

**LAND REVENUE CODE**  
**AND THE**  
**RULES THERE UNDER-1904**

## PREFACE

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

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

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

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

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

POONA, }  
31st December 1892. }

H. V. SATHE.

## PREFACE TO THE SECOND EDITION.



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

POONA, }  
30th June 1894. }

H. V. SATHE.

## PREFACE TO THE THIRD EDITION.

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THE publication of this—the third edition—had to be kept in abeyance pending the final passing of the Revenue Code Amendment Act ( VI of 1901 ) and the issue of the Revised Rules under the Code.

I need say nothing about the usefulness of the book, as it has been sufficiently proved by its having successfully passed through two editions. To add to its usefulness I have inserted in it the Record of Rights Act and the Rules and Instructions thereunder. All the important orders passed since the publication of the last edition have also been inserted in their proper place, while those that have been superseded or cancelled have been omitted. In fact, no efforts have been spared to bring the compilation up to date, and I hope that the present edition will be received by the general public with the same degree of approbation with which the last two editions were received by them.

In conclusion, I must acknowledge with thanks the help given to me by Mr. R. N. Jogalekar, Native Assistant to the Commissioner, Central Division.

Marathi and Gujarathi translations of the book are in progress.

POONA, }  
5th December 1904. }

H. V. SATHE.

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The following amendments have been sanctioned by Bombay Act No. IV. of 1905 :—

To Section 3, clause (1), *add the words* 'and for the purposes of Sections 25 and 26 includes a village-officer appointed or officiating under any of the provisions of the Bombay Hereditary Offices Act, or the Matadars' Act, 1887.'

In Section 33, *for the words* 'Commissioner' *wherever it occurs, substitute the word* 'Collector.'

To the heading above Section 40, *add the symbol* &c.

In Section 43—

(a) *after the word* 'remove,' *insert the words* 'from his holding';

(b) *after the words* 'natural product,' *where they first occur insert the words* 'whether of the like description or not.'

In Section 52, as amended by Section 4 of the Bombay Land Revenue Code Amendment Act, 1901, *for the word* 'or,' *where it first occurs, substitute the word* 'and.'

In Section 80, *for the words* 'for the Collector to' *substitute the words* 'the Collector shall on due tender thereof.'

In Section 144, *the words* 'subject to the orders of the Commissioner' *should be omitted.*

In Section 187, *after the words* 'in force,' *in the second place where they occur, insert the word* 'or by any contract with the Secretary of State for India in Council.'

In Section 214, clause (c), *after the word* 'may' *insert the words* 'or may not.'

In Section 214, clause (i), *after the word* 'generally' *insert the words* "or carrying out the purposes and objects of this Act, and."

In Schedule B—

(a) *to the Form of Bond to be required under Section 23, add the following proviso, namely :—*

'Provided always that nothing herein contained nor the security hereby given shall be deemed to limit my liability in respect of the matters aforesaid to the forfeiture of the said sum of rupees only, and that should that sum be insufficient to recoup the Secretary of State for India in Council in full for any loss or damage sustained by him in respect of the matters aforesaid I agree to pay to him on demand such further sum as shall be deemed by the person at the head of the said office necessary in addition to the said sum to cover such loss or damage as aforesaid,' *and*

(b) *in the Form of Security to be subjoined to the Bond of the principal for the word* 'such' *substitute the words* 'the sum of rupees, in which the abovesaid has bound himself, or such smaller.'

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

**LAND REVENUE CODE.**

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## LIST OF ABBREVIATIONS.

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



## BOMBAY ACT NO. V. OF 1879.\*

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

An Act to consolidate and amend the law relating to revenue officers and the land-revenue in the Presidency of Bombay.

Whereas it is expedient to consolidate and amend the law relating to revenue officers, and to the assessment and recovery of land-revenue, and to other matters connected with the land-revenue administration ; it is hereby enacted as follows :—

Preamble.

### CHAPTER I.

#### *Preliminary.*

Short title.

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

Local extent.

It extends to the whole of the Presidency of Bombay except the Scheduled Districts,<sup>1</sup> as defined by Act XIV. of 1874, and the city of Bombay.

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\*Land Revenue Code is allowed to be purchased from the contingent grant ( G. R. No. 1515, dated 22nd February 1905 ).

<sup>1</sup> The following are the Scheduled Districts in the Bombay Presidency :—

1. The province of Sind.

2. Aden.

3. The villages belonging to the following Mehwassi Chiefs :—

1. The Parvi of Kathi.

4. Walvi of Gaohalli.

2. The Parvi of Nal.

5. The Wassawa of Chikhli.

3. The Parvi of Singpur.

6. The Parvi of Nawalpur.

Commencement. ( Repealed by Bombay Act XVI. of 1895 ),

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

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

(3) **Districts in Sind.**—Bombay Act V. of 1879 ( with the exception of Section 104 ) has been extended by various notifications under Section 5 of the Scheduled Districts Act, 1874, to nearly the whole of Sind, *viz.*, to the districts of Karachi, Hyderabad, Shikarpur and Thar and Parker and to the talukas of Jacobabad, Kashmir, and Thul in the Upper Sind Frontier District—see Appendix to Vol. I. of the Bombay Code, 2nd Edition, pages XXXVI to XLIII.

(4) **Panch Mahals.**—Section 85 and the last 15 words of Section 58 are not in force in the Panch Mahals—see Act VII. of 1885, Section 2.

(5) **Khoti Villages in Ratnagiri and Kolaba.**—Sections 68, 72, 73, 74, 99 cl. (b), 104, paras. 2, 112, 150 cl. (b), and 153 of Bombay Act V. of 1879 do not apply to any village in the District of Ratnagiri or the District of Kolaba to which the Khoti Settlement Act, 1880, extends; and Sections 103, 118, 119, 123, 136, 150 cl. (f), and 162 of the Act are subject to modification when applied to any such village—see Bombay Act I. of 1880, Sections 1 and 39.

(6) **Estates in Gujarat.**—Sections 38 to 40, 44, 60 to 67, 76, 82, 85, 109, 110, 116, 127 to 136, 163, 216 and 217 of Bombay Act V. of 1879 do not apply to any estate in the Districts of Ahmedabad, Kaira, Broach or Panch Mahals to which the Gujarat Talukdars' Act, 1888, extends; and Sections 3 cl. (i), 46, 54, 88, 89, 94, 111, 113, 147, 150 cl. (f), 160, 162, 214 of the Act, and the words "occupant", "registered-occupant" and "occupancy" throughout the Act are subject to modification when applied to any such estate—see Bombay Act VI. of 1888, Sections 1 and 33.

2. The Regulations and Acts mentioned in the Schedule Enactments re- A<sup>1</sup> are repealed to the extent specified repealed. in the third column thereof, but not so as to render invalid anything done in accordance with any of them.

<sup>1</sup> Words repealed by Bombay Act III. of 1886 have been omitted.

All references made in any Bombay Regulation or in any Act of the Governor of Bombay in Council, or in any Act of the Governor-General in Council passed before the coming into operation of the Indian Councils Act<sup>1</sup>, 1861, to any enactment hereby repealed, shall be read as if made to the corresponding portion of this Act.

And all rules prescribed, appointments made, securities furnished, powers conferred, orders issued<sup>2</sup> and notifications published under any such enactment, and all other rules (if any) now in force and relating to any of the matters hereinafter dealt with, shall (so far as they are consistent with this Act) be deemed to have been respectively prescribed, made, furnished, conferred, issued and published hereunder.

And all proceedings now pending, which have been commenced under any enactment hereby repealed, shall be deemed to have been commenced under this Act, and shall hereafter be conducted in accordance with the provisions of this Act.

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

(1) “revenue officer” means every officer of any rank whatsoever appointed under any of the provisions of this Act, and employed in or about the business of the land-revenue or of the surveys, assessment, accounts or records connected therewith ;

(1) **Hereditary village officers not revenue officers.**—Hereditary patels and kulkarnis are not revenue officers within the definition of the Code as they are not appointed under this Act. The provisions relating to revenue officers in this Code do not therefore apply to hereditary village officers. (G. R. No. 2683, dated 21st April 1880.)

<sup>1</sup> Printed in the Collection of Statutes relating to India, Ed. 1899, vol. I., page 341.

<sup>2</sup> Orders fixing assessments issued prior to the passing of the Code, are not to be considered as issued under the Code for the purposes of Section 48, clause 2. (Vide G. R. No. 4758, dated 3rd July 1886, under Section 48.)

(2) **Officers ascertaining forest rights not revenue officers.**—An officer employed in ascertaining whether the forest rights in a village belong to the Government or to the Inamdar, is not a revenue officer as defined in Section 3, clause 2 of the Code, and cannot, therefore, legally exercise the powers conferred by Section 189 of the Code for the purpose of any such inquiry. Even were he gazetted an Assistant Collector, the enquiry would not relate to the business of land-revenue, nor could it be held to be an enquiry which an Assistant Collector is “legally empowered” to make. (G. R. No. 4964, dated 20th June 1884.)

(3) **District inspectors of agriculture.**—They should be considered revenue officers. (G. R. No. 1327, dated 25th February 1902.)

(2) “survey officer<sup>1</sup>” means an officer appointed under, or in the manner provided by, “Survey officer.” Section 18<sup>2</sup>;

“Collector.” (3) The word “collector<sup>3</sup>” means the collector of the district;

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

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

<sup>1</sup> A survey officer retired from Government service and subsequently employed in the survey of Native States under an arrangement between him and those States is not a survey officer within the meaning of Section 3, clause 2, and Section 18 of the Land Revenue Code. (G. R. No. 4523, dated 23rd June 1893.)

<sup>2</sup> Words repealed by Bombay Act III. of 1886 have been omitted.

<sup>3</sup> In the Bombay General Clauses Act (I. of 1904) the word “Collector” is defined to mean “the chief local officer in charge of the revenue administration of a district.”



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

(7) "recognized share of a survey number<sup>1</sup>" means a "Recognized share sub-division of a survey number separate- of a survey number." ly assessed and registered ;

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

(9) "boundary-mark" means any erection, whether

<sup>1</sup>(1) It is to be noted that the Code only mentions two kinds of sub-divisions of land, viz. (1) "Survey No." and (2) "recognized share of a survey No." There is besides these two, a third kind of sub-division of land which is commonly known as "subordinate survey No." or "Pot No." and though this kind of sub-division is largely resorted to in practice it has no separate recognition according to the Code under which it is considered as "recognized share of survey No." to all intents and purposes and is dealt with accordingly.

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

“Boundary-mark.” of earth, stone or other material, and also any hedge, <sup>1</sup> unploughed ridge or strip of ground, or other object, whether natural or artificial, set up, employed or specified by a survey officer, or other revenue officer having authority in that behalf, in order to designate the boundary of any division of land ;

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

(11) “holder” <sup>2</sup> or “landholder” signifies the person in whom a right to hold land is vested, whether solely on his own account, or wholly or partly in trust for another person, or for a class of persons, or for the public. It includes a mortgagee vested with a right to possession;

(12) “holding” signifies land over which such right extends ;

(1) **A holding may be of any size.**—A holding as defined in Section 3 (12) may be of any size: it is not in its ordinary sense restricted to any particular area, except where it is so expressly stated as in Sections 47 and 64. (G. R. No. 4567, dated 30th June 1899.)

(13) “superior holder” <sup>3</sup> signifies a holder entitled to receive from other holders rent or land-revenue on account of lands held by them, whether he be accountable or not for the same, or any part thereof, to the Government ;

(14) “inferior holder” <sup>3</sup> signifies a holder liable to pay the rent or land-revenue to a superior holder,

<sup>1</sup> These words were substituted for the original word by Bombay Act VI. of 1901, Section 2.

<sup>2</sup> According to this definition a holder may mean any person holding land by any right or title whatsoever. It may mean a superior holder, a tenant, or an occupant whether registered or unregistered. In the Code, however, it is used with reference to alienated land throughout.

<sup>3</sup> See orders printed under Sections 86 and 87.

“Inferior holder.” whether on account of such superior holder or Government ;

(15) “tenant” signifies a person who holds by a right derived from a superior holder called

“Tenant.” his “landlord,” or from his landlord’s

“Landlord.” predecessor in title ;

(1) **A tenant may mean an inferior holder.**—It is in no way inconsistent to say that a tenant is an inferior holder. Otherwise it would be useless to confer powers under Section 88, for the purpose of recovering rent from the tenants of the holders of alienated lands as the powers could only be exercised in respect of inferior holders. ( G. R. No. 6841. dated 30th December 1880. )

(16) “occupant” signifies a holder of unalienated land, or where there are more holders than one, the holder having the highest right in respect of any such land,

“Occupant.” or where such highest right vests equally in more holders than one, any one of such holders ;

(17) “registered occupant” signifies a sole occupant or the eldest or principal of several joint occupants whose name is authorizedly entered in the Government records as

“Registered occupant.” holding unalienated land whether in person or by his co-occupant, tenant, agent, servant or other legal representative ;

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

(1) **Occupancy means a surveyed as well as unsurveyed land.**—The word occupancy is used with reference to unsurveyed as well as surveyed land. ( G. R. No. 3009, dated 10th June 1880. )

(19) “alienated” means transferred in so far as the rights of Government to payment of the rent or land-revenue are concerned,

“Alienated.” wholly or partially, to the ownership of any person ;

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

(20) the words "village, town or city" include all lands belonging to any village, town or city ;

" Village, town or city." (21) the words " revenue year " or " year " mean the period from and exclusive of the thirty-first July of one calendar year until, and inclusive of, the thirty-first July in the next calendar year.

" Revenue year." " Year." (22)<sup>1</sup> " section " means a section of this Act ;

" Section." (23)<sup>1</sup> the words " this chapter " mean the chapter of this Act in which those words occur.

## CHAPTER II.

### *Constitution and Powers of Revenue Officers.*

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

There shall be one or more Commissioners<sup>2</sup> as the Governor in Council, subject to the orders of the Government of India, may direct ; and the Governor in Council shall prescribe what territories are to be under the control of each, whether generally or for any specific purpose, and may from time to time alter the limits of such territories, all orders made on this behalf being duly notified.

<sup>1</sup> These two clauses have been repealed by the Bombay General Clauses Act (III. of 1886).

<sup>2</sup> There are at present three Divisional Commissioners, besides the Commissioner in Smd, each in charge of a division, there being three divisions in the Presidency proper. These divisions are (1) the Nor-

N. D.	C. D.	S. D.	} them Division, (2) the Central Division, and (3) the Southern Division. Each of these divisions as at present constituted comprises six districts as shown in the margin.
Ahmedabad.	Khandesh.	Dharwar.	
Kaira.	Nasik.	Belgaum.	
Panch Mahals.	Ahmednagar.	Bijapur.	
Broach.	Poona.	Kolaba.	
Surat.	Satara.	Ratnagiri.	
Thana.	Sholapur.	Kanara.	

Division. The territories under each Commissioner shall form, and be called, a division<sup>1</sup>.

5. The Commissioners shall be appointed by the Governor in Council, and shall exercise the powers and discharge the duties conferred and imposed on a Commissioner under this Act, or under any other law for the time being in force, and so far as is consistent therewith all such other powers or duties of appeal, superintendence and control within their respective divisions, and over the officers subordinate to them as may from time to time be prescribed by Government.

Appointments and duties of Commissioners.

6. Each Commissioner shall have such number of assistants<sup>2</sup> as the Governor in Council may from time to time sanction, their appointment being made by the Governor in Council. Assistants so appointed shall perform such duties as the Commissioners to whom they are respectively subordinate may from time to time direct.

Assistants to Commissioners.

7. Each division under the control of the Commissioner<sup>3</sup>, shall be divided into such number of districts with such limits as may from time to time be prescribed by a duly published order of the Governor in Council.

Division to be divided into districts.

And each such district shall consist of such number of talukas, and each taluka shall consist of such number of mahals and villages, as may from time to time be prescribed in a duly published order of the Governor in Council<sup>1</sup>.

District, Taluka.

8. The Governor in Council shall appoint in each

<sup>1</sup> Clause repealed by Bombay Act XVI. of 1895, has been omitted.

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

<sup>3</sup> See footnote to section 4.

Collector of dis- district an officer who shall be the  
 trict. Collector<sup>1</sup> and who shall be subordinate  
 to the Commissioner of his division and  
 may exercise, throughout his district, all the powers, and  
 discharge all the duties, conferred and imposed on a Collec-  
 tor or an Assistant or Deputy Collector by this Act, or any  
 other law for the time being in force, and in all matters not  
 specially provided for by law shall act according to the  
 instructions of Government.

**Collector's powers.**—The Collectors are authorized (1) to  
 sanction exchanges in lieu of land taken up for public purposes, (2) to  
 extend the Jamabandi period, and (3) to allow a Railway Company to dig  
 for ballast in assessed waste land. (Entry 20.—G. R. No. 4347, dated  
 25th June 1902.)

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

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

10. Subject to the general orders of Government, a  
 Collector may place any of his Assistants  
 Their duties and or Deputies in charge of the revenue  
 powers. administration of one or more of the  
 talukas in his district, or may himself retain charge thereof.

Any Assistant or Deputy Collector thus placed in charge  
 shall, subject to the provisions of Chapter XIII<sup>3</sup>, perform all  
 the duties and exercise all the powers conferred upon a  
 Collector<sup>2</sup> by Act or any other law at the time being in  
 force, so far as regards the taluka or talukas in his charge:

<sup>1</sup> See footnote to definition No. 3.

<sup>2</sup> Words repealed by Act XVI. of 1895, have been omitted.

<sup>3</sup> Words repealed by Bombay Act III. of 1886, have been omitted.

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

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

**The Collector's power to delegate powers to his Assistants not limited to land Revenue**—(1) Section 10. Land Revenue Code, confers on Assistant or Deputy Collectors in charge of talukas all the powers of a Collector under the Act "or any other law at the time being in force," and empowers the Collector to delegate to Personal and Supernumerary Assistants not in charge of talukas any duties and powers. The words "any other law at the time being in force" are not limited to laws relating to land-revenue, but include all acts of the Government of Bombay in which a contrary intention does not appear. The Governor in Council now sanctions similar delegation of powers and powers to delegate them in respect of all executive orders of the Local Government. (G. R. No. 5941, dated 26th August 1902.)

(2) There should be no unnecessary reservation under this section. (G. R. No. 748, dated 8th October 1903.)

11. If the Collector is disabled from performing his duties, or for any reason vacates his office or leaves his district, or dies, his Assistant of highest rank present in the district shall, unless other provision has been made by Government, succeed temporarily to his office and shall be held to be the Collector<sup>1</sup> under this Act until the Collector resumes charge of his district, or until the Governor in Council appoints a successor to the former Collector, and such successor takes charge of his appointment.

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

<sup>1</sup> Words repealed by Act XVI. of 1895 have been omitted.





Assistant or Deputy Collector, or the Collector in charge of the taluka.

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

Mahal. The portion of a taluka in charge of a Mahalkari shall be called a Mahal.<sup>1</sup>

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

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

<sup>1</sup> Words repealed by Act XVI. of 1895 have been omitted.

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

17. Subject to the general orders of Government and of the Commissioner, the Collector shall prescribe from time to time what registers, accounts and other records shall be kept by the village accountant.<sup>1</sup>

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

18.<sup>2</sup> For the purposes of Chapters VIII., IX. and X.,<sup>3</sup> the Governor in Council may appoint such officers as may from time to time appear necessary. Such officers shall be designated "Commissioner of Survey,"<sup>4</sup> "Superintendent of Survey," "Survey Settlement Officer," and "Assistant," or otherwise as may seem requisite, and shall be subordinated the one to the other in such order as the Governor in Council may direct.

Subject to the orders of the Governor in Council the officers so appointed are vested with the cognizance of all matters connected with survey and settlement, and shall exercise

<sup>1</sup> Words repealed by Act XVI. of 1895 have been omitted.

<sup>2</sup> See footnote to definition No. 2.

<sup>3</sup> Words repealed by Bombay Act III. of 1886, have been omitted.

<sup>4</sup> Since 1st April 1901 the designation of the officer holding this appointment has been changed to Director of Land Records and Agriculture.

all such powers and perform all such duties as may be prescribed by this or any other law for the time being in force.

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

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

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

21. Subject to rules or orders made under Section 214 the appointment of all members of the establishments of the undermentioned officers shall, unless otherwise directed by Government, be made by those officers respectively, namely:—

The Commissioners,	} <sup>1</sup>
„ Collectors,	
„ Commissioner of Survey,	
„ Superintendent of Survey,	
„ Survey Settlement Officer.	

<sup>1</sup> In 1901 the Survey Department was abolished and the functions of that Department have been entrusted to the Agricultural Department which consist of the following appointments corresponding to the appointments in the old Survey Department:—

*Survey Department.*  
1. Survey Commissioner.

*Agricultural Department.*  
1. Director, Land Records and Agriculture.

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

22. The Governor in Council shall from time to time by notification prescribe what revenue officers shall use a seal, and what size and description of seal shall be used by each of such officers.<sup>1</sup>

### CHAPTER III.

*Of the Security to be furnished by certain Revenue Officers and the Liability of Principals and Sureties.*

23. It shall be lawful for Government to direct that such revenue officers as it deems fit shall, previously to entering upon their office, furnish security to such amount<sup>2</sup> as Government may in each case deem expedient, either by deposit of Government paper duly endorsed, accompanied by a power to sell, or in the form contained in Schedule B.<sup>3</sup>

2. Superintendent of Revenue Survey.	2. Superintendent of Land Records and Agriculture.
3. Assistant Superintendent.	3. District Agricultural Inspector.
4. Measurers and classers.	4. Circle Inspectors.

The Agricultural Department is considered a part of the Revenue Department proper; its functions being limited to inspection of Revenue and other statistical records and advice in the matter to Revenue officers.

<sup>1</sup> Words repealed by Act XVI. of 1895, have been omitted.

<sup>2</sup> Rule 2 of the rules framed under Section 214 of the Code enumerates the officers by whom, and the amounts up to which, security is to be furnished.

<sup>3</sup> Words repealed by Bombay Act III. of 1886, have been omitted.

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

(1) **Bonds and Securities how long to be kept.**—Bonds deposited by a Treasurer or other official should be retained by Government for a year, and other securities for six months, after an officer has vacated his appointment and that words providing for this might for the future be introduced in bond before signature. (G. R. No. 2119, dated 7th June 1884.)

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

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

(4) **But may be modified to meet special cases.**—The form of the security bond to be taken from treasurers or other officers of Government who are entrusted with the charge of public money, is only a model, and may be modified by Local Government to meet special cases. In the case of treasurers of District treasuries no modification should be made except after communication with the Government Solicitor. (G. R. No. 3496, F. D., dated 14th September 1889, and No. 4802, dated 5th December 1889, F. D.)

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

25. The Collector or Superintendent of Survey<sup>1</sup> or any other officer deputed by the Collector or Superintendent of Survey for this purpose shall in all cases in which he may have a claim on any revenue officer or on any person formerly employed as such in his department or district for public money or papers or other Government property, by writing under his official seal, if he use one, and signature, require the money or the particular papers or property detained to be delivered either immediately to the person bearing the said writing, or to such person on such date and at such place as the writing may specify.

<sup>1</sup> It is doubtful whether the Superintendent of Survey can take any action under clause 2 of this section independent of the Collector. It appears from Sections 26 and 157, and the form of warrant (Schedule C) that it is intended that in such cases the Superintendent of Survey should apply to the Collector with a view to the necessary action being taken.

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

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

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

Limit to confinement not more than a month.

26. The Collector of his own motion, if the officer or other person is or was serving in his department and district, and upon the application of the Superintendent of Survey, if such officer or person is or was serving in the survey department in his district, may also take proceedings to recover any public moneys due by him in the same manner and subject to the same rules as are laid down in this Act for the recovery of arrears of land-revenue from defaulters, and for the purpose of recovering public papers<sup>1</sup> or other property appertaining to Government may issue a search warrant and exercise all such powers with respect thereto as may be lawfully exercised by a Magistrate under the provisions of Chapter VIII. of the Code of Criminal Procedure, 1898.<sup>2</sup>

Public moneys may also be recovered as arrears of revenue.

and search warrant issued for recovery of papers or property.

It shall be the duty of all persons in possession of such

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

<sup>2</sup> The reference to Chapter XXVII. of Act X. of 1872 is altered in accordance with Act V. of 1898.

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

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

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

Extent of liability. Provided always that in any case of failure to discharge or make good any sum of money due to Government or to produce any property of Government of ascertained value, no greater sum than is sufficient to cover any loss or damage which the Government may actually sustain<sup>1</sup> by the default of the principal, shall be recovered from the surety or sureties as the amount which may be due from such surety or sureties under the terms of the security bond executed by him or them.

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

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

<sup>1</sup> Vide orders Nos. (2) and (3) printed under Section 23.



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

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

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

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

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

(2) **Fresh security bonds. Preservation of old ones.**—An instance having occurred in which the security bond taken from a Treasury Officer was subsequently found to be improper in form and was cancelled and destroyed, and a new bond taken instead, and with the result that the claim of Government for compensation for wrongful acts done

during the currency of the old bond could not be enforced, the following opinion of the Remembrancer of Legal Affairs was circulated to the officers concerned for information and guidance:—

“The question put with reference to this gentleman’s case in paragraph 3 of the Government memo. under reply is one of a general nature, viz., whether an old security bond which is superseded by a new one cannot, by some means, be kept in force. The first paragraph of Section 29 and Section 30 of the Land Revenue Code contains the law on this subject. A security bond continues in force *until it is cancelled*, and a surety who withdraws from his suretyship continues liable, notwithstanding his withdrawal, for any defalcation of his principal occurring up to 60 days after his giving notice of his intention to withdraw. The answer to the question of Government is, therefore, that a security bond should not be destroyed, until so long after the principal has ceased to occupy an office in which he has to furnish security that there is no probability of its being of any use. If a fresh bond is for any reason taken the old one should still be preserved as security against defalcations which may have occurred before the date of the new one.” (G. R. No. 3449 F. D., dated 14th October 1890.)

28. If an officer or other person as aforesaid, or his surety or sureties, against whom a demand is made shall give sufficient security in the form of Schedule D, the Collector shall cause such officer or surety, if in custody, to be liberated, and countermand the sale of any property that may have been attached, and restore it to the owner.

29.<sup>1</sup> The liability of the surety or sureties shall not be affected by the death of a principal, or by his appointment to a situation different from that which he held when the bond was executed, but shall continue so long as the principal occupies any situation in which security is required under Section 23, and until his bond is cancelled.

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

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

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

Liability of heirs of deceased officer.

<sup>1</sup> Vide order No. (2) printed under Section 27.

30.<sup>1</sup> Any surety, whether under a separate or joint bond, may withdraw from his suretyship at any time on his stating in writing, to the officer to whom the bond has been given, that he desires so to withdraw ; and his responsibility under the bond shall cease after sixty days from the date on which he gives such writing, as to all demands upon his principal concerning moneys, papers or other property for which his principal may become chargeable after the expiration of such period of sixty days, but shall not cease as to any demands for which his principal may have become liable before the expiration of such period, even though the facts establishing such liability may not be discovered till afterwards.

#### CHAPTER IV.

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

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

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

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

<sup>1</sup> *Vide* order No. (2) printed under Section 27.

(3) hold directly or indirectly any farm or be in any way concerned on his private account in the collection or payment of revenue of any kind in the district in which he is not to be concerned in revenue ;  
at the time employed ;

and no revenue officer shall

(4) derive either for himself or for any other individual any profit or advantage beyond his lawful salary<sup>1</sup> or emolument from any public money or property with the collection or charge of which he is entrusted not to make private use of public money or property ;  
or connected ; or

(5) demand or receive, under the colour or by the exercise of his authority as such revenue officer, or by way of gratification or otherwise, or knowingly permit any other person to demand or receive on his behalf, any sum or any consideration whatever over and above what he is legally entitled to demand or receive under the provisions of this Act or of any other law for the time being in force. not to make or receive undue exactions or presents.

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

(2) **Stipendiary village accountants not to hold land other than hereditary.**—The Governor in Council desired that clauses (1) and (2) of Section 31 of the Land Revenue Code ( which is the law in force and supersedes all previous orders ) should be construed strictly in the case of stipendiary village accountants and that permission should not be given to them to engage in money-lending or to purchase lands at public sales. Clause (3) if strictly enforced would prohibit them from holding any lands paying revenue to Government. His Excellency in Council does not, however, object to the holding of hereditary lands by stipendiary village accountants or absolutely to their holding of lands

<sup>1</sup>The Governor in Council is pleased to rule that any paid servant of Government accepting a commission for taking evidence must hand over forthwith to his superior officer or the neighbouring treasury any and every sum which he may receive as a fee for his services.

Courts sending and receiving commissions should be informed that

purchased otherwise than at a public sale. The section requires that every revenue officer who holds land paying revenue to Government in the district in which he is employed should obtain permission to continue to hold it, and the Collector can give or withhold permission according to the merits of each case, taking care that his orders are not unduly harsh. If the Collector considers that the position of a talati as a holder of land in his own charge, taluka, or district conflicts in any case with the proper performance of his duty as a village accountant, he can have him transferred. ( G. R. No. 5635, dated 31st July 1883. )

**(3) Civil and Military officers prohibited from entering into pecuniary arrangement.**

Notification No. 216, dated 9th September 1884. —The Governor-General in Council considers it desirable to republish for general information the orders issued by the Government of India prohibiting Civil and Military servants of the Government from entering into pecuniary arrangements with members of the service or department to which they belong in connection with the resignation of any appointment held by them. Officers of Government are warned that any violation of these orders will be severely visited on the offender. The Notification runs as follows:—

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

**Orders on the subject of connection of Government servants with land holding and commercial speculation in India.**—(4) The following paragraphs contain a brief summary of the more important orders which have been issued from time to time on the subject of the connection of Government servants with land-holding and commercial speculation in India :—

1, \* \* \* \*

2. Covenanted Civil Servants, Military officers in Civil employ, and all persons holding Civil offices ordinarily held by Covenanted or Commissioned officers of the two classes above mentioned are prohibited from

so far as Government is concerned there is no objection on its part to the defrayal of all fees that are paid or credited to Government by an equivalent amount in Court-fee Stamps. A note of such payment should be made by the transmitting Court and formally taken cognizance of by the Court executing the commission. ( G. R. No. 2551, J. D., dated 11th May 1889 and G. R. No. 1893, dated 9th July 1889. )

acquiring or holding land within the province in which they are employed or with the administration of which they are concerned, whether that connection be permanent or temporary. This prohibition does not extend to land occupied merely by buildings for residence and their usual appurtenances.

3. Natives<sup>1</sup> of India appointed under the Statutory Rules are permitted to hold any lands actually in their possession when they enter the service of Government, or which may come into their possession thereafter by inheritance, gift (i. e., *bonâ fide* gifts from relatives or near friends) or devise, provided that full information in respect of such lands is given to the Local Government, which will consider in each case whether the fact of an officer holding any particular lands need be a bar to his employment in the district where these are situated. No fresh purchase of land is, however, allowed on the part of a Statutory Civil Servant without the previous sanction of the Local Government under which he is serving.

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

5. Officers of all classes (including candidates for office) must be required to make a declaration of the fact of their being in possession of, or of their having acquired, landed property, stating the district within which it is situated, with such other particulars as may be considered necessary, of which registers<sup>2</sup> should be kept by the Local Governments concerned.

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

<sup>1</sup> The orders in this paragraph are also applicable to Natives of India who enter the Indian Civil Service by competition in England. ( Home Department Circular No.  $\frac{19}{1161-1770}$  Public dated the 14th June 1890. )

<sup>2</sup> The form in which these registers should be kept has been sanctioned by Government in their Resolution No. 317, dated 25th January 1886. *Vide* Appendix I.

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

8. With regard to investments other than those in land for the profits of cultivation, officers of every rank and class in the public service are expected to abstain from any investment ( though of itself unobjectionable ) which interests them privately in affairs or undertakings of the kind with which their public duty is connected. Subject to this general proviso, there is no objection to Government servants holding shares in mining or other companies ( including agricultural companies ), having for their object the development of the resources of the country, provided that they must not take part in the management of any such company, and that they must not be employed in the districts where the operations of the company with which they may be connected are carried on. This latter prohibition must be held to apply sometimes with less, sometimes with greater, force to certain officers connected with the central administration, such as Members of the Local Government, Members of the Board of Revenue and their Secretaries; and to indicate the necessity of great circumspection on the part of such officers as to the undertakings with which they become connected in any part of the province in which they are employed.

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

10. It is a standing order that servants of Government are required to abstain from speculative investments, but no literal definition has been

laid down as to the stage at which, or circumstances under which, the holding of land or other valuable property becomes speculative. It is obviously speculative to secure a grant of land supposed to be auriferous with the object of disposing of it hereafter to companies. Habitual speculation by officials has been always held to be an evil; and the Government has reserved to itself full power to deal stringently with the practice whenever it appears to prevail. The general distinction which exists between permanent and speculative investments is sufficiently described in the extract given below:—

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

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

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

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



would, therefore, seem sufficient if the registers are submitted to Government in the Department concerned in the case of those officers only whose appointments are made by Government, the registers in the case of all other officers being kept either by the Head of the Department concerned for his own guidance or submitted to his controlling officer in cases in which the power of making appointments, granting leave, etc., rests in the latter officer. (G. R. No. 833, dated 4th March 1886.)

