, the collection of land-revenue or the recovery of any sum which is recoverable as land-revenue under this Law or any other enactment;
- (m) any claim against the Government to set aside or modify any premium, penalty, cess or rate imposed or assessed under the provisions of this Law or any other enactment for the time being in force;
- (n) the distribution of land or the allotment of land-revenue on a partition of land made by a Revenue Officer under the provisions of this Law or of the rules thereunder;
- (o) any claim against the Government relating to any property or emoluments appertaining to the office of any hereditary officer or servant;

(p) any claim against the Government to perform the duties of any such officer or servant or in respect of any injury caused by exclusion from such office or service;

(q) any claim to compel the performance of any duty imposed by this Law on any Revenue Officer or other officer appointed under this Law.

(2) Where, under the provisions of this Law, a suit may be

Suits not to be proceeded with unless plaintiff has exhausted right of appeal.

instituted against Government to set aside or modify a decision made by a Revenue Officer on any matter which a Revenue Officer is empowered by this Law to determine, decide or dispose of, such suit shall not be proceeded with until the plaintiff proves that, prior to the institution of the suit he has presented and obtained decisions upon all appeals allowed under this Law in respect of such decision.

Provided that where the period of limitation of such suit runs from the date of the order which is sought to be set aside or modified, such date shall be deemed to be the date of the last appellate order in the series of appeals originating from such order.

Notes.

Reason for the rule:—This section and section 20 of the Berar Patel Patwaris law affirm the exclusive jurisdiction of revenue authorities in revenue matters. The reason for this special jurisdiction is stated to lie in the notion that the training under-gone by judicial officers of Government does not enable them to dispose of revenue cases with that insight and dispatch that revenue officers can do. In their routine work they have to visit villages and can therefore inquire on spot. Their work brings them into contact with people and acquaints them with their ways and habits; and they are thus better qualified to deal even justice than civil courts. Allocation of special work to special tribunals is now an accepted maxim of modern jurisprudence; and it is recognised through-out this law that when it is a question of civil rights the civil courts

ought to decide. The following extracts from the discussion on the Bombay Revenue Jurisdiction Bill on which these provisions are based in the Imperial Legislative Council in 1876 will illustrate the underlying principle:—

Honourable Mr. Hope said:—

“No proceeding is allowed in a civil court in England for the recovery of overpaid or overassessed taxes; the aggrieved parties can only apply to the Commissioner (i. e. Revenue Officers of Government) And the Court of Exchequer had ruled that it will not upon motion enter upon any question of rateability to assessed taxes and that an assessment under Assessed Taxes Act is final and conclusive unless appealed to the Revenue Officers. That was a broad and general statement which applied more or less to all classes of what might be called the Queen's Taxes in England. With regard to the local taxation the principle was very much the same; the appellate court was different, being usually the Court of Quarter Sessions. But with regard to such taxation also the law was perfectly explicit that “no rate, or order, or award, or other matter or thing made, done, removed or transacted in, or relating to the execution of this Act shall be removed or removeable by certiorari or other writ or process whatever into any of the Superior Courts.

“The line drawn in the Bill was that whenever a case or claim rested upon an express enactment, or provisions of a sanad, or upon a deed or a judgment or other specific basis the civil court should decide, but when a case turned upon a tenure or custom, or any matter more or less of a technical nature, the Revenue Courts should deal with it.”

“Again, the forms, principles and proceedings of civil courts are not favourable for the working out of elaborate revenue cases. The Court was bound to decide upon what was placed before it, it must go upon the particular statements, which might happen to be extracted unintentionally or with full consideration from individual witnesses and some times under cross examination. The civil court would perhaps under some theory of laches, refuse to admit in the course of a hearing evidence to rebut other evidence with which one of the parties concerned might think, he had been surprised. The

court would draw inferences unfavourable to one party from the absence of evidence which would have been produced in the lower court if a party wanted to do so. The Revenue officer was bound to investigate the matter to the bottom, he might send for any information he required. If he could not make out from the complaint or the evidence on which it was based he might send for the people considering themselves aggrieved, converse with them, find out what they really meant and deal with the case as he thought best. If there was not this distinction there would be no reason whatever for excluding from civil courts revenue matters."

The Hon'ble Mr. Hobhouse remarked:—

"The reasons were two:—

(1) the law cast on the Judges duties which they could not perform so well as Revenue Officers.

(2) if every man might question in a court of law the incidence of assessment on himself public business could not go on."

Section 9 of the Code of Civil Procedure which defines the jurisdiction of civil courts says that the courts shall have jurisdiction to try all suits of civil nature excepting suits of which cognizance is either expressly or impliedly barred, and the Explanation to that section lays down that all suits in which the right to property or office is contested are suits of a civil nature.

The Test:—This section bars the cognizance by civil courts of matters which Revenue authorities can decide under this law. So when a question arises if a civil suit is barred or not the test to be applied is to see if the subject matter is one which a revenue officer is empowered by this law to decide or dispose of. If it is so the suit is barred unless the right of suit is not expressly reserved. If the Revenue officer is not empowered by this law to decide a question the jurisdiction of civil courts is not ousted. It may be noted that the cases in which the right of private individuals to property are involved whether against Government or other individuals remedy of suit is expressly kept open under the several sections of this Law.

Jurisdiction of revenue court not ousted by errors or mistakes:—Another point well worth remembering is that the jurisdiction conferred on revenue courts by this Code cannot be taken as ousted by mistakes or errors, for as remarked by Lord Hobhouse, in *Malkarjun vs. Narhari* In I. L. R. 25 Bombay 337 P. C. at page 347. "The court made a sad mistake, it is true; but a court has jurisdiction to decide wrong as well as right. If it decides wrong the wronged party can take the course prescribed by law for setting matters right, and if that course is not taken the decision, however wrong, cannot be disturbed."¹

In a recent decision (*Arun Chandra Sinha vs Manmohan Singh Roy* A. I. R. 1924 Cal. 154) the Calcutta High Court has pointed out the distinction between "jurisdiction" and the exercise of jurisdiction."²

The term "jurisdiction" is often inaccurately used. There is clear distinction between "jurisdiction" and "exercise of jurisdiction." Since jurisdiction is power to hear and determine a case it does not depend either upon the regularity of the exercise of that power or upon the correctness of the decision pronounced, for the power to decide necessarily carries with it the power to decide wrongly as well as rightly. If it decides wrongly then the wronged party can only take the course prescribed by law for setting matters right; and if that course is not taken, the decision, however wrong, cannot be disturbed. The boundary between an error of judgment and the usurpation of power is this; the former is reversible by an appellate court within a certain fixed time and it is therefore only voidable, the latter is an absolute nullity. So far as the jurisdiction itself is concerned, it is wholly immaterial whether the decision upon the particular question be correct or incorrect. Were it held that a court had jurisdiction to record only correct decision, then each time it made an erroneous ruling or decision the court would be without jurisdiction and the ruling itself void."

The Court of the Judicial Commissioner at Nagpur observed as follows:—

1 *Malkarjun vs. Narhari* I. L. R. 25 Bom. 337 P.C. at 347.

2 *Arun Chandra vs. Manmohan Sinha Roy* A. I. R. 1924 Cal, 154.

“ Even if the order be considered as not warranted by law, it cannot be said to have been passed without jurisdiction. The Revenue officers had full and exclusive jurisdiction to decide the matter and in point of fact they did decide it. They may have erred in law but they are judges of law as well as facts and an error of law certainly does not vitiate the decision. The decision having been given by an authority legally competent to give it and not having been reversed or modified or corrected by officer having appellate jurisdiction in the matter can not be overridden by a decree of the Civil Court.”¹

Civil suits barred only when the Revenue Courts adjudicate according to the provisions of this law:—The jurisdiction of the civil courts is not barred when Revenue courts do not adjudge according to the provision of this law, i. e. travel beyond the realms of their jurisdiction.²

Strict construction of section:—As it is intended to oust the jurisdiction of civil courts, the section must be strictly construed.³

Time for pleading want of jurisdiction:—Objections as to jurisdiction can be raised at any stage of the proceedings. Thus it may be taken for the first time in appeal, or second appeal or in revision.⁴

General Rule:—Exclusive jurisdiction of revenue officers in revenue matters covered by this law is secured by the general proposition enunciated in the opening part of this section. The clauses below are instances of the application of this general rule. Jurisdiction of civil courts is barred in the cases covered by the clauses; but it does not necessarily follow that it is saved if a case does not fall under

1 *Lalsingh vs. Pandit Waman Rao* 22 N. L. R. 114 at p. 117.

2 *Balwant Ramchandra vs. Secretary of State* I. L. R. 29, Bom. 80 *Ganesh Mahadeo vs. Secretary of State* I. L. R. 43, Bom. 221 at 226 *The Secretary of State vs. Bagmat* 22 N. L. R. 147 at 150.

3 *Balwant Ramchandra vs. Secretary of State* I. L. R. 29 Bom. at 480 at 490 *M. A. Koyal vs. Bhondelal* A. I. R. 1931 Nag. 68; *Dattatraya vs. Tukaram* I. L. R. 45 Bom. 1141.

4 *Maha Prasad Singh v. Ramani Mohan Singh* I. L. R. 42 Cal. 116 at 136 *P. C. Ram Lal vs. Kisanchandra* 20 N. L. R. 33 P. C.

any of the clauses. For example the apportionment of land revenue on different portions of a survey number falls on a revenue officer and cannot be contested in a Civil Court. The opening part of this section corresponds with that of the C. P. Land Revenue Act Section 220, and in a case arising under that Act the Court of the Judicial Commissioner held that apart from the provisions of the clauses the jurisdiction of civil courts would be barred by the first part of the section which says that no civil court shall entertain any suit to obtain a decision on any matter on which any Revenue Officer is by the Act empowered to determine.¹

Clause (a):—This corresponds with para 4 of section 4 (a) of the Bombay Revenue Jurisdiction Act X of 1876.

Lands held under treaty:—In I. L. R. 29 Bombay 19 the Bombay High Court said that an agreement between the East India Company on the one hand and proprietors of village on the other could not be regarded as a treaty, the accepted meaning of the word being an agreement between two or more independent sovereign powers or states, and so the jurisdiction of civil court is not ousted when the question relates to the interpretation of an agreement between Government and an individual.²

Lands granted or held on political tenure:—Jagirs or Inam or lands granted for the performance of civil or military duties, or for the maintenance of the personal dignity of nobles and high officials are grants of this character. See Sir Alfred Lyall's Gazetteer of Berar pages 101-102, and Baden Powell's Land Systems in British India Vol. 1 page 257.

Any claim against Government:—The clause expressly bars suits against Government when the claim relates to lands held under treaty or lands granted on political tenure viz. Jagir or Inam lands but the question arises if suits relating to such land but between private individuals are barred. It is submitted that they are not barred as they do not fall in this category and neither this law nor the Inam Rules empower

1 Laxmanrao vs. Sadashee 22 N. L. R. 121 at 124.

2 Kalabhai Bapuji vs. Secretary of State I. L. R. 29 Bom. 19.

the revenue courts to deal with these matters to the exclusion of civil courts.

Clause (b):—We have already seen under section 190 before that Government has the right to nominate a successor to “service grants” and suits which call in question the decision of revenue courts as to forfeiture or to regrant of such lands would be barred.

Both this clauses and section 190 contemplate grants for services to be rendered to the community e. g. grants for the maintenance of a temple or mosque or for some other communal purpose. These are to be distinguished from grants made for services rendered in the past e. g. grants to Deshmukhs and Deshpandes, etc.

Clause (c):—This corresponds with sub-head 3 of clause (b) of section 4 of the Bombay Revenue Jurisdiction Act.

Clause (d):—This corresponds with sub-head 1 of clause (b) of section 4 of the Bombay Revenue Jurisdiction Act, and under this clause suits, in which the question of the incidence of land revenue or the amount payable by an individual to Government directly arises, are barred.

When the plaintiff Inamdar sued to recover from the defendant an occupant of land the assessment of lands held by him at survey rates and the defendant contended that under certain agreement with the Inamdar he had acquired the right to hold the land on payment of a fixed sum it was held that the cognizance of the suit by civil court was not barred.¹ “The objection must be” said the Bombay High Court “to the amount or incidence of any assessment of land revenue itself and as such. If the occupancy tenant complains that though he is bound to pay the assessment of land the amount or incidence of it as authorized by government is too high, having regard to the nature of the soil etc. and the objection is one purely and simply to such amount or incidence. But if without questioning the legality a propriety of the amount or incidence “per se” he

¹ *Lakshman Narayan vs. Govind* I.L.R. 28 Bom. 74 ; *Gangadhar Hari vs. Morbhat*. I. L. R. 18 Bom. 525.

asserts a right to pay a fixed sum he cannot be said to object to the amount of assessment. This view is affirmed in a recent case of the same court.¹

Clause (e) :—This corresponds with clause (f) of Sec. 4 of the Bombay Revenue Jurisdiction Act.

When the question is not to hold land free of land revenue but to derive some other advantage the suit is not barred.² This was a suit by an Inamdar against Government for interest on the profits of a village during the period he was dispossessed by Government on the ground that he was not entitled to hold the land free of assessment. The Inamdar was given profits for the period of dispossession and the suit was for the interest on the amount.

Proviso :—The proviso protects the right of an alienee of the revenue to sue in civil court for disturbance of his possession by Govt. The only condition required is that the claim should be under an instrument, sanad, or written grant.³

Recorded order :—These words are intended to cover the cases contemplated by proviso (3) to clause (j) of section 171 of the old Berar Land Revenue Code viz. cases where a person claims to hold land free of assessment "under a judgment of a law court or an adjudication duly passed by a competent officer under the Inam Rules, declaring property to be exempt."

If it is the question of the interpretation of an order passed by a competent authority e. g. the Inam Commissioner or any other officer empowered by law, the jurisdiction of a civil court is not ousted if the question arises between a purchaser from such an alienee and Government.⁴

Clause (f) :—Vide section 139, above.

Clause (g) :—Vide section 90 above.

1 Damodar Mahadeo. v. Kashinath A. I. R. 1925 Bom 79.

2 Janardanrao vs. The Secretary of State I. L. R. 13 Bom. 442.

3 Balvant Ramchandra vs. Secretary of State I. L. R. 29 Bom. 480.
at p. 500.

4 Fakrudinsab vs. Secretary of State I. L. R. 44 Bom. 130.

Clause (j) :—“Land records” see definition in section 2 (8). Suits against Government only are barred. Suits against private individuals are expressly provided for. Vide section 111.

The only case where the possibility of a suit against Government arises is the case of person claiming title to an intestate holding. This case is provided for by section 63 above; and suit against Government for declaration is contemplated by that section. This clause will not come in the way of such a suit as within 3 years there is no entry to be questioned and after three years the right of the heir is only to the sale proceeds of the holding.

Clause (k) :—The two cases which would necessitate civil suits between individuals have been provided for by section 124 and 129 above.

It should be noted that the suit which is barred by this clause is in regard to demarcation of boundaries or fixing of boundary marks. If a survey number adjoins Government waste land and the D. C. fixes the boundary marks of the survey number and summarily evicts him he has a right of suit not-with-standing the proviso to section 124 (2). Such a suit against Government for possession of land is expressly saved by section 41 (3) above.

Clause (L) :—This corresponds with clause (c) of section 4 of the Bombay Revenue Jurisdiction Act.

When the order of the Revenue officer is not in connection with the realization of a land revenue the order is *ultra vires* and right of suit is not barred.¹

In a case where the Collector attached talukdari village for arrears of revenue; and while the attachment was continuing ordered its forfeiture the Bombay High Court held that the Collector had no power to order forfeiture during the attachment and that as the order was illegal the jurisdiction of civil courts was not ousted. Jurisdiction of civil courts is

¹ *Samaldas Bechar v. The Secretary of State* I. L.R. 16 Bom 455. at 458.

ousted only when the Revenue court or officer had *prima facie* jurisdiction to pass the order questioned.¹

When there is no order by a Revenue officer in connection with the collection of land revenue and the suit is between two private individuals this clause cannot be invoked to bar the jurisdiction of a civil court.²

This clause would not be a bar to a suit in which the claim arises out of the alleged illegality of the proceedings taken for the realization of land revenue.³

Suits against Government officer:—This clause bars a suit against Government but would not by its wording bar a suit against Revenue officers acting in the discharge of their duties e. g. suit for damages for illegal attachment of moveables for realization of land revenue.

The old Code contained a definite section relating to the bar of certain suits against Revenue Officers to the following effect.

“No Revenue Officer shall be liable to be sued in any court for any act done or ordered to be done by him as such in pursuance of execution or intended execution of the provisions of this law or of any law, rule or order for the time being in force.” (Section 173)

There is no corresponding provision in the present Code for the obvious reason that none is necessary. If he acts as a ‘Revenue Officer’ and within the jurisdiction conferred on him by law he is protected by the general law that none can be proceeded against for doing what is his statutory duty. If on the contrary he oversteps the boundary and does something under the cover of law every subject of the Crown has the natural right to have his action tested in a court of law.

The Judicial Officers Protection Act, (Act XVIII of 1850) protects the ‘Collector or any other person acting judicially.’

1 *Anantacharya v. The Secretary of State* I. L. R. 19 Bom. 581 at 590.

2 *Bhau v. Hari* I. L. R. 20 Bom. 747 at 750.

3 *Gangaram v. Dinkar Ganesh* I. L. R. 37 Bom. 542 at 550.

A revenue officer acting within the limits of law would be acting judicially and would be protected by the Act. The protection given by this Act extends to acts without the limits of his jurisdiction provided that he at the time of doing the act believed himself in good faith to have jurisdiction to do or order the act complained of.¹

claims of third parties to property attached for realization of land revenue are expressly saved. Vide section 146 (5).

Suits to set aside sales on ground of mistake or irregularity in conducting and publishing the sale are barred. Vide section 157 (i). But suits to set aside sales on ground of fraud or on the ground that the arrear for which the property was sold was not due are not barred. See section 157 (2).

Clause (m):—Under this clause suits against Government only are barred. Suits against Local authorities like District councils are not barred. The right of suit against them is governed by Acts of the Legislature constituting them.

Clause (n):—Suit to question a partition made by Revenue Officer of revenue paying estates is barred under this clause.

Clauses (o) and (p):—Clause (o) corresponds with para 1 of clause (a) of section 4 of the Bombay Revenue Jurisdiction Act and clause (p) with para 2 of the same section.

These two clauses relate to suits concerning hereditary officers or servants.

Officers recognised as hereditary officers in Berar are (i) the Patel and (ii) the Patwari and the law governing these officers is the Berar Patel and Patwaris Law 1900. Section 11 of this law makes all assignments of emoluments void and section 20 bars the jurisdiction of civil courts in respect of suits:—

¹ Moti Lal Ghose vs. Secretary of State 9 C. W. N. 495.

Girja Shankar vs. Gopalji I. L. R. 30 Bom. 241. Vithal Ramchandra vs. Baghavendra I. L. R. 45 Bom. 1089. Clarke vs. Brajendra Kishore I. L. R. 59 Cal. 953 P. C.

- (1) relating to any claim by any person to the office of Patel or Patwari,
- (2) to any emoluments of the office,
- (3) or for compensation for exclusion from office.

Suits concerning social rights viz. "manpan" or rights of precedence in social functions etc. are not barred.

In a recent case the Privy Council has ruled that the words used in these clauses are wide enough to preclude the courts from entertaining any claim to watan office.¹

The combined effect of these clauses and section 20 of the Patel and Patwaris Law is to oust the jurisdiction of civil courts both in suits against Government and against private individuals. Clauses (o) and (p) bar suits against Government whereas section 20 of the Patel and Patwaris Law bars the cognizance of all suits where the relief sought is one of the above three kinds, irrespective of the fact that it is claimed against an individual.²

Jagallas and Mahars:—Jagallas are not hereditary servants. They are appointed by Tahsildars on the recommendation of the Patel. Vide Rules under section 194 (2) (g) rule 4. Mahars also are not hereditary village servants within the meaning of this section as succession to a working mahar is regulated strictly in accordance with the village custom and is not hereditary. In cases of dispute parties are referred to civil courts. Vide Rule 18 of the Rules under section 194 (2) (g).

The following suits are barred:—

- (1) suits relating to property appertaining to the office.³
- (2) suits relating to emoluments (See Section 20 of Patels and Patwaris Law.)
- (3) suits for 'Vadilki' (declaration about seniority.)⁴

1 *Laxmasrao vs. Shrinivas* I. L. R. 51 Bom. 830 P. J. See also *Hanumant vs. Secretary of State* I. L. R. 54 Bom. 125.

2 *Naro Pandurang vs. Mahadev* I. L. R. 12 Bom. 614; *Laxmasrao vs. Shrinivas* A. I. R. 1927 P. C. 217.

3 *De Souza vs. The Secretary of State-I.* I. L. R. 18 Bom. 318.

4 *Raoji vs. Genu* I. L. R. 22 Bom. 344.

The following suits are not barred:—

(1) suits for declaration that a person belongs to the family of an hereditary officer.¹

(2) suits against Patel or Patwari for impressing a pair of bullock.²

(3) suits that a person is the nearest heir of a deceased hereditary officer.³

Agreement to divide emoluments:—An agreement between a patwari and his substitute for the division of emoluments of the office of patwari is void and can not be enforced by a civil Court.⁴

Clause (q):—When there is a specific right in a person and corresponding duty in a public servant or public body suits to enforce such duties are permissible.⁵

But this clause bars a claim for performance of duties both against Government as well as the officer for the reason that higher authorities will not fail to accede to the wishes of a party when he has a right to exact a duty from a revenue officer.

Subsection (2):—This corresponds with the section 11 of the Bombay Revenue Jurisdiction Act.

Under this it is necessary for plaintiff to show that he had exhausted his remedies by way of appeals to revenue courts.

The Bombay Act does not require the plaintiff to wait for the decision of appeals presented. All that it requires of him is to present appeals.⁶ This subsection expects him to obtain decisions as well.

1 *Vithu v. Amrut* 7 B. H. C. R. 72; *Ramchandra v. Anant* I. L. R. 8 Bom. 25; *Govind v. Bapuji* I. L. R. 18 Bom. 516.

2 *Budho v. Kesho* I. L. R. 21 Bom. 773.

3 *Rahimkhan v. Dadamiya* I. L. R. 34 Bom. 101.

4 *Tatia v. Gangaram* 9 N. L. R. 175.

5 *Dr. Bannerji's Law of Specific Relief* p. 682.

6 *Abaji v. The Secretary of State* I. L. R. 22 Bom. 579.

Appeals allowed under this law:—These words do not mean “appeals within the time allowed by law.” They refer to appeals which the law prescribes and have no reference to the limitation in point of time. Plaintiff filing an appeal after limitation prescribed by the Revenue Law and getting decision thereon will be taken as having complied with the provisions of this section. The section is not a complex statute of limitation for the protection of Government. Its object is to prevent Government from being exposed to law suits arising out of orders of its subordinate officers before its superior officers have been afforded the opportunity of considering them.¹ When no appeals are allowed by this law there is of course no bar to plaintiff's suit.² If a plaintiff fails to file appeals as required the cognizance of his suit is barred.³

Proviso:—This is a logical corollary of the subsection and is with a view to provide definitely that the time occupied in appeals will be excluded in counting the limitation for the suit.