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

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

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

3. With reference to query 4 it should be observed that the registration of information regarding landed property in the case of those employes who are classed as "Inferior servants" under the Civil Service

Regulations would be of little use and that the term "Public servant" should therefore be held to include those officers only whose service is recognised as superior within the meaning of those Regulations. All public servants falling within the latter category, whether employed on permanent or temporary establishments, should be required to furnish the information in the form prescribed.

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

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

6. With reference to the 7th query it should be observed that landed property includes buildings standing on land, but that as is mentioned in the letter from the Government of India the prohibition to acquire or hold land "does not extend to land occupied merely by buildings for residence<sup>1</sup> and their usual appurtenances." (G. R. No. 1513, G. D., dated 29th April 1886.)

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

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

(10) **Landed property held by wives of Government servants to be treated as if held by themselves.**—In paragraph 5 of Home Department Circular letter No. 21-797-806, dated the 15th May 1885 (see order No. (3) above), which gives a summary of the existing rules and orders regulating the connection of public servants with land holding and commercial speculation in India, it was laid down

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<sup>1</sup> The expression "buildings for residence" means only the residence occupied by the officers themselves. (G. R. No. 2223, G. D., dated 23rd June 1886.)

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

In continuation of these orders His Excellency the Governor-General in Council is pleased to direct that in future similar particulars must be given of property held by, and managed by, wives of officers or other members of their families living with, and in any way dependent on them; and the management of such property shall be subject to the same restrictions as that of property belonging to themselves. ( G. R. No. 3404, G. D., dated 29th September 1888. )

(11) **Government servants prohibited from taking loans from their subordinates.**—All covenanted civil servants, statutory civilians, uncovenanted officers, who hold gazetted appointments, and military officers in civil employ are prohibited, under pain of dismissal, from taking loans from, or otherwise placing themselves under pecuniary obligations to, persons subject to the official authority or influence of such Government officers, or residing, possessing property or carrying on business within the local limits for which such Government officers are appointed.

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

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

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

(14) **Indebtedness of Government servants.**—In their

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

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

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

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

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

(15) **Vindication officer of by his character as public servant.**—It is a standing order that without obtaining the authorisation of the Government to which he is immediately subordinate, no officer of Government is permitted to have recourse to the Courts for the vindication of his public acts, or of his character as a public functionary, from defamatory attacks. In giving authority to institute proceedings, the Local Government concerned will decide whether the circumstances of the case are such that the Government should bear the costs of the proceedings, civil or criminal, or leave the officer to institute the prosecution or suit at his own expense; and in the latter case it will also

determine, in the event of the matter being decided by the Courts in the officer's favour, whether he should be recouped by Government the whole or any part of the costs of the action. The ruling above laid down does not affect an officer's right to defend his private dealings or behaviour in any way that he may be advised, but his official reputation is in the charge of the Government which he serves, and it is for that Government to decide in each case whether the institution of proceeding to vindicate his public acts or character is necessary or expedient. (G. R. No. 4097, G. D., dated 11th October 1890.)

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

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

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

(2) G. R. No. 4100, dated 30th May 1883, delegating to Mamlatdars the power of fining hereditary village officers, was obviously intended to apply to revenue officers only, and not to override in any way the provisions of the Village Police Act VIII, of 1867, Section 9 of which expressly limits the power of fining Police Patils to First Class Magis-

trates. If the resolution in question has been construed anywhere as empowering Mamlatdars to fine Patils for neglect of their Police duties, the practice is incorrect and should be discontinued. (G. R. No. 1953, dated 15th March 1893.)

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

33.<sup>1</sup> When any revenue officer passes an order for  
 fining, reducing, suspending or dismissing  
 any subordinate officer, he shall  
 record such order, or cause the same to  
 be recorded, together with the reasons therefor, in writing  
 under his signature in the language of the district or in  
 English.

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

(2) Government directed (Circular No. 796) in 1854 that, except in special cases which may appear to require instructions, no separate

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

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

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

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

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

All fines inflicted under this chapter may be recovered from the officer's pay or, if necessary, may be realized in the same way as arrears of land-revenue are recoverable under this Act.<sup>1</sup>

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

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

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

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

<sup>1</sup> Vide Section 187, clause 1.



Liability to criminal prosecution not affected.

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

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

Any officer subjected to such prosecution may be suspended pending the trial, and at its close may, upon a consideration of the circumstances brought to light during its course, be suspended,

reduced or dismissed by any competent authority whether he have been found guilty or not.

## CHAPTER V.

### *Of Land and Land-revenue.*

#### *Land.*

37. All public roads, lanes and paths, the bridges, ditches, dikes and fences, on, or beside, the same, the bed of the sea and of harbours and creeks below high-water mark, and of rivers, streams, nalas, lakes and tanks,<sup>1</sup> and all canals, and water-courses, and all standing and flowing water, and all lands wherever situated, which are not the property of individuals, or of aggregates of persons legally capable of holding property, and except in so far as any rights of such persons may be established in or over the same, and except as may be otherwise provided in any law for the time being in force, are and are hereby declared to be, with all rights in or over the same, or appertaining thereto, the property of Government; and it shall be lawful for the Collector, subject to the orders of the Commissioner, to dispose of them in such manner as he may deem fit, or as may be authorized by general rules sanctioned by Government, subject always to the rights of way, and all other rights of the public or of individuals legally subsisting.

<sup>1</sup> Vide Order No. (9) printed under Section 61.

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

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

(2) **Rights to public streets in Municipal limits.**—The only case in which a Municipality can sell or grant any portion of a public street to an individual house-holder is under clause 2 of Section 30 of Bombay Act VI., 1873,<sup>2</sup> which authorizes Municipalities for the purpose of improving the line of any public street to allow any house or building in that street to be set forward. Where there is no Municipality the public streets vest under Section 37 of the Land Revenue Code in Government. But they vest in Government like other lands “except in so far as any rights of any persons may be established in or over the same.” In public streets the public have a permanent right of way extending to every portion of such streets, and it would be an infringement of this right for Government or their officers to sell or grant any land belonging to a public street to an individual. Where therefore there is no Municipality the right to dispose of any portion of a public street is more limited than in a Municipal district, for Government have not even the legal power to allow a house to be set forward. (G. R. No. 5965, dated 20th August 1886.)

(3) **Rights to town walls, etc., in Municipal limits.**—Municipalities have no right to the sites of town walls or bastions. Municipal Act vests these in Municipalities as trustees. They have no power to remove them, unless the walls become dangerous, nor would such removal, if effected, operate to vest the sites in Municipalities,

The rights of Municipalities in respect of public roads are very limited. Though the road vests in them, the soil does not belong to them. The only powers which Municipalities have is to make, repair and keep properly cleansed such high-ways and do such things upon them as are necessary for conservancy, but that they have no right to obstruct or divert them. They can, however, divert new streets and roads which

<sup>1</sup> Now Section 50 (2) (b) of Act III. of 1901.

<sup>2</sup> Now Clause 1 of Section 90 of Act III. of 1901.

they may have laid out or made. Any house or building may be set forward for improving the line of any public street, but such permanent alienation would require sanction. Municipalities have no control over provincial high-roads or trunk roads. ( G. R. No. 1890, dated 13th March 1891. )

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

“ The decision of *Ismail Ariff vs. Mahomed Ghose* ( L. R. 20, I. A. 99 ) has no application to suits for restoration of possession brought against Government by persons who had been evicted under the Land Revenue Code. But if the person evicted proves that he was in possession and enjoyment for a considerable time, a presumption of full ownership arises, which throws upon Government the onus of showing that the land was not private property ( *vide* Section 110, Indian Evidence Act ), and it would not be sufficient to rely only upon the words of Section 37 ( *vide re* *Antaji Keshao Tamba*, I. L. R., 18 Bombay, 674, and *Secretary of State vs. Jaithabhai Validas*, I. L. R., 17 Bombay, 299 ). It would not be necessary for the person suing to show a title of possession for 60 years.

“ But in cases where the possession is not long, the state of the land before possession was taken, and the circumstances under which the possession was taken would in most cases, even where there is no entry in Government records, be sufficient to show whether the land was private property or not.” ( G. R. No. 1873, dated 27th February 1896. )

(5) **Proof sufficient to evict.**—When executive officers intend to evict persons in unauthorized possession they must be prepared to give evidence of Government title ( *a* ) documentary from the records, or ( *b* ) oral that the land in dispute has been at some time or other within 60 years unoccupied, that is, not in the juridical possession of any private person. Stacking of wood or grass is not tantamount to juridical possession. ( G. R. No. 9661, dated 1st December 1896. )

(6) **Apparent Government possession not sufficient to evict.**—Section 37 gives power to the Collector to dispose of the interests of Government in land, but nothing else. He cannot decide as to private title. This section gives him no power to *decide* as to the interests of Government. Unless the conditions in Sections 48, 57, 61, 66 or 181 exist, the mere fact that the Collector considers that the land belongs to Government or that Government have an interest in the land will not justify eviction.

When any person is in possession of land, it must be presumed that he has a title, until it can be shown that at some time within sixty years neither he nor anybody else did or could claim the land, as of right, with power to exclude all other possession. This might be shown either by proof ( *a* ) of absolute relinquishment of the land to Government by a

former occupant, or (b) of such circumstances as would negative the possibility of exclusive possession. (G. R. No. 3169, dated 22nd May 1900.)

38.<sup>1</sup> Subject to the general orders of Government it shall be lawful for survey officers whilst survey operations are proceeding under Chapter VIII.<sup>2</sup> and at any other time for the Commissioner,<sup>3</sup> to set apart lands, the property of Government and not in the lawful occupation of any person or aggregate of persons, in unalienated villages or unalienated portions of villages, for free pasturage for the village cattle, for forest reserves, or for any other public or municipal purpose ;

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

**Land assigned for military purposes not to be used for any other purpose.**—(1) No land (1) within cantonment limits, (2) forming part of a military encamping ground, (3) otherwise held for military purposes shall be used or occupied by railway, or otherwise, without the sanction of Government of India in the Military Department. (Cancels G. R. No. 9085, dated 18th November 1892.) (Government of India, in their Military Department No. 415, dated 27th February 1893, in G. R. No. 1978, dated 16th March 1893.)

(2) Curtailment of camping ground specially assigned for troops is not allowed. (G. R. No. 6881, dated 16th September 1897.)

(3) **Assignment different from appropriation.**—The orders conveyed in G. R. No. 8558, dated 6th December 1882, R. D. and in entry No. 3 of *Schedule A* appended to G. R. No. 720, dated 8th March 1887, F. D., restricting within certain limits the powers of

<sup>1</sup> See rules 7 to 12 of the rules under Section 214.

<sup>2</sup> Words repealed by Bombay Act III. of 1886 have been omitted.

<sup>3</sup> This section gives the Commissioner, instead of the Collector, the power of setting apart lands for public purposes : but the arrangement by which that power is to be exercised by Survey Officers, while survey operations are proceeding, is not thereby disturbed. (Select Committee's Report on the Revenue Code Bill.)

Commissioners to sanction, under Section 37, the *appropriation* of lands, for roads, schools, dharmashalas and other public purposes, were not intended to apply to assignments of lands under Section 38. The grant of land for threshing floors is an instance of such an assignment, and may be disposed of by the Commissioner on his own authority. (G. R. No. 3317, dated 12th May 1899.)

(4) **Appropriation for religious use.**—Appropriations for sectional religious uses require the sanction of Government. (G. R. No. 555, dated 29th January 1901.)

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

39. The right of grazing on free pasturage lands shall extend only to the cattle of the village<sup>1</sup> or villages to which such lands belong or have been assigned, and shall be regulated by rules to be from time to time, either generally or in any particular instance, prescribed by the Collector with the sanction of the Commissioner. The Collector's decision in any case of dispute as to the said right of grazing shall be conclusive.

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

### *Trees.*

40.<sup>2</sup> In villages, or portions of villages, of which the original survey settlement has been completed before the passing of this Act, the right of Government to all trees in unalienated land, except trees reserved by Government, or by any survey officer, whether by express order made

<sup>1</sup> The phrase "village cattle" does not include the cattle of any roving grazier who may choose to squat for a few months on the public ground of a village. (I. L. R. 2 Bom. 110.)

<sup>2</sup> *Vide* orders under Section 41.

at, or about the time of such settlement, or under any rule, or general order in force at the time of such settlement, or by notification made and published at, or at any time after such settlement, shall be deemed to have been conceded to the occupant. But in the case of settlement completed before the passing of Bombay Act I. of 1865, this provision shall not apply to teak, blackwood or sandalwood trees. The right of Government to such trees shall not be deemed to have been conceded, except by clear and express words to that effect.

In the case of villages or portions of villages of which the original survey settlement shall be completed after the passing of this Act, the right of Government to all trees in unalienated land shall be deemed to be conceded to the occupant of such land

Concession in case of settlements completed after passing of Act.

except in so far as any such rights may be reserved by Government, or by any survey officer on behalf of Government, either expressly at or about the time of such settlement, or generally by notification made and published at any time previous to the completion of the survey settlement of the district in which such village or portion of a village is situate.

When permission to occupy land has been, or shall hereafter be, granted after the completion of the survey settlement of the village or portion of a village in which such land is situate, the said permission shall be deemed to

Concession in case of land taken up after completion of settlement.

include the concession of the right of Government to all trees growing on that land, which may not have been, or which shall not hereafter be, expressly reserved at the time of granting such permission, or which may not have been reserved, under any of the foregoing provisions of this section, at or about the time of the original survey settlement of the said village or portion of a village.

41<sup>1</sup>. The right to all trees specially reserved under the provision of the last preceding section, and to all trees, brushwood, Government trees and forests. jungle or other natural product, growing on land set apart for forest reserves under Section 32 of Bombay Act I. of 1865, or Section 38 of this Act, and to all trees, brushwood, jungle or other natural product, wherever growing, except in so far as the same may be the property of individuals or of aggregates of individuals capable of holding property, vests in Government; and such trees, brushwood, jungle or other natural product, shall be preserved or disposed of in such manner as Government may from time to time direct.

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

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

In cases where the boundaries of a field are not laid down on the banks of a stream the area of the field as recorded in the survey registers should be taken as the guide in determining how far the right of the occupant extends. The occupant should be allowed the benefit of the trees on the area recorded, all beyond it being held to be the property of Government subject to the provisions of the Land Revenue Code regarding alluvion. (G. R. No. 649, dated 30th January 1882.)

<sup>1</sup>(a) *Vide* orders printed under rule 91.

(b) Special concessions have been allowed for planting of trees in open places in villages. The form of Sanad which is issued is given as Appendix XVI. (G. R. No. 4118, dated 14th June 1901.)

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

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

(5) In an alienated village in which the grant of service land was made by Government prior to alienation of the village to the Inamdar, and was thus excluded from Inam to the latter, the right to trees in such service land would undoubtedly vest in Government, while in villages where the service grant was subsequent to the alienation of the village, such right must be considered to vest in the Inamdar. (G. R. No. 7674, dated 17th November 1888.)

(6) **Of service Inamdars and of occupants distinguished or defined.**—The distinction between a holder of service lands and an ordinary occupant is clear. Service tenure is a privileged tenure, and the extent of the alienation conveyed in the privilege is governed by the general rules which do not presume cession of forest rights in the absence of proof. Government can disallow altogether the cutting of trees in service lands or can permit it subject to such conditions as they may think fit to impose. (G. R. No. 5987, dated 6th September 1888.)

(7) No distinction should be made between rights to trees enjoyed by occupants in return for certain amount of assessment, and those enjoyed by service Inamdars in return for service. Whatever trees are reserved in the case of ordinary occupants should be reserved also in those service lands to which a settlement converting them into private property has not been applied. (G. R. No. 9578, dated 19th December 1889.)

(8) **Trees outside railway fence.**—All trees outside a railway fence are Government property. (G. R. No. 247, dated 11th January 1890.)

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

- (a) Occupants of service holdings may, with the previous permission of the Collector, cut any trees standing in their holdings.
- (b) The Collector shall not, except for express reasons to be recorded in writing, refuse permission unless the trees be reserved at the Survey or form portion of sacred groves or are roadside or other trees useful to the community and whose destruction would be a public loss.



- (c) In the case of an application to cut isolated teak or other reserved trees, the Collector may grant them on payment of their estimated value. Where a permission to cut several of such trees is applied for, the application should be disposed of by the Conservator.

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

42.<sup>1</sup> All road-side trees which have been planted and reared by, or under the orders of, or at the expense of, Government, or at the expense of Local Funds, vest in Government. But in the event of such trees dying, or being blown down, or being cut down by order of the Collector, the timber shall become the property of the holder of the land in which they were growing; and the usufruct, including the loppings of such trees, shall also vest in the said holder; provided that the trees shall not be lopped except under the orders of the Collector.

If the holder of any land in which such trees are growing shall so desire and shall make an application to the Collector for the purpose at any time within two years from the date on which this Act shall come into operation, the Collector shall deduct the strip of land covered by the said trees from his holding, and remit thenceforward the proportionate amount of land-revenue due upon the strip so deducted. Any strip of land so deducted shall, with the trees upon it, vest thereafter in Government.

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

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<sup>1</sup> Vide G. R. No. 3495, dated 3rd July 1879, printed under rule 91.

43. Any person who shall unauthorizedly<sup>1</sup> fell and appropriate any tree or any portion thereof or remove any other natural product, which is the property of Government, shall be liable to Government for the value thereof, which shall be recoverable from him as an arrear of land-revenue, in addition to any penalty to which he may be liable under the provisions of this Act for the occupation of the land or otherwise; and notwithstanding any criminal proceedings which may be instituted against him in respect of his said appropriation of Government property.

The decision of the Collector as to the value of any such tree, or portion thereof, or other natural product, shall be conclusive.

44. In villages or lands in which the rights of Government to the trees have been reserved under Section 40, subject to certain privileges of the villagers or of certain classes or persons to cut firewood or timber<sup>2</sup> for domestic or other purposes, and in lands which have been set apart under Section 38 for forest reserves subject to such privileges, and in all other cases in which such privileges exist in respect of any alienated land, the exercise of the said privileges shall be regulated by rules to be from time to time, either generally or in any particular instance, prescribed by the Collector or by such other officer as Government may direct. In any case of dispute as to the mode or time of exercising any such privileges the decision of the Collector or of such other officer shall be conclusive.

<sup>1</sup> The offence of unauthorized cutting of trees in Government waste land, and of reserved trees in occupied lands, can be tried under Section 76 of the Indian Forest Act. The ruling, No. 49, dated 6th October 1896, *Queen-Empress vs. Koya Māvaji*, is no bar to such a prosecution. (G. R. No. 3394, dated 25th May 1903.)

<sup>2</sup> In sanctioning a free grant of timber, the sanctioning officer should fix in each case the time from the date of the communication of

*Land-revenue.*

45.<sup>1</sup> All land, whether applied to agricultural or other purposes, and wherever situate, is liable to the payment of land-revenue to Government according to the rules hereinafter enacted, except such as may be wholly exempted under the provisions of any special contract with Government or any law for the time being in force.

All land liable to pay revenue unless specially exempted.

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

46.<sup>2</sup> All alluvial lands, newly-formed islands, or sanction to the grantee, for which the grant will hold good, and notice should be given to the grantee of the time so fixed. (G. R. No. 7724, dated 5th November 1903.)

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

(2) *Vide* Order No. (9) printed under Section 61.

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

(4) *Vide* footnote No. (2) to Section 48.

<sup>2</sup>(1) See Rule 46 of the rules under Section 214 of the Code.

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

abandoned river-beds which vest, under any law for the time being in force<sup>1</sup> in any holder of alienated land, shall be subject in respect of liability to the payment of land-revenue to the same privileges, conditions or restrictions as are applicable to the original holding in virtue of which such lands, islands or river-beds so vest in the said holder, but no revenue shall be leviable in respect of any such lands, islands or river-beds until or unless the area of the same exceeds half an acre and also exceeds one-tenth of the area of the said original holding.

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

“The ordinary law, independent of the Land Revenue Code, is that the riparian proprietor becomes the owner of land gained from a river by gradual accretion; and the applicability of this principle to the Bombay Presidency has been recognized in *Nasarwanji Pestonji vs. Nasarwanji Darasha* (U. I. Bo. H. C. R. 366).<sup>2</sup> As the petitioner is the Inamdar of the adjoining land, I think he was entitled from the beginning to the possession of the newly-formed land, assuming, of course (as I think may probably be assumed owing to the smallness of its area), that it was formed by accretion and was not transferred bodily from some other holding. The law on the subject is concisely explained in the footnote on page 368 of the volume of the High Court reports above mentioned.

<sup>1</sup> When the Land Revenue Code Bill was before the Local Legislature, a bill providing for cases of alluvion, &c., was before the Legislative Council of India and which, if it had been passed into law, would have governed cases falling under this section, but as that bill has been withdrawn there is at present no special law on the subject. Cases falling under this section will, therefore, be governed by the ordinary law of the country.

<sup>2</sup> Special appeal No. 425 of 1864. *Held* that land gained from a river by gradual accretion belongs to the owner of the adjacent soil by the title of the occupancy.

"2. But though I do not think that Government had at any time any legal right to the land, the question of paying over to the petitioner mesne profits involves other considerations. By law he has no claim to them. He has enjoyed the land since 1882, and any right to previous profits is time-barred. The sum which is claimed is trifling in amount, but the principle of refunding money which at the time it was collected, was levied *bona fide* under the impression that Government was entitled to it, may if admitted, constitute an inconvenient precedent.

"3. Under the circumstances, I think Government might follow the course laid down in G. R. No. 1119 of 1st March 1878, and merely refund arrears from the date of the earliest discoverable petition, in which the petitioner may have laid claim to this land.

"4. I do not think there is any reason for treating the passing of the Land Revenue Code as the date from which a refund of mesne profits should be sanctioned as that Act does not appear to affect in any way the claimant's title." (G. R. No. 1094, dated 17th February 1888.)<sup>1</sup>

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

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

"The only exception is that defined by Lord Mackenzie (Roman Law), when, in consequence of a sudden flood in a river, a considerable portion of land clearly distinguishable is forcibly carried off from one estate and added to another, either on the opposite side or lower down the stream, the ground so severed still remains the property of the original owner, provided he asserts his right to it in proper time." When no such exception can be established the owner of the land which receives the addition is the owner of the accreted land.

"Section 46 merely determines the liability of the new land to the payment of land-revenue." (G. R. No. 8820, dated 21st December 1891.)

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<sup>1</sup> The law at present in force on the subject of alluvial accretions is that contained in Section 46 of the Land Revenue Code. This section, while it lays down the manner of dealing with such accretions so far as their liability to the land-revenue is concerned, does not enter into the question of right to such accretions, but deliberately leaves it to be determined by the "law (if any) for the time being in force." There is at present no such law in existence, and consequently cases of the nature must be determined and disposed of in accordance with the ordinary law under which, as explained by the Remembrancer of Legal Affairs, "the riparian proprietor becomes the owner of land gained from a river by gradual

47.<sup>1</sup> Every holder of land paying revenue in respect thereof shall be entitled, subject to such rules as may be from time to time made in this behalf by the Governor in Council to a decrease of assessment if any portion thereof, not being less than half an acre in extent, nor less than one-tenth of the holding, is lost by diluvian.

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

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accretion." This law has now been authoritatively upheld by Government, and all cases of rights to alluvial accretions must hereafter be disposed of in accordance therewith.

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

Such newly-formed land when found to exist at the time of survey is to be dealt with by the survey officer in the ordinary way, that is, it is to be included in the survey number on which it was formed, unless its area is sufficient to admit of its being made into a separate survey number, and is to be measured, demarcated and classed according to the rules in force applicable to lands of a similar description, its full survey assessment being recorded in the survey papers. In respect of liability to payment of revenue, the land will be subject to the same privileges, conditions or restrictions as are applicable to the original holding. Thus, if the original holding be "personal Inam" held under the "summary settlement," the payment of revenue on account of the alluvial land if it exceeds the limit will be regulated according to the terms of that settlement. In the case of the original holding being held on service tenure, the newly-formed<sup>1</sup> land will be subject to payment of full assessment as "Bhar Judi" or "Bhar Akar Salami."

<sup>1</sup> Vide rule 47 of the rules under Section 214, and G. R. Nos. 773, dated 13th February 1880, and 2771, dated 12th April 1886, printed under that rule.

Land chargeable with land-revenue. 48.<sup>1</sup> The land-revenue leviable under the provisions of this Act shall be chargeable—

- (a) upon land appropriated for purpose of agriculture ;
- (b) upon land <sup>2</sup>appropriated for any purpose<sup>2</sup> from which any other profit or advantage than that ordinarily acquired by agriculture is derived ;
- (c) upon land appropriated for building sites.

Assessment variable if purpose for which land is held is charged. <sup>3</sup>And the assessment fixed under the provisions of this Act upon any land appropriated for any one of the above purposes shall, when such land is appropriated for any other of the said purposes, notwithstanding that the term, if any, for which such assessment was fixed may not have expired, be liable to be altered and fixed at a different rate by such authority and subject to such rules as to the fixing and periodical revision thereof as the Governor in Council prescribes in this behalf.<sup>3</sup>

Land held rent free for one purpose assessable if used for another. And any land allowed by Government to be held free of assessment on condition<sup>4</sup> of its being appropriated to one purpose shall become liable to assessment if at any time it is devoted to any other purpose.

<sup>1</sup> (1) *Vide* Order No. (3) printed under Section 66.

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

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

<sup>2</sup> <sup>2</sup> These words were inserted by Bombay Act VI. of 1901.

<sup>3</sup> <sup>3</sup> This para. was inserted by Bombay Act VI. of 1901, Section 3 (1).

<sup>4</sup> <sup>4</sup> The holder of service Inam lands such as Mbarkji, which are not such as are allowed by Government, to be held free of assessment, on condition of their being appropriated to one purpose (*i.e.*, to some one specific purpose) can appropriate them to any purpose without any sanction and

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

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

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

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

(4) **Extent of para. 2 of Section 48 read with Section 112.**—Section 112 of the Code enacts that "existing survey settlements of land revenue \* \* \* shall be and are hereby declared to be in force subject to the provisions of this Act." As regards the question whether

without being liable to pay any extra assessment so long as they keep the lands in their possession and guard against such alienations of it as will conflict with the provisions of the Hereditary Offices Act [cancels G. R. No. 5517, dated 4th August 1886.] (G. R. No. 3411, dated 11th May 1893.)



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

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

(6) **Lands settled under the Code liable to altered assessment.**—In all cases in which unalienated land ( whether settled under the Land Revenue Code or before it came into force ) is appropriated to any purpose unconnected with agriculture, a fine under Section 65 (*vide* rule 66, now rule 72) can only be levied, but no revised assessment under Section 48 which can be only imposed in the case of land settled under the Code. The procedure to be observed in cases of such appropriation of land settled before the Land Revenue Code came into force should, therefore, be to recover the fine only. ( G. R. No. 6306, dated 19th September 1887. )

(7) **Appropriation of Mharki Inam land.**—In a case in which a company applied for permission to appropriate a ( Mharki ) watan land for building purposes, the question raised was whether, if the application now as granted, the land appropriated for building purposes would be

liable to altered assessment under paragraph 2 of Section 48 of the Land Revenue Code and to a fine under Section 65 of the Code. This question has been disposed of by the following orders :—

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

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

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

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

(10) **The test for levying assessment.**—The criterion whether any house site or open space (when appropriated to non-agricultural purpose) should be assessed or not is whether it is held by the present occupant prior to British possession or in recent years. In the former the land is exempt, in the latter it should be assessed. (G. R. No. 3476, dated 2nd June 1900.)

49. When it has been customary to levy any special or extra cess, fine or tax, however designated, from any holder of land, which though nominally, wholly or partially exempt from the payment of land-revenue, has by the exaction of such cess, fine or tax been indirectly taxed to the State,

or when any land ordinarily, or under certain circumstances, wholly or partially exempt from assessment, is subject occasionally, or under particular circumstances, to the payment of assessment, or of any cess or tax however designated,

the said assessment, cess, fine or tax may be commuted into an annual assessment on the land to be paid under all circumstances, but such commuted assessment shall not exceed such amount as the Commissioner shall deem to be a fair equivalent of the assessment, cess, fine or tax for which it is substituted, and shall not be in excess of the assessment<sup>1</sup> to which the land would be ordinarily subject if no right to exemption existed in respect thereof.

50. Whenever any such cess, fine or tax hitherto payable by an inferior holder shall be made leviable from the superior holder, it shall be lawful for such superior holder to recover from such inferior holder the amount of the commuted assessment fixed in lieu of such cess, fine or tax.

<sup>1</sup> Although the Judi on Inam lands is fixed by a sanad, the amount of Judi actually levied on such lands can never be in excess of the assessment to which the lands would be ordinarily subject if unalienated.

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

52.<sup>1</sup> On all lands which are not wholly exempt from the payment of land revenue, or on which the assessment has not been fixed under the provisions of Sections 102 or 106 the assessment of the amount to be paid as land-revenue shall, subject to rules or orders made in this behalf under Section 214, be fixed at the discretion of the Collector, for such period as he may, by general or special orders of Government in this behalf, be authorised to prescribe, and the amounts due according to such assessment shall be levied on such lands :

Provided that in the case of lands partially exempt from land-revenue, or the liability of which to payment of land-revenue is subject to special conditions or restrictions, respect shall be had in the fixing of the assessment and the levy of the revenue to all rights legally subsisting, according to the nature of the said rights.

Any assessment of land revenue heretofore fixed by the Collector, which expressly purports, or may be reason-

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Thus if the assessment is less than the fixed Judi the amount of Judi levied must be the equivalent of such assessment, while if at a future revision the assessment is enhanced up to or in excess of the amount of Judi, the Judi being fixed, Government is entitled to levy the full amount thereof. ( G. R. No. 8391, dated 30th November 1882. )

<sup>1</sup> (a) See rules 54 to 57 of the rules under Section 214 of the Code.

(b) Amended by Bombay Act VI. of 1901, Section 4.

ably held to have been intended, to have been fixed under Section 52 shall be valid and deemed to have been fixed under that section as amended by the foregoing section of this Act, and the amounts due according to such assessment shall, until duly revised or altered, continue to be levied.

**53.<sup>1</sup>** A register shall be kept by the Collector in such form as may from time to time be prescribed by the Governor in Council of all lands, the alienation of which has been established or recognised under the provisions of any law for the time being in force; and when it shall be shown to the satisfaction of the Collector that any sanad granted in relation to any such alienated lands has been permanently lost or destroyed, he may, subject to the rules and the payment of the fees prescribed by the Governor in Council under Section 213, grant to any person whom he may deem entitled to the same a certified extract from the said register, which shall be endorsed by the Collector, to the effect that it has been issued in lieu of the sanad said to have been lost or destroyed, and shall be deemed to be as valid a proof of title as the said sanad.

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

(2) **Issue of separate sanads not necessary.**—In cases in which it is found necessary to make out a sanad in the names of several sharers, a copy may be given gratis to each, but each of such copies should be signed and executed by the same officer and treated as an original document. In no other case can a copy of a sanad be granted, but an extract from the register of sanads may be given on payment of the fees

<sup>1</sup> The section as it stands does not contemplate the issue of a duplicate sanad in lieu of the lost one.

prescribed in the rules under Section 213 of the Land Revenue Code and Section 91 of the Registration Act (G. R. No. 4180, dated 2nd June 1883.)

(3) **Form of register of alienated lands.**—The register of alienated lands required to be kept under this section is to be prepared in the form given in Appendix F to the rules under the Code. Great care should be taken in the preparation of the register as otherwise it will not only be valueless but dangerous. The register is to be a District Register. It should therefore be in English and when completed, printed and bound in the same manner as the cash alienation lists. It should in the first place be prepared in Vernacular for each taluka.

The alienation of each village should be entered and disposed of before the alienation of another village is taken up and the villages should be entered in alphabetical order. These lists when duly examined and approved in the Alienation Branch should be formed into one general register for the District in English. (G. R. No. 5634, dated 31st July 1883.)

54. The settlement of the assessment of each portion of land, or survey number, to the land-assessment with whom revenue, shall be made with the person to be made. who, under Section 136, is primarily responsible to Government for the same.

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

When to be made with under-holder.

55.<sup>1</sup> The Governor in Council may authorize the Collector or the officer in charge of a survey or such other

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

(2) In exercise of the powers given by Section 55 of Bombay Act V. of 1873 the Governor in Council authorises the Commissioner in Sind to fix rates for the use, by landholders and others, of water the right to which vests in Government, for the cultivation of rice on any land not assessed and entered in the survey registers as rice land.

The amount of such rate shall be subject to the approval of Govern-

officer as he deems fit, to fix such rates as he may from time to time deem fit to sanction for the use, by landholders and other persons, of water the right to which vests in Government, 'and in respect of which, no rate is leviable under the Bombay Irrigation Act, 1879.'<sup>1</sup> Such rates shall be liable to revision at such periods as Government shall from time to time determine, and shall be recoverable as land-revenue.

ment, and shall, after sanction, be notified in the office of Mukhtyarkar of the Taluka in which the land on account of which the rate is levied is situated.

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

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

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

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

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

<sup>1</sup> The words in inverted commas have been inserted in accordance with the Bombay Irrigation Act ( VII. of 1879 ).

(1) **Water assessment on lands irrigated by tanks now abandoned.**—The intention of Government Resolution No. 34 W. T.—419, dated 5th March 1895 is that in the case of any tank which is abandoned, only that portion of the assessment in respect of the water derived from such tank is to be foregone which the circumstances of the lands affected may show to be required. This view is in no way contrary to those expressed in G. R. No. 5909, dated 10th August 1897.