It is noteworthy that it is not necessary for plaintiff to exhaust his remedy on the revenue side by revisions.

“Proceed with the suit”:—The filing of the plaint is not prevented. The suit can not be proceeded with. In urgent cases the plaintiff may file a suit and obtain a temporary injunction to prevent irreparable loss to him.

193. (1) All rules for which provision is made in Rules made under this Law shall be made by the Governor in Council and shall be consistent with this Law.

(2) A rule may be general for the whole of Berar, or for all areas in Berar not expressly exempted from its operation, or may be special for any local area, as the Governor in Council may direct.

1 *Rasheed vs. The Secretary of State* I.L.R.22 Bom. 583 at 587.

2 *Sakbaram vs. Collector of Ratnagiri* I. L. R. 28 Bom. 532.

3 *Dayal Krushal vs. Secretary of State* 59 I. C. 122. *Ambaram vs. Secretary of State* A. I. R. 1923 Bom. 416.

(3) In making any rule, the Governor in Council may direct that a breach thereof shall be punishable with fine which may extend to two hundred rupees.

(4) Except as regards rules made under section 120, the power to make rules under this Law shall be subject to the condition of the rules being made after previous publication.

(5) No rule made under this Law shall take effect until it has been published in the Gazette.

194. (1) In addition to any power specially conferred by this Law, the Governor in Council may make rules generally for the purpose of carrying into effect the provisions of this Law.

(2) In particular, and without prejudice to the generality of the foregoing power, the Governor in Council may make rules—

- (a) regulating the procedure of Revenue Officers in issuing and enforcing processes under this Law, prescribing the form of processes, prescribing the agency by which such processes may be executed, and prescribing the scale of fees to be charged for issuing or executing such processes and the mode of their collection and prescribing the expenses of sales ;
- (b) regulating the payment of expenses to witnesses and the recovery of such expenses from the parties ;
- (c) for the licensing of petition-writers and the regulation of their conduct ;
- (d) prescribing the persons who may be the recognized agents of parties in proceedings under this Law and regulating their procedure ;
- (e) regulating the sanitation of villages, the burial of the carcasses of animals, the protection and fencing of wells, the up-keep of village roads, and like matters of village self-government ;

Provided that such rules shall not apply to a village included within the area of a municipality, or of a notified area constituted under the Central Provinces Municipalities Act, 1922, or in which a Panchayat has been established under section 5 of the Central Provinces Village Panchayat Act, 1920, or included in an area which has been notified under sub-section (2) of section 2 of the Central Provinces Village Sanitation and Public Management Act, 1920 ;

- (f) Imposing duties on patels in respect of matters specified in clause (e) empowering them to give orders in relation to such matters, and regulating the appointment, constitution and functions of a committee of the residents of the village to assist the patel in the discharge of such duties ;
- (g) regulating the appointment, remuneration, punishment, dismissal and duties of jaglilas and village mahars ;
- (h) for carrying out the partition of land ; and
- (i) generally for the guidance of Revenue Officers and all other persons in proceedings under this Law.

For rules see 'Compilation' pp. 53-105.

195. All rules, assessments, appointments and transfers made, notifications and proclamations issued, authorities and powers conferred, farms and leases granted, records-of-rights and other records framed, revised, or confirmed, rights acquired, liabilities incurred, times and places appointed, and other things done under the Berar Land Revenue Code, 1896, shall, so far as may be, be deemed to have been respectively made, issued, conferred, granted, framed, revised, confirmed, acquired, appointed and done under this Law.

Appendix A

Rules

under the Berar Land Revenue Code 1928.

Classification of Land.

Section 42.

1. Unoccupied unalienated land included within the boundaries of a village shall be divided into the following classes :—

Notification No. 3104-XII dated the 1st October 1929.

E.—Survey numbers assigned for free grazing, not included in the forest area.

F.—Survey numbers assigned for village purposes other than free grazing, such as gothan khalwadi, burial ground, playing fields, assessed grazing fields, land set apart for purposes of nature, etc.

G.—Unculturable fields not included in any of the foregoing.

H.—Assessed fields available for cultivation.

I.—Areas such as village sites, tanks, rivers, etc., not included in any survey number.

2. No unoccupied land within half a mile of a railway station shall be given out for cultivation.

3. Land shall not be assigned or diverted under section 42 without previous consultation with the village body (if any) or the local residents.

Grazing on Government Waste Lands.

Section 43.

1. Any resident or cultivator of a village in which E class land is situated, or with the permission of the Deputy Commissioner, any resident of any other village is entitled to graze cattle in such land.

Notification No. 3104-XII, dated the 1st October 1929, as amended by Notification No. 978-510-XII D/ 26 March 1931.

2. Any cattle belonging to persons not residing or cultivating land in the village may be impounded if they are found grazing, without the

permission of the Deputy Commissioner, in E class land in such village.

3. Any person who has taken out a licence to graze his cattle in any Government forest is entitled, without additional payment, to graze such cattle in any E class land in the district.

Disposal of Trees and Forest Produce.

Section 45.

1. Any resident or cultivator of a village in which E class land is situated, or, with the previous, sanction of the Tahsildar, any resident of any other village may, from such land,—

Notification No. 3104-XI, dated the 1st October 1929, as amended by Notification No. 975-5106XII dated 26, March 1931.

(a) collect and remove for his personal use such forest produce, leaves and fruits as are not auctioned under rule 2 :

Provided that the Tahsildar may prohibit removal or impose conditions on the removal of leaves of Sindi palms if he is satisfied that the palm trees are being damaged ;

(b) remove for his personal use in head loads any dead wood ;

(c) fell and remove only for repairs to carts and agricultural implements and petty repairs to houses and cattle sheds and for fencing fields any tree other than Mango, Pipal, Gular, Pakhar, Banyan, Tamarind, Sindi, Mowha, Tendu, Jamun and Anjan :

Provided that no tree within 40 feet of the bank of a Nala in which water ordinarily remains until the end of January shall in any case be felled, cut or removed :

Provided further that nothing in this rule shall prevent the Tahsildar from preserving such trees as may in his opinion be necessary to provide shade for cattle.

2. Notwithstanding anything contained in rule 1, the Tahsildar if he is satisfied that any E or I class land has become so overgrown with trees as to affect prejudicially its value for the purpose for which it has been reserved, may auction the trees to the highest bidder reserving only the trees

mentioned in rule 1, sub-clause (c) and so many other trees as may be necessary to provide shade for cattle or for other purposes.

3. Subject to the above rules the right to remove the produce of trees vesting in Government shall be sold for a period not exceeding three years by public auction under the orders of the Tahsildar. The amount to be bid shall be the amount payable annually and it shall be paid in cash each year before the crop is gathered by dates to be fixed by the Tahsildar.

4. Subject to rules 1 and 2, trees, brush-wood and other natural products shall be disposed of from time to time by public auction under the orders of the Tahsildar.

Premium and Assessment on Diversion of Agricultural Land.

Section 50 (8) and (1).

1. For the purpose of these rules and rules under sections 58 and 64 towns and villages in Berar shall be divided into the following classes :—

Notification No.
3179-XII, dated 6th
October 1922.

Class I.—Municipalities and towns with a population of 10,000 or more.

Class II.—Villages with a population of 5,000 or more, but less than 10,000.

Class III.—Villages with a population of 2,000 or more but less than 5,000.

Class IV.—Villages with a population of less than 2,000

Provided that with the sanction of the Commissioner, the Deputy Commissioner may include any particular village in a higher or lower class than that prescribed in this rule.

Explanation.—When the village sites of two or more villages adjoin, the population shall be taken as the population of the combined villages.

2. When unalienated land held for purposes of agriculture is diverted with permission to any non-agricultural purpose, the revised assessment shall be fixed as follows :—

				Ra.	a.	p.	
Class I	...	...	...	30	0	0	per acre.
Class II	...	...	...	15	0	0	" "
Class III	...	...	...	7	8	0	" "
Class IV	...	...	...	3	0	0	" "

and a premium shall be imposed as follows:—

					Ra.
Class	I	...	...	...	500 per acre.
Class	II	...	...	...	300 " "
Class	III	...	...	...	150 " "
Class	IV	...	...	...	Nil. " "

3. The Deputy Commissioner may for reasons to be recorded in writing in any special case, (a) require the payment of premium and assessment not exceeding the rate prescribed for towns of class I in any village or town of any of the other classes or (b) with the sanction of the Commissioner reduce the premium and assessment in cases where these would exceed the maximum admissible under section 93 (4) of the Code or (c) with the sanction of the Local Government may require the payment of premium and assessment in excess of the maximum prescribed for a class I town.

4. All changes in assessment on account of diversion shall be brought on the akarband, record of rights and village Jamabandi, and necessary correction will also be made in the survey numbers.

5. In every tahsil a register shall be maintained in such form as may be prescribed by the Commissioner for all appropriation of lands sanctioned under the foregoing rule.

Assessment on Unassessed Lands.

Section 51.

1. Unalienated land which has not been assessed and which has been occupied, or is proposed to be given out, for purposes of agriculture shall be assessed at the rate for similar soil in the same or neighbouring villages, and the assessment so fixed shall be liable to revision at the next revenue survey of the taluq.

Notification No.
3366-XII, dated the
25th October 1929.

2. Unalienated land which has not been assessed and which has been occupied, or is proposed to be given out, for non-agricultural purposes shall, if liable to assessment, be assessed at the rate of one anna per rupee on half its freehold market value. The freehold market value means the price the land would fetch if it were sold free of rent or revenue in perpetuity.

Grant of Right to Occupy Unalienated Land.

A.—For agricultural purposes.

Sections 51, 53, 61 and 164.

1. Any person desiring to become an occupant of H class land shall apply through the patel to the Tahsildar.

Notification Nos.
3719—2386—XII,
dated the 27th
November 1929

2. The Tahsildar, after satisfying himself that there is no objection to the land being given out for cultivation, shall cause a notice in Form I to be affixed in the *chaudis* of the village in which the land is situated and in the *chaudis* of the adjoining villages, and shall cause the contents of the notice to be proclaimed by beat of drum in the aforesaid villages.

3. The Tahsildar shall procure a list of the trees standing on the land and calculate their value in accordance with a scale prescribed for the district by the Deputy Commissioner.

4. In the villages transferred from the Melghat taluq under notification No. 440, dated 29th August 1912, the Tahsildar shall, if there is no competition for the land, pass an order granting the right to occupy, subject to the payment by the applicant within 15 days of the price, if any, fixed for the trees, provided that the Deputy Commissioner may permit payment for the trees to be made in instalments.

5. If there is competition for the land in such a village, the Tahsildar may allot it to a resident or occupant of any of the aboriginal tribes or backward castes detailed in notification No. 1466—XII, dated the 20th April 1929, under section 66 of the Code on payment of the price of the trees. If there is more than one applicant from amongst these tribes or castes, the land shall be sold by auction; but the Sub-

Divisional Officer shall not be bound to accept the highest bid if made by a person who is not a member of any of the aforesaid tribes or castes.

Such occupant shall be granted a certificate in Form II if he belongs to an aboriginal tribe or backward caste, otherwise in Form IV.

6. In cases other than those specified in rules 4 and 5, the land shall be sold by auction.

7. Not less than 15 days prior to the date fixed for the auction, a notice in Form III shall be affixed at the tahsil and at the *chaudi* of the village in which the land is situated and proclamation of the sale shall be made by beat of drum in the village in which the sale is to be held.

8. The upset price shall be the value of all the trees growing on the land.

9. The sale shall be held by the Tahsildar or Naib-Tahsildar. Before the sale begins the person conducting it shall read out the particulars contained in the notice in Form III.

10. The highest bidder shall deposit immediately after the sale is closed 25 per cent of his bid as earnest money. The Tahsildar shall then submit the proceedings to the Sub-Divisional Officer for confirmation.

11. The balance of the purchase-money shall be paid within 15 days of the purchaser being informed of the confirmation of the sale. In default of payment of the balance within the prescribed period the deposit shall be forfeited to Government, and the land shall be re-auctioned and if the proceeds of the fresh auction amount to less than the premium bid by the defaulting purchaser the difference shall be recoverable from him as an arrear of revenue.

12. No sale shall be valid until it has been confirmed by the Sub-Divisional Officer and the full amount paid.

13. On payment of the full amount of the premium the Tahsildar shall give the purchaser a certificate in Form IV and cause him to be placed in possession and he shall there-

upon be liable to pay land revenue with effect from the following revenue year.

B.—For building sites in the village site of villages other than towns to which the Nazul Rules apply.

14. (1) Subject to the control of the Tahsildar, the revenue patel is authorized to allot building sites up to a limit of one guntha, or extensions which do not cause the total site to exceed that limit, except in villages of the following kinds:—

- (a) Villages with a population of more than 2,000
- (b) Bazar villages.
- (c) Villages adjoining railway stations.

(2) The Tahsildar is authorized to allot sites up to five gunthas in villages with a population not exceeding 5,000 other than villages adjoining railway stations.

(3) The Sub-Divisional Officer is authorized to allot sites in other cases; provided that in villages adjoining railway stations and villages with a population of more than 5,000 the allotment shall be in accordance with a lay-out sanctioned by the Deputy Commissioner; and provided further that a strip of land 100 yards broad shall be reserved round each railway station.

15. The patel shall maintain a register in Form IV (a) of vacant sites available for building, with a rough map of such sites. This register shall be checked by the Tahsildar and signed by him after marking as reserved sites of the following kinds:—

- (a) any site formerly occupied by Government buildings, e. g., garhia, tahsil buildings.
- (b) any site which is likely to be required by Government,
- (c) any site which it is desirable should be kept open for the public,
- (d) any site within 45 feet of a well or stream or the boundary of a tank.

A copy of the register shall be filed in the tahsil.

16. No site shall be given out for building purposes which is not entered or which is marked as reserved in the vacant sites register, except with the sanction of the Sub-Divisional Officer.

17. Every grant of a site shall be noted in the remarks column of the register and a report of the grant sent to the Tahsildar and a certificate in Form V shall be given to the applicant.

18. A register in Form VI shall be maintained in the tahsili and by the patwari for all sites granted in a village.

19. Where the patel is not empowered to dispose of the application or there is more than one applicant for a site or there is any dispute, he shall submit the applications with his report to the Tahsildar. The Tahsildar shall thereupon issue a proclamation in Form VII, which shall be affixed at the *chaudi*, and on expiry of the period mentioned in the proclamation shall proceed as laid down hereafter.

20. Where the site is claimed by a third party, the Tahsildar shall reject the application unless he is satisfied after enquiry that the site is really vacant.

21. If the applicant is entitled to a house site free of land revenue under section 90 of the Code, he may be allotted a site extending to one guntha or with the sanction of the Deputy Commissioner, a larger area. If there is more than one such applicant so entitled the Tahsildar shall allot to the applicant who applied first, unless he considers there are good reasons for allotting to one of the other applicants.

22. Where there is more than one applicant, who is not entitled to a site free of land revenue, or the site is more than one guntha the site shall be put up to auction by the Tahsildar, unless he thinks there are good reasons for allotting it to one of the applicants, as for example, where the land adjoins a plot already in such applicant's possession.

23. No ground rent shall be reserved, but that does not affect the liability of land in the village site to assessment at a future date under section 49 of the Code.

24. When a site is to be auctioned a notice in Form VIII shall be posted at the *chaudi* and at some place close to

the site at least 15 days before the sale is held and proclamation of the sale shall be made by beat of drum in the village on the day of sale.

25. The sale shall be held in the village by the Tahsildar or Naib-Tahsildar.

26. The highest bidder shall deposit immediately after the sale is closed 25 per cent of his bid as earnest money, the balance being paid within 15 days. In default of payment of the balance within the prescribed period the deposit shall be forfeited to Government and on re-auction of the site the deficit, if any, shall be recovered from the defaulting purchaser as laid down in rule 11. On full payment of the premium the purchaser shall be given a certificate in Form V and shall be placed in possession.

C.—Foy building sites in municipal towns.

Nazul Rules.

27. These rules shall be called the Nazul Rules and shall apply to every municipal town and to any other town* to

* The nazul rules have been extended to the following non-municipal towns and villages:—

<i>Name of town or village</i>	<i>Name of district.</i>
Badnara	} Amraoti.
Chandur Rialway	
Dhamangaon	
Morai	
Warud	
Chandur Bazar	
Daryapur	} Akola
Anjangaon Suri	
Telhara Buzrug	
Adgaon Buzrug	
Balapur	
Patur	
Wadegaon	} Buldana.
Risod	
Mangrul Pir	
Chikhli	
Daulgaon Raja	
Lonar	
Paturda	} Yestmal.
Pimpalgaon Kale	
Matargaon Buzrug	
Nandura	
Babulgaon	
Darwha	
Pused	}
Umerkhed	
Pandharkwada	
Ghatanj	
Ralegaon	

which they may be extended by the orders of the Governor in Council.

28. Nazul land is unalienated land which is used either for building purposes or for purposes of public convenience such as roads, markets or recreation grounds or which is likely to be used for such purposes in the future. It does not include occupied survey numbers or plot numbers of areas which have been diverted under section 58 of the Code from agricultural to non-agricultural use (such lands being known as converted lands).

29. At regular settlements all Government plots or sites which are likely to be valuable for any special reason, such as their situation near a line of railway or the like, or which in any scheme of development have been set aside as specially valuable, will be recorded by the Settlement Officer in consultation with the Deputy Commissioner as reserved: and the disposal of all such plots shall be subject to the sanction of the Governor in Council upon such special terms as may be decided for each plot. The Deputy Commissioner shall maintain a list of these plots and with the approval of the Governor in Council, may alter it as the changing circumstances of the town may demand.

30. Plots available for building purposes and not reserved shall be divided into the following three classes:—

- (1) Plots measuring 2,500 square feet or over.
- (2) Plots measuring less than 2,500 square feet, but more than 600 square feet or less.
- (3) Plots measuring 600 square feet or less.

Any plot, however small, which forms an addition to an existing plot will take the classification of the main plot, unless the Deputy Commissioner decides that with the addition the main plot should be raised in class.

A layout of plots available for building purposes shall be prepared by the Deputy Commissioner in consultation with the Municipal Committee and no plot shall be given out except in accordance with this layout. Such layout may be modified

from time to time by the Deputy Commissioner in consultation with the Municipal Committee.

31. Applications for nazul sites shall be made to the Deputy Commissioner or to an Assistant Commissioner, 1st grade, hereinafter called the Nazul Officer, appointed by him in this behalf and shall be accompanied by a plan of the land in duplicate and a rough estimate of the cost of the building to be erected. The condition mentioned in the first proviso to section 53 of the Code may be dispensed with so far as submission of plans of plots is concerned except in the case of civil station lands.

32. The Nazul Officer may, for reasons to be recorded in writing reject the application or direct the applicant to make such modification in the boundaries of the plot as he thinks fit.

33. When the Nazul Officer considers that the plot may be granted he shall consult the Municipal Committee, sending it a copy of the plan proposed to be granted.

If there is any difference of opinion between the Municipal Committee and the Nazul Officer the latter shall refer the case to the Deputy Commissioner whose orders shall be final. In other cases, and in cases where no reply is received from the Municipal Committee within two months, the Nazul Officer shall proceed to dispose of the plot in accordance with these rules.

34. All nazul plots shall be disposed of by public auction except when in any particular case the Deputy Commissioner thinks there is good reason for granting a plot without auction. In such case the price fixed for the plot shall not be less than half the free-hold market value of the plot and, if the plot is of class (1) or (2), Commissioner's sanction shall be obtained by a reference in Form IX or X.

35. Nazul plots shall be auctioned subject to an upset price calculated in accordance with the scale given below. The Local Government may sanction lower rates in particular localities or for particular plots.

Provided that if the Deputy Commissioner thinks that there is any circumstance which will interfere with free bidding for any plot, he may fix the upset price at half the freehold market value of the plot;

Provided further that the Deputy Commissioner may with the sanction of the Commissioner reduce the upset price for class (3) plots in the poor quarters of a town.

Class and name of town.	Class.				
	Class (1)			Class (2)	Class (3).
	For first 2,500 sq. ft.	For area in excess of 2,500 up to 5,000 sq. ft.	For area above 5,000 sq. ft.		
	Per 100 sq. ft.	Per 100 sq. ft.	Per 100 sq. ft.	Per 100 sq. ft.	Per 100 sq. ft.
1	2	3	4	5	6
CLASS I.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. s. p.
Amraoti City, Amraoti Camp, Akola, Khamgaon, Shegaon, Malkapur and Yeotmal.	8 0 0	4 0 0	2 0 0	8 0 0	4 0 0
CLASS II.					
Akot, Karanja, Basim, Murtizapur & Buldana.	4 0 0	2 0 0	1 0 0	4 0 0	2 0 0
Class III.					
All other towns	2 0 0	1 0 0	0 8 0	2 0 0	1 0 0

36. The land revenue to be paid on a plot shall be calculated at one anna per rupee on the premium bid in the auction, or the price fixed by the Deputy Commissioner under rule 34 as the case may be, and will be liable to revision at settlement:

Provided that, where the land revenue so-calculated together with the land revenue assessed on any plot to which it forms an addition is less than Rs. 2, the plot may be purchased outright by payment of 20 times the revenue in addition to the premium. Such a plot shall be held revenue free in perpetuity unless it forms an addition to a plot held on other terms in which case it shall be held on the same terms as the main plot.

37. Not less than 15 days prior to the auction a notice in Form XI shall be sent to the applicant and to the Municipal Committee and affixed at the Deputy Commissioner's office and shall be published in the town in such manner as the Deputy Commissioner may prescribe. At the same time the Nasul Officer shall cause the plot to be demarcated.

38. The auction shall, unless the Deputy Commissioner for special reasons otherwise directs, be conducted by the Nasul Officer personally except in the case of third class plots when the Tahsildar may be deputed to hold the auction. The Officer conducting the auction shall announce the upset price and the cost of advertising the sale and demarcating the land and explain to intending bidders the terms on which the plot is being sold and the period after which the revenue will be liable to revision.

39. The highest bidder shall deposit at the time of the sale 25 per cent. of his bid as earnest money. The balance together with all expenses incurred in demarcating the land and advertising the sale shall be paid by the purchaser within 30 days of the confirmation of the sale being notified to him. In default of payment of the same within the prescribed period, the deposit shall be forfeited to Government and on resumption of the plot, the deficit, if any, shall be recovered from the defaulting purchaser as laid down in rule 11.

40. No sale of Nasul land shall be complete until it has been confirmed by the Deputy Commissioner, or in the case of class (1) plot, by the Commissioner on a reference in Form IX.

41. On payment of the auction premium and expenses the purchaser shall become occupant of the plot and shall be

given a certificate in Form XII or Form XIII as the case may be and shall be bound to commence building within six months and to complete it within eighteen months of the date of the certificate, provided that the Deputy Commissioner may extend these periods for reasons to be recorded.

42. If the sale is confirmed during the first six months of the revenue year the land revenue shall be payable with effect from that year and in other cases from the revenue year following.

43. Land revenue payable on Nazul land and converted land in the neighbourhood shall fall due on the 1st August and shall be collected by the Tahsildar, through the agency of the village officers.