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

Under Section 48 the Collector can interfere to prevent the appropriation of any tank or pool to any purpose save those in view of which the area covered by it is exempted from assessment. ( G. R. No. 2207, dated 25th March 1899. )

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

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

(4) In supersession of G. R. No. 3574, dated 24th July 1871, the Governor in Council is pleased to delegate the power of reducing, on account of deficiency of water for irrigation, survey settlement assessments.

(i) The Commissioner when the reduction does not exceed Rs. 50 in each case. ( The powers given to the Collectors by this Resolution were cancelled by G. R. No. 1788, dated 7th March 1904. ) ( G. R. No. 6946, dated 3rd October 1902. )

56.<sup>1</sup> Arrears of land-revenue due on account of land by any landholder shall be a paramount charge on the holding and every part thereof, failure in payment of which shall make the occupancy or alienated holding, together with all rights of the occupant,

<sup>1</sup>(1) See G. R. No. 4891, dated 16th September 1880, printed under Section 169, and also rules 60 to 90 of the rules under Section 214 of the Code.

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

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



or holder over all trees, crops, buildings and things attached to the land, or permanently fastened to anything attached to the land, liable to forfeiture, whereupon the Collector may levy all sums in arrear by sale of the occupancy or alienated holding, or may otherwise dispose of such occupancy or alienated holding under rules or orders made in this behalf under Section 214, and such occupancy or alienated holding when disposed of, whether by sale as aforesaid, or by restoration to the defaulter, or by transfer to another person or otherwise howsoever, shall, unless the Collector otherwise directs, be deemed to be freed from all tenures, rights, incumbrances and equities theretofore created in favour of any person other than Government in respect of such occupancy or holding.

(1) **Effect of forfeiture not followed by sale.**—When a registered occupant's tenancy is forfeited under Section 56, and that forfeiture is not followed by sale of the occupancy (the Collector allowing the person actually in possession to be registered as occupant on his paying up all arrears of Government revenue due on the land), the lease by which the person actually in possession was holding from the former registered occupant is not destroyed by the forfeiture, and the lessee is still under liability to his landlord. (I. L. R. 24, Bom. 1884—Ganpar Shibhai *vs.* Trinmaya Shrivappa Hallipalk.)

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

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

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

Section 56 declares such holding liable to forfeiture ;

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

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

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

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

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

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

If a forfeited holding ( occupancy or alienated holding ) is not put up for sale, or if it is put up for sale and is not sold, so that it yields no proceeds, the arrear due by the defaulter is still recoverable by any of the means allowed by Chapter XI. In every case of default of payment of arrears of land-revenue the holding should be forfeited. ( G. R. No. 3796, dated 21st July 1880. )

(5) **Grant of occupancy of land to pauper cultivators.**—Government are of opinion that it is not expedient or desirable to issue any order prohibiting absolutely the grant of the occupancy of land to pauper cultivators. In allowing land to be taken up for cultivation by persons who possess little or no capital the Collectors must exercise their discretion on consideration of the varying circumstances of different districts. In Collectorates inhabited in parts by hill men and tribes whom it is desired to wean from their wild life and induce to take to cultivation and a more settled mode of existence, it would be obviously impolitic to refuse land to applicants merely because they were destitute of capital.

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

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

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

(7) *Vide* G. R. No. 4503, dated 2nd July 1902, under Section 68.

57.<sup>1</sup> It shall be lawful for the Collector, in the event of the forfeiture of a holding through any default in payment or other failure occasioning such forfeiture under the last section or any law for the time being in force, to take immediate possession of the land embraced within such holding, and to dispose of the same by placing it in the possession of the purchaser or other person entitled to hold it according to the provisions of this Act or any other law for the time being in force.

Receipts to be granted by revenue officers. 58.<sup>2</sup> Every revenue officer receiving a payment of land-revenue shall give a written receipt for the same.

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

(1) **Hereditary officers to grant receipts.**—The provisions of Sections 58 and 59 of the Land Revenue Code should be made applicable to hereditary officers. (G. R. No. 5480, dated 14th October 1880.)

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

<sup>1</sup> *Vide* order No. (3) under Section 56.

<sup>2</sup> *Vide* orders printed under Section 85.

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

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

(5) **Neglect to give receipts by village officers.**—Section 58 of the Land Revenue Code enacts that every revenue officer receiving a payment of land-revenue shall give a written receipt for the same, and Section 59 directs that any person convicted of a breach of the provisions of that section shall be liable to a fine not exceeding three times the amount received for which a receipt was not duly granted. In G. R. No. 2083, dated 21st April 1880,<sup>1</sup> however, Government have ruled that hereditary Patils and Kulkarnis are not revenue officers within the definition given in the Land Revenue Code. The result is therefore that when they fail to grant receipts for payments of land-revenue, they cannot be punished under Section 59.

To meet this and other similar difficulties it was suggested that the definition of the revenue officers given in Clause I., Section 3, of the Land Revenue Code should be amended. With reference to this it has been decided that no such amendment is necessary as the giving of receipts is a well established part of the duty of village revenue officers and neglect of it can be punished like any other breach of duty. (G. R. No. 3286, dated 4th May 1889.)

(6) **Examination of receipt books.**—It is not necessary for Bhag Karkuns to examine rayats' receipt books, and Daftars of the village officers. (G. R. No. 6828, dated 5th October 1891.)

(7) **The section does not apply to private lands of a superior holder.**—[Cancels G. R. No. 3733, dated 4th June 1898.] A principal or co-sharer, who is a holder of land in his Inam village, can recover the rent under Section 86, as that section is not limited to superior holders of alienated villages, but applies to all superior holders: a superior holder as defined in the Act would include him. He is not bound to give a receipt for that rent under Section 58. (G. R. No. 5095, dated 6th August 1898.)

59. Any person convicted of a breach of the provisions of the last preceding section after summary inquiry before the Collector shall be liable to a fine not exceeding three times the amount received for

Penalty for failure to grant receipts.

<sup>1</sup> Vide order No. (1) printed under Section 3, clause (1).

which a receipt was not duly granted, and one-half of the fine may, at the discretion of the Collector, be paid to the informer, if any. Such inquiry may at any time be instituted by the Collector of his own motion without any complaint being preferred to him.

## CHAPTER VI.

### *Of the Occupation of unalienated Land and the Rights of Occupants.*

#### *Occupation.*

60.<sup>1</sup> Any person desirous of taking up unoccupied land which has not been alienated must, previously to entering upon occupation, obtain the permission in writing of the Mamlatdar or Mahalkari.

Permission required previous to taking up unoccupied land.

61.<sup>2</sup> Any person who shall unauthorizedly occupy any land set apart for any special purpose, or any unoccupied land which has not been alienated, shall,

Penalties for unauthorized occupation of land.

if the land which he unauthorizedly occupies forms

<sup>1</sup>(1) Application for leave to extend cultivation is exempt from Court Fees. (*Vide* para. 11 of Section 19 of the Court Fees Act VII. of 1870.)

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

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

(4) No suit against the Commissioner's order.—The sale of unoccupied land, held by Mamlatdars under Section 62 and permission to occupy such land given under Section 60, are within the scope of Section 211 as proceedings, which the Commissioner has jurisdiction to call for and revise and to pass such order therein as he deems fit and no suit would lie against Government on account of that officer exercising his legal powers under that section. (P. J. 230, *Parapa vs. The Secretary of State for India*, 1891.)

<sup>2</sup>(1) This section corresponds to Sections 33 and 39 of Bombay Act I. of 1865. It has been constructed so as to make the penal provisions and remedies common to the two cases of occupation without permission and occupation of lands set apart for a special purpose. The section provides

part of an assessed survey number, pay the assessment of the entire number for the whole period of his occupation, and

if the land so occupied by him has not been assessed such amount of assessment as would be leviable for the said period in the same village on the same extent of similar land appropriated to the same purpose ;

and shall also be liable, at the discretion of the Collector, to a fine not exceeding five rupees, or a sum equal to ten times the amount of assessment payable by him for one year, if such sum be in excess of five rupees, if he have taken up the land for purposes of cultivation, and not exceeding such limit<sup>1</sup> as may be fixed in rules or orders made in this behalf under Section 214, if he have appropriated it to any non-agricultural purpose.

The Collector's decision as to the amount of assessment payable for the land unauthorizably occupied shall be conclusive, and in determining its amount occupation for <sup>2</sup>a portion<sup>2</sup> of a year shall be counted as for a whole year.

The person unauthorizably occupying any such land may be summarily evicted by the Collector, and any crop<sup>3</sup> raised on the land shall be liable to forfeiture and any building or other construction<sup>3</sup> erected thereon shall also,

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

(2) *Vide* G. R. No. 1873, dated 27th February 1896, given under Section 37.

<sup>1</sup> As regards determining the amount of fine leviable under this section, see table given in Appendix II.

<sup>2 3</sup> These words were substituted for the original words by Act XVI. of 1895.

<sup>3-3</sup> Words repealed by Bombay Act VI. of 1901, Section 7, have been omitted.

if not removed by him after such written notice as the Collector may deem reasonable, be liable to forfeiture.

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

(1) **General rulings as to unauthorized occupation and appropriation.**—This section applies as well as to lands in the sites of towns and villages as to other lands, and authorizes the Collector summarily to evict any person who shall unauthorizedly occupy any unoccupied land which has not been alienated. It has no retrospective effect however, and does not authorize the Collector summarily to evict a person from any land which he may have unauthorizedly occupied prior to the passing of the Code. In such cases the Collector's remedy would be by civil suits. (G. R. No. 172, dated 12th January 1880.)

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

(3) The Collectors have full discretion to remit fine under this section. (Entry 21 of G. R. No. 4347, dated 25th June 1902.)

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

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

If, on the other hand, the land is used, say, for cultivation, every fresh use of it constitutes a case of unauthorized occupation to be dealt with under the law at the time in force. In such cases if the occupier is evicted, any building he may have erected, whether prior to the passing of the Act or subsequently, will be forfeited unless removed by the owner. (G. R. No. 6087, dated 15th October 1881.)

(6) Section 61 has no retrospective effect, *i. e.*, the provision cannot be enforced in respect of anything done before the Code became law on the 17th July 1879.

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

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

These orders are in supersession of those in G. R. No. 3274, dated 25th June 1880.

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

(7) No fines could have been legally imposed under Bombay Act I. of 1865, and Section 65 cannot be applied retrospectively. (G. R. No. 8516, dated 6th December 1901.)

(8) **On public roads.**—In the event of land in a village-site being encroached upon or taken up unauthorizedly, Section 61 of the Code affords an adequate remedy. But this section does not apply to land which forms part of a road. The Government of India, at the time the Code was under consideration, objected to power being conferred upon revenue officers to deal with encroachments upon roads, and an express provision which had been inserted in the Bill for this purpose was, in consequence, omitted. Such encroachments can only now be dealt with by the Magistrates under the Criminal Procedure Code, or by municipal bodies under the enactments or rules which govern their procedure. (Extract from the Legal Remembrancer's Report,—G. R. No. 4344, dated 18th June 1886.)



(9) The order<sup>1</sup> regarding encroachment on public roads is inapplicable to any open space or portion of open ground which cannot be reasonably claimed as forming part of public road. Whether any such piece of ground is a part of public road or not is a question of fact, which must be determined according to the circumstances in each case. If a person has taken possession of land to which he has no right, the law should be enforced against him with the view of ousting him, or if that is found inexpedient, the occupancy should be recognized to be his on his giving usual occupant's *Kabulayat* and paying the usual occupancy price, if any. (G. R. No. 3815, dated 23rd June 1887.)

(10)<sup>2</sup> **On tanks in municipal limits.**—The word “ tank ” is ordinarily applied to basins in the earth constructed or adopted for the storage of water. All public tanks, and also any adjacent land appertaining thereto in Municipal limits are, under Section 17 of Bombay Act VI. of 1873, vested in, and belong to, the Municipality. Under this section it is clear that the bed of any such public tank belongs to the Municipality. And when once the soil has so vested there is nothing in the law to make it cease to be Municipal property on its nature being altered and its ceasing to be the bed of a tank. The test is whether the land has, at any time since the Municipal Act VI. of 1873, and since the constitution of a Municipality, been a public place for storage of water, if it has, it has vested in the Municipality, and if it was dried up permanently before the contingencies arose, it remains Government property. So long as an old basin known to have been formed or constructed for the storage of water remains capable of holding water and does usually hold it at some period of the year it remains a tank. When the bed of a tank is Municipal property according to this view, it is not liable to assessment when cultivated or otherwise used. Section 45 of the Land Revenue Code, no doubt, makes all land liable to land-revenue unless wholly exempted under the provisions of any special contract or any law for the time being in force, but looking to the Municipal Act, Sections 17 and 18, of which the latter declares that all rent of Municipal property shall go to the Municipal fund, it must be held that Municipal lands are implied by the intention of the Municipal Act exempted from land-revenue, and must be considered “ alienated ” (that is, transferred so far as the rights of Government to payment of rent or land-revenue are concerned) and therefore are not liable to assessment under Section 52 or to the penalties provided by Section 61 of the Land Revenue Code. The Collector should decide whether the bed of a disused tank belongs to Government. The other party may be left to its own remedy or appeal. G. R. No. 4551, dated 6th June 1885, does not affect this, (*Vide* Order No. 1 under Section 37.) Stream means a current of water, and does not include bed, but tank means the basin itself. (G. R. No. 6111, dated 9th September 1887.)

<sup>1</sup> *Vide* also Order No. (2) printed under Section 37.

<sup>2</sup> *Vide* Order No. (1) printed under Section 37.

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

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

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

(1) That the Inamdar in the present instance is not the owner of the soil under the ruling at 6 B. H. C. R. A. C. J.; and

(2) That Section 37 of the Bombay Land Revenue Code reserves the rights of Government in public roads.

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

"Section 61 applies only to unauthorized occupation of—

(a) any land set apart for any special purpose, and

(b) any unoccupied land which has not been alienated.

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

“It therefore follows that when land has been transferred in so far as the rights of Government to payment of the rent or land-revenue are concerned wholly or partially to the ownership of any person, the Collector cannot interfere to protect the rights of the transferee by evicting the unauthorized occupier summarily under Section 61.

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

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

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

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

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

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

“But whether or no an encroachment on a road in existence prior to the alienation could be dealt with by the Collector under Section 61 of the Bombay Land Revenue Code, there can be not the slightest room for doubt that it could be dealt with under Section 133, Criminal Procedure Code,

by the District, Sub-Divisional, or other duly empowered Magistrate, if it amount to an unlawful obstruction of a way, which is, or may be, lawfully used by the public.

“A public road forming part of the general system of communication is a matter of imperial interest, and is therefore protected by imperial legislation, and no one has a right to obstruct any part of that system. But, I think, before taking any magisterial action under the Criminal Procedure Code, it would be necessary to ascertain that the road in question was really a public road and not merely a private way, or a cart track, the use of which might be permissive only, or limited only to a section of the public resident in the neighbourhood.

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

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

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

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

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

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

(16) **Eviction of persons unauthorizably occupying.**—The Commissioner should be informed that the ground furnished by the Revenue Code for an expulsion by the Collector of an intruder is quite strong enough to warrant the adoption of the course, in two or three clear instances as test cases, in which certain persons built sheds, threshing floors, &c., on waste land adjoining a village site. Assessment should not be levied retrospectively. When a complete prescriptive title has grown up so as to convert possession into ownership the Collector should of course abstain from action in the way of summary ejection. (G. R. No. 86, dated 7th January 1889.)

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

“ Sections 35 and 36 of Regulation XVII. of 1827 show that the Legislature accepted the principle of prescription creating a right of property or of fiscal exemption against the State as against the individual, and article 149 of Schedule II. of Act XV. of 1879 bars a suit by the Secretary

I. L. R. IX. B. 227. of State in Council by the lapse of sixty years from the date when the period of limitation would begin to run under that Act against a like suit by a private person, and, under Section 28 at the determination of the period limited to any person for instituting a suit for possession of any property his right to such property is extinguished.

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

“ The question at what precise moment possession has become adverse must, of course, depend on the circumstances of each particular case. The enjoyment necessary to create a title by prescription must not be a mere succession of independent trespassers; it must be, if not continuous, at least of such a character that an intention to assert a right as owner may be inferred from it.”

I. L. R. IX. M. 183.  
See also Savigny on  
possession Sir E. Fry's  
translation, p. 275.

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

(18) **Extent of the unauthorizedly occupied land to be subjected to fine.**—It having been brought to the notice of Government that a variety of practice exists in different districts regard-

ing the area on which fines leviable under Sections 65 and 66 of the Land Revenue Code and rules 66 and 67 (now rules 72, 73, 74) of the rules under the Land Revenue Code are to be imposed, the Governor in Council is pleased to direct that the opinions of the Law officers of Government given below shall be forwarded to the Commissioner in Sind, the Divisional Commissioners and all Collectors for information and guidance :—

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

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

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

“ 3. No. 67 (now 73) of the Land Revenue Code Rules lays down that the fine leviable under Section 65 of the Code is to be calculated on the area of the ‘ land actually appropriated to any purpose unconnected with agriculture ’ and I said that in the case of mill-premises I considered that this area would include the whole area of the premises, whether built upon or not.

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

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

“ With reference to the Memorandum No. 4226 of the Revenue Department, dated 22nd June 1891, requesting my opinion as to whether the

<sup>1</sup> Order No. (3) printed under Section 66.

<sup>2</sup> Order No. (4) printed under Section 65.

area in respect of which the fine under Section 65 of the Land Revenue Code should be the whole area of the premises whether built on or not I am of opinion as follows :—

“I think that the fine should be levied in respect of the whole area of the land appropriated to any purpose unconnected with agriculture, whether the land so appropriated is built on or not. This area need not, necessarily, be the whole of a particular holding, nor only that portion which is covered by the sites of building. As to how much of a particular holding is used for purposes unconnected with agriculture it must depend upon the circumstances of each case, and it is not possible to lay down a general direction which will embrace all cases. I agree with Mr. Naylor in thinking that the fine should be calculated, in the case of a mill, upon the whole of the ground forming the mill-premises, and in the case of a bungalow, upon the area contained in what is usually called the compound, and not only upon the actual sites of the buildings.” (G. R. No. 5734, dated 21st August 1891). (Vide Order No. 27 under Section 65.)

(19) **Alienation of Service Inams to outsiders.**—Procedure cannot be taken either under the Hereditary Offices Act, 1874, or under Sections 61 or 202 of the Land Revenue Code, for the eviction of occupiers of lands which were originally held by village servants useful to Government, but have been alienated by the original holders to those occupiers who hold them without performing service. Separate civil suits for ejectment would be necessary in each case for the recovery of the land, and without such suits resumptions could extend only to the levy of the full assessment.

(G. R. No. 3136, dated 1st May 1893.)

(20) **Inapplicable to quit rents under the Survey Settlement Act.**—For the reasons given in G. R. No. 134, dated 7th January 1891, lands settled under Bombay Act VII. of 1863, are not subject to quit rent under that Act till the issue of the Sanad by which the continuance in perpetuity is authorized and guaranteed. Section 61 of the Land Revenue Code, 1879, is inapplicable to quit rent under the Summary Settlement Act. It is enforceable against squatters only. (G. R. No. 2238, dated 28th March 1894.)

(21) **The penalties for encroachment should be promptly enforced.**—The penalty for encroachment on Government land, including roads, is prescribed under Section 61, *viz.*, Rs. 5 or a sum equal to ten times the assessment of the area encroached upon if such a sum be in excess of Rs. 5, summary eviction<sup>1</sup> and forfeiture of crops raised. These penalties, if promptly and fully enforced, will prove to be sufficiently deterrent. (G. R. No. 44, dated 4th January 1900.)

(22) **Measures for detecting encroachments.**—The attention of all Revenue Officers is called to G. R. No. 9661, dated 1st

<sup>1</sup> Vide G. R. No. 2072, dated 16th March 1897.

December 1896, and to the necessity for the care and diligence in the collection of all available evidence, both oral or documentary, of Government title.

2. In order to afford some check on the numerous encroachments which at present escape undetected, as soon as the Accountant of any village has learnt surveying, the first opportunity should be taken to execute an accurate survey of the village site. When surveying village sites the necessity of allowing cultivators plenty of space for stacking grass, tethering cattle and similar purposes should be carefully borne in mind.

3. The proper procedure will be to map out the village site accurately (beginning so far as possible in the more important villages). The map should show all plots actually in the possession of private individuals, and all persons claiming sites should be called on to produce evidence of title. All claims which Government cannot be certain of disproving should so far as possible be compromised by leasing the land for a nominal occupancy price and reasonable ground rent.

4. All leases which may be effected or grants of permission to occupy which may be made in pursuance of these orders should be carefully noted in the record.

(G. R. No. 4054, dated 13th June 1901.)

(23) Government are aware that inquiry and survey can only proceed gradually, but it is desirable that a beginning should be made in places where trained village Accountants are available and the pressure of work is not unduly heavy. It is not the intention of Government that their claims should be asserted over any land which is or has recently been built over, but it will be of considerable advantage to obtain an up-to-date record of all permissive uses in a village and of the actual area at present occupied by buildings or clearly shown by the presence of old foundations to have been so occupied in the past.

2. Apprehensions of loss to Government interests do not, in the opinion of Government, outweigh the advantages anticipated, and Collectors should be directed to carry out the inquiries in a liberal spirit of compromise. It is most important for administration purposes that there should be a record of rights in open lands in or near village sites and the absence of one has led to very unsatisfactory results. (G. R. No. 1663, dated 12th March 1902.)

62. It shall be competent to the Collector, subject to such orders as may, from time to time, be made by the Governor in Council, to require the payment of a certain price for the occupancy, or to sell that right by

Occupancy right to be paid for and liable to conditions.



auction, and to annex such conditions<sup>1</sup> to the occupancy as may seem fit, before permission to occupy is granted under Section 60.

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

63.<sup>2</sup> When it appears to the Collector that the occupancy of any alluvial land which vests, under any law for the time being in force, in Government, may, with due regard to the interests of the public revenue, be disposed of in perpetuity; he shall offer the prior right of occupancy thereof to the occupant, if any, of the bank or shore on which such alluvial land has formed.

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

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

(1) **A notice to the Collector by the aggrieved party in a news paper not sufficient.**—D gave a notice to the Collector in a news paper that within two months from its date the occupancy of the number named ( to which Section 63 was applicable ) should be given to him

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

<sup>2</sup> (1) This section provides for the disposal of the occupancy of such alluvial or water-forsaken-lands as under the provisions of the Code ( Section 37 ) vests in Government. The object of the section is to secure to the neighbouring landholder, in consideration of the river frontage he would otherwise lose, right to purchase the occupancy of the new land at a price not exceeding three times its annual assessment. ( Select Committee's Report on the Revenue Code Bill.)

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

on his paying the occupancy price, otherwise he would institute a civil suit. The question was referred to the Remembrancer of Legal Affairs, who gave his opinion as follows :—

“ It is not generally desirable that the Collector should accept as sufficient, for the purposes of the Civil Procedure Code, a notice published in a newspaper.” ( G. R. No. 4803, dated 8th June 1892. )

(2) **The sale of an alluvial land to a stranger set aside.**—G unauthorizedly occupied alluvial land formed adjacent to his field, and enclosed it by an embankment. G offered not only three times but twenty times the assessment, but the land was put to auction and sold to S.

Government cancelled the sale as illegal. S was evicted, and the occupancy price, with reasonable compensation for loss, actual or prospective, which the dispossession did cause, was ordered to be paid. G was ordered to be put in possession on payment of a sum specified. ( G. R. No. 331, dated 19th January 1903. )

64. When alluvial land forms on any bank or shore, the occupant, if any, of such bank or shore shall be entitled to the temporary use and occupation thereof, unless or until the area of the same exceeds half an acre, and also exceeds one-tenth of the area of his holding. When the area of the alluvial land exceeds the said extent, it shall be at the disposal of the Collector, subject to the provisions of the last preceding section.

Temporary right to alluvial lands of small extent.

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

“ Holding ” defined.

### *Occupants' Rights.*

65.<sup>1</sup> An occupant of land appropriated for purposes of agriculture is entitled by himself, his servants, tenants, agents

<sup>1</sup>(1) As regards determining the amount of fine leviable under this section, see table given in Appendix II.

(2) *Vide* order No. (5) printed under Section 48.

(3) *Vide* also order No. (3) printed under Section 66.

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

or other legal representatives, to erect farm buildings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land, or its more convenient occupation for the purposes aforesaid.

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

When any such land is thus appropriated to any purpose unconnected with agriculture, it shall be lawful for the Collector, subject to the general orders of Government, to require the payment of a fine in addition to any new assessment which may be leviable under the provisions of Section 48.

Power to require fine.

(1) **Section 65 not applicable to alienated lands.**—Where M asked for permission to convert a portion of his *patilki inam* into building sites, the permission was refused, as only occupants as defined by Section 3, clause 16, are entitled to ask and obtain permission under Section 65.

The Collector then proposed to convert a portion of that land into *gaonthan* and another piece of land to be exchanged for *patilki inam*.

The proposal was sanctioned.

(G. R. No. 4148, dated 23rd May 1885.)

(2) B applied for permission to build a factory on a Deshpande land belonging to N.

The Legal Remembrancer's report was approved, which was as follows :—

“ 1. Section 65 is inapplicable to the land in question.”

“ 2. The alienation of land forming part of a District Hereditary Officer's *watan* is illegal under Section 5 of Bombay Act III. of 1874 as amended by Section 1 of Bombay Act V. of 1886, without the sanction of Government. But without knowing what is the nature of the title claimed by N in the piece of land which B wishes to acquire, it is not possible whether that section can be held to apply to it.

“ 3. The Collector apparently need not concern himself in the matter, unless action is asked for under some specific enactment. The sanction of Government does not appear to be necessary merely to permit B to build a factory.” ( G. R. No. 3181, dated 23rd May 1887. )

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

Such cases should be governed by paragraphs 2 and 3 of Section 65 of the Code. Permission of the Collector should be applied for and may be granted on payment of the prescribed fine ( Section 65, para. 3 ) and rules 66 and 67 ( now 71 and 73 ). Where an occupant takes action without obtaining the Collector's permission in the first instance, recourse might be had to section 66 of the Code. In addition to these provisions, rule 73 ( now omitted ) provides that an occupant acting as above ' shall be deemed to have committed a breach of conditions of his occupancy, and if after reasonable notice he shall fail to restore the land to its original condition he shall be deemed to have forfeited his right to the occupancy of the land, and may be summarily evicted.' Compliance with such notice for restoring the land to its original condition would save the occupant from eviction, but not from the payment of the fines prescribed. ( G. R. No. 6883, dated 16th October 1885. )

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

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

“ No. 67 ( now 73 ) of the Land Revenue Code rules lays down that the fine leviable under Section 65 of the Code is to be calculated on the area of the land actually appropriated to any purpose unconnected with agriculture. This, in the case of mill premises, would include the whole area of the premises, whether built upon or not.” ( G. R. No. 6412, dated 10th September 1890. )

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

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

“Section 65 of the Land Revenue Code confers on registered occupants, who have applied to the Collector for permission to appropriate land for certain purposes the privilege of acting as if the application had been granted within three months after acknowledgment of its receipt, if no answer to that application has been received by the applicant.

“When a Statute confers a right, privilege or immunity, the regulations, forms or conditions which it prescribes for its acquisition are imperative in the sense that non-observance of any of them is fatal. The strictest compliance with the conditions prescribed is required.

Maxwell on interpretation of Statute 453, et seq.

Noseworthy vs. Buckland, L. R. 9 C. P. P.

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

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

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

“An answer postponing decision on the application could neither be deemed to be ‘no answer’ at all, nor could it be deemed to grant it. It would be an answer refusing permission at least *in præsentia*, but there is nothing in the Act to prevent the Collector subsequently giving the permission.” (G. R. No. 5893, dated 20th July 1892.)

**(7) Levy of fine for non-agricultural appropriation**

—The opinion expressed by the Commissioner, N. D., in his following memorandum, No. 1631, dated 12th May 1892, was concurred in by Government:—

“I have the honour to submit, for the orders of Government, the following case regarding the levy of fine from one I. J. on a portion of land built upon by him after its purchase from the original holder, a Sádhu, who was allowed to enjoy it rent-free as *kacha* at the time of the Survey.

2. The land built upon measures 7 *gunthas* and forms part of 20 *gunthas* of land standing in the name of Sádhu J. in Survey No. 71, assessed at Rs. 4-8-0, including water rate, in Navagam, an uninhabited village in the Chorasi Taluka of the Surat District. On the above 7 *gunthas* of land five sheds have been built, for which the purchaser receives a rental of *annas* 12 per shed. There is no village site in the village, and the Survey No. being less than an acre in extent, and having on it a *math* and temple, was allowed to be enjoyed free of assessment by the Sádhu, who is entered in the *Kaim Kharda* as the holder of the land.

3. The Sádhu, having held the land on the ordinary survey tenure, had full occupancy rights over it, and he could, therefore, sell it to any one he pleased. It appears to me, however, that though the land was held rent-free, it was land assessed for agricultural purposes. It was not alienated land, nor land set apart for a special purpose, *e. g.*, for a temple or *math*, and I am of opinion that Section 65 of the Land Revenue Code is applicable to it, and that the occupant can be called on to pay a fine for using the land for a non-agricultural purpose. As the case is not quite clear, I have thought it desirable to refer it for orders.” (G. R. No. 4583, dated 30th May 1892.)

**(8) Discretion in imposing a uniform rate.**—When fines have to be levied at all, Government consider that they should be levied at a uniform rate over the whole compound area and that the rate should be imposed with reference to the circumstances of each case, for which discretion is allowed to Collectors by G. R. No. 8495, dated 20th November 1893. The uniform rate should not be so high as to discourage reasonably large compounds, or so low as to encourage the inclusion of unnecessarily large areas. (G. R. No. 6482, dated 2nd July 1894.)

(9) Government see no reason to suppose that Collectors will generally hesitate to apply the ordinary rates in ordinary cases, or will use the discretion given them to levy less than the ordinary rates in localities in which the provision of maxima, amounting to double or quadruple times the ordinary rates, sufficiently indicates that the ordinary rates are obviously and entirely inadequate. (G. R. No. 10468, dated 19th December 1894.)

(10) Government desire that local officers should so use their discretion as to leave a liberal margin to cover risks and expenses of enterprises which make for the health and the prosperity of the people, &c. (G. R. No. 6505, dated 16th October 1900.)

(11) What was intended by the orders of 1894 (G. R. No. 6482, dated 2nd August 1894) was that, when the levy of a fine at a uniform rate would press heavily, an agreement under Section 67 might be negotiated. Such an agreement would not ordinarily affect occupancy rights. The orders of Section 67 does not require the relinquishment of such a right as a condition of the new agreement. (G. R. No. 4823, dated 28th June 1897.)

(12) **Fruit trees cannot be included in agricultural purposes.**—The fine will be restricted to the area within the compound. There is no objection to the cultivation (on the area outside the compound) of fruits or coffee or other products which would not affect the immediate use of the land for the ordinary cultivation, but if it is laid out as a pleasure ground attached to the bungalow, it could not be held to be devoted to an agricultural purpose, although trees which may produce fruits are grown on it. (G. R. No. 6209, dated 19th August 1897.)

(13) **Partial appropriation.**—When land assessed for purposes of agriculture is appropriated to such purpose in the cultivating season, and to non-agricultural purpose during the rest of the season, fine is leviable. (G. R. No. 6516, dated 3rd July 1894.)

(14) **What constitutes appropriation.**—The sub-letting of land for storage of manure is an agricultural purpose. (G. R. No. 7702, dated 30th October 1899.)

(15) Fine is levied, not on the land covered by a bungalow, but also on that covered by a compound. Without payment of fine one is not at liberty to appropriate any land whatever for the purpose of a compound. (G. R. No. 4325, dated 24th June 1901.)

(16) Temporary appropriation is no appropriation under the section. (G. R. No. 3609, dated 27th May 1901.)

(17) **No concession to a Municipality.**—A municipality is not entitled to any concession as regards fine and altered assessment when they acquire agricultural land for non-agricultural purposes, in cases in which such acquisition is remunerative. (G. R. No. 8633, dated 3rd November 1892.)

(18) Erecting public latrines by a Municipality does not render the circumstances special or exceptional as required by G. R. No. 4678, dated 14th July 1885. (G. R. No. 811, dated 4th February 1903.)

(19) **The fine should be calculated at the time of the actual appropriation.**—The payment of the fine should be required when land is actually appropriated to a purpose unconnected with agriculture, not when permission for such appropriation is granted. It is,

of course, open to the Collector, and will generally be desirable to inform an applicant when permission is granted, what the rate of fine will probably be, but if that is done it should at the same time be made clear that the amount of the fine is to be finally determined in accordance with the rules and orders at the time in force when the appropriation has actually taken place, and Government is not committed to any rate before that event. (G. R. No. 8669, dated 29th November 1897.)

(20) **The permission cannot be conditional.**—It is not open to the Collector to attach conditions to the permission under Section 65 and to cancel the permission or hold it to be void if the conditions are not fulfilled. He can either refuse or grant the permission. (G. R. No. 127, dated 6th January 1898.)

(21) **Obligation of the Collector to acknowledge applications for permission.**—Appeal No. 464 of 1898, Valad Purushottam Ghelji vs. the Secretary of State, has rendered it impossible, that any person should defeat the clear intention of the legislature, that, without the express permission of the Collector, no occupant should appropriate his holding to non-agricultural purposes. It is, however, none the less incumbent on the Collector to fulfil punctually his statutory obligation to furnish immediately to applicants for such permission an acknowledgment of their applications. Any failure so to do may involve Government in troublesome and expensive litigation. (G. R. No. 8053, dated 11th November 1899.)

(22) **Instead of the fine and assessment, 4 per cent. rental on the market value to be taken.**—When land is appropriated to a non-agricultural purpose, the additional assessment to be demanded should be based upon the market value of the land, which should be determined separately in each case.

1. The market value of unalienated land is the sum which such land, while it continues liable to the full agricultural assessment, would fetch in the open market.
2. The Collectors are authorized to take in lieu of the rental (4 per cent. on the market value) at the option of the occupant a premium equal to 25 years' purchase of the whole or any portion of the rental on the 4 per cent. basis, subject, of course, to such rental as is not commuted into premium. The term of the lease should be not 99 years, but 50.
3. It should be made widely known that applications for relaxation of the ordinary rules will be readily entertained in all cases in which it can be shown that the fines and special assessments leviable under those rules are excessive as compared with the market value of the land required to be appropriated to a non-agricultural purpose.
4. This resolution supersedes the orders in G. R. No. 1062, dated 9th February 1899.



## 5. The areas to which these rules apply are—

1 Bantra, 2 Danda, 3 Chimbur, 4 Andheri, 5 Thana, Vesava, in the Thana District, and 27 villages of Taluka Daskroi, viz :—

1 Asarva, 2 Sheher Kotcha, 3 Rajpur-Hirpur, 4 Rakhial, 5 Daryapur Kajipur, 6 Bebrampur, 7 Soudhal-Khamodral, 8 Nagina, 9 Godasar, 10 Khokrar-Mehmedabad, 11 Baglordosh, 12 Mithapur, 13 Odhav, 14 Nikol, 15 Sahejpur Bogha, 16 Aspesar-Surgur, 17 Hansal, 18 Kachrale, 19 Paldi, 20 Ohhadavadi, 21 Changispur, 22 Shekhpur-Khanpur, 23 Vadaj, 24 Ismaupur, 25 Memnagar, 26 Rahip, 27 Ancher. ( G. R. No. 991, dated 12th February 1900. )

(23) Orders of Government relating to assessment of land appropriated to building may be summarised as under :—

- (i) In all areas in vicinity of large towns, where demand for building sites is keen, principles prescribed in G. R. No. 991, dated 12th February 1900, should be followed.
- (ii) For Salsette taluka special concession ( which Government will be prepared to extend to other places for which they are reported to be appropriate ) have been authorised in G. R. No. 1071, dated 15th February 1902.
- (iii) In all places not included in (i) and (ii) the existing rules should continue to be followed.

( G. R. No. 2373, dated 10th April 1902. )

(24) **Special Salsette rules.**—The Governor in Council has determined to abate the State demand to the extent of one-half in the taluka of Salsette.

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7. The whole of the land in the compound on which a building is constructed, and not merely the area covered with buildings, is liable to the full assessment, but for the purpose of securing intervening open areas between buildings, the Governor in Council is willing to make the following further concession on the conditions stated :—

1. Ordinarily permission to build under these orders will not be granted, unless the site is not less than 300 square yards in extent and unless the occupant agrees to keep not less than two-thirds of the site free of building or projection including a margin not less than 10 feet broad along the perimeter of the plot, but these restrictions may be modified in special cases.
2. Full assessment calculated as above described to be levied on sites which are not in excess of 300 square yards.

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<sup>1</sup> Premia are leviable under (iii). but not under (i) and (ii).

3. On sites which are in excess of 300 square yards in extent the full assessment will be levied on 300 square yards or on the area actually built over, whichever may be the greater, and on the remainder there will be levied an assessment at the rate of  $\frac{1}{10}$  of the full rate.
4. Fractions will be neglected.
5. The building shall be in accordance with a ground plan of the whole site, submitted to and approved of by the Collector.
6. The applicant shall undertake to surrender any part of the plot left open which may be required for a road, on payment of 30 multiples of the assessment of the land surrendered.
7. The applicant shall demarcate the plot in a prescribed manner (G. R. No. 1071, dated  $\frac{15\text{th February}}{8\text{th March}}$  1902).

(25) **The principles on which the 4 per cent. rules are to be applied and the period of Guarantee.**—As regards the composition of assessment, the intention of Government is that at the end of 50 years the assessment should be subject to revision without regard to any composition. Where land appropriated for building is held on survey tenure, the occupant already enjoys a right to occupy in perpetuity, subject to payment of the assessment, whether ordinary or special, which may from time to time be imposed. Waste lands should generally be granted with a right of revision. In cases in which the Collector considers special terms to be desirable he can propose them.

It is not expedient to specify distinctly in sanads or leases that in revising the assessment account shall not be taken of the value of an improvement effected by the holder. It is enough that it is so provided in Section 107. A sanad<sup>1</sup> should be given where land already in occupation is continued on a nulling assessment, and to give leases where waste land is given out for building sites.

Where a fine and altered assessment have already been imposed, that assessment must be continued until the term of the survey guarantee expires, unless the holder agrees to the substitution of an assessment fixed for 50 years under the revised rules, but at the end of the term of the survey guarantee the assessment is liable to revision. (G. R. No. 4738, dated 8th July 1901.)

(26) **The places where the 4 per cent. rules apply.**—The new rules should be applied to the towns and villages specified in the annexed list.

2. The new rules are not to be applied to the areas to which the city survey has been extended.

<sup>1</sup> For form of Sanad, see Appendix XVIII.

District.	Taluka.	Names of Places.
<b>NORTHERN DIVISION.</b>		
Surat ...	Chorasi ...	Surat, Rander, Athora, Kathodra, Unarvada, Anjna, Navagam, Tunki, Majura, Kathergam, Fulpada, Karanj, Kapadra and Unira.
Broach ...	Broach ...	Broach, Sherpura, Dungri, Vejalpur, Ali Kirthivaja, Bholav, Kasak, Mojampur, Maktampur.
	Ankleshwar ...	Ankleshwar, Diva, Chorasi, Divi, Survadi, Gadkhal, Piraman.
Panch Mahals ...	Godhra ...	Municipal limits of Godhra.
	Dohad ...	Municipal limits of Dohad.
<b>CENTRAL DIVISION.</b>		
Khandesh ...	Jalgaon ...	Jalgaon.
Nasik ...	Nasik ...	Nasik City, all land within one mile of Nasik Road station, Deolali village, Bhagur village.
	Igatpuri ...	Igatpuri, Talegaon.
	Malegaon ...	Manmad and Malegaon. <sup>1</sup>
Ahmednagar ...	Nagar ...	Nagar City and all the lands within a radius of two miles from the Ahmednagar City Post Office and within a radius of quarter of a mile from the Ahmednagar Railway station.
Poona ...	Haveli ...	Mali, Manjiri, Bhamburde, Parvati, City of Poona (including all pethas), Ghorpadi, Wanodi, Mundhva, Bopodi, Yeravda (Government lands).
	Maval ...	Lonavla, Khandala, Bhushi, Walwhan, Tungarli.

<sup>1</sup>These villages were added by G. R. No. 6616, dated 22nd September 1902.

District.	Taluka.	Names of Places.
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CENTRAL DIVISION. — *contd.*

Poona— <i>contd.</i> ...	Bhimthadi ...	Dhond.
Sholapur ...	Sholapur ...	Sholapur and radius of one mile from the Railway station, Hotgi, and radius of one mile from the Railway station.
	Barsi ...	Barsi town and a radius of one mile from the Railway station, Tadvala, and a radius of one mile from the Railway station.
	Pandharpur ...	Pandharpur and a radius of one mile from the town.

## SOUTHERN DIVISION.

Dharwar ...	Dharwar ...	Dharwar, Hosayellapur, Kamlapur, Malapur, Gulganjikop, Saidapur, Saptapur, Narayanpur, Bagtalav, Dadanaikankop, Takhmauhalli.
	Hubli ...	Keshavapur, Nagshettikop, Madinaikan, Arlakatti, Mariantim, Sagar, Bomapur, Yellapur, Ayodha, Krishnapur, Narayanpur.
	Gadag ...	Gadag, Bettigiri.

( G. R. No. 8281, dated 26th November 1901. )

(27) **Discretion to relax maximum fine.**—Land devoted to a non-agricultural use should be liable to an altered demand, but regard should be had to the circumstances of each case, and it is not expedient to exact the maximum fine where a considerable area is needed at one season of the year for such a purpose as stacking cotton. ( G. R. No. 6803, dated 28th September 1901. )

(28) Land regularly cultivated but also temporarily used for stacking cotton is not necessarily exempt from fine, impossible under Section 65, and that if it were it would also be exempt from enhanced assessment. G. R. No. 6803, dated 20th September 1901, was not intended to amend the principle that land devoted to a non-agricultural use should be liable to an altered demand, and enquiry was made whether relief was needed in cases where the altered demand imposed was in circumstances excessive. Government adhere to the view that land which is appropriated temporarily as well as permanently for non-agricultural purpose is liable to enhanced assessment and fine under Sections 48 and 65, Land Revenue Code, and it is only necessary to see in each case that the additional payments levied are reasonable in view of the higher value which may pertain to land when appropriated for the purpose in question. Government desire to make it clear that fine is limited in Khandesh cases, on the understanding that the land is used for a specific non-agricultural purpose, such as stacking cotton (which may be only temporary and does not essentially alter its permanent value), and can be imposed hereafter if buildings are erected or the land is appropriated for any other non-agricultural purpose. (G. R. No. 6364, dated 12th September 1903.)

(29) **What constitutes a compound.**—The compound is assessable at the same rate as the building site, but land, on which warkas crops are grown or even grafted mangoes, is not to be regarded as compound. Express provision should be made for the revision of the assessment on building sites as well as on agricultural land. (G. R. No. 1610, dated 7th March 1901.)

(30) The special assessment should be levied on the *whole area* appropriated to non-agricultural purposes and not merely on the ground on which the chawls stand. (G. R. No. 3019, dated 5th May 1902.)

(31) **The term "Market value" made more clear.**—The principle to calculate the rental on the price paid for the land at a time when the purchaser knew or may fairly be presumed to have known that the assessment would be enhanced to Rs. 10 per acre and a heavy premium levied in addition (as under old rules), cannot be accepted. The ground rent should be held due on all land which may be included in the compound. (G. R. No. 3371, dated 25th May 1903.)

(32) **The term of 4 per cent. rules.**—In all cases in which the assessment is fixed at 4 per cent. of the market value it may at once be guaranteed for 50 years.

The assessment being based on the market value has no connection with the revision of agricultural assessments. (G. R. No. 711, dated 31st January 1903.)

66.<sup>1</sup> If any such land be so appropriated without the

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<sup>1</sup> As regards determining the amount of fine leviable under this section, see table given in Appendix II.

permission of the Collector being first obtained, or before the expiry of three months from the date of the aforesaid acknowledgment, the occupant and any tenant, or other person holding under or through him, shall be liable to be summarily evicted by the Collector from the land so appropriated, and from the entire field or survey number of which it may form a part, and the registered occupant shall also be liable to pay, in addition to the new assessment which may be leviable under the provisions of Section 48 for the period during which the said land has been so appropriated, such fine as the Collector may, subject to the general orders of the Government, direct.

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

(1) **Applications made subsequent to the passing of the Code.**—Bombay Acts I. of 1865 and IV. of 1868 having been repealed by the Land Revenue Code, applications, made subsequent to the passing of that Code, for permission to appropriate land for building purposes, should be disposed of according to the provisions of that Code, and the rules framed thereunder, and not according to the provisions of, and the rules framed under, the above repealed Acts. It cannot be inferred that Government have relinquished in favour of a Municipality the fine imposable because the concession under the rules under Act IV. of 1868 have not lapsed though the Act is repealed. (G. R. No. 7831, dated 8th November 1882, and No. 8486, dated 4th December 1882.)

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

(3) **Precis of the law and rules on appropriations.**

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

(a) Section 48 allows revision of an assessment fixed under the Code (not of assessment fixed before the Code,—G. R. No. 4758,<sup>1</sup> dated 3rd July 1886) on appropriation.

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

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

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

(2) By the Collector's assent :—

(a) express or

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

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

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

(f) These are found in Rule 67 (now 73) expressly limited to a rate calculable on the areas actually appropriated alone.

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

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

(i) When the appropriation is not permissive but contrary to, or without waiting for, the express or implied orders of the Collector, then a fine may be imposed, which under Rule 69 (now 74) may extend to five times the rate imposable for permissive appropriation.

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

(k) And lastly the Collector may make his permission subject to such conditions as Government may, in any special case, require the regis-

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<sup>1</sup> Vide order No. (5) printed under Section 48.

tered occupant to agree to, as the terms on which it shall be granted. (Section 67, Bombay Land Revenue Code.)

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

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

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

If the Collector consider that his permission would give the privilege on too easy terms, he has only to express his dissent within three months of the application. It is open to the Collector, when he thinks any appropriation would be inadequately compensated for by a fine on the ordinary graduated scale, to refuse his permission except on condition of payment of a fine calculated on the area actually appropriated at the rate of Rs. 250 per acre (the rate for land prescribed for Class I, which, under the final paragraph of Rule 65 (now 70), he may in special cases at his discretion require). If no application is made, or if the appropriation is made either without waiting for three months after his application for permission has been acknowledged, or in defiance of the Collector's orders, the Collector can then annul the appropriation by evicting the occupant or other person holding under him.

Unless when the Collector considers the circumstances of a proposed appropriation so exceptional as to require reference to Government under Section 67, no terms can be imposed in excess of the maximum allowed by Rule 65 (now 70). That maximum in special cases is, as above noted, Rs. 250 per acre on the area actually appropriated. And the Collector is under that rule, in each case, to exercise his own discretion as to what are such special cases, bearing in mind that the ordinary rate should not exceed the maximum prescribed for the class to which, under notifications issued, the land in question properly belongs. (G. R. No. 6035, dated 25th August 1890.)

(4) **Privilege of preventing the sale of land for recovery of fine limited.**—A careful consideration of Sections 80, 81 and 86 of the Code seems to lead to the conclusion that no occupant has, as of right, the privilege of preventing the sale of land liable to forfeiture for unauthorised appropriation or to sale for recovery of a fine. The privilege of intervening to prevent forfeiture and sale which is secured to co-occupants (Sections 80 and 81) is clearly limited to cases where the liability



arises from non-payment of land-revenue, while Section 66 treats the occupants and all claiming through them as equally liable to eviction, (G. R. No. 6336, dated 9th August 1892.)

(5) **Appropriations before 1865.**—No fine should be levied on agricultural land appropriated without permission to non-agricultural purposes when Bombay Act I. of 1865 was in force. A note should be made that the lands are to be subjected to building assessment on the introduction of the next revision settlement. (G. R. No. 9805, dated 30th November 1894.)

(6) **Treatment of appropriations noticed after a long time.**—In a case where the settlement showed the land built upon as *pot kharab* (appropriation being after the Code) and the remainder was assessed as agricultural land and period of twelve years passed before the appropriation was noticed, it was held that the provisions of the Code as to guarantee against enhancement of assessment (*vide* Sections 102 and 106) cannot take away the power to impose a fine. The period of appropriation being long, the occupants should be informed of their liability under Section 66, but special terms should be offered under Section 67. (G. R. No. 6629, dated 30th August 1895.)

(7) **Misappropriation by strangers.**—The Collector should issue a notice to the occupants to show cause why they should not be dealt with under Section 66 for unauthorized misappropriation by trespassers who are not tenants of occupants. (G. R. No. 679, dated 22nd January 1896.)

67,<sup>1</sup> Nothing in the last two preceding sections shall prevent the granting of the permission aforesaid in special cases on such terms<sup>2</sup> or conditions<sup>2</sup> as may be agreed on between Government and the registered occupant.

Permission may be granted on terms.

(1) **Application of the section.**—This section should be generally applied in towns and at hill stations and such like places, and permission should not be granted in such cases unless such conditions as are considered desirable regarding the style of the building, the time within which it should be constructed, and the observance of Municipal or other sanitary regulations are agreed to. (G. R. No. 127, dated 6th January 1898.)

<sup>1</sup> It is to be noted that under this section the Collector can, subject to Government sanction, enter into special agreements with the persons desirous of building on land appropriated to purposes of agriculture by substituting a fair building assessment liable to revision at suitable intervals for the fine leviable under Section 65. (G. R. No. 4296, dated 15th June 1893.)

2—2 These words were inserted by Bombay Act VI. of 1901.

**(2) Conditions of relaxation of the 4 per cent. rules.—**

The readiness expressed in para. 13 of G. R. No. 991, dated 12th February 1900, to entertain application for the relaxation of the rules was limited to those cases in which the fines and special assessments leviable were excessive compared with the market value of the land. In estimating the market value, any value which the land would acquire by reason of the improvements which the applicant for it proposed to make, should be left out of account. (G. R. No. 2890, dated 8th May 1900.)

68. An occupant is entitled to the use and occupation of his land for the period, if any, to which his occupancy is limited, or if the period is unlimited, or a survey settlement has been extended to the land, in perpetuity, conditionally on the payment of the amounts due on account of the land-revenue for the same, according to the provisions of this Act or of any rules made under this Act, or of any other law, for the time being in force, and on the fulfilment of any other terms<sup>1</sup> or conditions<sup>1</sup> lawfully annexed to his occupancy.

<sup>2</sup> Provided that nothing in this or any other section shall make it, or shall be deemed ever to have made it, unlawful for the Collector at any time to grant permission to any person to occupy any unalienated unoccupied land for such period and on such conditions as he may, subject to the orders of Government, prescribe, and in any such case the occupancy shall, whether a survey settlement has been extended to the land or not, be held only for the period and subject to the conditions so prescribed.

(1) **When should annual leases be taken.**—It is not the intention of Government that land should be given out on annual leases, except in the special cases in which a permanent tenure is unsuitable or impracticable. (G. R. No. 7873, dated 8th November 1901.)

(2) **Free power of transfer should be allowed.**—Under the rules as amended, agreements in one or other of the forms in Appendix B must be executed in all cases in which occupancies are granted in perpetuity, whether with or without free power of transfer, if no

<sup>1</sup>—<sup>1</sup> These words were inserted by Bombay Act VI. of 1901.

<sup>2</sup> This proviso was added by Bombay Act VI. of 1901.

other special terms are attached. If no occupancy is granted for a fixed period, a lease should be executed in accordance with Rule 31.

2. In the exercise of discretion to section lease, mortgage, sale, or other encumbrance, when such sanction is needed by the agreement, the Collector will be guided generally by the considerations, whether or not the occupant can continue to cultivate efficiently without borrowing, and whether the transfer or encumbrance is desirable in his interest. Permission should, however, ordinarily be granted without question to a transfer from one agriculturist to another for the purpose of cultivation by the latter in person, and to a lease to one agriculturist by another who is unable to cultivate in person, and it should be made generally known that, except for very special reasons, sanction to such transfers and leases will not be withheld. (G. R. No. 8610, dated 11th December 1901.)

(3) **Regrant of confiscated lands.**—The order of regrant should be cancelled either when the land has been granted for improper reasons and when hardship or injustice has been caused to the former occupant. In the case of cancellation it will be necessary to refund at the cost of Government the amount paid by the person evicted and such proved expenditure as may not reasonably be held to have been recouped, but in the event of the latter having resulted in improvement of the land, it may be reasonable to require repayment of it as a condition of restoration to the former occupant.

2. The conditions prescribed in G. R. No. 5621, dated 8th August 1901, are based on instructions given by Government of India and must be fully carried out. They were mainly intended for cases in which there existed mortgages without possession, so as to avoid increase of encumbrances. (G. R. No. 4503, dated 2nd July 1902.)

69.<sup>1</sup> The right of Government to mines and mineral products in all unalienated land is and is hereby declared to be expressly reserved.

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

(1) **Reservation unnecessary in Kabulayats of unalienated lands.**—This section applies to all unalienated lands. It is therefore unnecessary to make express reservation of the Government

<sup>1</sup> The object of this section is to reserve the rights of Government to all mines, mineral products, and buried treasures with full liberty to work and search for the same, paying to the occupant only compensation for surface damage as estimated by the Collector. (Select Committee's report on the Revenue Code Bill.)

rights to mines and minerals in the leases or Kabulayats relating to such land. When however such land is transferred to the ownership of any person, so that it would come within the meaning of the term "alienated" as defined in Section 3 (19) of the Code, the rights of Government and the assignees in that behalf to the minerals ought to be expressly reserved as this section would not apply in such a case. (G. R. No. 6688, dated 15th December 1879.)

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

<sup>1</sup> Provided that in any case where the occupancy or interest of the occupant in the land is not transferable without the previous sanction of the Collector, and such sanction has not been granted to the transfer which has been made or ordered by the Court or on which the Court's decree or order is founded,

(a) such occupancy or interest shall not be liable to the process of any Court, and such transfer shall be null and void, and

(b) the Court, on receipt of a certificate under the hand and seal of the Collector, to the effect that any such occupancy or interest is not transferable without his previous sanction, and that such sanction has not been granted, shall remove any attachment or other process

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<sup>1</sup> This proviso was added by Bombay Act-VI. of 1901.

placed on, or set aside any sale of, or affecting, such occupancy or interest in the land.

(1) **New Khatedar, liabilities of.**—In cases in which land is transferred from one Khata to another on the authority of a Court's decree and in cases in which names are changed owing to the death of Khatedar, the new registered occupant stands in the shoes of the person whose place he is made to occupy and the same liabilities attach to him as to his predecessor, hence no fresh agreement in the form D (now B<sup>1</sup>) is needed from him.

(G. R. No. 2,600 dated 31st March 1883.)

71.<sup>2</sup> On the death of a registered occupant the Collector shall cause the name of his eldest son, or other person appearing to be his heir, or the principal of his heirs, to be registered in his stead, and the said heir shall thereafter be deemed the registered occupant, and, subject to the provisions of the last preceding section, shall be dealt with accordingly.

Name of heir to be registered when registered occupant dies.

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

When entry to be amended.

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

(2) **Mamlatdars to inquire and determine *proprio motu*.**—In cases in which there is sufficient proof that the person claiming to be recognized as heir to an inam or Khalsa holding is unable to pay the requisite stamp duty on a formal application for the purpose, it is not absolutely necessary that there should be an application from the person entitled to succeed as heir in order that the Mamlatdar may have authority to inquire and determine whose name ought to be substituted in his

<sup>1</sup> See Appendix B to the rules under the Code.

<sup>2</sup> *Vide* G. R. No. 6899, dated 17th September 1897, under Section 86

records for the name of the deceased. There would be no illegality in the Mamlatdar's starting such an inquiry *proprio motu* and taking the statement of the would-be applicant if necessary. (G. R. No. 5712, dated 2nd August 1883.)

(3) **Cases in which registered occupants and persons in actual possession are different.**—It is to be observed that under this section the Collector cannot, on the death of a registered occupant, enter in the Government accounts the name of any person for that of the deceased registered occupant unless such person is, or appears to the Collector to be, the registered occupant's heir, or unless he produces a certificate or order of a competent Court (clause 2 of Section 71). Accordingly in a case in which A the registered occupant of a survey No. died without heirs, and B who actually held the No. by right of purchase applied to have his name entered for that of A, the Collector refused to grant the application unless B produced an order from a competent Court. The Collector saw the inadvisability of referring B to the Civil Court, but as, under the Code as it stands, he could not otherwise proceed in the matter, he referred the case for the order of Government.

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

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

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

“3. There is yet another way in which the Collector can attain the desired end. I presume that B duly pays the assessment fixed on the Survey No. (Section 80). Let him be advised to make default of one payment; it will then appear to the Collector (Section 81) that a sale of the occupancy will operate unfairly to the prejudice of B who is interested in the continuance of the occupancy, and it will then be lawful for the Collector, instead of selling the occupancy to forfeit only A's in-

terest in the same and substitute the name of B as registered occupant in the Revenue Records on his payment of all sums due on account of land-revenue. This will cost B a trifling sum.

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

72.<sup>1</sup> If an occupant who is either a Hindu, a Mahomedan or Buddhist dies intestate and without known heirs, the Collector shall dispose of his occupancy by sale, subject to the provisions of this Act or of any other law at the time in force for the sale of forfeited occupancies in realization of the land-revenue, and the law at the time in force concerning property left by Hindus, Mahomedans or Buddhists, dying intestate and without known heirs shall not be deemed to apply to the said occupancy, but only to the proceeds of such sale after deducting all arrears of land-revenue due by the deceased to Government and all expenses of the said sale.

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

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

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

The term “occupant” should be taken in its general sense. There is no difficulty in so understanding it, if it is remembered that the only object of the section is that, when intestate property consists of an occupancy before it is treated as intestate property under the law for the time being in force respecting such property, the Collector should be able to secure the payment of any arrears due to Government, and the

<sup>1</sup> Vide G. R. No. 5243, dated 26th June 1885, printed under Section 86.

obvious step preliminary to proceeding under that section is to ascertain that the occupancy to be dealt with is actually an intestate property, whether the occupant be registered or not. (G. R. No. 2711, dated 26th April 1882.)

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

Section 79 was expressly inserted in the Code in order that the parties to transfers of occupancies might be made to feel the absolute necessity of obtaining a mutation of names in the Collector's books, and so in time the recorded occupants would always be found to be the actual occupants. The necessity for the provision and for its being strictly enforced is so great that it should not be allowed to be unobserved, even for exceptional reasons. (G. R. No. 3102, dated 20th April 1888.)

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

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

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

“3. The doubt which seems to have prompted the Commissioner's (C. D.'s) letter is whether when occupancies are thus sold by the Collector, they are to be sold ‘freed from all tenures, encumbrances and rights



created by the occupant,' like forfeited occupancies ( *vide* Section 56 of the Revenue Code ) or whether the right, title and interest of the deceased occupant merely is to be disposed of.

"4 The intention of Section 72 of the Code appears to be to prevent the occupancies of persons dying intestate coming under the management of the District Court's administrator. The section was inserted by the Select Committee who, in paragraph 32 of their final report on the Revenue Code Bill, dated 1st May 1877, said its purpose was 'to enable the Collector to dispose of the occupancy of an occupant dying intestate and to stay the operation of the law regarding property left by persons dying intestate until the occupancy has been sold and arrears due to Government secured.' Much correspondence and trouble are saved by keeping the control of such property in the hands of the Collector, who is obviously far better able than the District Court's Nazir to manage and sell it to the advantage of the deceased's estate. It was not, I think, the intention of the Legislature to forfeit in such cases subordinate rights created by the deceased occupant. The words in Section 72 'subject to the provisions \* \* \* in force for the sale of forfeited occupancies in realization of the land-revenue' may, at first sight, be thought to bear this meaning, but it ought not to be concluded that it was the intention of the Legislature thus to abrogate vested rights unless such intention is very clearly and unmistakably indicated in the language of the enactment. The words which I have quoted do not appear to me to mean more than that an intestate occupant's occupancy should be sold, subject to the same rules for regulating the sale as a forfeited occupancy, and this construction of them is consistent with the apparent purpose of the section. There is no reason to think that the Legislature contemplated attaching the same penal consequences to an occupant dying intestate and without known heirs as to the failure of a living occupant to pay the land revenue due on his occupancy. Such a provision would be unjust, and whenever the language of an enactment 'admits of two constructions according to one of which the enactment would be unjust \* \* \* and according to the other it would be reasonable and wholesome, it is obvious that the latter must be adopted as that which the Legislature intended.' (Maxwell, interpretation of Statutes, 179.)

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

"6. But although subordinate rights are not affected by the sale, I am still of opinion, as stated in my report quoted in the preamble to G. R.

No. 3102, dated 20th April 1883 ( see order No. (2) above ), that if the deceased was a registered occupant the Collector is not bound to recognize his vendees or other subordinate holders. If the deceased person is the registered occupant, the Collector is not bound to recognize 'any person to whom any interest in any portion of the occupancy \* \* \* has been assigned.' ( *Vide* Section 79 of the Revenue Code. )

"7. It follows from this view of the law that I differ from the late Mr. Cordeaux in thinking it necessary that the Collector should hold an inquiry for the purpose of ascertaining 'whether the occupancy has not passed to some other person who is in lawful possession.' The Collector, if he held any such inquiry, would not be competent to pass any order determinative of the rights of the respective claimants and possibly many claimants would object to reveal their title to him. I agree, therefore, with the Commissioner that inquiry is unnecessary. The title of the deceased should be sold for what it is worth, the purchaser making his own terms with, or taking such steps as he thinks fit against, other claimants in such a case as that which the Commissioner has stated as a representative case, it may be that the purchaser of a deceased registered occupant's right, title and interest will sometimes acquire nothing by the purchase except the right to become the registered occupant. In such cases it will usually be to the interest of the assignee or of one of the assignees of the deceased registered occupant to become the purchaser.

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

"9. In order to complete this explanation of the meaning and intention of Section 72 of the Revenue Code I agree with the late Mr. Cordeaux that the word 'occupant' which is used in it, must be taken in its general sense, as defined in Section 3, clause (16) of the Code, and not be deemed to apply to registered occupants only. If the person who

has died intestate and without known heirs is an occupant but not a registered occupant, his right, title and interest will be sold by the Collector without affecting in any way the title of the registered occupant." ( G. R. No. 783, dated 27th January 1885. )

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

(a) The Advocate-General's opinion:—

"In the case of a registered occupant, such as described in Section 72 of the Land Revenue Code, dying intestate and without known heirs and of another person claiming that the occupancy has been sold to him by the deceased though not transferred in the Government books, I am of opinion that the provisions of Section 72 come into force, by which it is enacted that—

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

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

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

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

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

"I observe that Section 56 enables the Collector to dispose of a forfeited occupancy under rules or orders to be made under Section 214. I am not aware whether any rules have been made in this behalf under Section 214, but if such rules have been made and the Collector has power

thereunder to dispose of a forfeited occupancy without prejudice to rights previously created by the occupant, it seems desirable that he should adopt such mode of procedure in cases similar to the one suggested under Section 72, when the case does not seem to him to be one in which the provisions of Section 81 can be properly applied." ( G. R. No. 10023, dated 14th December 1885. )

(b) The Legal Remembrancer's opinion :—

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

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

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

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

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

"In order, however, to avoid the risk of litigation in such cases as to claims that might afterwards be brought forward, I think the High Court might be moved to direct under Section 10, clause 4 ( of the said Regulation ), that such property should continue under the management of an administrator, until such period had elapsed as would render the chance of any claim being preferred infinitesimally small, and Government might then, through the Collector, put in their claim to the property as having passed to Her Majesty by escheat. The land could then be dealt with as proposed in G. R. Nos. 1983 and 2935 of 1872.<sup>1</sup>

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<sup>1</sup> It would appear that in the case of alienated lands the Collector is to proceed in accordance with the orders passed in 1872. These orders are to the following effect :—

"When an Inamdār dies without heirs his Inam land should at once be made Khalsat and dealt with as the Collector thinks proper, subject to any order that may be made by the Civil Court under Regulation VIII. of 1827, Section 10, and provided that the right of occupancy in lands made Khalsat is not sold so as to disturb actual possession. Should heirs of the deceased Inamdār appear after the land has been made Khalsat the matter is to be referred for the orders of Government. ( G. R. No. 1983, dated 25th April, and No. 2935, dated 19th June 1872. )

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

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

(5) **Collector to take the initiative.**—Government having decided in their Resolutions marginally noted that the provisions of Section 72 should be enforced, not only in the case of registered occupants, but in the case of occupants also, it was pointed out that it would not be always possible for the Collector who must take the initiative in the matter to comply with those provisions inasmuch as the names of “occupants” were not recorded in the Collector’s book. The point was referred to the Legal Remembrancer, who gave his opinion as follows :—

“Section 19 of the Bombay Village Police Act (VIII. of 1867) imposes upon the police patil the duty of taking charge of all unclaimed property and of reporting his proceedings to the Magistrate to whom he is subordinate. Property left by a person who dies intestate and without known heirs is ‘unclaimed property’ within the meaning of this section, and if, in addition to some moveable property, the intestate has left some lands inquiry will soon enable the Magistrate to determine whether the deceased was an occupant and whether, therefore, the Collector should take action under Section 72 of the Revenue Code. As a matter of practice, I believe every case of a person dying intestate is reported by the village officers to the higher authorities, whether under the provisions of Section 19 of the Village Police Act or otherwise, and there is little probability, I should think, of any case of any importance escaping notice. The Collectors can only take action in the cases which are reported to him, and I do not think there is any need for special measures to ensure every case being reported. The number of occupants, not being registered occupants, who die intestate and without known heirs, is probably inconsiderable.” (G. R. No. 3812, dated 13th May 1885.)

(6) **The Collector to hold inquiry in person.**—No exception appears to have been made in the case of large towns, and this section is applicable to house and moveable property in large towns where

land registers are kept. But it is an error to regard entries in the revenue record as evidence of title. They do not more than indicate the person responsible for Government assessment and invested with the privileges of the registered occupant. In contested cases under Section 71 the Collector has no legal authority to thrust the burden of investigation upon the Civil Court and is bound to hold himself such an inquiry as may be necessary. His decision is no award, and the aggrieved party has his remedy of a suit in a Civil Court. (G. R. No. 8488, dated 27th November 1899.)

(7) **Section 72 not applicable to alienated holdings**

—The word occupant cannot be held to include a holder of alienated land, and the Collector should not, therefore, attempt to take action under this section in the case of alienated holdings.<sup>1</sup> (G. R. No. 3812, dated 13th May 1885.)

(8) **Changes when to be made.**—Lists of deceased Khatedars should be ready at the Jamabandi. (G. R. No. 10072, dated 23rd December 1892.)