44. Deputy Commissioners are authorized to remit irrecoverable arrears of Nazul revenue when the amount of the arrears from any single defaulter does not exceed Ra. 500.

FORM I.

[Referred to in rule 2 under section 53. etc.]

Notice of application for land for agricultural purposes.

In the Court of the _____

Class No. _____ Case No. _____

Whereas _____ has applied for occu-

pant's rights in the fields, together with the trees standing thereon specified below, any other person who may desire to acquire occupant's rights in the said land should apply to the Tahsildar through the patel within 15 days of the date of publication of this notice :—

Village.	Survey Number.	Area.	Assessment.

Dated _____ 19 _____

(Sd.)

Tahsildar

FORM II.

[Referred to in rule 5 under section 53, etc.]

Certificate of grant of occupant's right in villages transferred from the Melghat.

In the Court of the _____

Class No. _____ Case No. _____

It is hereby certified that _____ has been granted occupant's rights in survey number _____ measuring _____ acres _____ gunthas, assessment Rs. _____ as _____, situated in the village of _____ taluq _____ subject to the provisions of section 66 of the Berar Land Revenue Code, viz, the land—

- (1) shall be transferable by lease for agricultural purposes only: provided that it may not be continually alienated for a period exceeding one year, in all;
- (2) shall not be transferable in any other manner without the previous sanction of the Sub-Divisional Officer, given in accordance with rules made under the Code;
- (3) shall not be liable to any decree or order for sale or foreclosure, and shall not be liable to be attached or sold in execution of any decree or order except in accordance with the provisions of this Law, and shall not vest in a Court or in a receiver under the Provincial Insolvency Act, 1920, or under section 51 of the Code of Civil Procedure, 1908.

(Sd.)

Tahsildar.

FORM III.

[Referred to in rule 7 section 53, etc.]

Notice of sale of land for agricultural purposes.

In the Court of the _____

Class No. _____ Case No. _____

Notice is hereby given that occupant's rights in the fields,

together with the trees standing thereon specified below, will be sold by auction at _____ midday on the _____

Village and survey number.	Area.	Assessment.	Trees.	Upset price.	Remarks.
1	2	3	4	5	6

(Sd.)

Tahsildar.

FORM IV.

[Referred to in rules 5 and 13 under section 53, etc.]

*Certificate of grant of occupant's rights in land
for agricultural purposes.*

In the Court of the _____

Class No. _____ Case No: _____

It is hereby certified that _____ has been granted occupant's rights for agricultural purposes in the land specified below situated in the village of _____ taluq _____ on payment of a premium of Ra. _____ The land shall be held by the occupant and his heirs and

assigns subject to the provisions of the Berar Land Revenue Code:—

Survey number and sub-division number.	Area.	Assessment.

(Sd.)

Tahsildar.

FORM IV (a).

[Referred to in rule 15 under section 53, etc.]

Register of sites available for building purposes in the village of _____.

Serial No.	Dimension of the site.	Number and description of the site with boundaries.	Remarks.
1	2	3	4

FORM V.

[Referred to in rules 17 and 26 under section 53, etc.]

Certificate of grant of occupant's rights in a building site in the village site.

In the Court of the _____

Class No. _____ . Case No. _____ .

It is hereby certified that _____ has been granted occupant's rights in the plots specified, below and

situated within the village site of the village of _____
 taluq _____ on payment of a premium of Rs. _____

The site shall be held by the occupant and his heirs and assigns subject to the provisions of the Berar Land Revenue Code, 1928 :—

Boundaries of the plots.	Area.	Dimensions.

(Sd.)

Revenue Patel.

(Sd.)

Tahsildar.

(Sd.)

Sub-Divisional Officer.

FORM VI.

[Referred to in the rule 18 under section 53, etc.]

Register of sites allotted for building purposes in the
 village site of _____ taluq _____.

Serial No. of Register No.	Area allotted with full dimensions.	Description of site with boundaries.	Name of persons to whom the site is allotted.	No. and date of the orders allotting the site.	Condition, if any and purpose for which the site is allotted.	Date on which possession was given.	Remarks.
1	2	3	4	5	6	7	8

FORM VII.

[Referred in to rule 19 under section 53, etc.]

Notice of application for land for building purposes.

In the Court of the _____

Class No. _____

Case No. _____

Notice is hereby given that _____ has applied for occupant's rights in the building site specified below, situated in the village site of _____.

Any person who wishes to claim the site should apply in writing to the Tahsildar within 30 days of the publication of this notice :—

Boundaries of the land.	Area.	Dimensions.

(Sd)

Tahsildar.

FORM VIII.

[Referred to in rule 24 under section 53, etc.]

Notice of sale of land in the village site for building purposes.

In the Court of the _____

Class No. _____ Case No. _____

Notice is hereby given that occupant's rights in the building site specified below, situated in the village site of _____ taluq _____ will be sold by auction at _____ at midday, on the _____. Any person who wishes to claim the site should remain present with his evidence at time and place fixed above :—

Boundaries of the land.	Area.	Dimensions.
1	2	3

(Sd,)

Tahsildar.

FORM IX.

[Referred to in rules 34 and 40 under section, 53, etc.]

Application for sanction to grant of occupant's rights in Nazul land. (New plots.)

1. Name of town.

2. Details and area of plot.

3. Name of applicant.

4. Name of highest bidder.

5. Upset price.

6. Auction premium.

7. Assessment.

8. Recommendation by the Deputy Commissioner :—

has applied for _____ sq. ft. of land marked _____ on the accompanying map from nazul plot No. _____ for building purposes. The Municipal Committee was consulted on _____ and has no objection to the grant of occupant's rights. not replied within two months.

The land was put to auction and knocked down for Rs. _____ in favour of _____ ' who was the highest bidder. The premium offered is reasonable. Grant of occupant's rights in favour of _____ on the above terms is recommended.

Deputy Commissioner.

9. Orders of the Commissioner :—

FORM X.

{ Referred to in rule 34 under section 53. etc. }

*Application for sanction to grant of occupant's rights
in Nazul land. (Encroachments.)*

1. Name of town.

2. Details and area of plot.

3. Name of encroacher.

4. Upset price.

5. Price fixed.

6. Assessment.

7. Recommendations by the Deputy Commissioner :—

has encroached on _____ sq. ft. of land
marked _____ on the attached map from nazul
plot No. _____ and taken it into occupation. The en-
croached area adjoins the house of the encroacher and is useful
to him alone. He is willing to become occupant on premium of
Rs. _____ and assessment of Rs. _____. The
premium offered is reasonable. The Municipal Committee was
consulted on _____ and has ^{no objection.}
not replied within two months.
Grant of occupant's rights as above is recommended.

Deputy Commissioner

8. Orders by the Commissioner :—

FORM XI.

[Referred to in rule 37 under section 53, etc.]

Notice of sale of Nazul land.

In the Court of the _____

Class No. _____ Case No. _____

Notice is hereby given that occupant's rights in the nazul land specified below and situated within the limits of _____, will be sold by auction at _____ at _____ o'clock on the _____

Sheet and plot No.	Area.	Description and boundaries of the land.	Upset price.
1	2	3	4

(Sd.)
Nazul Officer.

Dated _____ 19 .

FORM XII.

[Referred in the rule 41 under section 53, etc.]

Certificate of grant of occupant's rights in Nazul land.

In the Court of the _____

Class No. _____ Case No. _____.

It is hereby certified that _____ has been granted occupant's rights in the nazul land specified below and situated within the limits of _____ on payment of a premium of Rs. _____ and annual land revenue of Rs. _____ with effect from _____.

The grant is subject to the provisions of the Berar Land Revenue Code, 1928, and the rules made thereunder, and to the condition that the occupant shall commence to build within _____ months from this date and shall within _____ months from the said date complete the building costing not less than Rs. _____.

Sheet and plot No.	Area.	Description and boundaries of the land.	Date on which land revenue will be liable to revision.	Particular of easements permitted.	Nos. of Traverse marks, for the maintenance of which the occupant is responsible.*
1	2	3	4	5	6

(Sd.)

Nazul Officer.

Note—The certificate shall be prepared in duplicate. One copy should be given to the occupant and the other filed in the record of the case.

* Cols. 5 & 6 are proposed to be added Vide C. P. Gaz. dated 21-11-31. (Part I p. 1279).

FORM XIII.

[Referred to in rule 41 under section 53, etc.]

*Certificate of grant of occupant's rights in Nazul land by
outright sale*In the Court of the _____
Class No. _____ Case No. _____

It is hereby certified that _____ has been granted occupant's rights with effect from _____ in the Nazul land specified below and situated within the limits of _____ on payment of a premium of Rs. _____ and a lump sum of Rs. _____ representing 20 times the assessment, in commutation of the land revenue. The plot will be held revenue free _____ subject to the provisions of the Berar Land Revenue Code, 1928, and the rules made thereunder, and to the condition that the occupant shall commence to build within _____ months from this date and shall within _____ months from the said date complete the building costing not less than Rs. _____.

Sheet and plot No.	Area.	Description and boundaries of the land.
1	2	3

(Sd.)

Nazul Officer.

**Conditions on which land granted under
Section 55 may be held.**

Section 55.

1. Culturable land in the bed of rivers shall be leased by auction for the term of one year or for such period not exceeding five years as the Deputy Commissioner may prescribe. Auctions shall be held by the Tahsildar and the premium bid shall be the land revenue payable annually during the term of the lease.

Notification No.
3104-XII, dated the
1st October 1939.

2. When the land is granted on favourable terms under section 55 (1) (b) of the Code, the grant shall be subject to the following conditions in addition to any others that may be prescribed by the Governor in Council in individual cases:—

- (1) That the grant shall be liable to be resumed by Government, if used for other than the specific purpose or purposes for which it is granted;
- (2) That, should the grant be at any time resumed by Government, the compensation payable therefor shall not exceed the amount (if any) paid to Government for the grant, together with the cost or their present value, whichever is less, of any buildings erected or other works executed on the land by the grantees;
- (3) That in the case of grant for an educational institution, such grant shall be liable to resumption, if the institution is not conducted to the satisfaction of Government; and
- (4) That should the grant be resumed by Government in consequence of a breach of conditions on the part of the grantee, Government shall have the option of (a) taking over any buildings erected on the land on payment of their cost or present value, whichever is less, or (b) requiring the grantee to remove the buildings and to restore the land to its original condition within a reasonable period to be fixed by Government. Should the grantee fail to comply

with the requisition, the building shall lapse to Government :

Provided that in the case of land granted for purposes such as play ground where the erection of any expensive building would be inconsistent with the object of the grant the condition shall be that the grant will be liable to resumption if buildings are erected without the sanction of competent authority.

3. Land given out on the fair assessment for grazing for the village cattle shall be held on the following conditions:—

- (i) The land may not be brought under cultivation.
- (ii) The holder shall have the right to charge such grazing fees as he thinks fit.
- (iii) Any resident or cultivator of the village shall have the right to graze cattle on payment of fees.
- (iv) Residents and cultivators of the village shall have the same rights in trees and forest produce as in those growing in E class land.

If the holder commits any breach of these conditions or fails to pay the land revenue on the due date, his lease may be cancelled.

4. The lease of an assessed grazing field may be cancelled on application made to the Tahsildar if a majority of persons grazing cattle in the field desire it. The Tahsildar's orders shall take effect from the 1st June following.

5. When the lease is cancelled or the holder dies or relinquishes his rights, his successor shall be appointed by the Tahsildar after consulting the wishes of persons grazing cattle in the field.

6. Should no one be willing to take the lease or should a majority of the people in the village declare that the land is not required for grazing the Tahsildar shall direct the land to be recorded as H class.

7. The Deputy Commissioner is authorized to grant temporary leases under section 55 (1) (d) of the Code.

Grant or Refusal of Permission for Diversion of Land.

Section 58.

1. Permission to divert occupied agricultural land to building purposes shall be granted subject to the following conditions:—

Notification No. 113-2118-XII, dated the 9th January 1930.

- (i) The occupant shall be bound to level and clear the land sufficiently to render it suitable for building purposes and prevent insanitary conditions.
- (ii) No building shall be erected in a village with a population of more than 5,000 or a village adjoining a railway station, except in accordance with a lay-out sanctioned by the Deputy Commissioner who will consult the Municipal Committee if the land lies within municipal limits, or the Sanitation Committee or Village Panchayat if there is one.

2. The occupant may relinquish to Government any area reserved in the lay-out for roads or public purposes and shall thereupon be liable to pay premium and revenue calculated on the remaining area only.

3. If any portion of the land included in a survey number is classed in the survey papers as unculturable because it is occupied by a public road or public tank for irrigation or for drinking or domestic purposes or used for any other public purpose, permission to bring such portion of the land under cultivation or to divert it otherwise shall not be granted unless the road or tank thereon has ceased to exist or to meet the convenience of the public, or unless the land is no longer required for a public purpose. Permission to divert the remaining portion of the survey number may be granted subject to the condition that such diversion shall not adversely affect the utility of the excluded portion of the survey number.

Explanation.—“Public tank” in the above rule shall not include a tank which is used for irrigation only and waters land in the sole occupation of the occupant in whose survey number the tank lies, or when the right to cultivate the dry bed has been expressly conceded to the occupant.

4. The occupant of the land held for the purpose of agriculture may remove earth, stone, kankar, sand, murrum or any other material for his own domestic or agricultural purposes and he may also, with the Tahsildar's permission, allow potters to remove earth, etc., for the purposes of their trade: provided that no excavation close to the village site shall be permitted.

5. All orders sanctioning diversion of land shall be communicated to the village officers and noted in the record of rights and the date of diversion shall also be entered in the jamabandi statement.

Ejectment of Trespassers.

Section 59 (4).

1. An occupant whose land is being used by another person for any purpose other than that for which it was last conferred may apply to the Sub-Divisional Officer for ejectment of such person.

Notification No. 2310—1250—XII, dated the 18th July 1929.

2. The Sub-Divisional Officer, after such enquiry as may be necessary, may cause an order to be served on such person requiring him to vacate the land and remove any building or structure which has been erected thereon.

3. If such person fails to comply with the order, he shall be liable to a penalty not exceeding Rs. 100 and any building or structure erected by him may be removed by Government agency.

Relinquishment.

Section 60.

1. The notice of relinquishment to be given by the occupant to the Tahsildar under section 60 of the Code shall be in Form XIV and shall be endorsed by two respectable witnesses.

Notification No. 2310—1250—XII, dated the 18th July 1929.

2. It shall be the duty of the patwari to write such notice free of cost on request by the occupant.

3. The notice shall be presented to the patal who shall forward it without delay to the Tahsildar.

4. The Tahsildar after such enquiry as may be necessary shall, subject to the provisions of section 61 of the Code, cause the land to be recorded as H class or vacant building site, as the case may be, unless the Deputy Commissioner considers that it should be set aside for any public purpose.

FORM XIV.

[Referred to in rule 1 under section 60.]

Notice of relinquishment of land.

To

The Tahsildar _____

I _____, inhabitant of the village of _____, taluq _____ hereby give notice that it is my intention to relinquish on the 31st March 19____ my rights survey No. _____, sub-division No. _____, area _____, assessment _____ situated in the building site described below in _____ taluq _____ of which I am the occupant.

Dated this _____ day of _____ 19____,

Witnesses :

(Sd.) _____

Penalties.

Section 64 (1) (b)

L. The following penalties are prescribed for the unauthorized appropriation for non-agricultural purposes of unoccupied unalienated land set aside for any special purpose :—

Notification No. 3179-XII, dated the 9th October 1939.

- (a) When the land is within the limits of a municipality or a village site, a penalty not exceeding double the market value of the land.
- (b) In other cases a penalty according to the class of

village as defined in rule I under section 50 (4)
at a rate not exceeding—

	Rs.	
In villages of class I	... 2,500	}
In villages of class II	... 1,500	
In villages of class III	... 500	
In villages of class IV	... 100	

Per acre of the land un-authorizedly appropriated, and at the same rate proportionately for fractions of an acre.

Transfer of Holdings.

Section 66 (2) (ii).

I. In villages transferred from the Melghat taluq under Notification No. 440 dated the 29th August 1912, the Sub-Divisional Officer may permit a member of an aboriginal tribe or backward caste mentioned in Notification No. 1466-XII, dated the 20th April 1929 :—

Notification No. 2310—1950—XII, dated the 18th July 1929.

- (a) to lease his holding without restriction as to the period of lease or of continuous alienation, if the lessee is a *bona fide* agriculturist and the land leased is either surplus land in a large holding or land which owing to some temporary disability or cause, the lessee himself cannot conveniently cultivate ;
- (b) to sell, mortgage, or make a gift of his holding, if the transferee, is a *bona fide* agriculturist or a member of the transferor's family or the holding is one of which a right to transfer has been specifically recorded at Settlement ; and
- (c) in other cases, with the previous sanction of the Deputy Commissioner, to alienate his holding in any manner.

Alluvion and Diluvion.

Section 70 (1).

I. It shall be the duty of the Land Records staff to submit to the Tahsildar a report, together with a plan, of any change in the area of a holding in excess of one acre caused by alluvion or diluvion.

Notification No. 3104-XII, dated the 1st October 1929.

2. The fair assessment of alluvial land shall be determined by the Sub-Divisional Officer at the rate placed on similar soil in the same or neighbouring villages.

3. The assessment of land lost by diluvion shall be determined by the Sub-Divisional Officer according to the soil classification of the land as shown in the survey records.

4. When any change in area occurs owing to alluvion or diluvion, enquiry shall be made to ascertain whether there has been any corresponding accretion of alluvial land or loss by diluvion in the same or some other village.

5. When the Sub-Divisional Officer thinks that alluvial land may usefully be set aside for a public purpose, he shall submit a report for the orders of the Deputy Commissioner.

6. Newly formed islands, abandoned river beds and alluvial lands to which the provisions of Chapter VII of the Code do not apply shall be treated as H class land or otherwise dealt with as the Deputy Commissioner may deem fit.

Publication of Proposals for a Revenue Survey of Town Lands.

Section 79 (1).

1. Proposals for a revenue survey of non-agricultural town lands shall be published in the *Central Provinces Gazette*, with the intimation that any person objecting to the proposals may forward his objection in writing to the secretary to Government, Survey and Settlement Department, within such period not being less than one month as the Governor in Council may prescribe and that any objection so made will receive the consideration of the Governor in Council.

2. Copies of the proposals shall be sent to the local body within whose jurisdiction the land lies and a sufficient number of copies in Marathi shall be prepared and distributed to the public of the town concerned.

3. Any objection received within the prescribed period shall be considered by the Governor in Council, before a notification directing the revenue survey is published.

Notification No.
3129-1637-VII, da-
ted 6th November
1929.

Survey Numbers and Villages.

Section 86.

1. Except as provided in the following rules, existing survey numbers shall be retained as they stand.

Notification No.
3429 1687—XII,
dated the 6th No-
vember 1919.

2. When the actual boundary of a survey number does not agree with that shown in the records, the records shall be corrected in accordance with the boundary as agreed on by the parties concerned, or as determined under section 122 or 123 of the Code, and rules thereunder.

3. No new survey numbers shall be formed except in the following cases :—

- (1) land taken up for special purposes ; such as public buildings, threshing floors, etc. ;
- (2) waste land given out for cultivation ;
- (3) survey numbers exceeding 30 acres ; which may be divided into two or more survey numbers to reduce the area below 30 acres.

All other cases shall be dealt with by the formation of sub-divisions in, or addition of sub-divisions to, existing survey numbers.

4. Unless the Settlement Commissioner otherwise directs no change shall be made in the numbering of the survey numbers in a village except as provided in rule 10. When any new survey number is formed, it shall be given the number next after that of the last survey number in the village.

5. No survey number consisting of land to be used for agricultural purposes only shall henceforth be formed with an area of less than five acres except in the case of land acquired for public purposes or set aside for special purposes when the minimum shall be one acre.

6. (1) Two or more occupied survey numbers may be amalgamated, provided the following conditions are satisfied:—

- (i) the total area does not exceed 30 acres, or where one of the numbers to be amalgamated is less than five acres in area, 40 acres ;

- (ii) the occupants of each survey number are the same and agree to amalgamation;
- (iii) there are no sub-divisions;
- (iv) the common boundary is such that amalgamation will materially facilitate cultivation;
- (v) the tenure of each survey number is the same:

Provided that the limits imposed by condition (i) may be exceeded to such extent as the Settlement Commissioner may by general or special order sanction.

(2) The combined survey number shall be given the numbers of all the survey numbers which have been amalgamated to form it.

7. Unoccupied survey numbers included in A or C class forest may also be amalgamated in consultation with the Divisional Forest Officer-

8. Survey numbers may be cancelled only when merged in Government forest or in the village site. Survey numbers transferred to the town survey records will not be cancelled. They will be deleted from the records of the agricultural survey numbers, but will continue to be shown in the village map with the addition of the letters "T. S."

9. Two or more villages may be amalgamated provided the following conditions are satisfied,

- (i) they are adjacent;
- (ii) they have the same watandar patels and patwaris, and these agree to amalgamation;
- (iii) the village sites adjoin or there is only one village site and the other villages are uninhabited;
- (iv) communal rights such as those over E class land are enjoyed in common by cultivators of all the villages. Such amalgamation shall take effect from the 1st August.

10. On amalgamation the survey numbers of the largest inhabited village shall be retained and those of the other villages renumbered starting from the last number of the largest

inhabited village the cancelled numbers being shown in brackets below the new numbers.

Sub-Divisions of Survey Numbers.

Section 88 (2).

1. Every portion of a survey number which is held under a separate title shall be formed into a sub-division :

Notification No. 3429—1687—XII, dated the 6th November 1929 as amended by Notification No. 769—T-179—XII, dated the 27th February 1930.

Provided the no sub-division shall be formed—

- (a) with an area of less than one guntha or land revenue of less than one pice if land is used for the purpose of agriculture;
- (b) with an area of less than 100 square feet or land revenue of less than one anna if the land is used for any other purpose.

2. Alluvial land lawfully occupied by a person other than the occupant of the adjoining land shall be formed into a sub-division and included in the adjoining survey number.

3. Two or more adjoining sub-divisions in a survey number may be amalgamated when they are held by the same occupants under the same tenure.

4. Unculturable land shall be distributed amongst the several sub-divisions as agreed on by the occupants. If such land is held in joint possession it shall unless it is a road or nalla, be formed into a separate unassessed sub-division.

5. The assessment of a survey number shall be distributed over its sub-divisions as agreed on by the occupants, or where there is any dispute, in accordance with the area and soil classification of the several sub-divisions. On revision, the new assessment shall be distributed over the sub-divisions in the same manner as the old assessment. Fractions of a pice shall be ignored and the total assessment of the sub-divisions made to agree with that of the survey number by adding one pice to the assessment of as many sub-divisions as necessary, starting from the first.

Revenue Survey of Agricultural Land.

Sections 89, 97 (1) and 105.

1. The land records staff of a taluq under revenue survey shall be placed under the control of the Settlement Officer and, with the sanction of the Settlement Commissioner, the Settlement Officer may appoint such additional subordinate staff as may be necessary for carrying out the revenue survey.

Notification No. 2429-1687-XII, dated the 6th November 1929.

2. When a revenue survey commences the Settlement Officer shall cause enquiries to be made in each group in order to ascertain to what extent the fair assessment should be revised and whether any change is required in the grouping of villages.