73.<sup>2</sup> The right of occupancy shall, subject to the provisions contained in Section 56, and to any conditions lawfully annexed to the occupancy, and save as otherwise prescribed by law, be deemed as heritable and transferable property.

(1) **Applicability.**—This section is applicable to only unalienated land. (G. R. No. 5024, dated 21st July 1902.)

73A.<sup>3</sup> (1) Notwithstanding anything in the foregoing section, in any tract or village to which Government may, by notification published before the introduction therein of an original survey settlement under Section 103, declare the provisions of this section applicable, the occupancy or interest of the occupant in the land shall not after the date of such notification be transferable without the previous sanction of the Collector.

(2) Government may, by notification in the *Bombay Government Gazette*, from time to time exempt any part of

<sup>1</sup> Vide footnote to order No. (4) printed under Section 72.

<sup>2</sup> This section was substituted for the original by Bo. Act VI, of 1901.

<sup>3</sup> This section was inserted by Bo. Act VI, of 1901.

such tract or village or any person or class of persons from the operation of this section.

*Relinquishment of Occupancy.*

74.<sup>1</sup> An occupant may, by giving written notice to the Mamlatdar or Mahalkari, relinquish his occupancy, either absolutely or in favour of a specified person, provided that such relinquishment apply to the entire occupancy or to whole survey numbers, or recognized shares of survey numbers. An absolute relinquishment shall be deemed to have effect from the close of the current year, and notice thereof must be given before the 31st March in such year, or before such other date as may be from time to time prescribed in this behalf for each district by the Governor in Council. A relinquishment in favour of a specified person may be made at any time.

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

<sup>1</sup>(1) *Vide* rule 74 and orders thereunder.

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

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

Held, also, that the plaintiff was entitled to sue in ejectment, although he had not been put in possession of the land. (*Bhulia Dhondou vs. Ambo*, —I. L. R., Bombay, Vol. XIII., 1889, page 294.)

occupant, and his name shall thereupon be substituted in the records for that of the previous registered occupant.

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

When a Survey Settlement has been introduced into an alienated village, then Section 74 is applicable to the occupants in it, and relinquishments must, of course, be made to the Mamlatdar or Mahalkari until Government give the Inamdar power to receive them under Section 88 (e). (G. R. No. 3439, dated 15th June 1881.)

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

(3) Resolution No. 5730 of 1st October 1881 is not inconsistent with Resolution No. 3439 of 15th June 1881. No doubt, when a Survey Settlement has been introduced into an alienated village, Section 74 is made applicable to it by Section 217. But Section 88 (e) empowers the Governor in Council to authorize the Inamdar to receive notices of relinquishment instead of the Mamlatdar, and it was doubtless the intention of the Legislature that interference with Inamdars should ordinarily be avoided in this manner. (G. R. No. 7045, dated 23rd November 1881.)

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

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

As regards 1 and 2

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

(b) In *surveyed* alienated villages the Inamdars should, as far as possible, under Section 88, be invested where necessary with the powers contemplated by Section 74.

As regards 3

Section 60 does not apply to alienated lands, and the power of the Inamdars in respect of such agreement is unrestricted whether in *surveyed* or *unsurveyed* villages. (G. R. No. 953, dated 10th February 1882.)



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

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

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

(8)<sup>1</sup> **Registration of notices of relinquishments.**—The Collectors of the districts should be instructed not to insist on the registration of notices of relinquishment of occupancies of the value of Rs. 100 and upwards pending the contemplated amendment of the Registration Act. (G. R. No. 2367, dated 19th March 1885.)

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

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

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

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

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<sup>1</sup> Under the Indian Registration Act as amended up to 31st December 1892 the registration of notices of relinquishments under Section 74 or 76 is not obligatory; *vide* Section 90, Clause (e) of the Registration Act III, of 1877.

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

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

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

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

Government therefore left undecided the question, viz., whether the obligation of recording the name in the Revenue Records applies alike to holders of alienated and unalienated land till an amendment of the Code. (G. R. No. 5019, dated 19th June 1885.)

(10) **Occupancy defined. Partial relinquishment not allowed.**—An occupancy signifies the sum of the rights vested in an occupant as such (Bombay L. R. Code, Sec. 3 (18.) Amongst other rights which an occupant possesses is that of constructing wells in the land for the better cultivation thereof (*ib.* Section 65). Section 74 of the Code authorizes an occupant to relinquish his occupancy either absolutely or in

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

(11) **Vacant possession must be given.**—Section 74 only gives definition to the customary common law. \* \* \* The tenant is bound to give vacant possession to the landlord. If the vacant possession is not given, the tenancy does not continue indefinitely, but it gives right to a claim for damages on the part of the landlord. ( P. J. 430, *Baba Ramgiri vs. Wasudev*, 96. )

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

76.<sup>1</sup> The provisions of the two last sections shall apply, as far as may be, to the holders of alienated land : provided that—

(a) It shall not be lawful to relinquish, as afore-

<sup>1</sup>(1) See orders printed under Section 74.

said, any portion of any land held wholly or partially exempt under the circumstances described in the first paragraph of Section 49, until the commuted assessment payable in respect of such portion of land has been determined under the provisions of the said section ; and that

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

**(1) Absolute resignation by an Inamdar of a part of his holding which has been given as a subordinate (pot) inam by himself or by one of his predecessors.**

—There are cases in which an Inamdar or his predecessor in title has, without parting with his own inam right, made a grant of some land in his holding to a third person and his heirs in perpetuity either entirely rent-free or on terms which are advantageous to the grantee. But afterwards finding that the burden of paying the Government dues on the land included in such sub-grant while he receives little or no rent from the sub-grantee is greater than he can support naturally seeks to get rid of this result by absolute relinquishment of this portion.

In such cases it is not desirable to permit such resignations because they would encourage Inamdars to break faith with their sub-Inamdars. So long as the relations of the Inamdars and their *pot* inamdars remain in *status quo*, either the one or the other can resort to the Civil Court if so minded to obtain a declaration of their respective rights. If such resignations are accepted with the consent of the sub-Inamdars, the proportionate deduction shall be made in the amount payable by the Inamdar and the resigned holding should be considered to all intents and purposes as unalienated land and the full assessment should be levied upon it.

( G. R. No. 4235, dated 27th May 1885. )

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(2) It would appear from No. 17 of the original Survey Rules appended to the joint report (Survey and Settlement Manual, page 37) that the custom of obliging a rayat, who threw up a field, to relinquish at the same time the house attached to that field was abolished under the authority of Government letter No. 5593 of 1848, paragraph 42. ( G. R. No. 5512, dated 3rd August 1886. )

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

Right of way to relinquished land.

Sections 75 and 76 not to affect—

78. Nothing in Sections 75 and 76 shall affect—

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

(b) the validity of the terms or conditions of any lease or other express instrument under which land is, or may hereafter be, held from Government. validity of lease from Government.

79.<sup>1</sup> The registered occupant or the holder of alienated land shall continue liable for the land-revenue due on the occupancy or alienated holding and for all other lawful demands of Government in respect of the same, until such times as the occupancy or alienated holding is relinquished or transferred under any of the provisions of this Act, to the name of any other person; and the Collector shall not be bound in any case to recognize any person to whom any interest in any portion of an occupancy or alienated holding has been assigned, unless the transfer has been recorded in the revenue records in accordance with the foregoing provisions. Occupant to continue liable for demands until occupancy relinquished.

(1) **Registration of the names of the holders of alienated land.**—The Land Revenue Code does not make any distinct provision for the registration of the names of holders of alienated lands although in practice such names are invariably registered in the accounts.

2. Registration, however, of a name confers no rights whatever on the Inamdar registered. It does not give him any superior right to receive

<sup>1</sup> See orders printed under Sections 72 and 74.

from the Kulkarni the rents of the village and cannot give rise to any legal complications or affect in any way the interests of the rightful holder. It is the superior holder who is defined as an holder entitled to receive rent and not the registered holder who under Section 58 is bound to give receipts to the tenants for rent and who is primarily responsible under Section 136. Section 79 is the only section of the Code which expressly recognizes the fact that the names of holders of alienated holdings are registered; but although under that section the Collector is not bound to recognize an assignee until the transfer has been recorded and would not presumably be bound to help him under Section 87 to recover his rent, the mere fact that the name of a sharer by inheritance was not registered would not in itself disentitle him to such assistance if he were otherwise entitled to it.

3. In the present state of the law it is not, from a legal point of view, a matter of much importance whose name is registered, as the mere registration of a name does not justify any order as to the Wahiwat.

(G. R. No. 2158, dated 7th April 1888.)

**(2) Effect of a Court sale on the registered occupant.**—From Sections 70 and 79 of Land Revenue Code it appears—

(a) That the position of an occupant and the entry in the Collector's books must remain unaffected by a Court's sale until the Court's certificate is produced and an application is made for a change in the entry. Till then the occupant, though his interest may have been sold at a Court's sale, continues responsible for the revenue.

(b) If the registered occupant dies, his heir's name must be entered, and such heir must be dealt with as a registered occupant unless a certificate of sale of the interest he claims as heir is produced.

(c) If no such certificate is produced, the heir as registered occupant is entitled to be dealt with accordingly and is competent to do all that a registered occupant can do.

(d) If the heir dealt with as a registered occupant gives a notice of relinquishment under Section 74 in favour of another person who enters into a written agreement to become the registered occupant, the name of that other person shall be substituted in the records for that of the previous registered occupant.

(e) If after such relinquishment and substitution which the Collector is bound to treat as valid, a Court's certificate of the sale of the prior occupant's interest is produced the Collector is not bound to recognize it, as that interest has already been validly relinquished and has altogether ceased to exist before the transfer thereof had been recorded in the revenue records in the manner which alone could entitle it to recognition by the Collector.

(G. R. No. 469, dated 20th January 1891.)

Summary eviction of person unauthoriz- edly occupying land.

79A.<sup>1</sup> Any person unauthorizedly occupying, or wrongfully in possession of, any land—

(a) to the use and occupation of which he has ceased to be entitled under any of the provisions of this Act, or

(b) of which the occupancy right is not transferable without previous sanction under Section 73A, or by virtue of any condition lawfully annexed to the occupancy under the provisions of Sections 62, 67 or 68, may be summarily evicted by the Collector.

*Remedies against Forfeiture of Occupancies.*

80. In order to prevent the forfeiture of an occupancy under the provisions of Section 56 or of other than occupant any other law for the time being in force to pay land-revenue through non-payment by the registered to prevent forfeiture. occupant of the land-revenue due on account thereof, it shall be lawful for any co-occupant, tenant, mortgagee or other person interested in the continuance of the occupancy to pay on behalf of such registered occupant all sums due on account of land-revenue and for the Collector to receive the same.

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

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

Porviso.

<sup>1</sup> Inserted by Bombay Act VI. of 1901.

(1) **Returns of forfeitures.**—Returns should be submitted in the form ( given as Appendix XVII. ) within four weeks of the expiry of the quarter to which they relate. ( G. R. No. 7444, dated 23rd October 1901, Government of India <sup>2187</sup>/<sub>192-25</sub>, dated 9th October 1901. )

81.<sup>1</sup> If it shall appear to the Collector that a registered occupant has failed to pay land-revenue and has thus incurred forfeiture, with a view to injure or defraud his co-occupants or other persons interested in the continuance of the occupancy, or that a sale or <sup>2</sup>other disposal of the occupancy will operate unfairly to the prejudice of such co-occupants or other persons, it shall be lawful for him, instead of selling or otherwise disposing of<sup>2</sup> the occupancy, to forfeit only the said registered occupant's interest in the same and to substitute the name of any such co-occupant or other person as registered occupant thereof in the revenue records, on his payment of all sums due on account of land-revenue for the occupancy; and such person so becoming the registered occupant shall have the rights and remedies with respect to all other persons in occupation provided for by Section 86.

*Suspension of certain Provisions of this Chapter.*

82. It shall be lawful for the Governor-in-Council, by notification in the *Bombay Government Gazette*, from time to time,

Power to suspend operation of Section 60 or 74.

(a) to suspend the operation of Section 60 or 74, or of both, within any prescribed local area, either generally or in respect of cultivators or occupants of a particular class or classes, and

(b) to cancel any such notification.

During the period for which any notification under the above clause (a) is in force within any local area, such

<sup>1</sup>See orders printed under Sections 71, 72 and 74.

<sup>2</sup>Inserted by Bombay Act VI. of 1901.



rules shall be substituted for the provisions of which the operation is suspended as the Commissioner shall from time to time direct.

## CHAPTER VII.

### *Of Superior and Inferior Holders.*

#### *Tenants' Rights.*

83.<sup>1</sup> A person placed, as tenant, in possession of land by another, or, in that capacity, holding, taking or retaining possession of land permissively from or by sufferance of another, shall be regarded as holding the same at the rent, or for the services, agreed upon between them; or in the absence of satisfactory evidence of such agreement, at the rent payable or services renderable by the usage of the locality, or, if there be no such agreement or usage, shall be presumed to hold at such rent as, having regard to all the circumstances of the case, shall be just and reasonable.

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

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

(2) Appasaheb, the Chief of Kagvad, let certain land to the defendant for a term of twelve years by lease, dated 12th June 1857. Appasaheb died in the same year without male issue, and his Saramjam was resumed by the British Government. In 1858 the Collector treated the defendant as occupant of the land in question for the purposes of assessment, and again in 1860 entered his name as occupant in the Government books. In January 1868, the widow of Appasaheb adopted the plaintiff as his son. In 1881, the plaintiff sued the defendant to recover possession of the land let to the defendant in 1857. The defendant contended that the land was not the private land of Appasaheb, but belonged to the State of Kagvad, which was resumed on his death by the Government, and that the plaintiff's claim was barred by the law of Limitation. The Subordinate Judge allowed the plaintiff's claim, holding that the land was the private property of Appasaheb, Chief of Kagvad, and that the claim was not barred. The District Judge on appeal held that the land was not the

And where by reason of the antiquity of a tenancy, no satisfactory evidence of its commencement is forthcoming, and there is not any such evidence of the period of its intended duration, if any, agreed upon between the landlord and tenant, or those under whom they respectively claim title, or any usage of the locality as to duration of such tenancy, it shall, as against the immediate landlord of the tenant, be presumed to be co-extensive with the duration of the tenure of such landlord and of those who derive title under him.

And where there is no satisfactory evidence of the capacity in which a person in possession of land in respect of which he renders service or pays rent to the landlord, receives, holds or retains possession of the same, it shall be presumed that he is in possession as tenant.

Nothing contained in this Section shall affect the right of the landlord (if he have the same either by virtue of agreement, usage or otherwise) to enhance the rent payable, or services render-

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private property of the Chief, but was the property of the State, and that on the resumption of the State by the British Government the defendant's lease came to an end and the relation of landlord and tenant previously existing between the Chief and the defendant ceased. He also held that the plaintiff's claim was barred by limitation and reversed the decree of the Subordinate Judge. On appeal to the High Court.

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

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

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

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

able, by the tenant, or to evict the tenant for non-payment of the rent or non-rendition of the services, either respectively originally fixed or duly enhanced as aforesaid.

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

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

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

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

(4) Where there is no satisfactory evidence of the commencement of a tenancy by reason of its antiquity, nor any evidence of the period of its duration, nor of any usage of the locality as to the duration of such tenancies, the tenancy must be presumed co-extensive with the duration of the tenure of the landlord. (*P. J. 179, Jaikrishna vs. Lakshamanrau*, 1890.)

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

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

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

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

(2) **Application of the Section.**—Where Survey Settlement ( under Act I. of 1865 ) is introduced, Section 83 and not Section 68 applies in determining the nature of tenancy. ( P. J. 19, *Khanderao vs. Balsing*, 1889. )

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

An annual tenancy shall require for its termination a

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

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

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

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

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

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

notice given in writing by the landlord to the tenant, or by the tenant to the landlord, at least three months<sup>1</sup> before the end of the year of tenancy, at the end of which it is intimated that the tenancy is to cease. Such notice may be in the form of Schedule E., or to the like effect.

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

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

(2) **Rights lapse on resumption of Inam lands.**—The holder of Inam lands cannot convey to another person any right over those

<sup>1</sup> (1) In the absence of a special agreement to the contrary, the local fund cess must, as between an Inamdar and an occupant under him, be paid by the occupant. (S. A. 325 of 1871.)

(2) Unless authorised by the terms of his grant, an Inamdar cannot enclose lands at will, and certainly not lands which have been immemorially used as village pasture lands. (P. J. 3, Vishwanath *vs.* Mahadaji, 1879.)

(3) The notice ought to be of three months. (P. J. 298, Bahim *vs.* Vinayak, 1878.)

(4) Under the enactment (Act I. of 1865, Section 43) six months' notice was required for the termination of a tenancy, and this was then held to be sufficient and reasonable by the following decisions of the High Court. By the present law this term has been reduced to three months:—

(a) An Inamdar cannot eject a yearly tenant without six months' notice to quit, ending with the cultivating year. Nor can he eject other tenants, except on the expiration of their term of years or other interest in the land. (Narayan Bhivray *vs.* Kashi,—I. L. R., Bombay, Volume VI., page 67, 1882.)

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

lands greater than his own. If the lands in his possession are liable to resumption on the happening of a certain contingency (such as the death of the holder), they are equally so liable in the possession of the holder's mortgagee. When the contingency happens (*i.e.*, when the holder dies) and the lands are resumed, the claim of the late holder's mortgagee thereto ceases to exist whatever claim he may have against the heirs, if any, of the deceased. On the reversion of the lands to the original grantor all subordinate rights therein created by the grantee necessarily lapse also. But resumption does not mean ousting of possession. It is always taken to mean the continuance of the land in the hands of the actual occupants thereof so long as they do not fail to pay the full assessment leviable in respect of it. (G. R. No. 5953, dated 11th August 1883.)

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

Superior holders' dues by whom to be collected.

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

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

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

(5) Powers exercised by Government under the Code do not extend to Inamdars (P. J. 198, Sarwotamrao *vs.* Sakharam, 1893.)

(6) Where the tenants agreed by their Kabulayats to give up the land in *Kartik* and where no subsequent tenancy was created either by agreement or the acceptance of rent.

*Held*, that, no notice to quit was requisite, that Section 84 does not apply, and that the plaintiff was entitled to recover the land immediately after *Kartik*. (P. J. 218, Dattatraya *vs.* Lakshman, 1894.)

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

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

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

(2) Section 85 of the Code requires a superior holder to receive his dues on account of rent or land-revenue through the hereditary village officers, but he may receive his dues direct from the persons liable to pay them on failure of the village officers to account for the same, provided he first obtains the consent of the Collector. Although nothing in this section empowers the Collector to compel the village accountant to pay the amount claimed, the latter portion of the section clearly implies an exercise of discretion on the part of the Collector. If he has reason to doubt the claim he may refuse his consent, but if he has no doubt at all that the claimant is a superior holder entitled to the share of the revenue of the village which has been paid by the village officers to the other superior holders, he may consent to a demand being made by the claimant for payment direct from these co-sharers as inferior holders to the extent of their obligation. If the co-sharers refuse to pay the amount thus demanded the claimant can then apply to the Collector for his assistance under Section 86. In the Collector's summary inquiry, which he is bound to make on the application, the nature of dispute between the superior holders will be disclosed, and if the question at issue is of a complicated or difficult nature, the Collector will be justified in refusing assistance, leaving the parties to settle their dispute in the Civil Court. (G. R. No. 4330, dated 5th July 1882.)

(3) **If received direct,<sup>1</sup> village officers to countersign**

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<sup>1</sup> Vide G. R. No. 5095, dated 6th August 1898, under Section 53.

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

(4) This section applies to payments in kind, as well as to cash payments. Payments in kind are to be considered to have been made through the village officers as required in this section when they are made in the presence of such officers. The difficulty can be met by requiring the village officers to be present at the time of payment, which would then be made through them, and they would countersign the receipt as required by clause 2 of Section 58. In the case of large Inamdars, however, who customarily receive at their own houses the dues in kind, there is no objection to their receiving their dues direct and giving a receipt for such payments as provided in Section 58 of the Code. (G. R. No. 6020, dated 15th August 1883.)

(5) It does not appear to be legally necessary that an Inamdar should be present when the village officers are making the collections or that he should give an immediate receipt for each individual payment the moment it is made. What Section 58 of the Code requires is that the Inamdar should give a written receipt for every payment of rent or land-revenue made to him by an inferior holder. It would suffice if all the receipts (which should be already countersigned by the village accountant) were brought to the Inamdar to sign when the collections have been completed, or at the stated interval. There is no reason why these receipts should not be given in the rayat's receipt books whenever that would be the most convenient course. (G. R. No. 9107, dated 18th November 1884.)

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



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

(8) **The effect of the entry of an Inamdar's name.**—The Collector has no authority to determine the extent of the right, title and interest of the judgment debtor, and there was no occasion for him to issue any order for payment of an amount not specified in the decree. The report of the Legal Remembrancer contains the following observation :—

The registration of an Inamdar's name for a particular share confers on him no right to receive any fixed proportion of the revenue, and Government cannot adjudicate in quarrels between shareholders and rival claimants. (G. R. No. 6206, dated 14th September 1887.)

### *Recovery of Superior Holders' Dues.*

86.<sup>1</sup> Superior holders shall, upon written application to the Collector, be entitled to assistance by the use of precautionary and other measures for the recovery of rent or land-revenue payable to them by inferior holders, or by co-sharers in their holdings, under the same rules, except that contained in Section 137, and in the same manner as prescribed in Chapter

<sup>1</sup> (1) *Vide* Sections 87, 148 and 192 and orders printed thereunder.

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

(3) Where G was convicted under Section 183, Indian Penal Code, for having resisted by force the Taluka General Duty Karkun when the latter came to distrain some goods, grain, &c., at his house for making recovery of dues on behalf of the Khot who had applied for assistance to the Mamlatdar under Section 86, *Held*, that as it did not appear on the face of the conviction that the Mamlatdar was an officer to whom, under the provisions of Section 12, the powers of the Collector constituted by Section 87 had been delegated under any general or special order of the Government, nor that the Karkun employed to distrain was an officer directed to perform that duty by the Commissioner under the orders of the Government, the conviction must be reversed. (Cr. R. 13—24th February 1887—Imperial vs. Yashwant Hari.)

## XI.<sup>1</sup> for the realization of land-revenue by Government :

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

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

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

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

(3) **Of arrears.**—The law (proviso to Section 86) does not contemplate the grant of assistance to superior holders for the recovery of land-revenue due to him from his tenants for past years. Accordingly in

<sup>1</sup> Words repealed by Bombay Act III. of 1886 have been omitted.

a case in which an application was made by an Inamdar for assistance to recover from his tenants, the revenue due to him for the past years, he was referred to a Civil Court. ( *Vide* G. R., R. D., No. 3035, dated 13th April 1885.) The Inamdar filed a suit against one of his tenants, and eventually got a decree in his favour, and then, on the strength of this decree, made an application for assistance to recover his dues from other tenants. On this, the point, whether the assistance applied for by the Inamdar should be granted or not, was referred to Government. On this reference the following orders were passed :—

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

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

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

Held that the suit was properly tried by the Court of first instance on the merits. The lower Appellate Court having dismissed the suit on the ground that the Inamdar was not a party to the suit, a point on which no

issue was raised, although it had been taken in the written statement, and which was not made a ground of appeal.

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

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

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

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

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

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

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

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

A tenant shall be regarded as holding land at the rent agreed on between him and the landlord if there is evidence of such agreement, and the Collector is bound to give assistance if required for the recovery of so much rent as is lawfully due. If the question what is lawfully due should be of a complicated nature or difficult to determine, it is open to the Collector to refuse assistance. (G. R. No. 5841, dated 30th October 1880, and G. R. No. 6841, dated 30th December 1880.)

(11)<sup>1</sup> **Defaulter's holdings to revert to alienees.**—

Section 86 of the Code expressly provides that the recovery of dues from inferior holders shall be made under the same rules and in the same manner as prescribed in Chapter XI. for the realization of arrears due to Government. An exception only is made in the case of Section 137\* in which the paramount right of Government to recover its land-revenue over all other claims is recognized; but every other rule in Chapter XI. is applicable. Accordingly, where Section 153 provides that the Collector may declare the occupancy in respect of which an arrear of land-revenue is due to be forfeited to Government, so he may declare a holding with which he is dealing under Section 86 to have reverted to the superior holder. (G. R. No. 3083, dated 30th May 1881.)

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

(13) **Sharers in alienated villages.**—In accordance with the definitions in clauses 4, 13 and 14 of Section 3 of the Code and the decision of Government in their Resolution No. 437J of 20th August 1880 (see order No. (7) above) all the sharers in alienated villages, whether their names are entered in the accounts or not as managers, are in respect of their shares in, or charges on, the revenue entitled to assistance in the recovery thereof as superior holders. (G. R. No. 5454, dated 21st September 1881.)

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

(15) **Delegation of powers to Mamlatdars.**—In districts where the practice still obtains the Mamlatdars may continue to exercise

<sup>1</sup> *Vide* order No. (28) below and rule 65 (e).

the powers under Sections 86 and 87 of the Code, which powers they previously exercised under Regulation XVII. of 1827. Where, however, the practice has been discontinued the Collectors are authorized to delegate to the Mamlatdars in their districts the powers of receiving applications and issuing orders under Sections 86 and 87 of the Code. (G. R. No. 2598, dated 31st March 1883.)

(16) **To Mahalkaris.**—G. R. No. 2598 of 31st March 1883 should be held applicable to Mahalkaris, who should continue to exercise the same powers under Sections 86 and 87 of the Code which they previously exercised under Regulation XVII. of 1827. (G. R. No. 6924, dated 15th August 1883.)

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

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

When after enquiry it appears that there is a dispute between the two persons as to which of them is entitled to be the landlord of the tenant, the Collector is quite justified in declining to render assistance to either of them if the question raised by them appears to him to be "of a difficult or complicated nature." (G. R. No. 3778, dated 10th May 1881.)

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

(a) Opinion of the Honourable the Advocate-General—

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

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

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

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

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

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

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

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

"2. Section 79 of the Code says that 'the Collector shall not be bound in any case to recognize any person to whom any interest in any portion of an occupancy or alienated holding has been assigned, unless the transfer has been recorded in the revenue records in accordance with the foregoing provisions.

"3. The scope of this clause is limited by its last words; it can only be applicable in the class of cases in which the foregoing provisions of the Code provide for transfers being recorded in the revenue records,

"4. Thus Section 70 of the Code provides how effect is to be given to decrees of courts which declare an occupancy right to be vested in some person other than the person whose name has been hitherto entered in the Collector's records. So long as the person who is entitled to have his name entered in the revenue records under that section abstains from taking the necessary action to get his name entered, the Collector is not bound to recognize him as the occupant.

"5. So also with regard to private conveyances, whether of occupancies or of alienated holdings, in favour of another person, Sections 74, 75 and 76 provide a means whereby the name of the transferee may in certain cases be substituted in the revenue records for that of the transferer. If in any such case the transferee should apply to the Collector for assistance to recover rent from the inferior holders without having first of all got his name entered, the Collector would not be bound to recognize him.

"6. In the case of a partition amongst owners who have hitherto held jointly the entire estate standing in the revenue records in the name of one of them only, the Collector is also, I think, not bound to recognize a separated sharer who applies for assistance to recover rent from the inferior holders of his allotted share without having first of all got the lands in that share entered in the revenue records in his name. A definite portion of the estate has been assigned or transferred to such sharer and unless, through the operation of some provision of the Code or of some rule made under it, he is unable to get the share transferred to his own



name, the Collector would be justified in refusing to recognize him until his name is duly entered in the revenue records as the registered occupant or the holder, as the case may be, of his share."

(d) Memorandum from the Remembrancer of Legal Affairs, No. 668, dated 29th May 1885:—

"1. I do not think that Section 79 of the Revenue Code was applicable to the case reported on in my No. 537 of 15th April 1884 at all.

"2. Certain inam lands had stood in the Collector's books in the name of Pachhabibi. At her request they were transferred to the name of her only surviving male relative Sadat Sahab, and on the death of the latter his daughter Chhotibibi's name was substituted for his.

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

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

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

(22) **Applications for assistance.—Single application sufficient against several inferior holders.**—The present practice of allowing the superior holder to make a single application for

assistance under Section 86 against several inferior holders is correct; and no new rule seems to be called for. (G. R. No. 8721, dated 23rd December 1887.)

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

This question has been decided by the following orders:—

“For the reasons stated in G. R. No. 840 of 1st February 1890 (see *infra* order No. (27)) proceedings before revenue officers under Sections 86 and 87 of the Land Revenue Code are not subject to the provisions of the Civil Procedure Code.

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

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

(24) **Procedure in cases of death of applicant.**—In cases of applications for assistance under Section 86, if the tenant against whom the assistance is applied for, die after the application is made, the procedure to be followed should be that prescribed in Section 368 of the Civil Procedure Code, *viz.*, the Mamlatdar should postpone the case and call upon the applicant to specify the name of the legal representative of the deceased tenant whom he wishes to be entered in the record in lieu of

the deceased and to have a fresh notice issued to such representative. (G. R. No. 682, dated 26th January 1887, and G. R. No. 4672, dated 21st July 1887.)

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

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

As there is nothing to require or justify verification by, or an examination of, an applicant under Section 86, there seems to be no necessity for his personal attendance. The Legislature in dispensing with the verification required for a civil plaint (Civil Procedure Code, Section 51), and with the examination required on a criminal complaint (Criminal Procedure Code, Section 200), seems to have regarded an application in writing as a sufficient guarantee of good faith to justify action in the first instance. Against persons who, knowing they had no title, caused the Collector to harass cultivators unnecessarily, Section 182 of the Indian Penal Code would afford adequate protection.

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

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

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

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

Both departmental and public inconvenience might arise from the detention of applicants till their identity and status could be ascertained, and questions of titles are clearly to be postponed till they can be enquired into in the presence of the opponent.

There can, of course, be no objection to an applicant's employing the post instead of a private messenger for the bare delivery of his application. (G. R. No. 8027, dated 12th November 1890.)

(26)<sup>1</sup> **Expenses in such cases**—The recommendation of the Commissioners that the Bhatta payable to a karkun deputed to conduct a sale following as consequence of an application for revenue assistance should not be separately charged, is approved, except in cases in which the services of the karkun have been entirely placed at the disposal of the holder of a khotas or Inam village for any considerable time to execute assistance decrees. In such cases the pay and allowances of the karkun must be recovered from the khot or Inamdar. (G. R. No. 1880, dated 20th March 1888.)

(27) **Persons representing superior holders need not necessarily be pleaders.**—The question whether superior holders applying under Section 86 of the Code for assistance in recovery of dues from inferior holders can be represented by any person who is not a pleader, has been disposed of by the following orders:—

“The difficulty arises from Section 196, Bombay Land Revenue Code which declares that all formal and summary enquiries under that Act shall be deemed judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code, and that the office of any authority holding any such enquiry shall be deemed a Civil Court for the purposes of such enquiry.

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<sup>1</sup>The general practice, with regard to levying expenses in assistance cases which is at present followed and which has been approved by Government Resolution No. 1880, dated 20th March 1888, may be summed up as follows:—

In the enquiry stage.—proceedings originate with a plaint of petition which requires a Court fee stamp of 1 anna when the amount of the claim is less than Rs. 50, and 8 annas when it is Rs. 50 or more. A process fee of 3 annas for every notice or summons issued to the defendant or a witness is also charged, and the expenses of witnesses have also to be paid at the rate of 4 annas or 6 annas per witness, according to the class to which he belongs. All these expenses generally follow the decree, an exception being made only in those cases where the Court considers that the plaintiff was over-hasty in seeking its assistance, or for such similar reason.

The execution stage.—In most cases expenses end after the decree, and there is no formal execution stage. The Mamlatdar sends an order to the village officers giving particulars of the decree passed and directing them to enforce it. As a rule the defendant pays the money due on

"It would seem that such enquiries are judicial proceedings for the purposes only of Sections 193, 219 and 228, Indian Penal Code, and under the maxim *expressio unius est exclusio alterius* are not judicial proceedings for the purposes of any other enactment.

"The office of the authority making such an enquiry is a Civil Court for the purposes of the enquiry, but the proceedings are judicial only in the above limited sense, and the appearances, applications and acts authorized by law to be made or done, or not made or done by parties to suits or appeal within Section 36, Civil Procedure Code, and Section 39 of the Civil Procedure Code would not appear therefore to apply.

"That such officers are not Civil Courts for all purposes is clear from Section 87 of the Bombay Land Revenue Code, which provides for recourse to the Civil Courts as distinguished from such officers.

"Regulation II. of 1827, Section (1), which is still in force, requires that no person shall be allowed to act in any judicial proceeding in any Court except the pleaders, the parties, or their recognized agents.

"But Section 47 refers to Courts, appointed under that Act, which have jurisdiction over all suits of a civil nature of which their recognizance was not barred. It did not refer to what were then called Revenue Courts.

"The recourse to the Civil Courts now reserved by Section 87, Bombay Land Revenue Code, was under clause (5) of Section 26 of Regulation XVII. of 1827 to the Collector and when this jurisdiction was taken from him by Bombay Act XI. of 1866 special provision was made by Section 8 of the last mentioned Act for pleaders engaged in such suits there pending to appear in the Civil Courts. This seems to indicate that Section 47 of Regulation II of 1827 was not deemed applicable to Revenue Courts.

verbal orders from these officers, and there is no further trouble. But where this is not the case and an attachment and sale of the defendant's property is rendered necessary, expenses of sale are recovered at the following rates:—

- 2 annas in the case of moveable property ;
- 4 annas in the case of immoveable property : or
- $\frac{1}{4}$ th of the amount realized by the sale ;

whichever is the greater. (G. R. No. 2459, dated 26th March 1883.) Where a formal notice is issued prior to the attachment and sale of the defendant's property, a notice fee is also charged at the rate of 4 annas if the amount of the decree does not exceed Rs. 5, and 8 annas in other cases. These expenses also fall on the defendant, i.e., they follow the decree.

When a karkun has to be sent for conducting a sale in the rare cases in which a sale becomes necessary, it is the practice in some districts to levy the karkun's batta, or travelling allowance for the day along with the expenses of sale, and this charge also falls on the defendant.

"As moreover inquiries under Section 87, Bombay Land Revenue Code, are by Sect. on 196, judicial proceedings only within the meaning of the specified sections of the Indian Penal Code, Section 47 of Regulation 11 of 1827 would not apply to them." (G. R. No. 840, dated 1st February 1890.)

(28) **The forfeited land of an inferior holder cannot be given into the possession of a superior holder.**—In the execution of an assistance order, certain lands were forfeited under Section 153 and possession made over to the superior holder under orders of an Assistant Collector. The Commissioner reversed the order of assistance under Section 209, but the superior holder refused to hand over possession. In such a case Government have not the power to restore the land to the original occupants, Sections 61 and 202 being inapplicable. The question was referred to the Legal Remembrancer; his Report No. 1841, dated 21st December 1896, contains these remarks:—

In *Narayan vs. Parshottam and others* (at page 463 of the printed judgments) the Judges have agreed in holding that the Collector has no authority under Section 56 to restore the forfeited holding to the superior holder. Parsons, J., does not agree with G. R. No. 3089, dated 30th May 1881 (see order No. 11 above), that Section 153 must be construed as if the superior holder took the position of Government on the ground that a superior holder has not the paramount right for rent (under Section 137 expressly excepted in Section 86<sup>1</sup>). The revenue officers should therefore exercise the greatest care in applying the forfeiture clauses to lands held by inferior holders. (G. R. No. 2972, dated 16th March 1897.)

(29) **Any superior holder may apply for assistance.**—The High Court's Judgment in Appeal No. 26 of 1897, *Sambubin Bapu vs. Kamaalrao Vithalrao* has the following remarks:—

Section 71 was inapplicable as regards any private or Deshmokhi alienated land. There is nothing in Section 86 requiring an applicant to be a "registered superior holder." The term is unknown in the Land Revenue Code.

Possibly it might conduce to better Revenue administration if the Collector were empowered to hold an inquiry and determine who should be "recognized" holder of alienated lands to whom tenants should attach until the decree or order of a competent Court is produced. But such at present is not the law.

The facts of the case are as below:—

V died leaving a Will dividing his estate among his sons K and four others by one wife and B by another. K managed the estate during the life-time of V. The Will not being operated upon, the Collector entered the name of K. Some tenants paid revenue to B and against them K got assistance from revenue Courts. The Sub-Judge granted an injunction against K and this was upheld by the High Court. (G. R. No. 6899, dated 17th September 1897.)

<sup>1</sup> Vide rule 65 (c).

(30) **In appeals pleaders cannot legally represent their parties.**—For the reasons stated in G. R. No. 840, dated 1st February 1890, a Collector is not legally bound to admit pleaders in proceedings under Section 86. Enquiries under Sections 86 and 87 are judicial proceedings for the purpose of Sections 193, 219, 228, Indian Penal Code (*vide* Section 196). They are not judicial proceedings in the sense that they require the various formalities laid down by the Civil Procedure Code for such proceedings. Section 47 of the Regulation II. of 1827 and Section 36 of the Civil Procedure Code do not apply, and therefore a pleader cannot claim any right to appear in such enquiries. (G. R. No. 8915, dated 8th December 1897.)

(31) **No assistance for interest should be given.**—Government officers should not permit such a misapplication of the powers given to them by the law, *i.e.*, in giving assistance for rent in the guise of interest. (G. R. No. 1279, dated 21st February 1898.)

(32) **Local Fund cess in cases of land held on Kauls or perpetual leases.**—There are villages in which the tenants are in the habit of paying to the Inamdars a rental determined by Kauls or perpetual leases and a local fund cess calculated on the amount they actually pay. If a survey settlement is introduced in such a village, the Inamdar becomes liable for the cess calculated on the survey assessment under Section 6 of Bombay Act III. of 1869, and if this amount happens to be greater than the amount previously paid, he is entitled to recover the amount of the enhanced cess after introduction of the survey settlement. But as the Kauls are perpetual leases, he cannot increase that rental so as to make it equal to the survey assessment. (G. R. No. 3865, dated 10th June 1898.)

(33) **Year to mean the longest period.**—The ordinary and natural sense of the second clause is that the applicant is plainly to be allowed the benefit of whichever of the two periods mentioned (*viz.*, the revenue year or the year of tenancy) may give him the longest period of limitation within which to make his application. Thus where a year of tenancy ran from 29th April 1896 to 28th April 1897, the period of limitation would differ according as the rent became payable in 1896-97 or 1897-98. In the first case the longest period is the expiry of the tenancy, in the second, 31st July 1897. If the year of tenancy expires on 28th February 1897, the rent not being payable within the year, if the same tenancy continued another year, the longest period will be on or before 28th February 1898. In such a case the applicant is not bound to make his application before 31st July 1897. (G. R. No. 3617, dated 23rd May 1899.)

(34) **Execution of assistance decrees.**—Arrangements should be made to provide sufficient establishment to secure the prompt and vigorous execution of process in all villages in which assistance has been granted under the orders of the revenue authorities. (G. R. No. 705, dated 30th January 1900.)

(35) A village officer of an alienated village who fails to satisfy the Collector that he will exercise the necessary diligence and show reasonable efficiency in the collection of the revenue due to the Inamdar is certainly unfit to undertake the duties of his office and may be rejected under Sections 42 and 43 (Vatan Act). It is desirable that quarterly statements of collections and arrears of revenue in alienated villages should be submitted. (G. R. No. 809, dated 3rd February 1900.)

(36)<sup>1</sup> **The position of a mortgagee.**—A Mamlatdar can refuse to recognise a mortgagee if he had omitted to have his name entered in the Revenue records. (G. R. No. 1078, dated 16th February 1900.)

(37) **Notice of hearing to the superior holder—free.**—A notice of the date of hearing should continue to be furnished to applicants without charge. A copy of the notice served on an inferior holder or co-sharer should be sent by endorsement to the applicant for information and guidance. (G. R. No. 4932, dated 8th August 1900.)

(38) **Serving of processes.**—Government Resolutions, No. 881, dated 14th February 1873, and No. 4702, dated 18th August 1873, authorise the Collectors of Districts to engage temporary peons for the service of revenue processes and to pay them at daily rates for the number of days they may have been employed, the amounts so paid being drawn on contingent bills supported by a certificate that the fees realised in stamps were sufficient to cover the expenditure charged in the bill. The entertainment of temporary clerk throughout the year without the sanction of Government is irregular. Paragraph 9 of the Committee's report in the preamble to G. R. No. 1880, dated 20th March 1888 (see footnote to order No. 26), states that the work of the karkun who issues summonses and notices and keeps register is represented by the Court Fee on the petition which covers also the cost of stationery and that of the peon, whom Government has to send out, process serving is fairly met by the process fee annas 3 for such summonses or notices served (G. R. No. 2827, dated 28th April 1902.)

(39) **Van Mhais.**—"Van Mhais" cannot be regarded as "rent" or "land revenue." (G. R. No. 7783, dated 23rd October 1893.)

87.<sup>2</sup> On application being made under Section 86 to the Collector, he shall cause a written notice thereof to be served on the inferior holder or co-sharer, fixing a day for inquiry into the case. On the day so fixed he shall hold a summary inquiry, and shall pass an

Collector how to proceed on such application.

<sup>1</sup> *Id.* order No. (12) above.

<sup>2</sup> (1) *Id.* orders under Section 86.

(2) For form of notice to be issued under this Section, see Appendix IV.



order for rendering assistance to the superior holder for the recovery of such amount, if any, of rent or land-revenue as appears to him upon the evidence before him to be lawfully due.

But, if it appears to the Collector that the question at issue between the parties is of a complicated or difficult nature, he may in his discretion either refuse the assistance asked for, or, if the land to which the dispute relates has been assessed under the provisions of Chapter VIII.<sup>1</sup> or at any survey settlement confirmed by Section 112, grant assistance to the extent only of the assessment so fixed upon the said land.

Nothing in this section shall prevent either party from having recourse to the Civil Courts to recover from the other such amount as he may deem to be still due to him, or to have been levied from him in excess of what was due. as the case may be.

**(1) Grounds on which Collector's decision to proceed.**—The Collector's decision under this section should proceed on the grounds indicated in the first paragraph of Section 83 of the Code, viz.:—

(a) If any agreement between the superior holder and the tenant is proved, the rent agreed upon between them.

(b) If there is no satisfactory evidence of such agreement, the rent payable by the usage of the locality.

(c) In the absence of any agreement or usage, such rent as may under the circumstances of the case be deemed just and reasonable.

(d) If owing to the complicated and difficult nature of the dispute the Collector is unable to settle it summarily, he can refuse assistance, or, where the survey assessment has been fixed, may grant assistance to the extent of such assessment. (G. B. No. 3904, dated 17th June 1882.)

**(2) Collector not to withhold assistance.**—Para. 1 of Section 87 of the Code leaves the Collector no discretion as to withholding assistance for the recovery of rent or land-revenue which after a summary inquiry he finds to be lawfully due. The words are "he shall hold a summary inquiry and shall pass an order for rendering any assistance to the

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<sup>1</sup> Words repealed by Bombay Act III. of 1886 have been omitted.

superior holder for the recovery of such amount, if any, as appears to him to be lawfully due." In these inquiries the Collector exercises in a summary way the jurisdiction of a Civil Court, and like those Courts he has no authority to go behind the liability and listen to appeals *ad misericordiam*. Even if he should do so, the last paragraph of Section 87 enables the landlord to go to the Civil Court to recover from his tenant such amount as the Collector disallows, and the object of the Collector would be frustrated. ( G. R. No. 8402, dated 25th October 1884. )

(3) **Decisions in assistance cases are not decrees.**—Orders passed by a revenue officer under Section 87 of the Bombay Land-Revenue Code are not decrees, or orders having the force of a decree passed by a Revenue Court within the meaning of Article 7, Schedule I of the Court Fees Act. For the purposes of certain sections of the Penal Code a formal or a summary inquiry under the Land Revenue Code is to be deemed ( Section 196 ) a judicial proceeding, and the office of the authority holding such inquiry is to be deemed a Civil Court, but the order passed by a revenue officer under Section 87 of the Code is not in any way binding upon the parties like a decree and determines no question of right that may be at issue between them. To copies of such orders Article 9, and not Article 7 of the above schedule applies. ( G. R. No. 5630, dated 31st July 1883. )

(4) **Not to bar Civil Suit.**—The concluding part of Section 87 shows clearly that the Mamlatdar's order does not preclude the parties from having recourse to the Civil Court if dissatisfied with it. ( Ganesh Hathi *vs.* Metha Vyankatram Harijivan.—1 L. R., Bombay, Volume VIII., page 188, 1884. )

(5) **No limit as to time within which to execute necessary.**—As the orders passed under Section 87 of the Land-Revenue Code remained in numerous cases unexecuted for many years, it was suggested that a certain limit of time should be prescribed as in the case of decrees of Civil Courts within which those orders should be executed, and that any orders not so executed should be treated as time-barred. On this the following orders have been passed:—

"The orders contemplated by Sections 86 and 87 of the Land Revenue Code are not in the nature of decrees for specified amounts, execution of which can be taken out by the judgment-creditor at his discretion, but are orders for rendering assistance towards recovery of such amount as may appear to be lawfully due on account of the current years rent. Such orders should obviously themselves constitute the authority for the necessary action, when that action has been taken, that is, when the assistance directed has been given and the final order reported, the order is discharged whether the amount has been recovered in full or not. If anything remains to be recovered after the original order has been discharged and there is a prospect of its proving realizable by repetition of process under Chapter XI., it is open to the superior holder to make a fresh application, on which,

provided it is made within the year in respect of which the balance is due, a fresh order can be given at the discretion of the Collector." (G. R. No. 1117, dated 12th February 1894.)

(6) **The Collector's power of refusing assistance.**—The power given to the Collector in the second paragraph of Section 87 of the Land Revenue Code of refusing assistance to a superior holder for the recovery of dues from his inferior holders when the question at issue between the parties appears to him to be of a complicated or difficult nature is a discretionary power; and the ordinary rule in appeals is not to interfere with the exercise by subordinate authorities of their lawful discretion. But this rule is subject to the qualification that it is a duty of the appellate authority to see that the subordinate exercises a sound discretion.

(2) If a Collector declares a case under Section 87 of the Code to be of a complicated or difficult nature merely because the amount of rent which the superior holder has been in the habit of receiving, and which, therefore, he is *prima facie* still entitled to receive appears to him to be exorbitant, it is obvious that he uses his discretionary power simply in order to avoid giving effect to the law in that appears to him to be a hard case; or, in other words, he evades the law.

(3) It is no part of the Collector's or Assistant Collector's duty under Section 87 to determine what remission, if any, might reasonably be granted by an Inamdar in any given year owing to the nature of the season. The object of the section is to enable superior holders to enforce their ascertained and legal rights against the inferior holders by a summary process, *not* to make the Collector or his Assistant an umpire for the settlement of disputes that arise between superior and inferior holders. For the settlement of such disputes, the parties are expressly referred by the last paragraph of Section 87 to the ordinary Civil Courts. (G. R. No. 168, dated 5th January 1884.)

(7) **Prompt assistance to be given.**—Local officers should clearly understand that their duty in giving aid in the recovery of revenue of alienated villages is not less binding than the duty of collecting the Government revenue. (G. R. No. 4931, dated 16th July 1901.)

(8) The order to be passed under Section 87 is one for rendering assistance for the recovery of such amounts as appears to be lawfully due, and when such order is passed any or all of the measures prescribed in Chapter XI. may be taken until the amount held to be lawfully due is collected. When a superior holder has not paid revenue on the date on which it is due, there is failure to pay and it is then open to the Collector to recover from co-sharers or persons in actual occupation. This course should be adopted when the exact amount due from any individual is known but not otherwise. (G. R. No. 5084, dated 20th July 1901.)

(9) In pursuance of this resolution the Commissioner, C. D., issued the following Circular <sup>R</sup><sub>3376</sub>, dated 16th August 1901:—

1. Every Mamlatdar should see that the village officers furnish the Inamdars with the *vasulbaki* or statements of outstanding balances due from each tenant immediately after the lapse of the date of each instalment to enable them to file assistance suits earlier than at the end of the revenue year as is now the case in most cases.

2. In alienated villages where the demand against each tenant is settled by the Survey Department, there will be no dispute about the demand and therefore the assistance suits in such cases ought to be disposed of within fifteen days' at least, from the date of their presentation. Any case undisposed of for one month from the date of presentation should be reported to the Collector.

3. In cases where the demand is settled by long usage no delay should be necessary, but where the demand is not fixed as aforesaid but fluctuates from time to time according to the agreements between the parties or where the payment is in kind, there will be some delay in arriving at the correct dues claimed. Assistance suits of this nature should be disposed of at least within one month from the date of their presentation. In complicated cases the parties will of course be referred to the Civil Courts. Cases in unsettled villages not disposed of within two months from the date of presentation should be referred to the Collector.

4. Execution of decrees passed in assistance cases should not be deferred for years as is at present the case. As desired in paragraph 3 of the G. R. all the measures prescribed in Chapter XI. may be taken, if necessary, promptly until the amount held to be lawfully due is collected.

5. As a general rule no decrees should remain unexecuted beyond six months from the dates thereof.

6. The Collector and the Assistant and Deputy Collectors when examining a Mamlatdar's office or when visiting an alienated village should pay special attention to this part of the administration (*vide* G. R. No. 7092, dated 8th October 1901).

(10) Inamdars should at the beginning of each revenue year furnish the rent-roll (Village Form No. 6) to the village officers—hereditary, if there be any. (G. R. No. 3782, dated 4th June 1902.)

(11) It should be made the rule for Mamlatdars to enquire into and decide applications from holders of alienated villages as far as possible, in the villages concerned, the summary inquiry being in ordinary cases completed on the day fixed. G. R. No. 5084, dated 20th July 1901, was not intended to authorise repeated or frequent distinct processes of execution. It was merely intended to direct that for the purpose of executing an order for recovery all legal process might be applied continuously until exhausted. Once this has been done, a fresh application for execution in the case of the same arrears should not be entertained except for very special reasons, such as evidence that the defaulter had previously concealed available property. (G. R. No. 7537, dated 29th October 1903.)

*Grant of Special Powers to Holders of Alienated Lands.*

88. It shall be lawful for the Governor-in-Council at any time to issue a commission to any holder of alienated lands, conferring upon him all or any of the following powers in respect of the land specified in such commission (namely) :—

**(a)** to demand security for the payment of the land-revenue or rent due to him, and if the same be not furnished, to take such precautions as the Collector is authorized to take under Sections 141 to 143.

**(b)** To attach the property of persons making default in the payment of such land-revenue or rent, as aforesaid ;

**(c)** to fix from time to time the times at which, and the instalments in which, the land-revenue or rent due to him shall be payable ;

**(d)** to exercise the powers of a Collector under Sections 65 and 66 ;

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

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

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

**(1) Stamps for the agreement.**—The written agreement to be entered into by the Inamdar in respect to the remuneration of the

village officers will have to be executed on stamp paper of the value of eight annas. (G. R. No. 4639, dated 3rd September 1880.)

(2) **Formalities to be observed before Inamdar is invested with powers.**—There is no objection to the powers contemplated in clauses (a) and (b) of Section 88 of the Code being conferred upon an Inamdar at once, but none of the powers mentioned in clauses (c) to (f) of that section can be conferred until a Survey Settlement has been extended to his village under Section 216 of the Code. (*Vide* the proviso to Section 88, and G. R. No. 7697, dated 19th December 1881.)

The first step, if the Inamdar is to be invested with any powers under clauses (c) to (f) is for Government, under Section 216 of the Code, to authorize the extension to the Inamdar's village (by notification)<sup>2</sup> of the provisions of Chapters VIII. to X. of the Code which he may desire to have so extended, or of such of them as Government think fit to extend. Section 112 must, of necessity, be amongst the number of the sections to be so extended, when a Survey Settlement "made, approved and confirmed" under the authority of the Governor-in-Council, is already in force in the village. And when the existing assessments have not yet been declared by Government to be fixed for a term of years, Sections 102 and 103 must of necessity also be included, in order that Government may have power at once to declare them to be so fixed and that the Survey Settlement may be formally introduced.

When the above notification has been issued and when, if necessary, an order has been issued under Section 102 and proceedings have been taken under Section 103, the requirements of the proviso to Section 88 will have been satisfied.

The powers which Government may then deem it fit to confer upon the Inamdar or upon any agent of his may be given, not by notification, but by a commission in the form of Schedule F of the Code. If powers are conferred under clauses (a) and (b) of Section 88 of the Code at once without waiting for a Survey Settlement to be extended to the village under Section 216 they, too, must be given by a commission. (G. R. No. 1388, dated 8th March 1881.)

(3) **A Commission does not include power of distraint.**—It is not necessary that power to distraint must be given under Section 154, as Section 90 does not confer it on the holder of a Commission under Section 88. Under Section 88 (b) the Governor-in-Council can confer it. Section 90 lays down the course after attachment. (G. R. No. 3764, dated 30th June 1881.)

(4) **Preliminaries of the issue of a commission.**—With a view to being invested with any of the powers contemplated in clauses (c) to (f), the Inamdars should apply in writing under Section 216 to have the provisions of Chapters VIII. and IX. extended to their villages. (G. R. No. 81, dated 6th January 1882.)

<sup>1</sup> *Vide* G. R. No. 6401, dated 6th December 1880 under Section 216.

<sup>2</sup> This notification is issued in the form of Appendix V.

(5) The rule which His Excellency-in-Council desires to lay down with regard to the issue to Inamdars of Commissions conveying powers under clauses (a) and (b) of Section 88 of the Land Revenue Code is that these powers will not be granted unless the tenants concerned are protected from rack-renting under Section 217 of the Code. (G. R. No. 203, dated 9th January 1885.)

(6) The Commissions should continue to be issued by Government. (Entry 7 of G. R. No. 4347, dated 25th June 1902.)

(7) **Inamdars are invested with powers to take precautionary measures but cannot inflict punishment.**—Section 88, clause (a) of the Code and the Commissions issued under it empower the holders of such Commissions to take such precautions as the Collector is authorized to take under Sections 141 to 143. Section 141 and the first and second paragraphs of Section 142 provide precautionary measures for the security of the land-revenue, and there is no objection to the holder of the Commission acting under them. The third paragraph of Section 142, however, relates to the infliction of a penalty for disobedience of an order made by such holder, and enacts that such penalty may be inflicted on conviction after a summary inquiry. This involves a *quasi-judicial* proceeding (*vide* Section 195), and is obviously something quite distinct from the precautionary measures provided for securing the payment of land-revenue. The holder of a Commission cannot, therefore, exercise this power, but if he wishes to have a penalty inflicted under Section 142 on any of his inferior holders, his proper course is to move the Collector to enquire into the matter, and not to inflict the penalty himself.

Section 143 enables the Collector, if the revenue is not discharged within two months after the crop has been deposited under Section 141, clause (b), to take such portion thereof as he may deem fit for sale under the provisions of Chapter XI, applicable to sales of moveable property in realization of the revenue due and of all legal costs. This power also vests in the holder of a Commission, but the taking of a portion of the defaulter's crop is an attachment of his property, and when it is done the holder of the Commission is bound to make an immediate report thereof, under Section 90, to the Collector. At this point "precautions" cease, and the Collector has to step in under Section 90 to determine whether the attached crop may be sold or not. (G. R. No. 106, dated 6th January 1883.)

(8) **Powers to be conferred on Inamdars.**—Applications for granting of powers under the Section will be returned if the extension of the provisions of Chapters VIII. and IX. has not been applied for before.

2. None of the powers specified in clauses (c) to (f) can be granted until the Survey Settlement has been introduced.

3. An agreement to pay the Patil and Kulkarni should be required before granting a Commission under this Section (88). (G. R. No. 9819, dated 12th December 1884.)

(9) It is not advisable to confer the powers under Section 88, until the formalities described in Sections 216 and 217 have been fulfilled. (G. R. No. 280, dated 13th January 1885.)

(10) It is not necessary to confer on Inamdars powers under the second part of clause (e) of Section 88 of the Land Revenue Code. (G. R. No. 597, dated 23rd January 1889.)

(11) It is not expedient to confer on Inamdars the powers mentioned in Section 88 of the Land Revenue Code other than those specified in clauses (a), (b), (c) first part and (f) of that Section. (G. R. No. 4702, dated 2nd July 1889.)

(12) The grant and continuance of any Commission should in future be conditional on the Inamdar undertaking, on occasions of famine or scarcity, to grant suspensions or remissions on a scale (to be intimated to him by the Collector) corresponding with that applied to Government villages in similar circumstances. (G. R. No. 7537, dated 29th October 1903.)

(13) **Procedure to be adopted in recovering rent and revenue due to estates of which the Collector is the official guardian.**—It is not necessary to issue a commission to the Collector in his capacity of guardian. In his capacity of Collector he can exercise all the powers specified in Section 88. He is not required to apply to the Mamlatdar for assistance, on the contrary any assistance which the Mamlatdar can give is given by him as a deputy of the Collector, and the Collector can direct assistance to be given in any case whatever in his district in which it is legal to grant it. (G. R. No. 5424, dated 5th August 1902, and No. 4450, dated 11th June 1904.)

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

90. If the holder of any such commission attach a defaulter's property, he shall make an immediate report to the Collector of his having done so. Should the demand, on account of which the attachment has been made, appear to the Collector, after such inquiry as he may deem fit to make, to be just, he shall give orders for the sale of the property, and the sale shall be conducted agreeably to the provisions of Sections 165 to 186. But if the holder of the commission is invested under Regulation

Form of such commission.

Reference to be made by holder of commission to Collector.



XIII. of 1830, with civil jurisdiction and with power to execute his own or his agent's decrees, the sale shall be conducted by him and not by the Collector and his subordinates.

(1) **Inamdar's report exempt from Court fee-stamp.**

—The report required to be made by an Inamdar under this section is not an application or petition within the meaning of article 1. clause (b) of Section 2 of the Court Fees Act, and therefore does not require a stamp. (G. R. No. 987, dated 11th February 1882.)

91. All compulsory process shall cease on the defaulter's paying or tendering the amount demanded of him under protest, or on his furnishing, either to the holder of the commission or his agent or agents, or to the Collector, satisfactory security in the form of Schedule D, or to similar effect.

When compulsory process shall cease.

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

Penalty for continuing compulsory process.

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

Arrears to which power under commission to extend.

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

Holder of commission not to enforce unusual or excessive demand.

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

Penalty for so doing.

94. Nothing in the last section shall be deemed to prevent a holder of alienated land from instituting a suit in any Court of competent jurisdiction for the purpose of establishing his claim to re-assess the lands or re-settle the revenue of any inferior holder paying less than the full sum to payment of which he deems him to be justly liable, or from levying the sum ascertained to be due in accordance with the decree in any such suit in the manner hereinbefore mentioned.

Holder of commission may establish right to enhanced rent in Civil Court.

## CHAPTER VIII.

### *Of Survey Settlements and the Partition of Estates.*

95.<sup>1</sup> It shall be lawful for the Governor in Council, whenever it may seem expedient, to direct the survey of any land in any part of the Presidency, with a view to the settlement of the land-revenue, and to the record and preservation of rights connected therewith, or for any other similar purpose, and such survey

Power to introduce revenue survey into any part of Presidency.

<sup>1</sup> (1) The general principles and rules which form the basis of Revenue Survey operations are described in the Survey and Settlement Manual.

(2) With a view to the settlement of the land-revenue it is competent to Government, if they think fit, to direct under this section the survey of vacant lands in village-sites. When such an order is given, the officer in charge of the Survey will fix the assessment under Section 100. In respect of lands not within the local operation of an order under this section, the assessment has to be fixed under Section 52 by the Collector. (G. R. No. 4314, dated 18th June 1886.)

shall be called a revenue survey. Such survey may extend to the lands of any village, town, or city generally, or to such land only as the Governor-in-Council may direct; and subject to the orders of the Governor-in-Council, it shall be lawful for the officers conducting any such survey to except from the survey settlement any land to which it may not seem expedient that such settlement should be applied.

Control of revenue survey. The control of every such revenue survey shall vest in, and be exercised by, the Governor-in-Council.

96. It shall be lawful for the survey officer deputed to conduct or take part in any such survey to require, by general notice or by summons, suitable service from holders of land, etc. Survey officer may require, by general notice or by summons, suitable service from holders of land, etc.

all material questions, and the presence of taluka and village officers, who, in their several stations and capacities, are legally, or by usage, bound to perform service in virtue of their respective offices and to require from them such assistance in the operations of the survey and such service in connection therewith as may not be inconsistent with the position of the individual so called on.

97.<sup>1</sup> It shall be lawful for the survey officer to call upon all holders of land and other persons interested therein to assist in the measurement or classification of the lands to which the survey extends by furnishing flag-holders; and in the event of a necessity for employing hired labour for this or other similar object incidental to survey operations, it shall be lawful to assess the cost thereof, with all contingent expenses, on the lands surveyed, for collection as a revenue demand.

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

<sup>1</sup> Vide Section 9 of Act IV. of 1903.

98.<sup>1</sup> Except as hereinafter provided, no survey number comprising land used for purposes of agriculture only shall be made of less extent than a minimum to be fixed from time to time for the several classes of land in each district by the Commissioner of Survey, with the sanction of Government. A record of the minima so

<sup>1</sup>(1) *Vide* note under rule 55 of the rules under Section 214.

(2) Under the provisions of Rule 2, Section 17, of Bombay Act IV. of 1868 (which correspond to those of Section 98 of Act V. of 1879), the following scale for the regulation of sub-divisions of survey numbers was fixed. This scale is still in force and therefore given below for reference:—

Names of Collectorates.	Description of cultivation or class of land.	Minimum area to be formed into a sub-division under the Act.	
		Acres.	Gunthas.
Poona and Ahmednagar..	Jirait.....	3	0
	Garden.....	0	20
	Rice.....	0	20
Thana ... ..	Rice.....	0	10
	Garden.....	0	10
	Jirait.....	3	0
Ratnagiri... ..	Rice.....	0	5
	Garden.....	0	5
	Warkas....	2	0
Khandesh... ..	Jirait.....	4	0
	Garden.....	0	20
	Dry Crop...	6	0
Belgaum, Dharwar and Bijapur.	Rice.....	1	0
	Garden.....	0	20
	Dry Crop...	3	20
Satara ... ..	Rice.....	0	20
	Garden.....	0	20
	Kumri.....	5	0
North Kanara (settled Talukas of the below-what Districts).	Dry Crop...	5	0
	Rice.....	0	5
	Garden.....	0	5
	Kumri.....	5	0

In Guzerat the minimum should be one acre for jirait and half an acre for garden or rice land. (G. R. No. 2161, dated 29th May 1869.)

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

These provisions shall not apply to survey numbers which have already been made of less extent than the minima so fixed, or which may be so made under authority of the Commissioner of Survey given either generally or in any particular instance in this behalf; and any survey number separately recognized in the survey record shall be deemed to have been authorizedly made, whatever be its extent.

(1) **Pardi Numbers.**—The provisions of this section are not intended to apply to Pardi Numbers. (G. R. No. 4314, dated 25th July 1881.)

Provisions applicable to recognized shares of survey numbers. 99.<sup>1</sup> Recognized shares of survey numbers shall be subject to the same provisions of this Act as are applicable to entire survey numbers, except

(a) that it shall not be obligatory to demarcate such sharers separately, and

(b) that if any such share is relinquished by the occupant absolutely under the provisions of Section 74, the<sup>2</sup>

(3) The scale of minimum for the Below Ghat Districts of North Kanara shown above, was sanctioned under G. R. No. 5594, dated 11th November 1872.

(4) The above table does not give the minima for the Districts of Nasik, Kolaba and Sholapur, as these Districts have been formed since 1869. The scale of minima in force in the several Talukas of these Districts is therefore to be understood to be the same which is prescribed in the above table for the Districts to which they originally belonged.

(5) The Director of Land Records and Agriculture should be appointed to be Commissioner of Survey for the purposes of Section 98 and rule 55. (G. R. No. 5370, dated 31st July 1901.)

(6) In Lonawla, Khandalla and other special villages a number can be made of any size.

<sup>1</sup> See note under rule 55 of the rules under Section 214.

<sup>2</sup> "The" was substituted for "their" by Act XVI. of 1895.

occupancy thereof shall be offered to the occupants of the other shares of the same survey number in order of the relative largeness of the amounts payable by them respectively on account of the assessment of their said shares, and that, in the event of their all refusing the occupancy of the said share, the assessment thereon shall, until such time as the entire number is relinquished by them, be levied from them in proportion to the amounts of assessment payable by them as aforesaid.

(1) **Recognized shares forfeited and sold.**—When a “recognized share” of a Survey number has been put up to auction for arrears, has not been purchased, and is not accepted by the other sharers, the latter cannot be compelled to accept the forfeited share, nor can the assessment be levied from them. (G. R. No. 2235, dated 5th April 1882.)

100.<sup>1</sup> Subject to rules or orders made in this behalf, under Section 214, the officer in charge of a survey shall have authority to fix the assessment for land-revenue at his discretion on all lands within the local operation of an order made under Section 95, not wholly

Officer in charge of survey to fix assessments.

<sup>1</sup>The following scales for eliminating fractions when fixing survey assessments, sanctioned by G. R. No. 2210, dated 18th April 1873, have been and are still in force:—

SCALE No. 1.

For all Collectorates except Thana, Kolaba, Ratnagiri and Kanara.

From Rupees.	To Rupees.	Fixed as assessment.
0 0 1	0 3 0	0 2 0
0 3 1	0 6 0	0 4 0
0 6 1	0 10 0	0 8 0
0 10 1	0 14 0	0 12 0
0 14 1	1 4 0	1 0 0
1 4 1	1 12 0	1 8 0
1 12 1	2 4 0	2 0 0
2 4 1	2 12 0	2 8 0
2 12 1	3 4 0	3 0 0
3 4 1	3 12 0	3 8 0
3 12 1	4 8 0	4 0 0
4 8 1	5 8 0	5 0 0

and so on.

exempt from land-revenue, and the amounts due according to such assessment shall, subject to the provisions of Section 102, be levied on all such lands.

Regard to be had to proviso to Section 52. In fixing such assessment, regard shall be had to the requirements of the proviso to Section 52.

But nothing in this Section shall be deemed to prevent the survey officer aforesaid from determining and registering the proper full assessment on lands wholly exempt from payment of land-revenue or on lands especially excepted under Section 95 from the survey settlement, or from dividing all such lands to which the survey extends into survey numbers.

101.<sup>1</sup> The power to assess under the preceding section shall, in the case of lands used for purposes of agriculture alone, include power to assess, whether directly on the land, or in the form of a rate or cess upon the means of irrigation in respect of

Assessment may be on land, or on means of irrigation, &c.

SCALE No. II.