On completion of such enquiry he shall submit a report for the orders of the Governor in Council and the revised assessment on each survey number shall be determined in accordance with those orders and shall be based on the classification of the soil.

3. Unless the Governor in Council otherwise directs, the soil classification made at the preceding revenue survey shall be adopted without change.

Provided that—

- (1) garden land and rice land shall be given the same classification as dry crop land of similar quality;
- (2) an addition may be made to the classification of a field owing to its being favourably situated with respect to the receipt of manure and a deduction may be made from the classification of a field owing to its remoteness from the village or its proximity to forest, or if from any other cause such as flooding the productivity of the soil is likely to suffer.

4. For determining the assessment of land previously unassessed the 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 Settle-

ment Commissioner with reference to the circumstances of the tract and to the nature of the cultivation.

5. Unless the Governor in Council otherwise directs no survey number shall be resurveyed, unless the boundary has changed by more than eight annas through the action of a nalla or river or from any other cause, or unless survey is necessary owing to the formation of sub-division.

6. All measurements of resurveyed survey numbers shall be entered in a field book, and no corrections shall be made in the old survey tipan books, but a reference shall be made in the old tipan book to the appropriate page in the field book.

Maps of such survey numbers shall be drawn to scale in a new mozni book, and a reference to it made in the old mozni book.

7. The unculturable area (pot-kharab) in each survey number recorded in the survey records shall be checked but need not be remeasured unless there appears to be some material change. After corrections the revised pot-kharab area shall be deducted from the area of the survey number before the assessment is calculated. The revised pot-kharab area in each survey number shall be entered in a statement in Form A and shall be sketched by eye on the map.

8. A road which is no longer used shall if it is included in occupied survey numbers be cancelled and the unculturable area reduced accordingly. If the road does not form part of a survey number, it shall be offered to the occupants of the adjoining survey numbers on payment of premium, or otherwise disposed of as the Settlement Officer may deem fit.

9. A road which has come into existence since the previous revenue survey shall, if the Settlement Officer so directs, be measured and brought on the map; and if the road is included in occupied survey numbers, the necessary addition shall be made to the unculturable area in such survey numbers.

10. The revised assessment of each survey number shall be calculated and entered in the classer's register in Form B.

11. Where a portion of a survey number has been diverted to non-agricultural purposes the area and assessment of such portion shall be shown separately in the register.

12. The area and assessment of survey numbers and subdivisions shall be entered in the classer's register and in the record of rights.

13. Topographical features, such as trees, wells, tanks, rivers, nallas, roads, footpaths, railway lines temples and houses, shall be checked by eye and the necessary corrections made in the map. Points at which a topographical feature crosses the boundary of a survey number or sub-division shall be fixed by measurement.

14. When a survey number has been resurveyed the holders shall be required to erect boundary marks at the corners of the survey number so demarcated. The boundary marks of survey numbers not resurveyed need not be examined by the survey party.

15. Except along the boundary between Berar and the Bombay Presidency and Hyderabad State the boundary lines of adjoining villages shall be compared and any serious mistakes or discrepancies rectified after such survey as may be necessary. At the same time it shall be seen that topographical features crossing the village boundary are shown in the same position in the maps on either side of the village boundary.

16. The Settlement Officer shall examine the land set aside for special purposes in each village, and make such changes as appear desirable in the interests of the people of the village.

17. Converted land adjoining land to which the nazul rules have been or are being applied shall, if the local Government so directs, be excluded from the revenue survey of the taluq, and dealt with at the time of the revenue survey of the adjoining nazul land.

18. The village map shall be corrected in accordance with any changes made under these rules and shall show the revised survey number, boundaries, boundary marks and topographical features.

19. (i) Assessments, whether original or revised, fixed in accordance with section 96, shall be notified by the Settlement Officer or Assistant Settlement Officer or Sub-Divisional Officer in the manner hereafter prescribed.

Notifn. No. 302XVI
d. 30-3-31

(2) A notice in form C shall be posted in the *chaudi* of the village concerned and the date, time and place appointed in the notice for the public declaration of the assessments shall be proclaimed by beat of drum in the village concerned at least a fortnight prior to the date appointed for such declaration.

(3) At the time and place aforesaid, the assessment of each survey number shall be read over to the persons present and the term of settlement and the date of commencement of that term shall be explained.

(4) If any errors of the kind mentioned in section 102 are brought to the notice of the officer declaring the assessments, he shall correct them then and there.

(5) The officer declaring the assessments shall make an endorsement over his signature on the askarband as follows:-

Announced by me this _____ day of _____ 19
at _____.

20. Corrections made in the area and assesement of a survey number at any time during the period of a settlement after announcement shall be entered in a statement in Form D.

21. The Settlement Commissioner may issue instructions for the guidance of the Settlement Officer in conducting a revenue survey.

Notice of assessments fixed on non-agricultural lands.

Section 97 (1)

1. Assessments, whether original or revised, on non-agricultural lands fixed in accordance with section 96 shall be notified by the Settlement Officer or Assistant Settlement Officer in the manner here-in-after prescribed.

Survey and Settl.
Dept. Notif. No.
169—XVI, dated
18-2-31.

2. (1) A notice in Form A shall be posted at the local Settlement Office: and the date, time and place appointed in the notice for the public declaration of the assessments shall be proclaimed by beat of drum in the town concerned at least ten days prior to the date appointed for such declaration.

(2) At the time and place aforesaid the assessments concerning the persons who may be present and who may so desire shall be read over to them and the term of settlement and the date of commencement of that term shall be explained;

3. If any errors of the kind mentioned in section 102 are brought to the notice of the officer declaring the assessments he shall correct them then and there.

4. The officer declaring the assessments shall make an endorsement over his signature on the record-of-rights as follows:—

“Announced by me this _____ day of _____ 19 _____ at _____”

FORM A

Notice of declaration of assessment on non-agricultural lands under settlement in the town of _____.

In accordance with the rules made under section 97 (1) of the Berar Land Revenue Code, 1928, notice is hereby given that the assessments on non-agricultural lands in the town of _____ fixed in accordance with section 96 of the said Code in the course of the settlement operations undertaken in pursuance of the *Central Provinces Gazette* notification no. _____, dated the _____ will be publicly declared at _____ on the _____ day of _____ at _____
a. m.
p. m.

2. All occupants or their agents should be present at the time and place aforesaid to hear the assessments declared.

3. The record showing the assessments will be open to inspection to any occupant or his agent between the hours of _____ and _____ on all working days from the date of this notice to the date of declaration abovementioned, at the office of _____.

4. The term of settlement has been fixed to be _____ years. It will commence from the _____. Under section 97 (2), the assessments to be announced will be the land revenue payable annually on the lands during the term of the settlement unless it is modified in accordance with the provisions of the Code. The assessments shall be so payable whether the persons liable to pay them are present or not at the time of their declaration.

Date _____

Signature of officer

FORM A.

[Referred to in rule 7 under sections 89, 97 and 105.]
Pot-kharab statement.

Survey No.	Total area.	Pot-kharab area.	Remaining area.	Details of pot-kharab.						Remarks.
				Unculturable area.	Nalla.	Road.	Well.	Temple.	Other.	
1	2	3	4	5	6	7	8	9	10	11

FORM B.

[Referred to in rule 10 under sections 89, 97 and 105.]
Classification register.

Village _____, pargana _____, taluq _____, Revision Survey 19 -19 .

Survey No.	Kind.	Total area.	Minus Pot-kharab.	Remaining area.	Classification in annas.	Added for special advantage.	Deducted for special disadvantage.	Total annas.	Distance in miles from the village.	Rate.	Deducted assessment.	Old assessment.	Assessment fixed.	Remarks.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

FORM C.

[Referred to in rule 19 under section 97.]

Notice of declaration of assessments on agricultural lands under settlement in the village of _____

In accordance with the rules made under section 97 (1) of the Berar Land Revenue Code, 1928, notice is hereby given that the assessments on agricultural lands in the village of _____ taluq _____ fixed in accordance with section 96 of the said Code in the course of the settlement operations undertaken in pursuance of the *Central Provinces Gazette* Notification No. _____, dated the _____, day of _____ 19 will be publicly declared at _____ on the _____ day of _____ at _____
a. m.
p. m.

2. All occupants or their agents should be present at the time and place aforesaid to hear the assessments declared.

3. The records showing the assessments will be open to inspection to any occupant or his agent between the hours of _____ and _____ on all working days from the date of this notice of the date of declaration above-mentioned at the office of _____.

4. The term of settlement has been fixed to be _____ years. It will commence from the _____ 19. Under section 97 (2) the assessments to be announced will be the land revenue payable annually on the lands during the terms of the settlement unless it is modified in accordance with the provisions of the Code. The assessment shall be so payable whether the persons liable to pay them are present or not at the time of their declaration.

Signature of officer

Date _____.

To

The patel and patwari,
 Village _____.

You are hereby ordered to attach this notice in the *chauthi* and to proclaim by beat of drum the contents in the village and to remain present with the occupants at the camp.

Signature of officer.

FORM D.

[Referred to in rule 20 under sections 89, 97 and 105.]

Kamjasti patrak, village _____, pargana _____
taluk _____.

Survey No.	As at present.				Survey No.	After corrections.							Remarks.
	Total area.	Potkharab.	Culturable area.	Assessment.		Total area.	Potkharab.	Culturable area.	Rate.	Kachha akar.	Kayam akar.	Case No. and class No.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14

Record of Rights.

Chapter X.

1. The record of rights shall be prepared in the following forms :—

Notification No. 3379-1780-XII, dated the 28th October 1929, and Survey and Settlement Department Notification No. 813-XVI, dated the 28-8-30.

- (a) For unalienated village in Form A.
 (b) For alienated villages in Forms B and C
 (c) For surveyed town lands in Form D.

2. In addition to the particulars mentioned in section 108 of the Code, the record shall contain particulars of the rights of tenants holding under leases passed for a period of not less than five years for the redemption of debt.

3. When the record of rights is about to be prepared in any village, the patwari or the Settlement Officer as the case may be shall cause notice thereof to be proclaimed by beat of drum throughout the village and shall post a copy of the notice at the *chaudi*.

4. Prior to the preparation of the fair copy of the record of rights, there shall be prepared a rough copy in which the patwari or the Settlement Officer as the case may be shall make, on such information as he can collect or from such reports as he may receive, all entries likely to be required for the fair copy.

5. If there is a dispute about any entry proposed to be made in the rough copy, the patwari shall leave such entry blank and shall record the particulars of the dispute in the register of disputed cases which shall be maintained in Form E.

6. Every entry in the rough copy shall be examined by the revenue inspector or such other officer as may be deputed for the purpose, and read out to all persons present. If any person interested admits the entry to be correct, the admission shall be noted in the remarks column. If there is any dispute, an entry shall be made in the register of disputed cases :

Provided that in the case of town lands notice shall be issued to all persons likely to be interested in the property to appear and represent their interests.

7. Any change occurring during the preparation of the record of rights shall be brought on the rough copy and shall be checked by a revenue officer not below the rank of a Naib-Tahsildar or such officer as may be authorized in this behalf by the Governor in Council.

8. Disputed cases shall be decided by a revenue officer not below the rank of a Naib-Tahsildar or such officers as may be authorized in this behalf by the Governor in Council.

9. A fair copy of the record of rights shall be prepared by the patwari and checked by the revenue inspector or such officers as may be authorized in this behalf by the Governor in Council.

10. When the record of any village is complete, the sub-Divisional Officer, or in the case of town lands the Settlement Officer, shall issue a proclamation calling on all persons interested to appear on a specified date at a place in or near the village concerned and notifying that any such person may inspect the fair copy on application to the patwari or in the

case of town lands on application at the town settlement office and may prefer objections to any entry therein.

11. On the date and at the place appointed the Sub-Divisional Officer, or the Settlement Officer, as the case may be, shall cause such portions of the record as the persons in attendance may desire to be read over in their presence and, after such further correction as may then be necessary, shall sign the record and add at the end a certificate that it has been duly approved and promulgated.

12. In addition to the measurement fees prescribed in rule 29, a fee of one rupee for each serial entry in the record of rights, shall be paid by the person whose name is entered in column 9 of Form A or Form D or column 8 or Form C and in return such person shall be given a certified copy of the entry.

Provided that—

- (i) "where the person whose name is entered in column 9 of Form D, holds such a number of properties that the preparation of separate certified copies of the entries relating to those properties would in the opinion of the Deputy Commissioner or Settlement Officer, entail unnecessary expense to that person, a joint certified copy of the entries or of such of the entries as can be put together conveniently, may be issued on payment of a fee not exceeding Rs. 10; this proviso shall not apply unless the properties to be included in the joint copy are contiguous and form a compact block; and
- (ii) a person, whose name is entered in column 11 of Form D, may be given a certified copy of the entry in the record of rights on payment of a fee of Re.1"

13. The mutation register shall be maintained in the following forms by the patwari or in the case of surveyed towns by the town surveyor.

For unalienated villages in Form F.

For alienated villages in Forms G and H.

For surveyed towns in Form I.

14. Entries in the mutation register shall be certified in the neighbourhood of the village to which they refer by a revenue officer not below the rank of a Naib-Tahsildar:

Provided that, where the mutation relates only to the imposition or discharge of a mortgage, the coming of age of a minor or to entries relating to wells and trees and there is no dispute, it may be certified by the revenue inspector.

15. The certifying officer shall give due notice in Form J to the patwari concerned and the patwari shall thereupon issue notices to the parties in Form K:

Provided that in the case of town lands such notices shall be issued by the certifying officer himself.

16. No mutation entry shall be certified before the expiry of one month from the date on which a copy of the entry was posted in the *chauch* or *tahsili*.

17. No mutation entry shall be certified except in the presence of the parties concerned, provided that, where a party has been served with a notice in Form K, the entry may be certified *ex-parte*.

18. The certifying officer shall read out the entry in the presence of the parties interested and where the correctness of the entry is admitted shall record such admission in the mutation register and add an endorsement under his signature that the entry has been duly certified:

Provided that mutations in regard to inam fields other than mutations in respect of ante-inam tenants, shall not be certified till sanctioned by the Deputy Commissioner.

19. All original documents produced before the certifying officer shall be endorsed by him and returned to the parties as soon as orders have been passed.

20. Disputes shall be decided summarily on the basis of possession, that is to say, the person who actually holds possession under a claim of title shall be recorded as the occupant or permanent tenant, etc. as the case may be. If there is doubt as to actual possession, the person with the strongest title should be recorded. The order should contain the names of the parties and witnesses and a brief summary of

the evidence produced by entry in the mutation register, the certifying officer shall make.

21. When the dispute order requires any change in the entry in the mutation register, the certifying officer shall make the necessary corrections.

22. When the entries in the mutation register of a village have been certified, they shall at once be transferred by the patwari or town surveyor to the record of rights by writing them below the old entry, or where the changes are small, by correcting the old entry. Such new entries or corrections shall be made in red ink and shall be initialled by the certifying officer.

23. All mutations remaining uncertified during the last tour of the certifying officer before the rains shall be entered in a register of pending cases in Form L, and steps shall be taken to dispose of these cases by calling the parties to convenient centres of the tahsili during the monsoon.

24. The record of rights shall be re-written after every five years or after such longer period as the Deputy Commissioner may decide after security of the record.

25. Intimations of transactions affecting land which registering officers are required to send under section 113 shall be in Form M. A separate form shall be prepared for each village in the first week of each month for the transactions of the past month and shall be despatched to the Tahsildar for transmission to the patwari or town surveyor concerned.

26. The acknowledgment to be given for a notice of acquisition of right under section 109, or of an objection under section 110 (3), or for information or documents requisitioned under section 116 of the Code shall be in Form N.

27. The measurement of sub-divisions of survey numbers and of town plots shall be carried out by measurers appointed in this behalf. Such measurers shall enter the area of each sub-division or plot in the record of rights and mutation register.

28. The payment of flag-holders and chainmen required for measurement operations shall be made daily, under the

supervision of the patel, direct by the persons whose sub-divisions have been measured during the day. The rate shall be fixed by the measurer in each village with the aid of a panoh according to the labour rate customary in the village.

29. In addition to the cost of flag-holders and chainmen, a measurement fee according to the following scale shall be paid by the holder of each sub-division measured :—

	Ra. a. p.
(1) For sub-divisions on which the rent or land-revenue assessed is less than Ra. 5	... 1 0 0
(2) For sub-divisions on which the rent or land-revenue assessed is Ra. 5 or more.	... 2 0 0
(3) For sub-divisions of plots in towns	... 2 0 0

FORM A.

[Referred to in rule 1 under sections 108, etc.]

Record of Rights continued from the year _____ *—for unalienated villages,*
Village _____ *Talug* _____.

Serial number.	Survey number.	Area.	Assessment.	Judi.	Subdivision number.	Area.	Assessment.	Occupant of khalsa land or holder of inam land.	Nature and origin of title.	Other rights or encumbrances with name of the right holder or encumbrancer.	Serial number in the mutation register with date of certification.	Remarks.
1	2	3	4	5	6	7	8	9	10	11	12	13

Note.—In the remarks column the date of the first promulgation or of rewriting should be given.

FORM B

[Referred to in rule 1 under sections 108, etc.]

Record of Rights continued from the year
 Village _____

for superior holders in alienated villages.
 Taluq _____

Serial number.	Name of each superior holder or co-sharer.	Details of share			Nature and origin of title.	Other rights or encumbrances with name of the right holder or encumbrancer.	Serial number in the mutation register with date of certification	Remarks.
		Fractional amount of share.	Area.	Revenue.				
1	2	3	4	5	6	7	8	9

NOTE.—In the remarks column the date of the first promulgation or of rewriting should be given.

FORM C.

[Referred to in rule 1 under sections 108, etc.]

Record of Rights continued from the year. —for *plct holders and protected tenants.*

Village _____ Taluq _____

Serial number.	Survey number.	Area.	Assessment.	Subdivision number.	Area.	Assessment.	Name of plot holder, ante-alienation tenant or permanent tenant	Rights in which the land is held.	Origin of title.	Rent paid to superior holder.	Other rights or encumbrances with name of right holder or encumbrancer.	Serial number in the mutation register with date of certification.	Remarks.
1	2	3	4	5	6	7	8	9	10	11	12	13	14

Rules—Secs. 108 etc.

- NOTE.—**1. This form will be filled up for each survey number held by a plot holder or protected tenant in serial order.
 2. The names of plot holders to whom full proprietary rights in any area have been transferred but the right to receive rent has been reserved by the superior holder should be entered in column 8.
 3. In the remarks column the date of the first promulgation or of rewriting should be given.

FORM D.

[Referred to in rule 1 under sections 108, etc.]

Record of Rights continued from the year.

—In surveyed town lands.

Serial number.	Sheet number.	Plot number.	Reference to old number.	Area in sq. ft.	Tenure.	Assessment.	Year from which assessment of assessed plots is liable to revision.	Name, parentage, profession and caste of occupant.	Title.	Encumbrances and easements against Government or private persons.	Serial number in the mutation register with date of certification.	Remarks.
1	2	3	4	5	6	7	8	9	10	11	12	13

NOTE.—In the remarks column the date of the first promulgation of rewriting should be given.

FORM E.

[Referred to in rule 5 under section 108, etc.]

Register of Disputed Cases:

Village _____ Taluq _____

Serial num- ber of dispute.	Setial number in the mutation register.	Survey num- ber (or sheet and plot number).	Sub-division number.	Area enter- ed in the record of rights.	Date of receipt of objection.	Names of the disputing parties.	Nature and particulars of dispute.	Order of Officer.
1	2	3	4	5	6	7	8	9

FORM F.

[Referred to in rule 13 under sections 108, etc.]

Mutation Register.—for unalienated villages.

Village _____ Taluq _____

Serial number of mutation.	Date of entry in the mutation Register.	Back reference.	Forward reference.	New entry.							Remarks and signature of Officer.
				Survey number and sub-division number.	Area.	Assessment.	Occupant of khalsa land or holder or inam land.	Nature and origin of title.	Other rights or encumbrances with name of the right holder or encumbrancer.		
				Columns 2 and 6 in the record of rights.	Column 3 or 7 in the record of rights.	Column 4 or 8 in the record of rights.	Column 9 in the record of rights.	Column 10 in the record of rights.	Column 11 in the record of rights.		
1	2	3	4	5	6	7	8	9	10	11	

Rules—Secs. 108 etc.

FORM G.

[Referred to in rule 13 under sections 108, etc.]

Register of Mutations.—of superior holders in alienated villages.

Village _____ Taluq _____

Serial number of mutation.	Date of entry in mutation register.	Serial number in the record of rights (column 1 to which the mutation relates).	New entry,						Remarks and signature of Officer.
			Name of sharer in the record of rights.	Details of share.			Nature and date of transfer and in case of sale consideration paid.	Other rights or encumbrances with name of the right holder or encumbrancer.	
				Fractional amount of share.	Area.	Revenue.			
1	2	3	4	5	6	7	8	9	10

FORM H.

[Referred to in rule 13 under section 108, etc.]

Register of Mutations.—for plot holders and protected tenants.

Village _____ Taluq _____

Serial number of mutation.	Date of entry in the mutation register.	New entry.							Remarks and signature of Officer.
		Survey number and sub-division number.	Area	Assessment.	Plot holder, ante-alienation tenant or permanent tenant.	Nature and origin of title.	Rents or assessment paid to superior holder.	Other rights or encumbrances with name of the right holder or encumbrancer.	
		Columns 2 and 5 in the record of rights.	Columns 3 and 6 in the record of rights.	Columns 4 and 7 in the record of rights.	Column 8 in the record of rights.	Columns 9 and 10 in the record of rights.	Column 11 in the record of rights.	Column 12 in the record of rights.	
1	2	3	4	5	6	7	8	9	10

Rules—Secs. 108 etc.

FORM J.

[Referred to in rule 15 under sections 108, etc.]

NOTICE.

From,

The Tahsildar _____
_____ taluq.

To,

The village officers of village _____
_____ taluq.

Notice is hereby given that the entries in the mutation register of your village will be verified by the certifying officer on _____ at _____.

You are, therefore, hereby required to issue timely notices to all the parties concerned directing them to appear at the certifying officer's camp on the above-mentioned date. You are also directed to appear before the officer on that date with all your daftr. You must arrange for the re-service of such notices as may be returned unserved. Your failure to act as above will be severely dealt with.

Dated _____ 19

Tahsildar,
_____ taluq

FORM K.

[Referred to in rule 15 under sections 108, etc.]

Summons to appear.

Whereas a report regarding the acquisition of rights as specified in the margin over land situated in village _____ taluq _____, has been received, you are hereby required to appear before the certifying officer at 11 a. m. on _____

Patel,

Patwari,

or

Tahsildar.

Dated _____ 19.

FORM L.

[Referred to in rule 23 under sections 108, etc.]

Register of pending mutation cases.

Talug _____ Year _____ Village _____

Serial number.	Serial number in mutation register.	Names and addresses of parties.	Dates fixed for hearings.	Date of disposal.
1	2	3	4	5

FORM N.

[Referred to in rule 26]

Receipt under sections 109, 110 and 116, Berar Land Revenue Code.

Received from _____
report

the objection statement specified in the margin regarding the
documents

acquisition of right over land situated in village _____
talug _____.