For use in Thana, Kolaba, Ratnagiri and Kanara.						
0	0	1	0	0	6	
0	0	7	0	1	6	
0	1	7	0	3	0	
				0	2	0

For higher figures the same scale as in the other Collectorates.

(2) His Excellency the Governor-in-Council entirely approves of the proposal to settle whole Talukas as far as possible at one time instead of proceeding with the settlement of a group of villages, as soon as the measurement and classification of them are completed. The course proposed will no doubt be more satisfactory to the people who are likely to be confused by successive settlement operations in the same Taluka and will also tend to administrative convenience. (G. R. No. 2674, dated 3rd April 1883.)

<sup>1</sup>(1) If bandharas are erected without permission, they will be either removed, or the lands watered from them assessed as bagayet. Maulatdars and their subordinates and village officers are to report if they find bandharas so erected without permission. (G. R. No. 3172, dated 23rd June 1874.)

which no rate is 'levied'<sup>1</sup> under Section 55 or under the Bombay Irrigation Act, 1879,<sup>2</sup> or in any other manner whatsoever that may be sanctioned by Government.

**Free use of water by Railways.**—Provided no pumping stations are erected or bunds thrown across rivers and streams by Railway Companies without the previous sanction of Government, no objection need be raised to the free use of water. (G. R. No. 8842, dated 1st December 1893.)

102. The assessment fixed by the officer in charge of a survey shall not be levied without the sanction of Government. It shall be lawful for the Governor-in-Council to declare such assessments, with any modifications which he may deem necessary, fixed for a term of years not exceeding thirty in the case of lands used for the purposes of agriculture alone, and not exceeding ninety-nine in the case of all other lands.

Assessments so made not leviable without sanction of Government.

But may be fixed, with or without modification, for a term of years.

(2) The following are the rules regarding fixing water assessment on lands irrigated from Bandharas (dams) built across streams or nullas:—

I. Lands under bandharas existing at the original settlement, have been assessed at garden rates, and will, at the revision, pay whatever revised rates may be determined upon.

II. Lands classed as dry crop at the original settlement, but which have been converted into garden by the use made of water from public streams beyond the limits of the occupancy of the cultivator during its currency, will be assessed at the revision at garden rates modified according to the quantity of water obtainable, the number of months for which it can be depended upon, the description of cultivation which it will render practicable, the cost of providing the means for obtaining water or forming the water courses (paths) necessary for its utilization.

III. When lands are classed at the revision settlements as dry-crop, and it is desired to convert them into garden during the currency of those settlements by the construction of temporary or permanent bandharas on, or by drawing water directly from, streams not within the boundary of a cultivator's occupancy, the previous permission of the Collector must be obtained, and any person erecting a bandhara or drawing water without such permission will be liable to the penalties prescribed by law. On giving permission the Collector may couple it with such conditions as to pay-  
<sup>1</sup> "Levied" was substituted for leviable by Bo. Act VII. of 1879, Section 2.

<sup>2</sup> These words have been inserted under the Bombay Irrigation Act (VII. of 1879).



**(1) Notification of survey settlement guarantee.—**

When the assessments fixed by the Survey Department have been sanctioned by Government finally, a notification determining the period for which they are guaranteed is required to be published in the *Government Gazette*,

ment of garden rates, the removal of obstructions to the stream arising from the means employed to obtain water, &c., as may be desirable. In those collectorates in which it may have been the custom to levy extra rates at once without waiting for the expiration of existing settlements, the practice will continue, but where such has not been the practice, it will be left to the Collector, under the orders of the Commissioner, to make such conditions, as keeping channels clear and other matters relating to the use of the water, as he may consider fair and reasonable.

The Collector will, in granting such permission, pay due regard to the interests of those who may have already erected bandharas on the same stream, and will further take care to obtain from the applicant a written acknowledgment of the rights of Government to make other use of the water at any future time, if they should think fit to do so—to remove the bandhara without compensation whenever it may be desirable—and to compel the applicant to clear the stream of any obstruction caused by his neglect to keep the bandhara in proper order. (G. R. No. 3618, dated 14th July 1874.)

**(3) The following orders in respect to the revision of the assessment on lands irrigated from wells are still in force:—**

1. That in the case of old wells constructed before the first settlement, all special water assessment should be abandoned, and the maximum jirait rate alone levied.

2. That in the case of new wells constructed subsequent to the first settlement, the ordinary dry crop rate should be imposed without any addition whatever on account of the new wells.

The first rule was intended in the first instance to be applicable to the drier Talukas of the Deccan Collectorates, where the rain-fall is, as a rule, light and uncertain. It is now generally adopted in the Deccan and Southern Maratha country.

Boorkees of permanent construction are to be treated as wells. There is no objection to classing at a higher rate land within a certain distance from a stream from which water can be obtained by means of a Boorkee. The same principle may be adopted in the case of land which derives benefit from its proximity to a tank. This should form part of the Regular process of classification, in order that it may be tested by the Classing Assistants in the same manner as other classification returns. (G. R. No. 1028, dated 25th February 1874.)

Government have given a general assurance that the above two rules will be adhered to in fixing assessment on all lands irrigated from wells in the Deccan and Southern Maratha Country Districts. (G. R. No. 6682, dated 10th November 1881.)

in the form prescribed in rule 89<sup>1</sup> (now 90) of the rules under the Land Revenue Code. When the assessments have been sanctioned provisionally for one year only, no such notification is necessary.

If, however, the assessment has been revised with reference to the general consideration mentioned at the close of Section 106 of the Code and sanctioned by Government, the publication of the settlement, even if fixed for one or two years only, would be necessary. The Code does not recognize anything of the nature of a temporary or *interim* settlement. (G. R. No. 3299, dated 19th May 1882.)

(2) **It must be fixed for a term of years.**—Section 102 says that “it shall be lawful for the Governor-in-Council to declare such assessments (*i.e.*, the assessments fixed by the Survey Superintendent) with any modification which he may deem necessary fixed for a term of years not exceeding thirty.” The words “it shall be lawful” are according to well-established rules of interpretation imperative, not optional. If new rates fixed by a Survey Superintendent are sanctioned with or without modification by Government, the Code (Section 102) requires Government at the same time to decree a “Survey Settlement,” *i.e.*, to declare that the rates sanctioned shall not be liable to increase for a term of years.

The law will not be complied with therefore if Government declare the sanctioned assessment fixed for one year only. Section 104 of the Code, which contains distinct special provisions (1) for the year in which a Survey Settlement is introduced, and (2) for the next following years, indicates clearly that the Legislature did not contemplate settlements for one or even two years only; for the provisions in question are such as are just and requisite at the initiation of a term of settlement. But setting aside Section 104, it is a misuse of language to call a settlement for a year a settlement for a term of years. Moreover, if it would be legal for Government to sanction a term of one year once, it would be equally legal for them to do so successively year by year for an indefinite period, which would obviously be an evasion of the intention of the Legislature. The proposal to sanction survey settlement for one year only was not adopted. (G. R. No. 784, dated 3rd February 1892.)

(1) In practice however the form adopted for publishing the period of guarantee in the *Government Gazette* is as shown in Appendix VI., and not the one prescribed in Rule 89 (now 90) (see Appendix I. to the rules under Section 214). The latter form is used for declaring the terms of the settlement to the rayats concerned, and a notification drawn up in this form is read out to the people assembled before the announcement of the rates is commenced.

(2) No form of register under G. R. No. 2110, dated 20th March 1894, need be prescribed. It was intended to facilitate the tabulation of materials for the notice of the working of the settlement to be *finished* under heading—Special measures—Settlements—in the Annual Administration Report. The observation under this heading should include besides

**(3) Revision Survey arrangements.**—The following arrangements are prescribed to ensure in future the punctual and methodical submission of revision settlement reports after the abolition of the Survey Department. The orders will apply at once in the Central and Southern Divisions :—

Before the 31st July in each year the Director of Land Records and Agriculture should report to the Commissioner of each Division, the taluka or talukas in that Division, the current settlement of which expires on the 31st July, two years later—see order 4 (below)—submitting at the same time his recommendations as to the arrangements to be made for the submission in due time of proposals for revision.

2. The following is the general outline of the programme which should be observed :—

(1) An officer should be selected with the approval of Government to prepare the proposals.

(2) In the travelling season, following the Director's report, the officer selected should thoroughly visit the tract to be reported on.

(3) His proposals should be submitted to the Collector before the 1st of June following, those of the Collector to the Commissioner before the 1st of August, and those of the Commissioner to Government before the 1st of October. (G. R. No. 800, dated 2nd February 1900.)

(4) The above Resolution with regard to the period of submission of settlement reports is modified as follows :—

The Director of Land Records and Agriculture should report to the Commissioner *three* years, not *two*, before the expiry of all settlements. (G. R. No. 347, dated 20th January 1903.)

(5) New rates may legally be announced or introduced before expiry of the term in which the old rates were guaranteed. (G. R. No. 2973, dated 5th May 1903.)

**(6) Announcement when rates remain unaltered.**—For every village, in which it is decided at revision of settlement to continue unaltered the assessments previously subsisting, it will be sufficient if an announcement is made by the Collector, Assistant Collector, or Deputy Collector in charge of the taluka to the occupants and holders especially assembled for that purpose that the assessment of each survey number of the village has been fixed at the same amount as had been previously levied. The time of jamabandi will generally be the most convenient for making such announcements. In all other cases an announcement of the new assessment must be made number by number. (G. R. No. 6593, dated 19th October 1900.)

general remarks, a summary of the number and the principal grounds of objections received and the manner in which they were disposed of. (G. R. No. 6529, dated 3rd August 1894.)

(7) **Building sites excluded.**—Lands which are really building sites should be excluded from the operation of the officer engaged in revision settlement of agricultural lands and left to be dealt with separately. (G. R. No. 4763, dated 17th July 1903.)

103. When in the case of lands used for the purposes of agriculture alone, Government shall have sanctioned the assessments fixed by the officer in charge of the survey, it shall be the duty of the said officer or of the Collector, or Assistant or Deputy Collector publicly to announce, or to cause to be announced, the assessment fixed on each survey number.

The said officer, or the Collector, or Assistant or Deputy Collector shall at a reasonable time beforehand, cause public notice to be given, in such manner as he shall deem fit, of the time at or about which the assessments will be announced as aforesaid.

If the holder or other person interested in any holding do not appear in person or by agent, he shall be subject, nevertheless, to the same liabilities as if he had attended.

When the assessments have been announced in the manner provided in the first clause of this section, the survey settlement shall be held to have been introduced.

(1) **Co-operation of revenue officers in the introduction of Survey Settlement.**—It is the desire of Government that the practice should be adhered to by which the Commissioner or Collector has always been present when revised rates are given out, and has had the Assistant in charge of the Taluka with him. (G. R. No. 4839, dated 20th August 1881.)

(2) **Superior officer's presence.**—The presence of superior revenue officers at the announcement of rates is necessary. (G. R. No. 7734, dated 28th October 1893.)

(3) **Year of introduction—what it means.**—The Revision Survey Settlements must be held to have been introduced in the year in which the provisionally sanctioned assessments are announced under Section 103, and not in the year in which the modifications to which those assessments may have been declared liable are brought into operation. (G. R. No. 8057, dated 22nd December 1900.)

(4) **Levy of revised rates.**—It is directed that the land revenue settlements should invariably be introduced between the 1st of

August and the date of the first instalment of the collection of land-revenue, and that reductions in the assessments should be given effect to in the year of introduction. Care should be taken to submit proposals for revision of settlements in time to obviate any unavoidable loss of revenue, which might otherwise result from non-observance of these orders. (G. R. No. 1447, dated 27th February 1901.)

(5) **How to calculate remissions.**—Remission in Revision-Survey Settlements should be calculated on the individual survey number (G. R. No. 2706, dated 5th April 1895.)

(6) In continuation of G. R. No. 1780,<sup>1</sup> dated 4th March 1895, it is directed that the remissions granted in future revision settlements, under the Igatpuri system of concessions, shall be calculated on the survey number or pot number, unless specific orders to the contrary are given. (G. R. No. 2579, dated 30th March 1895.)

(7) No doubt the use of the expression "remitted" would *prima facie* imply that the new assessment is legally leviable in the year of assessment, but the clause "the revised assessment should be levied only from the next following year" appears to be quite general; if it applied only to cases in which the new assessment is in excess of the old, it would be mere surplusage. But as the old rates were too high in the case referred to, Government authorised the collection to be restricted to the revised rates in the then current revenue year. (G. R. No. 4739, dated 4th June 1897.)

(8) **System of remissions.**—Remissions are allowed under Section 104 only in the year of introduction of the new survey settlement, and as the modifications have not to be introduced, they do not require to be remitted during the first year of their operation.

The scale of  $\frac{1}{3}$  and  $\frac{2}{3}$  may be adopted instead of 33 and 66 per cent. prescribed under the orders granting the concessions in the matter of the levy of enhancements. (G. R. No. 8057, dated 22nd December 1900.)

(9) Revised assessment comes into force in and from the year after its introduction, and the guarantee should run from the year in which the revised rates (whether enhanced or reduced) are first levied; the revised rates having been introduced in 1902-03, their levy should commence from 1903-04, and therefore the guarantee also should commence from the latter year. The order in G. R. No. 1447, dated 27th February 1901, that reductions should be given effect to in the year of introduction is a special concession made by Government, and does not affect the period of guarantee. (G. R. No. 1396, dated 27th February 1903.)

(10) It was directed in G. R. No. 1447, that "reductions in the assessments should be given effect to in the year of introduction," and in para. 1 of G. R. No. 1396, dated 27th February 1903, it was pointed out

<sup>1</sup> Printed on pages 159 to 162 of the Survey and Settlement Manual, Vol. III.

that this was a special concession made by Government irrespective of the Land Revenue Code. This concession is intended to be given at all revisions of settlement. (G. R. No. 5508, dated 13th August 1903.)

104.<sup>1</sup> In the year in the course of which a survey settlement, whether original or revised, may be introduced under the last preceding section, the difference between the old and new assessment of all lands on which the latter may be in excess of the former shall be remitted, and the revised assessment shall be levied only from the next following year.

Excess assessment not to be levied in year in which a survey settlement is introduced.

In the year next following that in which any original or<sup>2</sup> revised survey settlement has been introduced, any occupant who may be dissatisfied with the increased rate imposed by such new assessment on any of the survey numbers held by him shall, on resigning such number in the manner prescribed by Sections 74 and 76 on or before the 31st March, receive a remission of the increase so imposed.

(1) **Application of Section 104 to original settlement.**—In the first line of clause 2 of this section the words "original or" appear to have been inadvertently omitted before the word "revised" in the same line. Government have, however, decided that with reference to the portions of tract remaining to be originally settled, the clause should be beneficially constructed as if the words "original or" were inserted between the words "any" and "revised" in the first line thereof. (G. R. No. 31, dated 5th January 1882.)

(2) **Remission to whom to be given.**—As a general rule, the amount of remission should be disbursed to whomsoever pays the assessment into Government treasury, whether solely or partly on his own account and whether he be the Khatedar, sub-sharer or tenant. (G. R. No. 2108, dated 31st March 1882.)

(3) **Announcement and introduction of rates and the first year of their levy.**—The announcement and introduction of rates are identical, for, the assessment is introduced by being announced. The revised assessment comes into force in the sense that it is levied, in and from the year after its introduction, and as the intention is that rates once

<sup>1</sup> This section does not apply to the province of Sind. (Vide Order No. (3) under Section 1.)

<sup>2</sup> These words were inserted by Act XVI. of 1895.

fixed should be collected for thirty years, the guarantee for thirty years should run from the year in which the rates are first levied as the first year of the thirty. Accordingly in the year of introduction no enhancement is to be levied, and in the year following also (see clause 2) an occupant may escape the enhancement by relinquishing his land but not otherwise. It is not enacted in this section that if the new assessment is less than the old, the difference between the new and old assessment will be remitted in the year of introduction, and if the assessment is introduced after the old assessment of the year of introduction has been collected, there remains nothing further to be done in that year. (G. R. No. 4559, dated 6th June 1885.)

(4) **The year of introduction, not the year of levy.**—The Code contemplates (1) the year of introduction, and (2) the year of levy. Section 103 lays down that when assessments have been announced in the manner provided, the Survey Settlement shall be held to have been introduced. Section 104 provides that revised assessment shall be levied from the next following year. It is therefore clear that the new rates do not have effect in the year of introduction. This view is supported by the speech of the Honourable Colonel Anderson in the discussion in the Legislative Council when Act I. of 1875, revising Act I. of 1865, was under consideration. He states as follows:—

“If a settlement was introduced on the 25th August 1874, the new rates of assessment would take no effect in the year then current, and in the ensuing year, 1875-76, the new rates would not be levied from any occupant who resigned his land before 31st March 1876.”

The new rates having thus no effect in the year of introduction, the old rates would have to be levied, and the question whether, when the new rates are less than the old, the difference between them should or should not be remitted for that year cannot therefore arise. At a later stage in the discussion this particular question was considered, it being proposed that the clause in the Bill might be altered so as to bring it into accord with the then custom that where the new assessment was less than the old one, the new one only should be levied. This suggestion was, however, over-ruled, and looking to the manifest intention of the Legislature, as indicated by the discussion above referred to, His Excellency the Governor in Council cannot construe Section 104 of the Land Revenue Code as authorizing remissions in cases in which the new assessment is less than the old. (G. R. No. 2836, dated 7th May 1887.)

105. The fixing of the assessment under the provisions of Section 102 shall be strictly limited to the assessment of the ordinary land-revenue, and shall not operate as a bar to the levy of any cess<sup>1</sup> which it shall

<sup>1</sup> As for instance local fund cess at present levied under Bombay Act III. of 1869.

be lawful for the Governor in Council to impose under the provisions of any law for the time being in force for purposes of local improvement, such as schools, village and district roads, bridges, tanks, wells, accommodation for travellers and the like, or of any rate for the use of water which may be imposed under the provisions of Section 55, "or the Bombay Irrigation Act, 1879."<sup>1</sup>

106.<sup>2</sup> It shall be lawful for the Governor in Council Government may direct fresh survey and revision of assessment. to direct, at any time, a fresh revenue survey<sup>3</sup> or any operation subsidiary thereto, but no enhancement of assessment shall take effect till the expiration of the period previously fixed under the provisions of Section 102. "Provided that when a general classification of the soil of any area has been made a second time, or when any original classification of any area has been approved by the Governor in Council as final, no such classification shall be again made with a view to the revision of the assessment of such area."

107.<sup>5</sup> "In revising assessment of land revenue

<sup>1</sup> The words in inverted commas have been inserted under the Bombay Irrigation Act (VII. of 1879).

<sup>2</sup> *Vide* footnote to Section 107.

<sup>3</sup> (1) The phrase "fresh revenue survey" is ordinarily called "Revision Survey."

(2) Before revision operations are commenced in any of the collectorates, in which the term of the original settlements has not yet expired, the Survey Commissioner should carefully consider and report for the orders of Government the extent to which any general revision of field work may be imperative. (G. R. No. 2516, dated 5th May 1881.)

<sup>4</sup> This proviso was substituted for the original clause by Bombay Act IV. of 1886, Section 1.

<sup>5</sup> (1) One of the chief principles laid down by the Bombay Government for the guidance of their Survey Officers in revising survey settlements was that the assessment of land should not be enhanced in revision settle-

\* Nothing in the last preceding section shall be held to prevent a revised assessment being fixed:—

ment on account of increased value due to improvements effected by the holder during the currency of the past settlements. This principle received legislative sanction in the Bombay Survey and Settlement Act (I. of 1865, Section 30). In 1879,



Conditions applicable to revisions of assessment.

regard shall be had to the value of land and, in the case of land used for the purposes of agriculture, to the profits of agriculture: Provided that if any

(a) With reference to any improvement effected at the cost of Government, or,

(b) With reference to the value of any natural advantage when the improvement effected from private capital and resources consists only in having created the means of utilizing such advantage, or,

(c) With reference to any improvement which is the result only of the ordinary operations of husbandry.

it was considered undesirable to allow it to stand in the Statute book, the more so, as in its existing state it was calculated to give rise to misapprehensions and misunderstandings which might tend to discourage the application of private enterprise and capital to agriculture. It was accordingly proposed to amend this portion of the Code ( Land Revenue Code, Act V. of 1879 ) and to re-enact it in such terms as might set forth clearly, absolutely, and without qualification the two following principles :—

(1) That assessments will be revised on consideration of the value of land and the profits of agriculture, and

(2) That assessments will not be increased on revision on account of increase to such value and profits due to improvements effected on any land during the currency of any previous settlement by, or at the cost of, the holder thereof.

With this object a bill ( No. VI. of 1885 ) was introduced before the Legislative Council in the early part of the year 1885, which after a lengthy discussion was passed into law, Act IV. of 1886.

The latter portion of Section 106 and Section 107, which are included in inverted commas, are the amendments made by this Act.

By the above amendments the advantage of all improvements effected by holders, or at their cost in their holdings has now been fully assured to them.

While the above amendments were being discussed in the Legislative Council, one of the Honorable Members asked 'whether it would not be possible for Government to give an opportunity to the rayats to be heard as to enhancements before sanctioning the settlement.' The Council first

Bombay Act I. of 1865 was repealed and the provisions contained therein were embodied in the Bombay Land Revenue Code ( Act V. of 1879 ). In this Code, while Section 80 of the Bombay Act I. of 1865 was re-enacted with little change as Section 106, another section ( Section 107 )\* was added to it, which, although it had never been so applied or interpreted as modifying the principle that the occupant should be secured in the enjoyment of the improvements effected by his labour and outlay, did reserve to Government the power to consider, in fixing a revised assessment, the increased value derived from *certain classes of improvements*. As however Government had never used nor ever intended to use this section to tax improvements,

improvement has been effected in any land during the currency of any previous settlement made under this Act,

objected to make any such provision as it would only delay and inconvenience the settlement operations, but subsequently at the instance of the President it was agreed that the wishes of the Honorable Member should be met by an executive order. A Government Resolution was accordingly issued to the following effect :—

“ His Excellency the Governor-in-Council is desirous that the occupants of land should be given the fullest opportunities, while classing operations are in progress, of representing improvements and other circumstances which they consider should be taken into account in fixing the values of their fields. A formal notification\* should in future be issued by the Superintendent of Survey, and published in each village, not less than three months before the operations are commenced, warning those concerned that they should bring to the notice of the Assistant Superintendent of Survey in charge of the party of classers, whilst the classing process is going on, any special circumstances bearing on the value of their lands and, failing due consideration from that officer, should appeal to the Superintendent of Survey.

“ By the same Notification, moreover, the village communities should be advised to bring to the notice of the Survey Officers through their patel or panchayat any facts which, in their opinion, entitle their village to special consideration in fixing the standard of the new rates.”

The same Resolution ordered the publication of another notification\* before the introduction of the settlement, with the object of acquainting the rayats of the proposed rates and grouping. The Resolution runs :—

“ The Superintendent of Survey shall, as soon as he has worked out his revision of groups and rates, forward to the Collector a notification in Vernacular of the district, giving the names of the villages coming under revision according to the groups or assessment circles in which it is proposed to arrange them, and showing against each village the existing and proposed maximum rates, *i. e.*, the cash rates applied to what is technically termed 16-anna soil upon which the assessment of all lands in the village are graduated according to their relative values. It shall be the duty of the Collector to cause this notification to be published without delay by arranging to have one copy posted up in the chavdy or other conspicuous place in each village affected by the settlement. The Notification should state that for a period of two months from the date of publication thereof the Collector will be prepared to receive objections made by the village community and presented in writing by the revenue patel, as their representative, to the proposed grouping of villages and maximum rates. Any objections so received shall be forwarded by the Collector to Government through the Survey and Settlement and Divisional Commis-

\* In the form of Appendix VII.

\* In the form of Appendix VIII.

or under Bombay Act I. of 1865, by or at the cost of the holder thereof, the increase in the value of such land or in

sioners, with such remarks by each officer as may appear necessary, and they will be taken into consideration by Government before final sanction is accorded to the proposals." (G. R. No. 7447, dated 21st October 1886.)

The above notifications are now invariably issued in the case of every revision settlement and every objection raised by the rayat as to the groupings or rates is duly investigated and disposed of before the rates are finally introduced.

Further, to obviate the least possibility of improvements effected by the occupants at the expense of their private capital being taxed, Government have laid down that—"land which, though arable, was at the first survey included in a survey No. as unarable, and was left unassessed, shall also be left unassessed at the Revision settlement for the benefit of the occupant." (G. R. No. 2619, dated 26th March 1884.)

In addition to the above measures Government have, with a view to check the tendency of assessments being considerably increased in revision, laid down the following limits up to which enhancement of assessment may be allowed:—

1st. The increase of revenue in the case of a taluka or group of villages brought under the same maximum dry-crop rate shall not exceed 33 per cent.

2nd. No increase exceeding 66 per cent. should be imposed on a single village without the circumstances of the case being specially reported for the orders of Government.

3rd. No increase exceeding 100 per cent. shall in like manner be imposed on an individual holding. (G. R. No. 5739, dated 29th October 1874, and G. R. No. 2619, dated 26th March 1884.)

In calculating the 33 per cent. limit the *patasthal* rates, although imposed (Section 101) and levied along with the ordinary land-revenue, are not to be taken into account as they form no part of the land-revenue assessment proper being calculated on the average area of land actually under "pat" cultivation. Improvements by wells and *budkis* worked as auxiliaries to the flow supply, and effected at the cost of the rayats are not liable to taxation. (G. R. No. 3880, dated 4th June 1891, and G. R. No. 3205, dated 5th April 1892.)

With all the precautions above enumerated it is sometimes found that the increases resulting from the revised rates are, owing chiefly to the rectification of the original classification, so excessive in individual cases that their immediate collection would cause hardship to the rayats concerned. With a view to obviate this hardship, as also to enable the rayats to adjust themselves to increased payments by degrees, Government have ordered that while the rent rolls (*Akarband*) should in all cases

the profit of cultivating the same, due to the said improvement, shall not be taken into account in fixing the revised assessment thereof."

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be made out according to the full sanctioned rates, it should be notified that enhancement in excess of 4 annas in the rupee (or 25 per cent.) of the assessment on a holding will be remitted for the two first years of the revised settlement, enhancement in excess of 8 annas in the rupee for the 3rd and 4th years, and enhancement in excess of 12 annas in the rupee for the 5th and 6th years of the revised settlement. (G. R. No. 3541, dated 4th May 1885.)

The above system of remissions has been ordered to be extended to all revision settlements. (G. R. No. 2981, dated 20th April 1886.)

This system of remission is not intended to be extended to alienated villages. (G. R. No. 6556, dated 16th September 1890.)

Government have now directed that a separate register should be kept of petitions against excessive individual enhancements made to the Survey and District authorities in connection with the introduction of revision settlements for ready reference and that the subject should be noticed in reporting the results of those settlements. (G. R. No. 2110, dated 20th March 1894.)

(2) This section was substituted for the original Section 107 by Bombay Act IV. of 1886, Section 2.

(3) In modification of G. R. No. 7447 (see above), dated 21st October 1886, para. 1, the notification shall give a statement as shown in Appendix VIII. (G. R. No. 490, dated 21st January 1895.)

(4) Special assessment.—The order passed in G. R. No. 4145, dated 16th June 1891, regarding extra rate for villages situated near railway stations is not of general application, but, on the contrary, immediate proximity to a large and important railway station, market, shall be deemed an adequate cause for a moderate special increase of assessment. (G. R. No. 2712, dated 27th March 1896.)

(5) The Governor-in-Council is pleased to direct that, when by the orders of Government on proposals for a settlement, the rates of a village have been fixed at a higher figure than that recommended by the Settlement Officer and published in the notifications issued before the receipt by Government of the report, a fresh notification should be published showing the assessments as determined under the orders of Government in the form Q appended to G. R. No. 490, dated 21st January 1895. (G. R. No. 6141, dated 7th September 1903.)

108. It shall be the duty of the survey officer, on the occasion of making or revising a settlement of land-revenue, to prepare a register to be called "the Settlement register,"<sup>1</sup> showing the area and assessment of each survey number, together with the name of the registered occupant of such survey number and other records,<sup>2</sup> in accordance with such orders as may from time to time be made on this behalf by Government.

(1) **Authority to correct.**—The law is perfectly clear and there is nothing in G. R. No., 3574 of 1874 to conflict with it. Collectors have, however, to correct mere clerical errors and up to two years from the settlement to alter names of occupants.

The G. R. of 1871 has merely transferred to Commissioners the Government right of sanctioning corrections of any kind in assessment up to Rs. 50. (Commissioner, C. D.'s, Vat. No. 2, dated 22nd August 1892.)

(2) The Collector or any higher authority is precluded from correcting maps so as to set aside the demarcation of survey. (G. R. No. 3630, dated 13th May 1897.)

109. The survey officer, or if the survey settlement have been introduced under the provisions of Section 103 by the Collector or Assistant or Deputy Collector, the Collector or Assistant or Deputy Collector shall at any time correct or cause to be corrected any

Officers to correct clerical and admitted errors in settlement register, and

<sup>1</sup> Settlement register means Lawni Faisal Patrak. This paper is prepared by the Survey Department in the form of Appendix IX.

In addition to this, another important paper prepared by the Survey Department and furnished to the Revenue Department to enable it to prepare the land register (Village form No. 1) is the "Akarband" (Appendix X.) In the Konkan Survey instead of the "Akarband," a paper called "Sud" (Appendix XI.) is prepared.

<sup>2</sup> (1) The Collector's office at head-quarters, the Mamlatdars, or Mahalkaris and the village accountants should each of them be furnished with a copy of the field map and register directly the survey rates are introduced, and in the event of any one of these copies being lost or destroyed, its place should be at once supplied. (G. R. No. 5189, dated 4th July 1850.)

(2) When village maps are destroyed by neglect or careless usage within five years of being supplied, new copies are to be paid for by those who have caused the loss; but in such cases the orders of Government should be taken. (G. R. No. 3292, dated 23rd May 1877.)

clerical errors, and any errors which the parties interested admit to have been made in the settlement register ;

He shall also receive and inquire into all applications made to him at any time within two years after the introduction of the survey settlement for the correction of any wrong entry of a registered occupant's name in the said register, and if satisfied that an error has been made, whether through fraud, collusion, oversight or otherwise, shall correct or cause the same to be corrected, notwithstanding that all the parties interested do not admit the error ; but he shall not receive any such application at any time after two years from the date of the introduction of the survey settlement, unless good cause be shown to his satisfaction for the delay in making such application, and no such correction of the said register shall be made in consequence of any application made after the said period of two years, except with the previous sanction of Government.

(1) **Deposit required from a person claiming inquiry.**—In such enquiry a condition should be made that the applicant shall deposit a sum sufficient to cover the cost in case the original record should prove to be correct. The deposit should be refunded in full in all cases in which the complaint proves to have been well founded. ( G. R. No. 646. dated 25th January 1894. )

(2) **No limit of time for a change.**—Certain plots were shown in the Survey Registers as open spaces and as belonging to the Municipality. They were really burial grounds and *should belong to Government*. The Municipality consented to the change of the entry, but the change was not made for two years. The Legal Remembrancer gave his opinion that the case must be treated under Section 109 (a) for which there is no limit of time. ( G. R. No. 6915, dated 5th November 1900. )

110. The Collector shall keep the settlement register, and such other records prepared by the survey officer as Government shall direct, and shall cause the village records and accounts to be prepared in accordance therewith ;

Collector to keep survey records and frame village records in accordance therewith :

he shall not make any alterations or corrections<sup>1</sup> in the settlement register, but shall cause to be registered in the village records and accounts all changes, &c. and to register changes, &c. that may take place, and anything that may affect any of the rights or interests therein recorded.

111. In the event of any alienated village or estate coming under the temporary management of Government officers, it shall be lawful for the Collector to let out the lands thereof at rates determined by means of a survey settlement or at such other fixed rates as he may deem to be reasonable, and to sell the occupancy of unoccupied lands by auction, and otherwise to conduct the revenue management thereof under the rules for the management of unalienated lands, so far as such rules may be applicable, and for so long as the said village or estate shall be under the management of Government officers: provided, however, that any written agreements relating to the land, made by the superior holder of such village or estate shall not be affected by any proceedings under this section in so far as they shall not operate to the detriment of the lawful claims of Government on the land.

112.<sup>2</sup> Existing survey settlements of land-revenue, made, approved and confirmed under the authority of

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<sup>1</sup>(1) When land is alienated for the construction of dharmashallas, schools, etc., or for the performance of village service and other public purposes, the Collector of the district should invariably inform the Survey Department of such alienations in view to the necessary corrections being made on the maps and other Survey records. (G. R. No. 1811, dated 21st March 1876, and G. R. No. 4107, dated 17th July 1876.)

(2) The Survey Department does not take cognizance of any alterations other than those which relate to area or assessment.

<sup>2</sup>Vide orders Nos. (4) and (5) printed under Section 48.

Maintenance of existing settlements of land-revenue.

the Governor in Council shall be, and are hereby declared to be in force, subject to the provisions of this Act.

*Partition.*

Partition of an estate paying revenue to Government.