_____ Patel.

_____ Patwari.

Dated _____ 19 .

FORM M.

[Referred to in rule 25 under sections 108, etc.]

*Sub-Registrar's monthly return of registered transactions affecting land in _____ taluq _____
district for the month of _____ 19 _____.*

Serial number in registration book.	Name of village in which the land is situated.	Nature of the document.	Survey number (or plot number) and sub-division number affected by the transaction.	Area.	Rental if any.	Tenure.	Name, caste and residence of the executor of the document.	Name, caste and residence of the person in whose favour the document is executed.	Whether the registered transaction is by order of court or otherwise.	Consideration.	Date of execution of the document.	Remarks.
1	2	3	4	5	6	7	8	9	10	11	12	13

Instructions.—

1. A separate return will be prepared for each village every month and will be despatched to the Tahsildar in the first week of the following month. The return will include all documents affecting land which were registered during the month.
2. The return will be forwarded in original by the Tahsildar to the Patwari or town surveyor concerned who will number the return for each village serially.
3. The Patwari or town surveyor concerned will keep a file of these returns called the "File of monthly registrations" in which each return will be given a page number.
4. This file will be open to inspection by the public and on application copies will be given in the same way as copies of other village papers.
5. This file must be examined at the time of jamabandi and it must be verified that the entries in it are correct.

See page 60

Boundaries.*Section 122.*

1. When there is a dispute regarding the boundary of any village or of any survey number or surveyed sub-division in an unalienated village, the correct position of the boundary shall be determined by measurement according to the data contained in the survey records:

Notification No. 2134-XII, dated the 4th July 1929 as amended by Notification No. 1921-T-165-XII dated the 19th June 1930.

Provided that where the boundary so determined is called in question, its correct position shall be decided on such evidence as may be available or by reference to arbitration under section 123 of the Code.

2. The boundaries of sub-division which have not been surveyed shall be fixed according to the line agreed to by the holders concerned. If there is any dispute the correct position of the boundary shall be decided on such evidence as may be available or by reference to arbitration under section 123 of the Code. Such boundary strip or ridge shall be half in one field and half in the other field on either side of the boundary line as shown in the survey records.

3. Any application by a private person for the measurement of land whether for the purpose of determining the

Continued from page 59

NOTE.—1. The return will contain all transactions affecting land such as sale deeds, deeds of gift, deeds of exchange, ordinary or possessory mortgages, partition deeds of relinquishment any other documents regarding land except (1) under leases for a period of less than five years passed for redemption of debt, (2) ordinary leases for fixed periods passed on cash consideration, and (3) wills.

2. In the case of leases the period of the lease should be stated in column 3.

3. If house or other property is included in the transaction, or if any special condition, etc. are attached to the transaction this should be noted in column 13.

4. In the case of town lands if agricultural land or other property is included in the transaction, or if any special condition, etc., are attached to it this should be noted in column 13.

5. In the case of town lands a separate return in respect of houses and building sites will be prepared and forwarded to the Tahsildar.

boundary or for any other purpose shall be accompanied by a copy of the tipan giving the measurements required.

Boundary Marks.

Section 125.

1. For the purpose of these rules of the holding of an ante-alienation tenant, tenant of antiquity or permanent tenant shall be deemed to be a survey number or survey numbers as the case may be.
2. The boundaries of all villages and survey numbers shall consist of an unploughed strip or dhura $4\frac{1}{2}$ feet broad, or in the alternative a ridge, fence or wall as provided by rule 12.

3. Near each corner of a survey number shall be erected two mounds (warulis) pointing along the field boundaries. The dimensions of such warulis shall be—

- Length 10 feet.
- Breadth at base 5 feet.
- Breadth at top $\frac{3}{4}$ foot.
- Height 3 feet.

4. When the length of a boundary exceeds 25 chains one intermediate stone or waruli shall be erected on such boundary unless the boundary is clearly defined by a hedge, fence or wall.

5. At each bend of more than 4 annas in the boundary of a survey number shall be erected a stone not less than 6 inches square and $2\frac{1}{2}$ feet in length of which at least two feet shall be sunk in the ground.

6. When the corner of a survey number falls near a nalla where mounds would be liable to be washed away, stones as prescribed in rule 5 may be used instead of warulis to demarcate the boundary. In that case one stone shall be fixed at the corner and another stone or a waruli on each boundary line at a distance of 8 annas ($16\frac{1}{2}$ feet) from the corner.

7. In villages where the holders of not less than three quarters of the occupied land in the village desire it, a system

of single boundary marks may be introduced in place of those prescribed in rules 3 to 6. Such single boundary marks may be of the following descriptions:—

- (1) Stones not less than 3 feet long and 7 inches embodied in rubble and mortar with not more than 1 foot above the ground level.
- (2) Masonry pillars of cement, mortar or burnt brick in cement mortar one foot square and three feet high of which two feet must be embedded in the ground with the foundations stepped down.
- (3) Of such other description as may be approved from time to time by the Governor in Council.

One such boundary mark shall be fixed at each corner of a survey number and at each bend of more than 4 annas in its boundary and in the middle of each boundary exceeding 25 chains in length.

8. In order to cover the cost of any staff employed for determining the position of single boundary marks, fees not exceeding the following scale may, if the Deputy Commissioner so directs, be recovered from the occupant of each survey number, in addition to the cost of materials and labour:—

Survey numbers on which the land revenue assessed is less than Ra. 10.	... 2
Survey numbers on which the land revenue assessed is Ra. 10 or more.	... 4

9. Between the 1st November and the 15th December each year the patel and patwari shall jointly inspect every boundary mark in each survey number in the village and shall prepare a list of defective or missing marks and shall give written notice in Form A to the holders concerned :

Provided that the Deputy Commissioner may direct that, in any specified village where the inspection of all the boundary marks between the dates prescribed would be attended with difficulty, the inspection of, not less than one-third of their number shall be made annually, care being taken to ensure the examination of all of them at least once in three years; and provided further that all boundary marks must be

inspected in the year preceding the inception of a revenue survey.

10. After the 1st March the village officers shall make a second inspection of all fields entered in the list to ascertain whether the defective boundary marks have been repaired or not. The second inspection shall be completed by the 31st March and the patwari shall thereupon send to the Tahsildar a statement, signed by himself and the patel, of boundary marks still defective and an estimate of the cost of their repair.

A separate report shall be sent by village officers regarding each case of encroachment or ploughing up of a boundary strip together with an estimate of the cost of repairs.

11. The Tahsildar shall then, after such enquiry as he may consider necessary, order the patel to have the boundary marks repaired by hired labour, recovering the costs together with such penalty, not exceeding Re. 1 per boundary mark, as the Tahsildar may think fit. If necessary the cost of repairs may be recovered in advance, the balance, if any, unspent being refunded to the defaulter on completion of the work.

12. Where a boundary strip has been encroached upon or ploughed up the Tahsildar shall issue a notice to the person responsible requiring him by a certain date to erect on that portion of the boundary strip which has been encroached on or ploughed up a ridge of earth $4\frac{1}{2}$ feet broad at the base and $1\frac{1}{2}$ feet high or a strong fence or wall; and, should he fail to do so, the Tahsildar shall order a ridge to be constructed by hired labour and the cost together with such penalty as he may deem fit to be recovered from the defaulter.

13. The boundary marks of free grazing land and other lands set aside for public purposes shall be repaired when necessary by the village mahars.

14. The boundary marks of H class land shall be repaired when necessary under the order of the Tahsildar at the cost of Government.

15. A holder of land in an unalienated village shall be responsible for the construction and maintenance of half the boundary marks on the boundaries of his land where they adjoin other occupied land and otherwise of the whole of the

boundary marks. Provided that single boundary marks, constructed under rule 7 which fall on the boundary of a village adjoining a village where such boundary marks have not been introduced, shall be maintained entirely by the landholders concerned of the village in which such boundary marks have been introduced.

16. In an alienated village, ante-alienation tenants, tenants of antiquity and permanent tenants shall be responsible for the construction and maintenance of half the boundary marks of their survey numbers and the superior holder for half the boundary marks of his land where it adjoins the survey numbers of such tenants or the village boundary. Provided that where the village boundary does not adjoin occupied land the tenant or the superior holder, as the case may be, shall be responsible for the construction and repair of the whole of the boundary marks on such boundary.

17. Holders of sub-divisions who have had boundary marks erected under the provisions of section 127 of the Berar Land Revenue Code will be responsible for the maintenance of the whole of such boundary marks.

18. In allotting to each holder of land the share of the boundary marks for the construction and maintenance of which he is responsible the Deputy Commissioner shall ordinarily maintain any distribution recorded in the survey papers.

19. The Deputy Commissioner may subject to the foregoing rules, either declare two or more holders of land to be jointly responsible for the maintenance of any boundary mark, or allot to each holder separate marks. And if it is not practicable to make an exactly equal distribution of separate marks he may make such distribution as appears equitable or may recognize an existing customary distribution. His decision shall be recorded in the survey papers.

FORM A.

[Referred to in rule 9 under section 125.]

Notice requiring holders of land to repair their boundary marks

From

The patel of village _____ taluq _____

To,

Whereas the boundary marks of your field detailed below are defective, you are hereby directed to put them into proper repair before the 1st day of March next:—

Survey number.	Details of defective or missing boundary marks,

(Sd.)

Dated

Patel

Boundaries of Sub-Divisions.

Section 127 (2)

L. The boundary marks of sub-divisions may be of any of the kinds specified in rules 3 to 7 under section 125 of the Code.

Notification No. 2134-XII, dated the 4th July 1929.

2. The cost of materials and labour shall be paid by the holders of the sub-divisions and in addition a fee according to the following scale for each sub-division demarcated:—

	Rs.
On sub-divisions on which the land revenue assessed is less than Rs. 5.	... 1
On sub-divisions on which the land revenue assessed in Rs. 5 or more	... 2

Payment of Land Revenue.*Section 134 (2).*

1. Land revenue on account of occupied land other than nazul or village site land shall be payable in instalments on the 15th February and 15th April, calculated in accordance with the next following rule.

Notification No. 3104-XII, dated the 1st October 1929.

2. If $\frac{2}{3}$ ths or more of the area of a survey number or sub-division excluding pot-kharab is sown with kharif crop, the land revenue shall be payable on the 15th February. If $\frac{2}{3}$ ths or more is sown with rabi, the land revenue shall be payable on the 15th April. If the proportion of the area under rabi or kharif, as the case may be, is more than $\frac{1}{4}$ th but less than $\frac{2}{3}$ ths of the total, the land revenue shall be payable half on the 15th February and half on the 15th April.

Explanation—Fallow land and land diverted to non agricultural use shall for the purpose of this rule be considered as under kharif crop.

3. Land revenue shall be paid in the village to the revenue patel of the village :

Provided that in special cases, with the sanction of the Deputy Commissioner, land revenue may be paid into any sub-treasury or district treasury in Berar. Such payment shall not be accepted unless the payer furnishes with it full particulars of the amount due and of the land on which it is due.

Grant of Receipts.*Section 136 (1).*

1. Receipts for land revenue paid on account of occupied land other than nazul or village site land, shall be granted in a receipt book in Form A, to be maintained by each occupant or holder. Such receipt books shall be stocked at the tahsili and sold to the public at the rate of 4 annas each.

2. Receipts for land revenue paid on account of nazul or village site land or other money recovered by the patel as an

arrears of land revenue shall be granted in Form B. The receipt shall be written in duplicate by means of carbon paper, the original of which will be given to the payee and the duplicate retained by the patal.

Levy of Penalty.

Section 137.

L. The penalty leviable under section 137 of the Code shall not exceed one-fourth of the amount of land revenue in arrears and should be enforced only in cases of wilful default.

Notification No. 3104-XII, dated the 1st October 1929.

FORM A.

[Referred to in rule 1 under section 136 (1).]

Receipt book (first page),

District

Taluq

Village

Name, father's name and caste of occupant

No. of holding

Serial No. in Record of Rights.	Survey. No.	Subdivision number.	Area.	Assessment.				Remarks.	
				Land revenue.	Deduct assignment.	Net amount for payment.	Cesses.		Total.
			A. g.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	

(Subsequent pages.)

Page

Page of ledger

Year

No. of holding.

Credit.		Debit.		
Amount.	Details.	Amount.	Details.	
			Land revenue.	Cesses.
	Kird page date Received from. By the hand of Rs. a. Patel Patwari		Past arrears. Demand for current year as per jama- bandi.	
	Total receipt (words) Balance due (words) Patel Patwari		Total ...	
			1st instalment ...	
			2nd instalment ...	
			Total ...	
			Patel ...	
			Patwari ...	

FORM B.

[Referred to in rule 2 under section 136 (1.)]

Receipt.

Received from _____
resident of _____ taluq _____ the sum of
Rs. _____ on account of _____

Dated _____ (Sd.) Patel.

Village _____ (Sd.) Patwari.

Suspension and Remission of Land Revenue.

Section 139 (1).

1. Suspensions and remissions of land revenue may be granted in unalienated villages in the

Notification No.
3104-XII, dated the
1st October 193.

case of—

- (1) widespread calamities due to general crop failure; †
- (2) local calamities occasioned by hail, floods, locusts and the like.

In alienated villages no suspension or remission will be allowed unless the Deputy Commissioner is able to secure a corresponding suspension or remission of the tenants' rents.

Widespread calamities.

2. On hearing that there has been a general failure of the crops in any part of his district the Deputy Commissioner shall cause early enquiries to be made into the condition of the affected tract and the degree of crop failure in each village or group of homogeneous villages. The enquiries should include a reference to the village panchayats, local board and leading agriculturists of the neighbourhood.

3. The degree of relief shall be the same throughout each village or homogeneous tract and no attempt shall be made to differentiate between the circumstances of individuals.

4. Relief shall be calculated according to A scale or B scale according to the previous revenue history of the tract. The A scale will be used in villages whose condition is normal and the B scale in those which have suffered from recent crop failure or deterioration. The sanction of the Commissioner shall be obtained to the application of the B scale except in villages in which there has been any general suspension of revenue in the previous year:—

A Scale.

State of crop. (13½ annas = Normal 100 American notation)	Degree of relief.
6 annas or over	Nil
4 annas or less than 6 annas	‡
Less than 4 annas	All

B Scale.

State of crop. (13½ annas = 100 American notation)	Degree of relief
8 annas or over	Nil
Less than 8 annas and not less than 6 annas	½
Less than 6 annas	All

In calculating the outturn for each village any shortage in the cropped area as compared with the normal shall be taken into consideration.

5. The Deputy Commissioner shall submit his proposals for suspensions to the Commissioner, and on receipt of sanction shall cause them to be announced to all concerned before the instalment of revenue to which they relate falls due:

Provided that if for any cause it appears probable that the Commissioner's orders cannot be received in time to allow of announcement before this date, the Deputy Commissioner may, after obtaining the requisite authority beforehand from the Commissioner, pass orders himself sanctioning the suspensions required.

6. No revenue which has been suspended shall ordinarily be collected till one fair harvest subsequent to the failure has been reaped in the affected tract.

7. The amount of suspended revenue to be collected along with the ordinary demand shall be determined by the Deputy Commissioner according to the character of the harvest and shall be announced before the date on which the instalment concerned is payable.

8. Suspended revenue may, with the sanction of the Governor in Council, be remitted in part or in whole—

(1) when the revenue which it is sought to remit has been suspended for three years;

(2) in certain specified tracts when the amount suspended

exceeds the annual revenue demand; in which case the amount in excess of the annual demand will ordinarily be remitted;

- (3) in cases where it is clear from the condition of the tract that it would be inadvisable to collect the suspended revenue or part of it.

Local Calamities.

9. The foregoing rules shall also govern the procedure in the case of local calamities subject to the modifications prescribed in the following rules.

10. Relief shall be granted to individuals varying according to the damage done to the total holding of each.

11. Relief shall be granted on B scale if any general suspension of revenue was granted in respect of the previous year's crops in the village, otherwise on A scale.

12. Relief may be granted by the Deputy Commissioner either by suspension or remission in the first instance. The Deputy Commissioner is authorized to remit land revenue up to Rs. 2,500 in connection with any single calamity, but shall report to the Commissioner all remissions granted.

Jaglia and Mahar Cess on Survey Numbers and

Sub-Divisions.

Section 171 (2).

1. The cess on a survey number shall be calculated at 12 pies per rupee on the number of whole rupees in the fair assessment, annas and pies being disregarded.

Notification No.
3104-XII, dated the
1st October 1929.

When a survey number contains sub-divisions, the cess for the whole survey number shall be divided amongst the sub-divisions in proportion to the fair assessment of each fraction of a pie being ignored. The total of the cesses for the several sub-divisions shall then be made to agree with the cess for the whole survey number by adding one pie to the cess of as many sub-divisions as may be necessary, starting from the first.

Jaglia and Mahar Cess on Non-Agricultural Income.*Section 172 (3).*

2. A cess on income derived from non-agricultural sources shall be levied at the following rates :—

Notification No.
3104-XII, dated the
1st October 1929.

Per annum.
Ra.

- | | |
|--|--------|
| (i) From all persons in receipt of an annual income from such sources, exceeding Rs. 500 but not exceeding Rs. 2,000 | ... 2 |
| (ii) From all persons in receipt of an annual income from such sources exceeding Rs. 500 but not exceeding Rs. 5,000 | ... 5 |
| (iii) From all persons in respect of an annual income from such sources exceeding Rs. 5,000 | ... 10 |

3. A register in Form A shall be prepared annually by the patwari for each village showing the names of all persons liable to assessment under section 172.

4. Between October 1st and November 30th the Tahsildar, with the assistance of the village officers, shall fix the assessment of each person entered in the register.

5. On completion of the assessment the register shall be forwarded to the tahsili and a copy shall be posted in the *chaudi* together with a notice that an appeal may be filed to the Sub-Divisional Officer within 45 days from the date on which the copy was posted in the *chaudi*.

6. Any alterations made in appeal shall be brought on the original register in the tahsili and on the copy in the *chaudi* before the 15th February.

7. The cess shall be payable on the 15th February and shall be collected by the patel.

FORM A.

[Referred to in rule 3 under section 172 (3).]

Assessment register of jaglia and maharkicess on non-agricultural incomes.

Village _____ Pargana _____ Taluq _____

Serial No.	Name and father's name of assessee.	Occupation.	Estimated income from sources other than agriculture.	Amount of income finally determined under rule 4.	Assessment of jaglia and maharki cess.	Alterations, if any, made in appeal.	Remarks.
1	2	3	4	5	6	7	8

NOTE.—1. Columns 1 to 4 shall be filled in by the patwari. Columns 5 and 6 shall be filled in by the Tahsildar.

2. The amount of cess and date of collection shall be entered in column 8 by the patwari.

I—Grant of Copies of Revenue Records and Maps.

Section 188.

1. Applications for copies may be presented in person or by an agent or sent by post to the Head Copyist of the office at the place where the record from which the copies are desired will eventually be deposited for safe custody. Applications for copies of records which are kept for a term of years at a tahsili and thereafter are deposited in the Deputy Commissioner's record room shall be made to the ministerial officer of the tahsil (hereinafter called the Head Copyist for the purposes of these rules) until the records are transferred to the Deputy Commissioner's record room.

Notification No. 2310-1250-XII, dated the 18th July 1919.

Applications for copies of records in charge of the village officers may be made to the Tahsildar who shall cause them to be prepared by the patwari.

Explanation.—Under this rule applications for copies of settlement records are to be made to the Head Copyist of the Deputy Commissioner's office even when settlement is in progress.

2. Every application save those exempt from Court-fees shall bear a Court-fee label of one anna: provided that an application sent by post may be sent without a label, in which case the Head Copyist shall see that a label of one anna is affixed to the application and punched, the cost thereof being debited to the applicant's account.

3. Every application shall be accompanied by an advance sufficient to cover the estimated cost of the copy applied for, and also if the copy applied for is of the kind mentioned in rule 12, by the requisite non-judicial stamp. In the case of an application sent by post, the advance shall be remitted by money order. An application received by post before the arrival of the connected advance shall not be registered or acted upon until receipt of the advance. Should an advance be received before the connected application, the money shall forthwith be sent by the Head Copyist to the Treasury or Sub-treasury, as the case may be, after making the requisite entry in Pass Book B. The Treasury Officer shall enter the item under the head "Miscellaneous". On receipt of the connected application, the Head Copyist shall obtain the money from the Treasury or Sub-treasury and shall, when recording the withdrawal in Pass Book B, enter the name of the remitter in column 8. If no application is received within thirty days, the Head Copyist shall demand return of the money so that action may be taken under rule 20.

4. If an applicant who has presented his application in person desires the copy to be sent by post, he shall state in his application or in a subsequent communication the address to which the copy should be sent and the copy shall be sent accordingly. Similarly, if an applicant who has sent his

application by post desires to take delivery himself he shall state the fact and the copy shall be retained for such delivery.

5. On each application the Head Copyist shall endorse the date of its receipt and shall initial such endorsement. If the applicant is present in person, the Head Copyist shall immediately give a receipt in the prescribed form for the advance received with the application.

6. (1) Copies of documents, such as registers and statements which, cannot by their nature be prepared on copy sheets, shall be given on the appropriate forms.

(2) Copies of maps shall be made on tracing cloth to be supplied by the Head Copyist. The fee for a copy of a map shall be one rupee for every certified copy of a survey number or sub-division of a survey number including details of all measurements. Such fees shall be affixed to the copy in the form of Court-fee labels.

(3) The fee for a certified copy of a serial number in the record of rights, including entries cancelled by subsequent mutations, or of a serial number in the register of mutations, shall be 8 annas.

Except in the Melghat taluq the fee for copies prepared by a patwari of entries in records in his custody shall be recovered in cash and shall be placed in the Treasury as revenue deposit payable to the patwari concerned through the Tahasildar. Such deposits shall be made only twice a month viz., on the 10th and 25th.

(4) Except as provided for in sub-rules (2) and (3) the copying charges shall be calculated at the rates prescribed in rule 8, the printed matter being treated as matter copied.

II.—Preparation and delivery of copies

7. Copies exempt from copying charges and those required by officers of Government or of the Court of Wards or of Co-operative Credit Societies for official use shall be made on plain paper, free of cost.

8. Except as provided for in rules 6 and 13 all copies shall be prepared on sheets of plain water-marked foolscap

paper, which shall be obtained from the Treasury or sub-treasury. The fee for preparing copies shall be 4 annas for every 180 English words or 270 vernacular words or fraction thereof, four figures counting as one word. Both sides of the paper are to be used, whether the copying be in manuscript or in type. One sheet should ordinarily contain 720 English words in type or 180 English words in manuscript or 600 vernacular words in type or 270 vernacular words in manuscript. The exact number of words in a particular line is immaterial so long as the total on a sheet approximates sufficiently closely to the standard required. Documents written in Modi shall be copied in Balbodh character. At the top of each page a margin of an inch and a half is to be left for the affixing of the necessary Court-fee labels. There will also be a margin of one inch on the left of the front and on the right of the back of a sheet. A margin of a quarter of an inch should be left on the right of the front and on the left of the back of the sheet. Similarly, there will be a margin of half an inch at the foot of each page. It should not be necessary to rule these margins, but if they are to be ruled, this should be done in pencil only. For type-written copies, the usual double line spacing should be used. For manuscript copies, the most convenient spacing is fifteen lines on each page and six English or nine vernacular words to a line.

9. The value of the Court-fee label to be attached to the sheet depends on the total number of words written or typed, the labels being affixed on the right hand side to the top margin of the front page. On the back of each sheet on the top margin the stamp "Head Copyist, Deputy Commissioner's office," or in the case of copies granted at a tahsili the seal of the Tahsildar shall be affixed.

10. Immediately below the top margin in the first sheet used for each copy shall be typed or written the words "Copy of" with a brief description of the document to be copied, e. g. order, deposition of witness, application, etc. The description of the case shall include the number and year of the case, the name of the Revenue Officer to whose file the case belongs, the names of the parties, and the date of the order or other

proceeding. When the copy is a copy of a document in an appellate record or a miscellaneous case connected with an original case, the description of the appellate or miscellaneous case, as the case may be, as well as that of the original case, shall be given.

II. On the back of the last sheet in each copy shall be typed or otherwise legibly endorsed the following table:—

Application for copy received on	Applicant told to appear on	Applicant appeared on	If copying not begun for want of correct information, date on, which full information was supplied.	Copying stopped or copy not sent for want of funds on	Subsequent advances paid on	Copy ready on	Copy delivered or despatched on	Courtfee realised.
1	2	3	4	5	6	7	8	9

Copyist.

Comparer.

Head Copyist

Such words in the table as do not apply to the case in hand should be scored out. The dates to be entered in the table shall be entered in figures, not in words, and all corrections shall be properly attested. When certifying a copy the Head Copyist or the Tahsildar, or Naib-Tahsildar, as the case may be, shall himself satisfy that these entries have been correctly made.

The full particulars in the table shall only be furnished in respect of copies of judgments and orders which form the basis of an appeal; in other cases such as copies of dispositions and of village records, etc., entries in columns 1, 7 and 8 only will be made.

12. If the copy is of a kind requiring a stamp under article 24, Schedule I to Act II of 1899, it shall be commenced on an impressed non-judicial stamp paper of the value required and shall, if not finished on the front thereof, be completed on an ordinary plain sheet or sheets. If the copy is finished on the non-judicial stamp itself, the endorsements required by rule 11 shall be made on the back of the stamp. A Court-fee label of the required value shall be affixed to the non-judicial stamp and also to each plain sheet at the rates prescribed by rule 8.

13. Under no circumstances shall a copy be carried beyond the number of sheets already paid for. Whenever copying cannot be taken in hand or completed owing to want of funds or incorrect information having been given, the Head Copyist shall report the matter to the Superintendent or the Tahsildar, as the case may be, and shall also inform the applicant when he attends, or send an intimation by a service postcard to the applicant who has asked for the copy to be supplied by post.

14. When copies are ready, they shall, before delivery or despatch, be signed by way of attestation by the Head Copyist or in case of copies granted at a tahsili by the Tahsildar or the Naib-Tahsildar. The attesting officer shall before signing see that each sheet bears the Court-fee label or labels required by rule 8 foregoing and that all such labels are punched by a punch marking the letter C.

15. Copies shall be delivered to applicants personally or to their agents or counsel or shall be sent by post, if so desired, to their addresses by registered packet.

16. If the amount of the advance in the case of an application in which the copy is to be sent by post is more than sufficient to cover all charges (including Court-fees, postage, registration and money order fees) the surplus shall be remitted, along with the copy by money order, or, if it does not exceed seven annas in postage stamps. If the copy is to be delivered to the applicant in person and he fails to appear, the balance of advance after deduction of all charges shall be

remitted by money order to the applicant within a month of the date on which he was told to appear.

17. Applications will be received and copies delivered daily between such hours as the Deputy Commissioner may decide. Enquiries shall be attended to throughout the usual office hours.

III.—Maintenance of registers and accounts.

18. The Head Copyist shall keep the following registers in the forms appended hereto :—

Name of register.	No. of form with the No. Schedule on which it is borne.
(1) Register of applications for copies	... II-90
(2) Account Book	... II-91
(3) Detailed Account Book	... II-92
(4) Duplicate Receipt Book	... II (a)-135
(5) Pass Books A and B, showing transactions with the treasury	... II-155
(6) List of Unexpended Advances	... II-156
(7) Dak Book	... II-69
(8) Ledger account of copying fees payable to patwaris.	

19. All applications, whether received by post or presented in person or by an agent, shall be entered in one and the same annual series of numbers in the Register of Applications for copies, the letter P in red ink being written to the left of the number assigned to each postal application.

20. When a copy remains undelivered or when no work has been done on an application for 30 days owing to want of funds or lack of correct information or when no application has been received for 30 days in connection with an amount received by money-order, the unexpended advance shall be entered in columns 1, 2 and 3 of the List of Unexpended Advances: the application itself and any sheets used in connection therewith shall be deposited in the record-room. The disposal of the unexpended advance either by repayment or by lapse to Government will be shown in red ink in columns 4, 5 and 6 against the original entry, in addition to the usual black ink entry in chronological order in columns 1, 2 and 3 which latter entry will effect the balance in column 7.

21. (1) Each amount received from applicants personally or by money-order accompanied by an application shall be entered by the Head Copyist in the Register of Applications for copies and the Detailed Account Book. Daily totals of columns 3 to 8 of the Detailed Account Book shall be carried to the appropriate columns of the Account Book.

(2) A ledger account register in Form 8 shall be maintained showing the amount payable to each patwari. On the 31st March the total of each ledger account shall be withdrawn and paid to the patwari concerned when he comes to tahsil to receive his emoluments.

22. If a money order for the balance due to an applicant is returned unpaid, the amount thus received shall be entered in (1) column 10 of the Head Copyist's Register of Applications, and (2) column 4 of the Detailed Account Book, and it shall be entered in the list of Unexpended Advances in the manner specified in rule 20 above. Copies sent by post and received back shall be deposited in the record-room.

23. The Head Copyist shall ordinarily indent for plain sheets from the Treasury or Sub-treasury once a month. To minimize work in the District Treasury, the indent should be for a whole number of reams of 480 sheets. The Head Copyist should ordinarily never have more sheets in stock than will suffice for two months and should never have less sheets than will suffice for one month. The indent should be in duplicate on unofficial memorandum forms. One copy will ultimately remain in the Treasury office and one with the Head Copyist. The indent should be countersigned by the Superintendent or a gazetted officer and in a tahsil by the Tahsildar or his Naib. The Head Copyist shall indent from the Treasury or Sub-treasury for Court-fee labels whenever required. The indents shall invariably be for whole sheets, whatever be the denomination of the label. The labels required will be one anna, four annas, eight annas, twelve annas and one rupee. There are always thirty-six labels to a sheet. The Head Copyist shall not obtain labels from a stamp-vendor without the express permission of the Tahsildar or gazetted officer in charge of the Copying Department. Court-fee labels shall be

reckoned as cash for all account purposes and shall be sent daily along with the each to the Treasury in a sealed leather bag. All transactions relating to disposal of Court-fee labels will appear in the Detailed Account Book. The Head Copyist shall every day give to each copyist as many blank sheets as will approximately suffice for the day's work and shall see that each evening each copyist returns to him the number given, whether used, unused or spoilt. Notes of these transactions shall be kept in a rough notebook. The Head Copyist is responsible for the correct balance of blank sheets.

24. In the Duplicate Receipt Book shall be entered all sums paid by applicants personally as an advance required for the copy and also all balances returned to applicants personally. As soon as the first advance is received and entered, the outer-foil shall be torn off and made over to the payer, and when the copy, with balance, if any, is delivered it will be taken back and affixed to the inner foil. Receipts from applicants who sent their applications by post, but have obtained delivery of copies with refund of balance in person, should be taken in a separate receipt-book to be maintained for the purpose, entries being confined to such columns as are appropriate. If more money has been advanced than was required, the payer shall receive back the excess at the time the copy is delivered.

25. On receiving an application presented by hand the Head Copyist shall, if the applicant does not desire the copy to be sent by post, forthwith fix and intimate to the applicant a date within seven working days of the date of presentation on which he should attend to ascertain whether the copy is ready or whether any further advance is required. Should the copy not be complete on the date so fixed, the applicant shall be directed to attend on another date within seven working days of the first date fixed, and so on. The successive dates on which the applicant is told to attend and on which he attends shall be entered in both foils of the Duplicate Receipt Book and in the Register of Applications.

26. If the copying work is in arrears or for any other sufficient reason, the head of the office may, by general or

special order, direct that the period between presentation and first attendance or the period between the dates fixed for two consecutive attendances shall consist of a fixed number of days in excess of seven, and shall at the same time determine the period for which the order is to remain in force.

27. The Deputy Commissioner shall record an order fixing the maximum balance of cash to be kept by the Head Copyist in his own hands, and the amount so fixed shall not in any case exceed Rs. 200 at headquarters and Rs. 30 at each outlying place, without his special sanction. Each Head Copyist shall furnish security in a sum to be fixed by the Deputy Commissioner which shall not be less than 25 per cent in excess of the maximum cash balance. Each Head Copyist shall be provided with a box having a good lock for the custody of blank sheets, his cash balance shall be sent in a sealed leather bag with his Dāk-Book to the Treasury daily not later than 4-45 p. m.

28. Whenever the amount of money and Court-fee labels in the hands of the Head Copyist at the close of the day's business is greater than the amount fixed under the preceding rule the excess shall be entered in Pass Book A, and paid in cash by the Head Copyist into the Treasury or Sub-treasury, as the case may be, to be treated as a revenue deposit. Unexpended advances mentioned in rules 20 and 22 shall be paid into the Treasury or Sub-treasury immediately applications are deposited in the record-room and money orders are returned unpaid. Action in respect of an advance received by money order without an application is to be taken under rule 3.

29. On receiving the money from the Head Copyist, the Treasury or Sub-treasury Officer, as the case may be, shall enter the total amount as a single item in the Register of Revenue Deposit Receipts, describing it as "Copying" fees received from the Head Copyist, without giving a number to the item or recording any other particulars. The Treasury Officer may receive Court-fee labels as the equivalent of cash to be kept as part of his cash balance.

30. When the Head Copyist requires repayment of any amount paid into the Treasury under rule 28, he shall enter it in the Pass Book which will be presented to the Treasury. The date and amount of each deposit out of which repayment is desired shall be given in columns 4 and 5 of the Pass Book. In every case of withdrawal other than that of an unexpended advance (rule 20 or 22) the oldest deposit available shall be drawn upon; for this purpose, against each withdrawal which finally exhausts a deposit and also against the entry relating to the original deposit, a remark to the said effect shall be made in the last column of the Pass Book showing transactions with the Treasury. The book shall be presented in the Treasury or Sub-treasury, as the case may be, accompanied by a simple receipt therefor. The receipt shall be countersigned by—

- (a) The Deputy Commissioner or one of his Gazetted Assistants. ... At the headquarters of a district.
- (b) The Sub-Divisional Officer ... At the headquarters of a sub-division.
- (c) The Tahsildar or Naib-Tahsildar ... At the headquarters of a tahsil.

On the other hand, if part of the balance with the Treasury is in Court-fee labels, those labels should be returned at the first opportunity to the Head Copyist. If the balance in deposit at the credit of the Head Copyist is sufficient, the Treasury or Sub-treasury, as the case may be, shall make the payment and shall enter the items in the Register of Repayments of Revenue Deposits without number as "Repayment of copying fees to Head Copyist." An unexpended advance once paid into the Treasury or Sub-treasury shall not be refunded to the applicant until it has been withdrawn from the Treasury or Sub-treasury.

IV. Supervision.

31. The Superintendent or the Tahsildar shall test the work of the copyist from time to time by selecting sheets at random and counting the words entered on each. He shall daily examine the Account Book and the Detailed Account Book with reference to the other registers. He shall also in the first week of each month, examine the Head Copyist's

account for the preceding month with reference to the Pass Book A in order to ascertain whether each sum in the Pass Book has been accounted for in the Account Book.

32. The head of the office or a subordinate gazetted officer deputed by him shall examine the several registers of the Head Copyist in the first week of each month with the object of seeing whether the work of copying is being regularly done, the excess payments properly refunded and the excess over the maximum balance deposited in the Treasury or Subtreasury, as the case may be, in accordance with rule 28. He shall also satisfy himself by an examination of the Account Book that the balance of sheets will suffice for a period of not less than one month and not more than two months. He shall also verify the correctness of the accounting for plain sheets as explained in rule 23. The head of the office shall also examine a certain number of applications pending over one month in which copying has been stopped for want of funds or proper information regarding the document to be copied to see if any were rightly deposited in the record-room.

33. The closing cash balance, inclusive of unused Court-fee labels in the hands of the Head Copyist which is shown in column 13 of the Account Book, shall be verified at least once a quarter by the head of the office or a subordinate gazetted officer deputed by him. The process to be adopted is as follows:—

A list of all advances received in respect of applications other than (i) those deposited in the record-room under rule 20, and (ii) those in which copy has been delivered or the amount advanced has been refunded shall be prepared from the Register of Applications. To the total of the list shall be added the progressive total or balance in the list of unexpended advances. From the sum thus arrived at shall be deducted—

- (i) the value of Court-fee labels used in respect of applications in the foregoing list of advances received;

(ii) the balance in the Treasury or Sub-treasury, as the case may be, and

(iii) the cost of Court-fee labels affixed by the Head Copyist to postal applications under rule 2.

The difference thus found should tally with the closing balance shown in the Account Book and with that in the Head Copyist's hands.

V.—Accounts for Accountant General.

34. In compiling the Extract Registers of Receipts and Repayments of Deposits for submission to the Accountant General, the items entered in the Deposit Registers of the Treasury without number (*vide* rules 29 and 30) shall not be reproduced in detail: the monthly totals only shall be entered at the foot as amounts of copying fees received from and repaid to Head Copyist. The total amount repaid from the deposits made in each financial year shall, however, be given separately. Thus, supposing the total amount of copying fees repaid during a month to be Rs. 175, the note would stand as follows:—

		Rs.
On account of deposits made in 1910-11 ...	...	23
Do. do. 1911-12 ...	...	34
Do. do. 1912-13 ...	...	118

Total ...	...	175

35. Early in March a list of items lapsing to Government shall be prepared and this list, after being compared by the Deputy Commissioner or one of the Assistants with the List of Unexpended Advances and the Register of Applications, shall be submitted to the Accountant General immediately after the 31st March; in accordance with article 206 of the Civil Account Code. The list shall show distinctly how much is now to be credited to Government as lapsed out of the amounts received during each separate financial year. Thus

supposing Rs. 45 are to be credited to Government as lapsed the note would stand as follows:—

		Rs.
On account of 1909-10	...	6
Do. 1910-11	...	5
Do. 1911-12	...	34
		<hr/>
Total	...	45
		<hr/>

Refunds of amounts included in this list shall only be payable with the sanction of the Accountant General under article 207 except that repayments of such deposits up to a limit of Rs. 5 may be made by the Treasury Officer.

Similarly, the account particulars, submitted to the Accountant General by the Treasury under article 204 of the Civil Account Code, shall show the particular year on account of which there are balances of copying fees outstanding in the Head Copyist's Register.

VI. Elimination.

36. Each register and paper specified below shall be preserved for the period noted against it:—

Name of register or paper.	Period for which to be preserved.
(i) Head Copyist's Register of Applications for copies.	} 6 years
(ii) Account Book	
(iii) Detailed Account Book	
(iv) Duplicate Receipt Book	
(v) Pass Books A and B	
(vi) List of Unexpended Advances	
(vii) Ledger account of copying fees payable to patwaris.	
(viii) Counterfoils of postal money orders	} 3 years.
(ix) Dak Book	
(x) Applications for copies in which copies have been delivered or in which advances have been refunded without preparing copies or which are received by post unaccompanied by advance and for which no advance is subsequently received	} 6 months from date of delivery or refund.
(xi) All other applications	} 3 years.
(xii) Copies undelivered	

Head Copyist's Register of Applications for copies for

IN THE COURT OF

	1	Serial No.	
	2	Date on which application was received.	
	3	Name and address of applicant.	
	4	Description of document of which copy is applied for.	
	5	If copying not begun for want of correct information date on which full information was supplied.	
	6	Date or dates on which applicant was told to attend.	
	7	Date or dates on which applicant attended.	
Rs.	8	Amount of first advance.	
	9	Date on which copying stopped or copy not sent for want of funds.	
Rs.	10	Amount of further advance or of unpaid money orders refunding balance due to applicant.	
	11	Date on which amount in column 10 was received,	
Rs.	12	Amount paid for Court-fee labels affixed to copies.	
Rs.	13	Amount deposited as copying fees payable to patwaris.	
Rs.	14	Court-fees on applications for copies and money order commission.	Incidental charges.
Rs.	15	Postage and registration charges.	
	16	Date on which copy was ready.	
	17	Date of delivery or despatch of copy and of refund of balance to applicant.	
Rs.	18	Amount refunded to applicant.	
	19	Date of credit to Government as lapsed.	Unrepaid advances.
Rs.	20	Amount.	
	21	Remarks.	

IN THE COURT OF
Account Book to be kept by the Head Copist.

	1	Date,
Rs.	2	Opening cash balance.
Rs.	3	Amount withdrawn from Treasury.
Rs.	4	Advances received from parties.
Rs.	5	Advances and other amount received by post.
Rs.	6	Total cash receipts.
Rs.	7	Total of columns 2 and 6.
Rs.	8	Amount refunded to applicants.
Rs.	9	Incidental charges, e. g., postage and registration charges, money order commission and Court-fees on applications for copies.
Rs.	10	Amount paid for Court-fee labels affixed to copies.
Rs.	11	Amount deposited in treasury.
Rs.	12	Amount deposited as copying fees payable to patwaris.
Rs.	13	Total cash expenditure.
Rs.	14	Closing cash balance.
	15	Opening balance.
	16	Number of plain sheets received.
	17	Total number of plain sheets.
	18	Number of plain sheets used.
	19	Closing balance.
	20	Initials of Superintendent.
	21	Remarks.

Receipts.

Expenditure.

Account of plain sheets.

II—92 **IN THE COURT OF**
Detained Account Book to be kept by the Head Copyist.

Date.		Receipts.	Expenditure.	Re- marks
1	2			
		Serial No. of application in Register of Applications.		
	3	Advances received from parties.		
	4	Advances and other amounts received by post.		
	5	Amount refunded to applicants.		
	6	Incidental charges, <i>s. g.</i> , postage and registration charges, money order commission and Court-fees on applications for copies.		
	7	Amount paid for Court-fee labels affixed to copies.		
	8	Amount deposited as copying fees payable to patwaris.		
	9			

II-(a)—135 DUPLICATE RECEIPT BOOK

Inner fol.

No. _____ of 193

Name of applicant.

Description of document required.

1	Date of payment of each advance.
2	Amount of each advance.
3	If copying not begun for want of correct information, date on which full information was supplied.
4	Dates on which the applicant is told to appear from time to time.
5	Signature of applicant.
6	Dates on which the applicant has appeared from time to time.
7	Date on which copying stopped for want of fund.
8	Unexpended balance returned to applicant.
9	Signature of applicant by way of acknowledgment of receipt of copy and money refunded with date.



DUPLICATE RECEIPT BOOK.

Outer fol.

This must be produced at the time of taking the delivery of copy.

No. _____ of 193

Name of applicant.

Description of document required.

1	Date of payment of each advance.
2	Amount of each advance.
3	If copying not begun for want of correct information, date on which full information was supplied.
4	Dates on which the applicant is told to appear from time to time.
5	Initials of Head Copyist.
6	Dates on which the applicant has appeared from time to time.
7	Date on which copying stopped for want of funds.
8	Unexpended balance returned to applicant.

II—69

Dāk Book of the Court of _____

Date and hour of dispatch.	Number of cases if any.	Brief description of paper or article sent.	Person to whom sent.	Signature of person receiving	Remarks, e. g., sent by post or name or bearer.
1	2	3	4	5	6

Ledger Account of copying fees payable to patwaris.

Name of patwari in full _____

Name of Village _____

Serial No. of application in the register of applications for copies.	Amount of copying fees credited to revenue deposits as payable to patwari.	Challan No. and date.	Date of payment.	Amount paid to patwari.	Signature of patwari in token of acknowledgment.	Signature of Officer before whom payment is made.	Remarks.
1	2	3	4	5	6	7	8
				Rs. a.			

Inspection of Revenue Records, Maps and Land Records.

Section 188.

- 1. All records and maps maintained under the Code shall be open to inspection.**

Notifications No. 3178-XII, dated the 9th October 1929.

- 2. For the inspection of the record of a case which is pending, or which has been decided, but the record of which has not been deposited in the record room, the permission of the officer before whom the case is pending or by whom the case has been decided shall be necessary ; for the inspection of the records of cases which have been deposited in the record room, the permission of the officer in charge of the record room shall be necessary.**

- 3. A person, other than a Government officer, who has duly obtained permission to inspect the record of a case, may avail himself of it at any time during the first four hours of the days on which revenue offices are open and only in such part of the office as shall be appointed by the Deputy Commissioner or head of the office. If the applicant fails to make inspection within one week from the date on which inspection was ordered, the order shall lapse and no further inspection shall be allowed without a fresh application.**

- 4. (1) No person other than a Government officer shall remove the record from the place appointed for inspection purposes. The use of pen and ink during inspection is strictly prohibited. Pencil and paper may be used, but no marks shall be made on any record or paper inspected. Any person infringing this rule may be deprived, by the order of the Deputy Commissioner or the presiding revenue officer, of the right of inspection for such period as he may direct. Such an order when passed by a revenue officer subordinate to the Deputy Commissioner shall be subject to the latter's approval.**

- (2) It shall be the duty of the record-keeper or other official appointed in that behalf to see that the above provisions are strictly enforced.**

5. (1) Applications for inspection of records from persons other than Government officers, or duly appointed agents of Government, shall be on paper stamped according to the scale prescribed for miscellaneous applications to a civil court.

(2) Inspection fees shall be levied from the persons aforesaid at the rate of annas 8 per hour or fraction of an hour for every record, register or book inspected. The fee shall be prepaid in court-fee stamps and will in no case be refunded. The stamp shall be affixed in column 7 of the register prescribed in Form A and cancelled in the manner prescribed in section 30 of the Court Fees Act, 1870 (VII of 1870), and the officer who grants permission to inspect shall sign his name across the stamp.

6. No inspection fee shall be charged for the inspection of any record, book or register by Government officers or other persons duly authorized in this behalf for Government purposes or by an official of the Court of Wards for the purposes of that court or by officers of any duly registered co-operative society requiring, *bona fide* for the business of the society, details of land in the possession of members of rural societies; or for the inspection of the record of a pending case by a party thereto or by any advocate, vakil, pleader or agent who has filed an application in the case:

Provided that should any party to a case apply to a revenue officer personally or otherwise that any record, book or register or set of books or registers be sent for and inspected during the pendency of the case, the applicant shall, on the application being granted, pay a fee of Ra. 1 in court-fee stamps for each such record, book or register or set of books or registers, and the officer shall send such application, together with the stamp or stamps, to the record-keeper for compliance. The record-keeper shall affix the stamp or stamps in column 7 as directed in rule 5 and note on the application that he has done so:

Provided also that the officer who sends for the record, book or register may remit the fee payable under this rule if he sees reason to do so.

7. The village officers shall allow any one interested to inspect free of charge any records in their custody and to take notes of the same.

8. The record of rights, mutation register and register of disputes of towns of which there has been a town survey and settlement shall be open to inspection free of charge at such times and places as the Deputy Commissioner may in each case appoint.

FORM A.

[Referred to in rule 5 under section 188.]

Inspection Book.

Date.	Signature and occupation of applicant for inspection.	Record book or register of which inspection is sought.	Capacity in which inspection is sought.	Initials of officer ordering inspection.	Time occupied in inspection.	Stamps affixed.	Remarks.
1	2	3	4	5	6	7	8

Regrant of Forfeited Service Inam.

Section 190 (2).

A forfeited service inam may be regranted to any person or panch who is willing to perform the service and whom the Deputy Commissioner considers suitable for the purpose.

Notification No. 2310-2350-XII, dated the 18th July 1929.

Issue of Processes

Section 194 (2) (a).

1. The following forms are prescribed for processes under the Code :—

Notification No. 3104-XII, dated the 1st October 1929, as amended by Notification No. 3812-2034-XII D/- 6312-30.	Summons for appearance ... Form A Warrant of arrest for appear- ance ... Form B Notice of demand ... Form C Warrant of arrest of revenue defaulter ... Form D Warrant to confine revenue defaulter in the civil jail ... Form E Warrant of attachment of movable property ... Form F Warrant of attachment of holding ... Form G Proclamation of sale of movable property ... Form H Proclamation of sale of holding ... Form I Sale certificate for land ... Form J
--	--

2. The fees shown in the following table shall be charged for serving and executing the several processes under the Code :—

	Rs.	a.	p.
(1) For every notice of demand if sent—			
(a) by post	...	0	8 0
(b) otherwise	...	1	0 0
(2) For a summons for appearance in respect of each person	...	0	12 0
(3) For a warrant of arrest in respect of each person	...	4	0 0
(4) For warrant of attachment of mov- able property	...	1	8 0
(5) For warrant of attachment of holding	...	3	0 0
(6) For a proclamation of sale of either movable or immovable property	...	1	8 0
(7) For a warrant for the delivery of immovable property	...	3	0 0
(8) For any process not specified above	...	0	12 0

3. Notwithstanding anything in rule 2 no fee shall be charged for executing :—

- (a) any process which may be issued by any revenue officer of his own motion except those issued for the recovery of land revenue or of any other sums recoverable as arrears of land revenue under section 164.
- (b) any process issued a second time in consequence of any mistake for which the officer is responsible or in consequence of an adjournment made otherwise than at the instance of a party;
- (c) any copy of any process fixed at the office of a revenue officer or at any other place under his orders.

4. The process fee shall be paid in court-fee stamps, which shall be affixed either to the application by which the revenue officer is moved to issue the process, or, if no such application be filed, to the order by which the revenue officer directs the issue or service of the process. If such an application be filed, it must, in addition to the requisite stamps for the process fee, bear such stamps, if any, as are needed for its own validity.

Provided that process fees may not be recovered in advance from a liquidator in cases where dues are to be recovered as arrears of land revenue under a certificate issued by the Registrar, Co-operative Societies, under the proviso to section 164 (d) of the Berar Land Revenue Code, 1928. When processes are issued jointly or severally against members of a society, the whole amount of process fees shall be recovered from the gross sum collected. Should no recovery be affected the process fees shall be recovered from the liquidator.

5. Processes shall be served by peons attached to tahsils or by the patal or may in the case of notice be sent by post. The peon or the patal shall enter the date and particulars of the mode of service on the copy of the process retained by him and this copy shall be returned to the officer who issued it.

6. Tahsil peons are prohibited from receiving any money on account of Government revenue or process fee.

7. When a revenue officer sends a process for service or execution to any court in British India, or in the territories of

a Native State with which an engagement for reciprocal service has been effected, the fees shall be levied in stamps in accordance with the rates prescribed in rule 1, and the revenue officer shall certify on the process that the proper fee has been levied.

8. A process issued by any court in British India, or in territories of a Native State with which an engagement for reciprocal service has been effected, shall be served and executed free of charge by any revenue officer to whom it may be sent, if it is certified on the process that the proper fee has been levied. When no such certificate has been given or the amount of process fee has been specifically mentioned in the revenue recovery certificate, the officer effecting recovery of the arrears will realize the fees due on the processes actually issued minus the amount shown in the revenue recovery certificate to have been recovered in advance.

9. Subsistence money to be paid by Government to a defaulter under detention or imprisonment shall be allowed at the rate for the time being in force for civil debtors.

FORM A.

[Referred to in rule 1 under section 194 (2) (a).]

Summons to attend before a Revenue Officer.

In the Court of _____

To _____

of village _____,

talug _____

Whereas your attendance is necessary in my Court on the _____ day of _____ 19____ for the purpose of _____,

you are hereby required to appear before me on that date at _____ and to bring with you _____

Herein fail not.

* A sum of Rs. _____ being your travelling expenses and diet money is sent herewith.

(Sd.) _____
Revenue Officer,
Designation.

Dated _____ 19____

(Seal.)

* To be scored out when no diet money is sent.

FORM B.

[Referred to in rule 1 under section 194 (2) (a).]

Warrant of arrest for appearance before a Revenue Officer.

In the Court of _____

To _____

Whereas _____ of village _____ has not obeyed the summons issued by this Court for his appearance, which summons was duly served on him, you are hereby ordered to arrest the said _____ and to produce him before this Court

(Sd.)

*Revenue Officer,
Designation.*

Dated Seal _____ 19

If the said _____ shall give bail himself in the sum of Rs. _____ with one surety in the sum of Rs. _____ to attend before this Court on the _____ day of _____ 19 , and to continue so to attend until otherwise directed by the Court, he may be released.

)

*Revenue Officer,
Designation.*

Dated _____ 19 .

FORM C.

[Referred to in rule 1 under section 194 (3) (a).]

Notice of demand under section (4) (a), Berar Land Revenue Code.

In the Court of _____

To _____, son of _____

resident of village _____, taluq _____

You are hereby required to take notice that a sum of Rs. _____ is due from you on account of arrears of land revenue as per details given in the subjoined statement, and that unless it is paid within _____ days from the receipt of this notice together with Rs. _____ being the penalty and process fee compulsory proceedings will be taken against you according to law for recovery of the dues :—

Village.	Survey number and sub-division number.	Amount of arrears.	Penalty.	Process fee.	Total amount due.	Date of service.
1	2	3	4	5	6	7

(Sd.)

Dated _____ 19 .

Tahsildar.

(Seal).

FORM D.

[Referred to in rule 1 under section 194 (2) (a).]

Warrant of arrest Revenue Defaulter.

Section 141 (a), Berar Land Revenue Code.

In the Court of the _____

To (name and office of the person charged with the execution of the warrant), _____

Whereas _____, son of _____ resident of village _____, taluq _____, has made default in payment of Rs. _____ on account of land revenue as per details given in the subjoined statement, you are hereby ordered to arrest him and bring him before this court unless he pays the said sum of Rs. _____ together with Rs. _____ as cost for the execution of this warrant and Rs. _____ as penalty to the patal on or before the day of _____ 19 _____ :—

Village.	Survey number and sub-division number.	Amount of arrears.	Process fee.	Penalty.	Total amount due.
1	2	3	4	5	6

(Sd.)

Dated _____ 19 .

Tahsil

(Seal.)

FORM E.

[Referred to in rule 1 under section 194 (2) (a).]

Warrant to confine revenue defaulter in the Civil Jail.

Section 147, Berar Land Revenue Code.

From

The _____,

To

The Officer in charge of the Civil Jail.

at _____.

Whereas _____, son of _____, resident of village _____ taluq _____ has been arrested for default in payment of the sum of Rs. _____ being arrears of land revenue due by him together with process fees and penalty :

and whereas the said _____ has been brought before me and has not paid the above sum (or has paid Rs. _____ and the sum of Rs. _____ is still due); you are hereby required to receive the said _____ into the Civil Jail of this district and to confine him there for a period of _____ unless the above sum be paid to you within that period or the imprisonment be stayed by order from this Court.

The allowance for subsistence of the defaulter during his imprisonment has been fixed at the rate of Rs. _____ month.

Dated _____ 19

Sub-Divisional Officer.

(Seal.)

FORM F.

[Referred to in rule 1 under section 194 (2) (a).]

Warrant of attachment of movable property.

Section 141 (b), Berar Land Revenue Code.

To,

(Name and office of the person charged with the execution of the warrant,)

Whereas _____, son of _____, resident of village _____, taluq _____, has made default in payment of Rs. _____ on account of land revenue as per details given in the subjoined statement, you are hereby ordered to attach the movable property of the said _____ and unless the total amount due is paid to the patel, to hold the same until further orders from this Court.

You are further ordered to return this warrant on or before the _____ day of _____ 19 _____, with an endorsement certifying the date and manner in which it has been executed or why it has not been executed :—

Village.	Survey number and sub-division number.	Amount of arrears.	Process fee	Penalty.	Total amount due.
1	2	3	4	5	6

(Sd.)

Dated _____ 19
(Seal.)

Tahsildar

FORM G.

[Referred to in rule 1 under section 194 (2) (a).]

Warrant of attachment of holding.

Section 141 (c), Berar Land Revenue Code.

To,

(Name and office of the person charged with the execution of the warrant.)

Whereas _____, son of _____ resident of village _____ taluq _____, has made default in payment of Rs. _____ on account of land revenue as per details given in the subjoined statement, you are hereby ordered to attach survey number _____ of village _____ and unless the total amount due is paid to the patel, to hold the same until further orders from this Court.

You are further ordered to return this warrant on or before the _____ day of _____ 19_____, with an endorsement certifying the date and manner in which it has been executed or why it has not been executed :—

Village.	Survey number and sub-division number.	Amount of arrears.	Process fee.	Penalty.	Total amount due.
1	2	3	4	5	6

(Sd.)

Dated _____ 19

Tahsildar.

(Seal)

FORM H.

[Referred to in rule 1 under section 194 (2) (a).]

Proclamation of sale of movable property.

Section 145, Berar Land Revenue Code.

Whereas the movable property specified below has been attached for the recovery of Ra. _____, on account of arrears of land revenue, process-fee and penalty due by _____ son of _____, resident of village _____ taluq _____.

Proclamation is hereby made that, unless the amount due be paid to the patel before the day herein fixed for the sale, the said property shall be sold by public auction at _____ on the _____ day of _____ 19_____ at or about _____ o' clock.—

Description of movable property.	Number of articles.	Property exempt under proviso (1) to section 141.
1	2	3

Dated _____ 19____ (Sd.) _____
 (Seal.) _____ Tahsildar.

FORM I.

[Referred to in rule 1 under section 194 (2) (a) .]

Proclamation of sale of holding.

Section 149, Berar Land Revenue Code.

Whereas the holding specified below has been attached for the recovery of Rs. _____, on account of arrears of land revenue, process-fee and penalty due by _____, son of _____, resident of village _____ taluq _____.

Proclamation is hereby made that unless the amount due be paid to the patel before the date herein fixed for the sale, the said holding shall be sold free of all encumbrances by public auction at _____ on the _____ day of _____ 19_____, at or about _____ o'clock:—

Village.	Survey number, sub-division number.	Area.	Assessment.
1	2	3	4

(*Sd.*)

Dated _____ 19 .

Tahsildar.

(Seal.)

FORM J.

[Referred to in rule 1 under section 194 (2) (a).]

Sale certificate for land.

Section 161, Berar Land Revenue Code.

In the Court of the _____.

Class No. _____ Case No. _____.

This is to certify that _____, son of _____, resident of village _____, taluq _____, has been declared the purchaser of the holding specified below at a sale by public auction held on the _____ day of _____ and that the sale has been duly confirmed by the Sub-Divisional Officer on the _____ day of _____ 19_____.

Such sale transferred the property free of all encumbrances imposed on it, and all grants and contracts made in respect of it by any person other than the purchaser :—

Village.	Survey number and sub-division number.	Area.	Assessment.
1	2	3	4

(Sd.)

Dated _____ 19 _____

(Seal.)

Tahsildar.

Payment of Expenses To Witnesses.

Sections 20 (1) and 194 (2) (b):

1. When the attendance of a witness is applied for by a party in any proceeding before a Revenue Officer, the applicant shall be required to deposit diet money and travelling expenses sufficient to reimburse the witness for the reasonable expenses incidental on his attendance in court.

Notification No.
2310-1250 XII,
dated the 18th
July 1929.

2. (1) For diet money the rates shall not exceed the following maxima or such lower maxima as may be prescribed by the Deputy Commissioner:—

	Per diet.		
	Rs.	a.	p.
<i>Class A.</i> —Indians of the labouring class	0	8	0
<i>Class B.</i> —Artisans, cultivators, shopkeepers and others of the middle class.	1	0	0
<i>Class C.</i> —Europeans, Anglo-Indians and Indians of superior rank.	5	0	0

(2) In special cases, if the rates above prescribed appear to be insufficient, the Revenue Officer may, for reasons to be recorded in the order sheet, require such sums as appear reasonable to be paid.

(3) Diet money shall be given not only for the period of actual attendance, but also for any reasonable time spent in the journey to and from the place of sitting, the mode of conveyance available being taken into consideration.

3. For travelling expenses the rates shall be—

(i) When the journey is by road, the actual expenses incurred up to a maximum of six annas per mile, provided that travelling expenses shall not be paid to A class witnesses unless owing to age or physical condition or any other reasonable cause they are unable to travel on foot.

(ii) When the journey is wholly or partly by rail—

Class A.—3rd class railway fare.

Class B.—2nd or intermediate class railway fare according to the discretion of the Revenue Officer.

Class C.—1st or 2nd class railway fare plus 3rd class railway fare for one servant according to the discretion of the Revenue Officer.

4. When the Revenue Officer causes the attendance of a witness of his own accord and not at the instance of any party, he may allow the payment of expenses to the witness by Government at the rates prescribed in the foregoing rules, provided that diet money and travelling expenses shall not be paid to a village officer summoned in any matter connected with his official duty.

5. Government servants when summoned to give evidence in their public capacity shall, save in the undermentioned cases receive nothing from the Revenue Officer, but are entitled to travelling allowance under the Fundamental Rules. The Revenue Officer, on finally discharging such witnesses, shall sign a certificate in such form as the Accountant General may from time to time prescribe, stating the period for which they have been detained to give evidence :—

(a) To a Government servant attending before a Revenue Officer not more than five miles from his headquarters, payment may be made direct by the Revenue Officer of reasonable travelling expenses actually incurred in connection with his attendance, whenever this appears to be necessary.

(b) Government servants whose salary does not exceed Rs. 15 per mensem may receive from the Revenue Officer a suitable daily allowance under rule 2 and reasonable travelling expenses actually incurred in connection with their attendance.

6. Government servants when summoned to give evidence in their private capacity may receive from the Revenue Officer any daily allowance and travelling expenses admissible under rules 2, 3 and 4, but they will not be entitled to any travelling allowance under the Fundamental Rules.

Petition-writers.*Section 194 (2) (c)***1. In these rules :—**

(i) "Petition" means a document written for the purpose of being presented to a Revenue Officer and includes a petition of appeal or review.

Notification No. 2310-1250-XII, dated the 18th July 1929.

(ii) "Petition-writer" means a person licensed under these rules to write petitions.

(iii) "To practise as a petition-writer" means to write petitions for hire, and extends to the writing of a single petition for hire.

(iv) A petition-writer is said to practise before a Revenue Officer when he writes petitions for the purpose of being presented to that officer.

2. No person shall practise as a petition-writer before a Revenue Officer unless he has been duly licensed under these rules provided that :—

(1) these rules shall not apply to any advocate or pleader in respect of a petition written for presentation to a Revenue Officer before whom he is entitled to appear, whether such petition be written by himself or on his behalf; provided that in the latter case it be signed by the petitioner;

(2) no petition shall be rejected merely on the ground that it has been written by a person who is not a licensed petition-writer.

3. No person shall be licensed as a petition-writer whilst he is in the service of Government, of an Indian State or of a legal practitioner.

4. Any person above the age of twenty years may present a stamped application to the Deputy Commissioner of the district in which he resides, or desires to practise, to be licensed as petition-writer.

5. (1) The application shall be written by the applicant in his own hand and presented by him in person, and shall state :—

- (a) the applicant's name, father's name, date of birth, caste, residence and present occupation (if any);
- (b) the language or languages with which the applicant is acquainted;
- (c) the names of two persons of respectability to whom reference may be made as to the applicant's character.

(2) If the applicant has been convicted of a criminal offence or removed from Government service, this should be stated in the application. If the applicant is in the service of Government, of an Indian State or of a legal practitioner, his application shall state that he is prepared to resign such service on being licensed as a petition-writer.

6. The Deputy Commissioner to whom the application is made may, in his discretion, on being satisfied that the applicant:—

- (a) is over twenty years of age,
- (b) is of good character, and
- (c) is otherwise eligible,

grant the applicant a licence in Form A.

7. (1) Every appointment will be probationary in the first instance and no probationer will be confirmed unless and until he satisfies the Deputy Commissioner that he:—

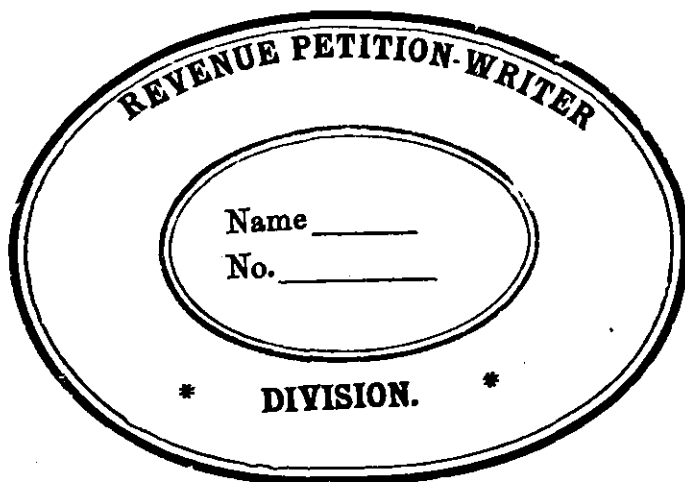
- (i) is able to draw up in a legible hand a clear and concise petition in the official language of the place where he practises; and
- (ii) is acquainted with the provisions of the Berar Land Revenue Code, Patels and Patwaris Law, Berar Alienated Village Tenancy Law, the Land Acquisition Act, the Agriculturists Loans Act and the Land Improvement Loans Act, so far as a knowledge of these Acts is necessary for the efficient performance of the duties of a petition-writer.

(2) Any probationer who fails to give such satisfaction within one year from the date of his appointment may be removed by the Deputy Commissioner.

8. A register of licensed petition-writers in Form B will be maintained in the office of every Deputy Commissioner. A page or pages of the register will be set apart for each petition-writer.

9. Every licensed petition-writer shall keep up a register in Form C and shall enter therein every petition written by him, and shall produce the register for the inspection of any Revenue Officer, when required to do so.

10. Every licensed petition-writer shall, at his own expense, provide himself with an official seal of the following pattern:—



11. Every licensed petition-writer, in writing petitions, shall confine himself to expressing in plain and simple language, such as the petitioner can understand, and in a concise and proper form, the statements and objects of the petitioner; and shall not introduce any argument or quotation from a law report or other law book, or refer to any decision not brought to his notice by the petitioner.

12. Every licensed petition-writer shall affix his seal (with his name and licence number filled in) on every petition written by him, and shall enter on such petition the number which it bears in his register and the fee which has been charged for writing it.

13. (1) Subject to the provisions of rule 16, every licensed petition-writer may make his own terms with his employer as to the remuneration to be paid for his services.

Provided that he enters correctly the actual amount agreed upon on the petition and in the proper column of his register.

(2) A licensed petition-writer shall not take payment for his services by an interest in the result of any case in connection with which he is employed and shall not find, or contribute towards, the funds employed in carrying on any case in which he is not otherwise personally interested.

14. A licensed petition-writer shall not accept any Mukhtarnama, whether general or special, for the conduct of any case before a Revenue Officer other than a case in which he is himself a party.

15. Every licensed petition-writer—

(1) who resigns or is removed from his appointment:

(2) who enters the service of Government, of an Indian State or of a legal practitioner: or

(3) who is suspended or dismissed under these rules, shall forthwith surrender his license to the Deputy Commissioner.

16. Any Revenue Officer who, upon the representation of any person employing a petition-writer, and after hearing such petition-writer (if he desires to be so heard) finds that the fee charged for writing a petition presented to him was excessive may, by order in writing, reduce the same to such sum as appears to be, under the circumstances, reasonable and proper, and may require the petition-writer to refund the amount received in excess of such sum.

17. Any Revenue Officer may order a licensed petition-writer to rewrite without extra remuneration any petition written by him which contravenes rule 11, or is illegible, obscure or prolix, or contains any irrelevant matter or misquotations or is, from any other cause, in the opinion of such officer informal or otherwise objectionable.

18. Any person who contravenes rule 2 or any licensed petition-writer who contravenes any of the rules 9, 10, 12, 13,

14 and 15 shall be liable; by order of the Deputy Commissioner to a penalty not exceeding fifty rupees.

19. Any licensed petition-writer who—

- (1) does not carry out, within a reasonable time, the order of a Revenue Officer made under rule 16 or 17.
 - (2) habitually writes petitions contrary to rule 11 or containing irrelevant matter or which are unnecessary or informal or otherwise objectionable; or
 - (3) in the course of his business as a petition-writer uses disrespectful, insulting or abusive language; or
 - (4) is found to be incapable of efficiently discharging the functions of a petition-writer; or
 - (5) by reason of any fraudulent or improper conduct in the discharge of his duty as a petition-writer is found to be unfit to practise as such; or
 - (6) is convicted of a criminal offence;
- may be suspended or dismissed by order of the Deputy Commissioner.

20. No order under rules 18 and 19 shall be passed by the Deputy Commissioner until the person or petition-writer in fault has been given an opportunity of defending himself.

FORM A.

Form of licence.

Certified that _____, son of _____, resident of _____ has, this day, been licensed as a revenue petition-writer in the _____ district and is hereby permitted to practise as such in the manner prescribed by the rules relating to such petition-writers in Berar and subject to the provisions of the said rules.

Given under my hand and the seal of this office this _____ day of _____ 19____ at _____.

(Seal.)

Deputy Commissioner.

Recognized Agents.*Section 194 (2) (d).*

1. "Recognized agent" means a person authorized in writing by any party to a proceeding under the Code to make appearances and applications and to do other acts on his behalf in such proceeding and shall be a permanent servant, partner, relative or friend of the party who from his knowledge of the matter in dispute or his general acquaintance with the affairs of the party, is a fit person to represent him.

Notification No. 2310-1250-XII, dated the 18th July 1929.

2. In deciding whether any person is a fit recognized agent a Revenue Officer shall have regard to section 10 of the Legal Practitioners Act, and shall so exercise his discretion as to prevent any single person from taking powers of attorney from numerous principals.

Sanitation Rules for villages where the Central Provinces Municipalities Act, Village Sanitation and Public Management Act or Village Panchayat Act are not in force.

Section 194 (2) (e) and (f).

1. No person shall throw rubbish or allow water to flow over the streets or lanes or open places in the village.

Notification No. 2310-1250-XII, dated the 18th July 1929.

2. Household refuse and stable litter shall unless it is taken out to the fields, be thrown daily by the owners into manure pits or into other receptacles provided by them for the purpose.

3. No person shall do any act, such as the washing of clothes, steeping stalks of ambadi, san, hemp, etc., which is likely to defile the water of a well, tank or stream used for drinking purposes. In the case of a stream the washing of clothes and other acts may be done below the point at which water is taken for drinking purposes.

4. No corpse shall be buried in or near any well or the bed of any tank or stream or in the village site.

5. All people shall be bound to go for purposes of nature beyond the limits which shall be marked out by the patel on each side of the village. These limits shall be at least 100 yards from the outermost houses of the village. This rule shall not be enforced in the case of infants or sick or infirm persons.

6. No animals shall be skinned or carcasses buried except at a place or places which shall be fixed by the patel.

7. Any person who commits a breach of rules 1 to 6 shall be liable at the discretion of the Tahsildar to a fine not exceeding Rs. 50.

Jaglias

Section 194 (8) (g).

1. Jaglias shall be appointed in all taluqs of Berar except the Malghat according to the scale given in the following table:—

Population of village,	Number of jaglias.
Below 1, 400	0
From 1, 400 to 3,000	1
Above 3,000	2

Notification No. 3104-XII, dated the 1st October 1929.

Provided that—

- (1) In municipal towns the Commissioner shall decide how many jaglias should be appointed.
- (2) The Commissioner may for special reasons sanction a departure from the scale in any case.

2. No person shall be eligible for the post of jagila who—

- (1) is a woman;
- (2) is not of good character and antecedents;
- (3) is unfit through infirmity of body or mind to perform the duties of the post.

3. When a post of jaglia falls vacant the police patel shall nominate a successor and appear with him in person before the Tahsildar.

4. The Tahsildar may appoint such person as a jaglia or may, for reasons to be recorded, order the patel to produce another nominee.

5. The scale of remuneration of jaglias shall be determined from time to time by the Governor in Council.

6. The pay of jaglias shall be disbursed quarterly in April, July, October and January at the tahsili.

7. Patels may grant leave of absence to a jaglia up to one week and will be responsible that the duties of the jaglia are not neglected.

For longer periods the sanction of the Tahsildar shall be obtained and a jaglia granted such leave will be required to provide a substitute.

8. A jaglia may be suspended or dismissed by the Tahsildar on any of the following grounds:—

- (1) that he is of bad character ;
- (2) for wilful breach of rules ;
- (3) for serious misconduct.

9. A jaglia may be removed from service by the Tahsildar when, owing to age or to mental or bodily infirmity, he is no longer fit to perform the duties of the post.

10. A jaglia, on retirement after, long and approved service, shall be entitled to a gratuity to be determined by the Commissioner.

11. Jaglias shall wear a leather belt with a brass badge inscribed with the words—

Jaglia No.

Mauza.

Talug

and a turban and coat of such pattern and material as the Commissioner may from time to time direct. The cost of these articles shall be defrayed by Government. The coat and turban shall be renewed annually.

12. The principal duties of jaglias shall be as follows:—

- (1) to supervise the village watch and ward and accompany the mahars on night rounds ;
- (2) to see that all crimes are reported to the patel ;
- (3) to take the weekly report to the police station in

turn with the mahar or mahars allotted for the purpose ;

- (4) to report vital statistics and outbreaks of epidemics with the assistance of the mahar or mahars set aside for the purpose ;
- (5) to assist in the collection of land revenue ;
- (6) generally to carry out the patel's orders and supervise the work of the mahars.

(1) to (4) do not apply to jaglias in towns where the Municipal Law is in force.

In villages where there are two patels, the jaglias shall work under the police patel, but during the collection season shall give all needful assistance to the revenue patel.

13. Jaglias shall not be liable to be employed on serving processes or to transfer from one village to another.

Village Mahars.

14. In all taluqs except the Melghat the number of mahars to be maintained in office in each village shall be determined, under the control of the Deputy Commissioner, by the Sub-Divisional Officer in consultation with representatives of the patel, mahars and persons liable to pay mahar and jaglia cess and may be varied from time to time under the specific sanction of the Deputy Commissioner.

15. The mahars shall be under the control of the revenue patel and it shall be his duty to see that the number of mahars sanctioned for the village is maintained in office.

16. No person shall be eligible for the post of village mahar who :—

- (1) is a woman ;
- (2) is not of good character and antecedents ;
- (3) is unfit through infirmity of body or mind to perform the duties of the post.

17. Village mahars shall be appointed by the revenue patel in accordance with the custom of the village, provided that where no established custom exists, the nearest eligible relative of the late mahar shall be appointed.

All appointments of village mahars shall be immediately reported by the revenue patel to the Tahsildar.

18. If there is a dispute as to the right to office, the revenue patel shall make a temporary appointment and the parties shall be referred to a civil court. If the person decided by the civil court to have the right to office is in the opinion of the patel of bad character or unfit to perform the duties of the office, he shall demand that a competent substitute be furnished. Any person dissatisfied with the patel's order may apply to the Tahsildar for redress.

19. The scale of remuneration of mahars shall be determined from time to time by the Local Government.

20. The remuneration of mahars shall be disbursed quarterly in April, July, October and January at the tahsili.

21. Patels may grant leave of absence to a mahar up to one week and will be responsible that the duties of the mahar are not neglected.

For longer periods the sanction of the Tahsildar shall be obtained and a mahar granted such leave will be required to provide a substitute,

22. A village mahar may be suspended or dismissed by the Tahsildar on any of the following grounds:—

- (1) that he is of bad character;
- (2) for wilful breach of rules;
- (3) for serious misconduct.

The vacancy so caused shall be filled, under the orders of the Tahsildar, by a person who is not a member of the family of the suspended or dismissed mahar.

23. A village mahar may be removed from service by the Tahsildar when, owing to age or to mental or bodily infirmity, he is no longer fit to perform the duties of the post.

24. It shall be the duty of the village mahar—

- (1) to reside in his village, or, if he be in charge of more than one village, in such village as is appointed for his residence by the Tahsildar, and not to absent himself without the patel's permission

- (2) to keep watch and ward over the houses and property of the villagers; and, in villages with a population of more than 300, to patrol the village at night;
- (3) to arrest and convey to the police station any person who in his view commits a non-bailable and cognizable offence, or who has been proclaimed as an offender;
- (4) to assist in the private defence of person or property in accordance with section 97 of the Indian Penal Code;
- (5) to report immediately to the police patel of the village (or in his absence to the officer in charge of the police station) all matters such as the presence of suspicious strangers, the occurrence of any unnatural death, etc., which the patel is bound to report to the police;
- (6) to patrol important routes within the village boundary on bazar days and on occasions of fairs;
- (7) to carry reports to the police station;
- (8) to report to the patel vital statistics and the outbreak of epidemic disease or cattle disease;
- (9) to carry corpses under the order of the police for *post mortem* examination and to bury unclaimed corpses when ordered;
- (10) to assist village officers in the collection of the land revenue;
- (11) to escort money to the tahsili;
- (12) to assist any Government officer in survey operations, measurement work, and crop and boundary mark inspection;
- (13) to carry reports to the tahsili, to carry message from village and revenue officers and to serve record of rights notices;
- (14) to repair and maintain boundary marks of village sites and of lands set apart for public purposes;

- (15) in villages where no conservancy staff is employed to clean the public buildings;
- (16) to assist the patel in enforcing the rules for village sanitation;
- (17) to remove the bodies of unclaimed dead animals and bury them when ordered;
- (18) to carry out petty repairs to fair weather roads within the village boundary;
- (19) to carry Government property;
- (20) to assist the patel in the supply, on proper payments, of necessary provisions and transport to public officers and travellers and to put up tents;
- (21) to carry out the patel's orders in all official matters;
- (22) upon payment of the fee fixed according to the rules made under the Central Provinces Village Panchayat Act, 1920, as applied to Berar to serve summonses and notices issued by a panchayat or a village court or bench constituted under that Act.

Proviso 1.—Duties Nos. (7) and (8) shall be performed personally by one or in large villages by two mahars set aside for the purpose by the patel for a period of not less than three months at a time and the names of such mahars shall be communicated by the patel to the Tahsildar and police station.

Proviso 2.—In towns where the Municipal Law applies, watch and ward, reporting of crime and vital statistics are not duties enjoined on the mahars.

Proviso 3.—Mahars shall not be employed for carrying messages when these can be conveniently sent through the post,

- (23) If so ordered to do by the Deputy Commissioner and upon payment of the fee fixed by that officer

Notification No.
220-XI, dated 4-5-31

to serve notices and summonses issued by the school attendance authorities constituted under section 7 of the Central Provinces Primary Education Act III of 1920, as applied to Berar. "

Procedure of Revenue Officers.

Section 194 (2) (j).

1. Subject to the provisions of section 19 of the Code applications shall be entertained and cases taken cognizance of only by the lowest court competent to deal with them:
- Notification No. 3104-XII dated the 1st October 1931.

Provided that in such classes of cases as the Deputy Commissioner may prescribe, applications may be entertained and cases taken cognizance of by a lower court and submitted with a report after due enquiry to the court competent to deal with them.

An application not presented in accordance with this rule may be returned for presentation to the proper court.

2. In revenue proceedings all statements of parties and depositions of witnesses and the final order shall be recorded personally by the officer making the enquiry.

3. Order in revenue cases, whether original, appellate or revisional, shall be communicated by the court to the parties personally if they are present in court; otherwise by a memorandum issued by the Tahsildar through the village officers.

The village officer shall read out the memorandum to the parties and take their signature on it and return it to the Tahsildar after endorsing on it the date on which the order was communicated.

In unimportant cases where proof of the date of communication of the order is not likely to be required, the order may be communicated by post.

Partition of Lands in Alienated Villages Leased Under the Waste Land Rules of 1865.

Section 194 (2) (h).

1. Partition of the lands of an alienated (izara) village shall be carried out by a Revenue Officer on precept from a Civil Court only, which shall specify the rights of the parties concerned and the nature of the partition to be effected.
- Notification No. 814 XVI, dated the 28th August 1930.

2. The officer carrying out the partition shall not be of lower class than an Assistant Commissioner of the first grade.

3. With the precept the Civil Court shall forward a map showing the lands to be partitioned and certified copies of the latest entries in the record of rights and crop statement relating to these lands.

4. The Revenue Officer shall proceed to the village in which the lands are situated and after inspecting the lands and hearing the parties interested, shall with the assistance of the land records staff, draw up instructions for the guidance of the revenue inspector or other person, entrusted by him with the preparation of the detailed scheme for partition.

Provided that if the lands to be partitioned are small in area and the partition is of simple character the Revenue Officer, for reasons to be recorded by him in writing, need no visit the village.

5. These instructions shall be so drawn up as to secure so far as is possible, that the lands allotted to each party shall be compact and that there shall be an equitable division by area, fair assessment and rent of the lands held by ante-alienation tenants, permanent tenants, and ordinary tenants and of the home-farm and waste and unoccupied lands.

6. On receipt of the detailed scheme from the Revenue Inspector or other person, the Revenue Officer shall explain it to the parties and record their statements in respect of it. After considering their objections, if any, and modifying the scheme, if necessary, he shall record an order of confirmation. There-after, he shall intimate the result of the proceeding and the details of the scheme confirmed to the Civil Court.

7. At the time of passing the order of confirmation, the Revenue Officer shall draw up a statement of the costs incurred in effecting the partition, including his travelling and daily allowance for his visit to the village and the remuneration of the person preparing the scheme and shall apportion these costs amongst the parties, from whom they shall be recoverable as provided by section 164 of the Berar Land Revenue Code.

Legal Practitioners.

Section 194 (2) (j).

1. No legal practitioner shall act for any party before any Revenue Officer in any proceeding under the Code or the rules made thereunder, unless he has been appointed for the purpose by such party by a document in writing signed by such party or by his recognized agent or by some other person duly authorized by or under a power of attorney to make such appointment.

Notification No.
3103-873-XII, dated
the 1st October
1929.

2. Every such appointment shall be filed before the Revenue Officer and shall be deemed to be in force until determined with the leave of the Revenue Officer by a writing signed by the party or the legal practitioner, as the case may be, and filed before the Revenue Officer, or until the party or the legal practitioner dies, or until all proceedings in the case are ended so far as regards the party.

3. For the purposes of rule 2, an appeal from any order in the case, an application for revision or review and any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the case or of obtaining refund of monies paid before the Revenue Officer in connection with the case shall be deemed to be proceedings in the case.

4. If the party is unable to write his name, his mark upon the document appointing the legal practitioner or upon the writing determining such appointment shall be attested by a witness.

5. No legal practitioner who has been engaged for the purpose of pleading only shall plead on behalf of any party, unless he has filed before the Revenue Officer a memorandum of appearance signed by himself and stating:—

- (a) the names of the parties to the case,
- (b) the name of the party for whom he appears, and
- (c) the name of the person by whom he is authorized to appear :

Provided that nothing in this rule shall apply to any legal practitioner engaged to plead on behalf of any party by

any other legal practitioner who has been duly appointed to act before the Revenue Officer on behalf of such party.

Procedure for presentation of appeals

Section 194 (2) (j)

Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Revenue Officer or to such Officer as he appoints in this behalf, in accordance with the provisions of section 31 of the Code.

Appendix B. .

Notifications under Berar Land Revenue Code 1928.

Commencement of the Code.

In exercise of the powers conferred on him by section 1 subsection (3) of the Berar Land Revenue Code, 1928, promulgated in the Government of India Foreign and Political Department Notification No. 523-I dated the 25th September the Governor in Council is pleased to direct that the Code shall come into force on the 1st November 1928.

Notification No. 3397-XII, dated the 9th October 1928.

Classification of Assistant Commissioners and E.A. Cs.

In exercise of the powers conferred on him by section 8 of the Berar Land Revenue Code, 1928, the Governor in Council is pleased to direct that all Assistant Commissioners and Extra-Assistant Commissioners, other than those appointed as Assistant Commissioners first grade, under the Code, shall be Assistant Commissioners of the second grade.

Notification No. 587-297-XII, dated the 7th February 1929.

Powers of Assistant Commissioners, 1st and 2nd Grades

In exercise of the powers conferred on him by section 8 of the Berar Land Revenue Code, 1928, the Governor in Council is pleased to invest Assistant Commissioners of the first and second grades with the powers under the Code specified below.

Notification No. 588-297-XII, dated the 7th February 1929.

Powers of an Assistant Commissioner, first grade.

To exercise all or any of the powers conferred on a Sub-Divisional Officer in such cases or classes of cases as the Deputy Commissioner may from time to time refer to him for disposal.

Powers of an Assistant Commissioner, second grade.

To investigate and report on such cases as the Deputy Commissioner or the Sub-Divisional Officer may from time to time refer to him for investigation and report.

Appointment of Tahsildars and Naib Tahsildars.

In exercise of the powers conferred on him by section 9 of the Berar Land Revenue Code, 1928, the Governor in Council is pleased to delegate to the Commissioner, Berar, the power of appointing Tahsildars and Naib-Tahsildars.

Notification No. 539-297-XII, dated the 7th February 1929.

Powers of Sub-Divisional Officers.

In exercise of the powers conferred on him by section 11, sub-section (2), of the Berar Land Revenue Code, 1928, the Governor in Council is pleased to invest all Sub-Divisional Officers with powers under the Code specified in the schedule below :—

Notification No. 785-297-XII, dated the 21st February 1929.

Schedule.

	Section of the Code,
To decide claims against Government to land	41 (2)
To alter the assessment and impose premium on diversion of land.	50 (2), (3) and (4).
To dispose of the right to occupy un-alienated land	53.
To sanction diversion of land and to impose a penalty for diversion without notice.	58.
To take action where land is diverted after permission is refused or in contravention of a condition.	59 (1), (2) and (3),
To eject a third party who diverts land	59 (4).
To dispose of intestate holdings	... 63.
To sanction transfers of land by members of aboriginal tribes or backward castes.	66,
To dispose of alluvial land	... 67.
To make assessments and decide disputes in regard to alluvial lands.	70.
To correct errors in the area and assessment of a holding.	102.
To fix boundaries of villages and settle village boundary disputes and in such cases to eject a person found wrongly in possession of land.	122, 123 and 124 (1)
To redistribute land revenue in accordance with a civil court decree.	124 (3)

Schedule

	Section of the Code
To impose a penalty for default in payment of land revenue.	137.
To recover arrears of land revenue by attachment and sale of the holding on which the arrear is due or by ordering the detention of the defaulter in the civil jail.	141 (c) and (d) and 147 (2), (3) and 148(4).
To set aside sale of immovable property for irregularity, etc.	156.
To confirm or set aside sale of immovable property.	159.

Powers of Tahsildars.

In exercise of the powers conferred on him by section 13 sub-section (2) of the Berer Land Revenue Code, 1928, the Governor in Council is pleased to invest all Tahsildars with powers under the Code specified in the schedule below :—

Powers of Tahsildars

Schedule.

	Section of the Code,
To recover the value of Government trees unauthorisedly felled and appropriated and to impose a penalty.	48.
To dispose of the right to occupy unalienated land subject to the provisions of the rules under section 53.	53.
To lease land situated in the bed of a river	55 (1) (a).
To dispose of relinquished sub-divisions	61.
To impose penalty and assessment on persons unauthorisedly taking possession of lands, to eject persons unauthorisedly in possession and dispose of forfeited property.	64.
To eject a person unauthorisedly in possession of land	65.
To correct the record-of-rights in accordance with a civil court decree.	112 (3).
To correct clerical errors and errors admitted by the parties in the record-of-rights.	114.
To impose a penalty for neglect to make report or furnish information or documents as required by sections 109 and 116.	117

Schedule

- | | Section of the Code |
|--|-----------------------------|
| To determine field boundaries and settle field boundary disputes and in such cases to eject a person found wrongfully in possession of land. | 122, 123 and 124 (1) |
| To demarcate the boundaries of sub-divisions | 127, |
| To enquire into and decide the right of way over boundaries. | 129. |
| To recover revenue paid on behalf of a co-sharer in an alienated village. | 138. |
| To recover arrears of land revenue by— | 141 (a), (b) and (d). |
| (a) service of a written notice of demand on the defaulter. | |
| (b) attachment and sale of the defaulter's movable property. | |
| (c) arrest and detention of the defaulter. | |
| To decide what property should be exempt from attachment. | 141. proviso 1 (b). |
| To decide claims by third parties to property attached or proceeded against. | 146. |
| To issue proclamation and conduct sale of immovable property. | 149 and 150, |
| To recover deficiency of price and costs of sale from a defaulting purchaser. | 153 (2) and 154. |
| To set aside sale on deposit of arrear, etc. | 155. |
| To place the purchaser in possession and give him a certificate.] | 161. |
| To prevent the removal of crop in cases of anticipated default, employ watchmen, etc., and impose fine for disobedience of order. | 166, 167, 168, 169 and 170. |
| To impose a penalty for recovery of cess on a tenant in excess of the legal amount. | 171 (5). |
| To demand the production of records prepared by hereditary or village officers. | 189. |

Powers of Naib Tahsildars drawing Rs. 100 or more.

In exercise of the powers conferred on him by section 13, sub section (2), of the Berar Land Revenue Code, 1928, the Governor in Council is pleased to invest all substantive Naib-Tahsildars and officiating Naib-Tahsildars drawing Rs. 100 or more per mensem with all the powers of a Tahsildar under the Code.

Notification No.
589-A-297-XII,
dated the 7th
February 1929,

Powers of Sub-Divisional Officers to hear appeals.

In exercise of the powers conferred on him by section 13, sub-section (2), of the Berar Land Revenue Code; 1928, the Governor in Council is pleased to confer on all Sub-Divisional Officers the powers of a Deputy Commissioner under section 32, sub-section (1) clause (a), of the Berar Land Revenue Code, 1928, to hear appeals from orders passed by Tahsildars and Naib-Tahsildars under the Code.

Notification No. 593-297-XII dated the 7th February 1929.

Aboriginal tribes and backward castes under Sec. 66

In exercise of the powers conferred on him by section 66 of the Berar Land Revenue Code, 1928, the Governor in Council is pleased to apply to the provisions of that section to land comprised in occupants holding and sites in gaathan in the Melghat taluq as constituted in the year 1911, held by the following aboriginal tribes and backward castes:—

Restriction of rights of transfer of certain backward classes in the Melghat.

- | | |
|-------------|------------------------|
| (1) Korku. | (9) Banjari. |
| (2) Balai. | (10) Pardhan. |
| (3) Mahar. | (11) Moghia. |
| (4) Gond. | (12) Gosai. |
| (5) Bhil. | (13) Gowari. |
| (6) Gaolan. | (14) Korku-Christians. |
| (7) Nihai. | (15) Chamar. |
| (8) Gaoli, | (16) Bhuta. |

(17) Mang.

Provided that the aforesaid provisions shall not apply to sites in the gaathan of villages transferred from the Melghat taluq under Notification No. 440, dated the 29th August 1912.

Exemption from provisions relating to Record of rights.

In exercise of the powers conferred by section 121 of the Berar Land Revenue Code, 1928, the Governor in Council is pleased to direct that the provisions of sections 108 to 117 and 119 of the Code shall not apply to the following areas namely:—

Exemption from provisions of Chapter X.

- (i) the Melghat taluq, and
- (ii) all village sites except sites in which a revenue-survey has been undertaken or completed under section 79.

For a list of village sites in which a revenue survey has been completed see page 9 of Appendix A.

Rate of Jaglia and Mahar cess.

In exercise of the powers conferred on it by section 171; sub-section (1), of the Berar Land Revenue Code, 1928, the Local Government is pleased to direct that, with effect from the 1st November 1928, the cess to provided for the remuneration of jaglias and village mahars shall be levied at the rate of 12 pies in the rupee on the amount on which the cess is to be calculated in all the taluqs of Berar.

Rate of Jaglia and Mahar cess on Non-Agricultural incomes.

In exercise of the powers conferred on it by section 172, sub-section (1), of the Berar Land Revenue Code, 1928, the Local Government is pleased to direct that, with effect from the 1st November 1928, the cess to provide for the remuneration of jaglias and village mahars shall be levied at the following rates in all the taluqs of Berar on incomes derived from non-agricultural sources:—

- (i) from all persons in receipt of an annual income from such sources exceeding five hundred but not exceeding two thousand rupees—two rupees per annum;
- (ii) from all persons in receipt of an annual income from such sources exceeding two thousand but not exceeding five thousand rupees—five rupees per annum; and
- (iii) from all persons in receipt of an annual income from such sources exceeding five thousand rupees—ten rupees per annum.

Application of preemption to Izara Village.

In exercise of the powers conferred on him by section 187 sub-section (1), of the Berar Land Revenue Code, 1928, the Governor in Council is pleased to extend after previous publication, the application of the provisions of Chapter XIV of the said Code to all alienated villages leased under the Waste Lands Rules of 1865 in which proprietary rights have been conferred by Government.

Application of
Chapter XIV to
Izara village.



Berar Land Revenue Code 1928.

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