113.<sup>1</sup> The following rules shall be enforced at the partition of any estate paying land-revenue to Government (namely):—

(1) the estate shall be divided as far as possible according to survey numbers without sub-dividing any number, but if the partition cannot be completely effected without sub-dividing a number, such sub-division may be made by the Collector, subject to the provision of Section 98;

(2) any number, or sub-division of a number, which may remain over after the partition has been carried out, as far as possible, according to the last rule, and which is incapable of sub-division or of further sub-division owing to the provision of Section 98, shall be made over to one of the sharers in consideration of his paying to the other sharers the value in money of their shares in the same, or shall be sold and the proceeds divided amongst all the sharers, or otherwise disposed of, as the Collector thinks fit;

(3) the expenses necessarily and properly incurred in making such partition shall be recoverable as a revenue demand in such proportions as the Collector thinks fit from the sharers at whose request it is made, or from the persons interested in such partition.

(1) **Recognition of rights in numbers of less than minimum extent.**—In the division of an estate paying land-revenue to Government, the Collector is bound by the rules laid down in Section 113 of the Land-Revenue Code whenever they are applicable. If a Court assigns

<sup>1</sup>(1) When land is sub-divided by the Court, the sub-divisions may be recorded according to the Court's order as pot number, but the parties themselves are to be left to preserve the boundaries of the new sub-divisions for which the Government officers are in no way responsible. (G. R. No. 2595, dated 29th May 1872.)



rights in specified areas in survey numbers of less extent than the minima prescribed under Section 98 of the Code, these rights cannot be registered in the Government accounts, or be otherwise recognized by Government. (G. R. No. 7052, dated 23rd November 1881.)

(2) **Partition of Inams under Summary Settlement.**—In cases of Inam land and villages held under the Summary Settlement, the Collector shall be bound to accord separate entry, to the sharers, of their shares,

- (a) in every case of partition supported by a deed of consent ;
- (b) in every case supported by a decree of the Civil Court. (G. R. No. 3483, dated 5th May 1883.)

(3) **Of Service Inams.**—Having regard to the decision of the Bombay High Court in *Mancharam vs. Pranshunker* (I. L. R., Bombay, Volume VI., page 298, 1882), there seems no objection to the provisions of Section 113 of the Land Revenue Code being extended to the cases of Service Devasthan Inam lands paying only Jodi to Government, provided that by the partition effected under the above section there will be no alienation of the property out of the family by which the services for which it was granted are to be performed. (G. R. No. 2457, dated 23rd April 1887.)

(4) **Persons entrusted with partition. Travelling Expenses of.**—The travelling allowance of the person entrusted with the partition, according to the scale laid down in the High Court's circulars, as also contingent expenses on account of carriage of instruments required in such partition, necessarily and properly incurred, are to be recovered under clause 3 from the parties to the partition. In the first place, however, the parties interested should be called on to provide whatever assistance in the way of carriage or labourers the person entrusted with the partition may require, and in the event of a necessity to employ hired labour, the cost thereof with other contingent expenses should be recovered from the parties concerned as a revenue demand. (G. R. No. 6280, dated 11th September 1882.)

(5) **Scale of Bhatta to.**—The scale according to which Bhatta is to be allowed to persons entrusted with the partition is as follows :—

For Clerks and Karkuns of Collectors and other officers employed by the Collectors for each day actually on tour—

	Rs.		Rs.	Rs.
on more than	275	to	500	3- 0-0
Do.	250	to	275	2-12-0
Do.	225	to	250	2- 8-0
Do.	200	to	225	2- 4-0
Do.	175	to	200	2- 0-0
Do.	150	to	175	1-12-0
Do.	125	to	150	1- 8-0
Do.	100	to	125	1- 4-0

	Rs.		Rs.	Rs.
on more than	87-8	to	100	1- 0-0
Do.	75	to	87-8	0-14-0
Do.	62-8	to	75	0-12-0
Do.	50	to	62-8	0-10-0
Do.	37-8	to	50	0- 8-0
Do.	10	to	37-8	0- 6-0

For Peons, &c.,—

on more than Rs. 8-0-0.....	0-2-0
on Rs. 8 and less.....	0-1-0

(*Vide* Bombay Government Gazette, Part I., page 865, 1884.)

(6) **Disposal of fees paid to Government Servants entrusted with partition. Classers.**—When classers or other Revenue officers are deputed on a commission under Chapter XXV. of the Civil Procedure Code, 1882, the Civil Courts grant them a certain fee for the execution of the said commission. (*Vide* rule 48 of the High Court civil circular orders published in the *Bombay Government Gazette*, Part I., page 865, 1884.) This fee should be recovered from the classers and the Revenue officers deputed on commission, and credited to Government in return for the loss of their services during the time they were engaged in executing the commission. (G. R. No. 7858, dated 28th September 1885, and G. R. No. 8520, dated 20th December 1888.)

(7) **Measurers.**—The measurers of the Revenue Survey Department employed on the work of partitioning estates and the peons under them are entitled to travelling allowances under the rules of the Civil Travelling Allowance Code (now Civil Service Regulations) for journeys performed by them in the execution of their duty and such allowances should be paid to them.

The partitions made by these officers are effected under the orders of Civil Courts equally with those effected by surveyors employed on Collector's Establishments and the fees prescribed in Section 41 of the High Court Circulars as well as contingent expenses for the carriage of records, instruments, &c., should be recovered from the parties interested in the partitions. (G. R. No. 1765, F. D., dated 21st June 1856.)

(8) **Other Government Servants.**—Government servants accepting commissions issued by Civil Courts are required to pay into the treasury, sums which they may receive as fees for their services. They are, when so engaged, regarded as being on duty and are allowed travelling allowance according to the rules in the Civil Service Regulations, the allowance being drawn in the usual way by presentation of bills in the Treasury. (G. R. No. 2053, J. D., dated 17th April 1890.)

(9) **Recovery of Fees and other Expenses in partition cases. Fees.**—The Collector should see that the extra fee prescribed

by rule 41 at page 178 of the High Court circulars is levied in all cases in which partition of an estate is made by the Collector under Section 265 of the Civil Procedure Code. (G. R. No. 7230, dated 11th December 1886.)

(10) The Commissioners of Divisions should be requested to impress upon the Collectors the duty of seeing that the orders conveyed in G. R. No. 7230, dated 11th December 1886, F. D., are properly carried out. The extra fee prescribed by rule 41 at page 178 of the High Court Circulars must be levied in all cases in which partition of an estate is made by the Collector under Section 265 of the Civil Procedure Code. (G. R. No. 140, dated 7th January 1887.)

(11) **Other Expenses.**—The Collector should include the salaries and allowances of surveyors and peons employed in effecting partitions in the expenses necessarily and properly incurred within the meaning of Section 113 (3) of the Land Revenue Code. The charge should be for the time the above officers are actually engaged in the village in which the partition is to be effected, and for a reasonable time for going to, and returning from, that village; but a charge for one and the same day must not be made in more than one case. (G. R. No. 5894, J. D., dated 29th October 1888.)

(12) Charges, when incurred, in connection with partition of estates should be debited to Land Revenue, and the recoveries, when made, credited to that head by reduction of expenditure. (G. R. No. 3118, F. D., dated 27th April 1889.)

(13) G. Rs. No. 2379, dated 4th May 1889 and No. 5319, dated 5th October 1889 are cancelled. Circular No. 83 at pages 46 and 47 of the High Court's circulars having been cancelled, the Governor in Council is pleased to direct that in future the Collectors shall be left free to use their powers under the Bombay Land Revenue Code for the levy of the costs of the partition in execution of a Civil Court's decree of estates paying revenue to Government. (G. R. No. 1993, J. D., dated 14th April 1890.)

(14) **Finality of partition.**—In accordance with the opinion in case *Shrinivas vs. Gurnuath* (I. L. R. 15 Bom. 327), if the aggrieved party could "apply for redress to the Collector" after a decree is once irregularly or improperly executed, the same party might apply to the Commissioner as a superior executive officer, though the ruling makes the partition not subject to revision or interference by a Civil Court under Section 265 of the Civil Procedure Code. (G. R. No. 4558, dated 16th June 1897.)

(15) **Revision of a partition by the Collector.**—A Collector can revise either *suo motu* or under instructions from the Commissioner, a partition of lands wrongly or irregularly effected. The revised partition is the final partition. (G. R. No. 6548, dated 2nd September 1897.)

114. Whenever any one, or more co-sharers, in a Khoti estate, into which a revenue survey has been introduced (or in a talukdari estate)<sup>1</sup> consent to a partition of the said estate, it shall be lawful for the Collector or for any other officer duly empowered by him in this behalf, subject to the rules contained in the last preceding section, to divide the said estate into shares according to the respective rights of the co-sharers, and to allot such shares to the co-sharers :

Provided that no such partition shall be made unless—

(a) all the co-sharers are agreed as to the extent of their respective rights in the estate, and

(b) the assessment of the share or shares of the sharer or sharers consenting to such partition exceeds one-half of the assessment of the entire estate.

In such cases the expenses of partition shall be recovered under rule (3) of the last preceding section from all the co-sharers in the estate divided.

115.<sup>3</sup> At the time of a revision of survey it shall be in the discretion of the officer in charge of the survey, subject to the provisions of Section 98, and to any departmental rules or orders in this behalf at the time in force, to sub-divide any survey number into two or

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<sup>1</sup> The words enclosed in brackets have been repealed by Section 3 of Bombay Talukdari Act (VI. of 1888).

<sup>2</sup> The object of this section is to enable the officer in charge of the survey to make, at the revision survey, into separate survey Nos., portions of original survey Nos., which may have passed, by purchase, by a decree of the Civil Court or by partition, into the occupation of persons other than the holder of the original survey Nos. provided that the portions to be so made into separate survey Nos. are not of less extent than the minimum fixed under Section 98.

more distinct numbers, and to enter the names and liabilities of the persons whom he shall deem entitled to be recognized registered occupants of such sub-divisions in the settlement register separately.

116. When any portion of cultivable land is appropriated under the provisions of Section 65 or 67 for any non-agricultural purpose, the portion so appropriated may, with the sanction of the Collector, be demarcated, and made into a separate number at any time, notwithstanding the provisions of Section 98.

Separate demarcation of land appropriated under Section 65 or 67.

(1) **Invariable division into separate numbers when a railway bisects.**—When several survey numbers are bisected by a railway or drainage, each portion should be made into a separate number. It is not right to leave them as they are, marking the area taken as pot kharab. The changes should be recorded in all cases as punctually as possible after they occur. (G. R. No. 535, dated 28th January 1901.)

Bombay Act V. of 1862 not affected. 117. Nothing in Sections 113, 115, or 116 shall affect the provisions of Bombay Act V. of 1862.<sup>1</sup>

## CHAPTER IX.

### *The Settlement of Boundaries and the Construction and Maintenance of Boundary-marks.*

118. The boundaries of villages situated in British territory shall be fixed, and all disputes relating thereto shall be determined by survey officers or by such other officers<sup>2</sup> as may be nominated by Government for the purpose, who shall be guided by the following rules:—

Determination of village boundaries.

<sup>1</sup> Bhagdari and Narvadari Tenures Act.

<sup>2</sup> A Divisional Inspector of the Agricultural Department is not a survey officer and is therefore required to be specially nominated for the purpose of fixing boundaries under this Section. (G. R. No. 2749, dated 18th April 1893.)

*Rule 1.*—When the patels and other village officers of any two or more adjoining villages, and, in the case of an alienated village, the holder thereof or his duly constituted agent, shall voluntarily agree to any given line of boundary as the boundary common to their respective villages, the officer determining the boundary shall require the said parties to execute an agreement to that effect, and shall then mark off the boundary in the manner agreed upon. And any village boundary fixed in this manner shall be held to be finally settled, unless it shall appear to the said officer that the agreement has been obtained by fraud, intimidation or any other illegal means.

*Rule 2.*—If the patels and other village officers, and, in the case of an alienated village, the holder thereof or his duly constituted agent, do not agree to fix the boundaries of their respective villages in the manner prescribed in the preceding rule, or if it shall appear to the said officer that the agreement has been obtained by fraud, intimidation or any other illegal means, or if there be any pending dispute, the said officer shall make a survey and plan of the ground in dispute, exhibiting the land claimed by the contending parties, and all particulars relating thereto, and shall hold a formal inquiry into the claims of the said parties, and thereafter make an award in the case. If either of the villages concerned be alienated, an award made by a survey officer shall, unless the officer making it be the Superintendent of Survey, be subject to his confirmation, and an award made by any other officer shall be subject to confirmation by such other officer as Government may nominate for the purpose.

119. If at the time of a survey, the boundary of a field or holding be undisputed and its correctness be affirmed by the village officers then present, it may be laid down

Determination of field boundaries.

as pointed out by the holder or person in occupation, and if disputed, or if the said holder or person in occupation be not present, it shall be fixed by the survey officer according to the village records, and according to occupation as ascertained from the village officers and the holders of adjoining lands, or on such other evidence or information as the survey officer may be able to procure.

If any dispute arise concerning the boundary of a field or holding which has not been surveyed, or if at any time after the survey records have been handed over to the Collector, a dispute arise concerning the boundary of any survey number, it shall be determined by the Collector, who shall be guided in the case of survey numbers by the survey records, if they afford satisfactory evidence of the boundary previously fixed, and if not, by such other evidence as he may be able to procure.

**(1) Boundary disputes to be decided free of cost.**—Sections 119 and 120 provide the machinery for the settlement of a boundary dispute and make it the duty of the officers mentioned therein to decide such a dispute. The sections are silent as to any charge for the performance of such duties, and it is not open to Government therefore to attach any charge on account of such performance any more than on account of a judicial decision.

The cost of constructing a boundary-mark is recoverable as a revenue demand (Sections 122, 124, and 187) whenever it is necessary, whether it be needed in consequence of a dispute or not, but no charge can be made for the settlement of a dispute as to a boundary. (G. R. No. 2465, dated 29th March 1889.)

**(2) Revision of boundaries.**—Section 119 does not contemplate revision of boundaries, on the ground of incorrectness in their location by the Survey. (G. R. No. 3796, dated 23rd May 1889.)

**(3) Enquiries into complaints as to incorrect boundaries.**—The present practice of recovering cost in cases of inquiries set on foot on complaints as to the incorrectness of boundary-marks fixed by the Survey should be adhered to. (G. R. No. 745, dated 29th January 1890.)

120. If the several parties concerned in a boundary dispute agree to submit the settlement thereof to an

arbitration committee, and make application to that effect in writing, the officer whose duty it would otherwise be to determine the boundary shall require the said parties to nominate a committee of not less than three persons within a specified time, and if within a period to be fixed by the said officer the committee so nominated or a majority of the members thereof arrive at a decision, such decision, when confirmed by the said officer, or if the said officer be a survey officer lower in rank than a Superintendent of Survey, by the Superintendent of Survey, shall be final :

When award may be remitted for re-consideration.

Provided that the said officer, or the Superintendent of Survey, shall have power to remit the award<sup>1</sup> or any of the matters referred to arbitration to the reconsideration of the same committee for any of the causes set forth in Section 520 of the Code of Civil Procedure.<sup>2</sup>

If arbitration fail, survey officer to settle dispute.

If the committee appointed in the manner aforesaid fail to effect a settlement of the dispute within the time specified, it shall be the duty of the officer aforesaid, unless he or, if the said officer is a survey officer lower in rank than a Superintendent of Survey, the Superintendent of Survey, see fit to extend the time, to settle the same as otherwise provided in this Act.

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<sup>1</sup> Under Section 520 of the Civil Procedure Code the Court may remit the award or any matters referred to arbitration to the reconsideration of the same arbitrators, or umpire, upon such terms as it thinks fit:—

- (a) Where the award has left undetermined any of the matters referred to arbitration or where it determines any matter not referred to arbitration.
- (b) Where the award is so indefinite as to be incapable of execution.
- (c) Where an objection to the legality of the award is apparent upon the face of it.

\* This reference to Section 520 of Act X. of 1877 should now be read as applying to Section 520 of Act XIV. of 1882—see Section 3 of the latter Act.



Effect of settle-  
ment of boundary.

121.<sup>1</sup> The settlement of a boundary under any of the foregoing provisions of this chapter shall be determinative:

(a) of the proper position of the boundary line or boundary marks, and

(b) of the rights of the landholders on either side of the boundary fixed in respect of the land adjudged to appertain, or not to appertain, to their respective holdings.

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<sup>1</sup>(1) While the Land Revenue Code Bill was under discussion one of the Hon'ble Members proposed, with the object of not giving the decisions of revenue officers passed in boundary dispute cases the finality contemplated by Sections 119, 120 and 121, that Section 121 should be omitted altogether, and that the following clause should be added to Sections 119 and 120, viz., "Provided that the determination of any boundary under these sections shall not debar any one claiming any right in the land from any legal remedy he would otherwise have for dis-possession."

This amendment, when put to the vote, was lost. Under the sections as they now stand, therefore, the decisions passed by revenue officers are final as will be seen from the following decision of the Bombay High Court:—

In 1877, a dispute arose between plaintiffs and defendant as to the boundaries of certain land, being Survey Nos. 88 and 87, of which the plaintiffs and the defendant were respectively occupants under Government. In 1879, the boundaries were fixed by a revenue officer under the orders of the Collector, and the piece of land in dispute was found to belong to the plaintiffs as occupants of Survey No. 88. Subsequently, the defendant having encroached upon it and dispossessed the plaintiffs, the present suit was filed. The Court of first instance awarded the plaintiffs' claim holding that the decision by the revenue officer was conclusive as to the boundary. The defendant appealed, and the lower appellate Court reversed the lower Court's decree. On appeal by the plaintiffs to the High Court.

*Held*, restoring the decree of the Court of first instance, that, under the provisions of Section 121 of Act V. of 1879, the decision of the Collector as to the boundaries was conclusive, and that the plaintiffs were entitled to possession. ( Bai Ujam and another vs. Valiji Rasulbhai,— I. L. R. Bombay, Volume X., page 456, 1886. )

(2) Where there was a settlement of boundaries under Section 119, the word "determinative" in Section 121 meant conclusive as to the legal rights of the adjoining holders. ( Printed Judgment 11, Laksham v. Narayan, '90. )

*Boundary Marks.*

122.<sup>1</sup> It shall be lawful for any survey officer authorised by a Superintendent of Survey or Settlement Officer, to<sup>2</sup> specify, or cause to be constructed, laid out, maintained or repaired<sup>3</sup> boundary marks of villages or

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<sup>1</sup>All boundary-mark expenditure on occupied land should be collected immediately the distribution accounts are sent to the Collector. In case of any special circumstances rendering it expedient to postpone that collection for a time, the Collector can do so with the sanction of the Commissioner of Division.

All boundary-mark expenditure should remain on the Survey Books till the measurement of the village is completed and the accounts made up. In cases where the final completion of a village is delayed on account of a little work, boundary disputes or such like, sending in the accounts of the completed main bulk of the village need not be delayed; a supplementary bill being forwarded afterwards on the completion of the outstanding work. (G. R. No. 4036, dated 5th November 1866.)

Repairs to boundary-mark in Khalsat unoccupied lands are to be made by the Local Officers at the expense of Government, unless the Collector is satisfied that the repairs would be as effectually and more cheaply made by the farmers, to whom the grazing of the land is annually sold, when a clause requiring this to be done should be included among the conditions of the sale. When the former course is adopted the farmers of waste should be freed from all responsibility whatever connected with the boundary-marks, as the sale of the grazing farms must be injured by laying any amount of responsibility on them.

To provide funds for the repair of boundary-marks to Khalsat unoccupied lands, the Collector may deduct from the amount for which the grazing farms may be sold, a sum not exceeding five rupees for every thousand acres of waste, and hold this amount in deposit until the 15th of July in each year when any unexpended balance of it should be brought to credit on account of the grazing farm, so as to prevent any accumulation of funds beyond the close of the revenue year.

In Talukas where the boundary-marks to unoccupied lands have been allowed to fall into great disrepair, and the sum provided by the foregoing rule would not suffice for their restoration, the Collector may expend from the collection on account of grazing farms double the amount allowed by the preceding rule, or up to ten rupees for every thousand acres of waste, on reporting his reasons for the information of the Commissioner. (G. Letter, dated 20th August 1852.)

*Vide* G. R. No. 625, dated 26th January 1887, printed under Section 123.

<sup>2-3</sup>These words were substituted for the original words by Bombay Act VI. of 1901, Section 14 (6).

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

Such officer may require landholders to construct, 'lay out, maintain' or repair their boundary marks, by a notification which shall be posted in the chauri or other public place in the village, to which the lands under survey belong, directing the holders of survey numbers to construct, 'lay out, maintain' or repair, within a specified time, the boundary marks of their respective survey numbers, and on their failure to comply with the requisition so made, the survey officer shall then construct, 'lay out' or repair them, and assess all charges incurred thereby as hereinbefore provided.

Requisition on landholders to erect or repair boundary marks.

A general notification, issued in the manner aforesaid, shall be held to be good and sufficient notice to each and every person having any interest in any survey numbers within the limits of the lands to which the survey extends.

General notification to be sufficient notice of requisition.

<sup>2</sup>The boundary marks shall be of such description, and shall be constructed, laid out, maintained or repaired in such manner and shall be of such dimensions and material as may, subject to rules or orders made in this behalf under Section 214, be determined by the Superintendent of Survey according to the requirements of soil and climate.

Description of boundary-marks.

**(1) Superfluous boundary marks. Circle Inspectors to cause them to be removed.**—It is the duty of the village officers and Circle Inspectors to cause superfluous marks that have been cut into

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<sup>1</sup> These words were inserted in the 2nd para. of Section 122 by Bombay Act VI. of 1901, Section 14 (2).

<sup>2</sup> This para. was substituted for the original one by Bombay Act VI. of 1901, Section 14 (3).

two at the revision Survey as a sign that they need not be repaired to be removed, and the Collectors should see that this duty is properly carried out. (G. R. No. 6560, dated 14th August 1884.)

(2) **If not removed by occupants, cost of removal charged to them.**—If landholders do not remove the superfluous marks, the expense of removing them can be recovered from them. If, as is said to be the case, deep cuttings are made in the cancelled marks, there can be no risk in letting the village officers under the supervision of Circle Inspectors or General duty karkuns to take measures for their removal, and it would clearly be an useless expense to depute members of the Survey Establishment on this duty in places where the revision Survey is completed. In places in which the revision Survey has yet to be made, it will be preferable for the Survey Department to take measures at the time of the revision for the removal of redundant marks. (G. R. No. 4686, dated 9th June 1885.)

(3) **Landholders responsible for their removal.**—Under the terms of the Land Revenue Code the landholders are responsible for the removal of superfluous boundary marks and for any reasonable expenses incurred in connection therewith. The landholders should be impressed with the advantages of the speedy and entire obliteration of all superfluous marks and the village officers and Circle Inspectors should take steps for their complete demolition. (G. R. No. 3502, dated 13th May 1888.)

(4) **Writing off boundary mark outstanding balances.**—The Commissioners of Divisions are authorized to write off outstanding balances on account of erection and repairs of boundary marks. (G. R. No. 7264, dated 13th October 1886.)

(5) **Boundaries of free grazing lands.**—Boundaries of free grazing lands inside the demarcated forest line should be repaired by the Forest Department and those of Gairan lands outside the forests should be repaired by the village communities which enjoy the privilege of free grazing. When the grazing of waste Nos. outside the forests is sold, the practice of inserting in the conditions of sale a clause binding the purchasers to repair the boundary marks should be continued. (G. R. No. 3378, dated 30th May 1887.)

(6) **Cost of correcting mistakes of revision Survey.**—It would be very hard to expect an occupant to pay for a new survey of his field necessitated by the mistakes of the revised Survey. (G. R. No. 5698, dated 28th August 1887.)

(7) **Collector to pass boundary mark expenditure.**—Expenditure incurred on account of boundary mark inspection should be passed in future on the countersignature of the Collector. (G. R. No. 7, dated 3rd January 1888.)

(8) **Responsibility of Holders of alienated villages.**—Holders of villages which are alienated or held on similar other tenure, such as "Sanadi Luam" tenure, cannot be required to maintain the Survey boundary marks, unless the provisions of Chapter IX. of the Land Revenue Code have been formally extended to them. ( G. R. No. 3613, dated 4th June 1858. )

(9) **Boundary mark advances to Mamlatdars.**—It is not necessary to allow Mamlatdars permanent advances to meet charges on account of repairs to boundary marks as rule 311, chapter 7, of the Civil Account Code rules provides for the drawing of advances for this purpose which are cleared when recoveries are made from parties concerned. ( G. R. No. 6528, dated 4th September 1839. )

(10) **Rules for the demarcation of land permanently occupied for the use of Railways in India.**—1. All land permanently occupied for the purposes of a Railway shall have its boundaries defined on the ground in such a manner as to enable such boundaries to be readily ascertained and identified.

2. For this purpose the boundary of the Railway land may be defined by a continuous wall, fence or ditch, or by detached marks, posts or pillars.

3. Where the boundary mark is continuous, the boundary of the Railway land is to be on the outer edge of the wall, fence or ditch—that is to say, the wall, fence or ditch will be situated wholly on Railway land.

4. Where detached marks, such as isolated posts or pillars, are used, the boundary of the Railway land will pass through the centres of such marks. Between the marks the boundary will in each case be taken in a straight line from the centre of one mark to the centre of the next mark.

5. Detached marks are in no case to be at a greater distance apart centre to centre than one-eighth of a mile (660 feet). They are to be of a substantial character, not easily destroyed or moved by accident or mischief, and are to be of such size and form as to be readily found and recognized.

6. Each detached boundary mark is to bear a number, and the position and corresponding number of each detached boundary mark is to be shown on the land plan.

7. Where a fence, wall or ditch is for convenience situated at some distance within the boundary and does mark the actual limit of the Railway land, it will be necessary that in addition to such fence, wall or ditch, the actual boundary of the Railway land shall be properly marked and defined in accordance with these rules. ( G. R. No. 6037, dated 1st October 1890. )

(11) **Remedy if an Inamdar fails to abide by this section.**—There is no provision of law or order under which steps can be taken against an alienee for non-compliance with the orders in G. R.

No. 2581, dated 19th June 1865, which lays down that the owners of alienated villages, which have been surveyed either by virtue of their being held on service tenure or at the express desire of the alienee, should be requested to cause the boundary marks to be examined by the village officers, to test these examinations themselves or by their agents and to report the result to the Assistant Collector in charge of the taluka.

But the provisions of Sections 216 and 217, which apply to alienated villages into which the survey settlement has been introduced, empower the Collector to take all necessary measures under Sections 123 to 125 for the preservation and maintenance of boundary marks. (G. R. No. 4799, dated 8th June 1892.)

(12) **Recovery of the cost of boundary marks.**—In all cases of the recovery of the cost of boundary marks or other unusual charges detailed lists of the amounts due from the several individuals should be sent to the villages for publication in the village chavdis. When the recovery is to be made by village accountants, both the sums due and amounts recovered will be shown in the proper village accounts. (G. R. No. 1789, dated 12th March 1898.)

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

Responsibility for maintenance of boundary marks.

(1) **Demarcation of Forest lands. Liability of the Forest Department to pay its cost.**—The Forest Department should be required to pay only half the cost of boundary marks put up to mark the line of division between forest land and non-forest land, and as the ordinary survey boundary mark is not efficient as a forest boundary mark, the Forest Department should not be required to pay for the ordinary survey boundary marks if they undertake to put up boundary marks of their own. But it would not be convenient to leave a boundary without survey marks when the Forest Department is not ready to put up marks suitable to their purpose at once. In such cases the Forest Department will pay half the cost of the boundary marks erected by the Survey Department. (G. R. No. 5637, dated 7th August 1886.)

(2) G. R. No. 5637, dated 7th August 1886, was intended to rule that the Forest Department should pay the usual occupant's share of the costs of boundary marks between land in its charge and other land. But when the Forest Department prefers to put up special marks by its own

agency, at its own costs, and is prepared to do so at once, the special marks will be substituted for the ordinary survey marks. ( G. R. No. 7063, dated 5th October 1886. )

(3) The cost of boundary marks constructed by the Revenue Survey Department in forest survey Nos. should be charged to the Forest Department. A special notice, over and above that required by Section 122 of the Land Revenue Code, of the intention of the Survey Department to erect boundary marks in forest Nos. should be given to the Forest Department. ( G. R. No. 625, dated 26th January 1887. )

(4) **What charges may be said reasonably incurred.**—The charge should include the salary and expenses of the officer, if any employed, and should not be such as would not be incurred if the work was being done at Government expense, nor should the landholders be made to pay for work which they are willing and able to do themselves. Copies of survey documents which may be required should be charged for at the rates given to section writers. ( G. R. No. 646, dated 25th January 1894. )

124. When the survey settlement shall have been introduced into a district, the charge of the boundary mark shall devolve on the Collector, and it shall be his duty to take measures for their 'construction, laying out' maintenance and repair, and for this purpose the powers conferred on survey officers by Section 122 shall vest in him.

Collector to have charge of boundary marks after introduction of survey settlement.

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

One-half of every fine imposed under this section may be awarded by the officer imposing it to the informer, if any, and the other half shall be chargeable with the cost of restoring the mark.

(1) **Enquiries into injuries to boundary marks.**—Cases in which it is desirable in the interests of Government to hold

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<sup>1-1</sup> These words were inserted in Section 124 by Bombay Act VI. of 1901, Section 15.

enquiry (as for instance, cases of complaints of injury done to Survey marks), should not be dismissed through default of the parties in furnishing Court fee, batta to witnesses, etc. In such cases the best course for the Revenue Authority is to accept the petition or complaint and summon the witnesses *proprio motu*. The Government of India in their Reso. No. 3025 of 31st December 1878 (which may be found at page 180 A. of the High Court's Circulars) have sanctioned the procedure to be followed when a judge himself summons the witnesses in a suit, and this procedure may be adopted by Revenue Authority holding as such a judicial proceeding. (G. R. No. 6737, dated 11th November 1881.)

(2) **Digging of earth within two cubits of boundary marks.**—The accused was charged before a 2nd Class Magistrate with digging of earth within a space of two cubits of an earthen boundary mark (in contravention of rule 101 (now 98) of the rules made by Government under Section 214 (g) of the Bombay Land Revenue Code (Act V. of 1879). The Magistrate convicted the accused under rule 111, clause 3 (a), now (103 (3)) and sentenced him to a fine of one rupee.

*Held*, that the conviction and sentence were illegal. Section 125 of the Land Revenue Code does not give jurisdiction to any Magistrate to try a person accused of injuring boundary mark.

*Held* also, that rule 101 (now 98) is not such a rule as can be legally made under Section 214 (g) of the Code. It is not a rule "for the administration of a Survey Settlement." Such a Settlement is a settlement of the land-revenue, and relates only to such matters as are referred to in Chapter VIII. of the Code, and not to boundaries or boundary marks which are dealt with in Chapter IX. (Queen Empress *vs.* Irappa.—I. L. R. Bombay, Volume XIII., page 291, 1880.)

## CHAPTER X.

### *Of Lands within the Sites of Villages, Towns and Cities. Fixing of Sites.*

126<sup>1</sup>. It shall be lawful for the Collector or for a survey officer acting under the general or special orders of Government, to determine what lands are included within the site of any village, town or city, and

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

<sup>1</sup> Although Government have, under the provisions of this and the following sections, the power to order the Survey and assessment of lands in the sites of towns and villages, and can in exercise of that power impose assessment on any such lands it would not be just and fair if such assessment were ordered to be imposed in isolated cases only. Accordingly in



to fix, and from time to time to vary, the limits of the same, respect being had to all subsisting rights of landholders.

(1) **General Survey of village sites abandoned.**—It having been deemed inexpedient to proceed further in the matter of the general survey of village sites contemplated in the Resolutions of Government noted in the margin, there is no objection to disposing of occupancies of building sites in accordance with the rules framed under the Land Revenue Code, 1879. (G. R. No. 4099, dated 21st May 1884.)

4305 }  
5930 } of 1879.

a case in which certain lands in a village site, which had been exempt from assessment under certain circumstances, were assessed by the Collector on those circumstances being changed it was held by the Legal Remembrancer that the action of the Collector was objectionable. The Legal Remembrancer stated:—

“ 1. \* \* \*

“ 2. So far as regards the assessment of land of which the occupancy may hereafter be granted, the subject is free from difficulty. Under Sections 45 and 48 of the Land Revenue Code, all land is liable to the payment of land-revenue, no matter what purpose it is put to, unless it is exempted under a special contract or by any law for the time being in force. To land of which the occupancy is to be newly given no such exemption can apply. With a view to the settlement of the land-revenue, it is competent to Government, if they think fit, to direct, under Section 95 of the Code the survey of vacant lands in village sites. When such an order is given, the officer in charge of the Survey will fix the assessment under Section 100 of the Code. But in respect of lands not within the local operation of an order under Section 95, the assessment has to be fixed under Section 52 by the Collector, subject to rules or orders made in this behalf by Government. The Land Revenue Code Rules Nos. 23—28 (now 22—28) are the existing rules prescribed by Government for the guidance of Collectors in allotting building-sites, and I believe they are found sufficient.

“ 3. \* \* \*

“ 4. The law as to the assessment to the land-revenue of lands in village-sites already occupied is precisely the same as that applying to lands which may hereafter be given out for the occupation described in paragraph 2. Government may direct a survey of all or any of such lands under Section 95, and then the assessment thereof will be made under Section 100 by the officer in charge of the Survey, or if no such survey is ordered by Government, the Collector may, under Section 52, fix the assessment. In either case the following limitations apply, *viz.*:—

- (1) Land wholly exempted under the provisions of any special contract with Government or any law for the time being in force must be exempted (Section 45);

*Exemption from Land-revenue.*

127. Act XI. of 1852 and Bombay Acts II. and VII. of 1863 shall be deemed to be applicable, and to have always been applicable, in the territories to which they respectively extend, to all lands within the limits of the site of any town or city in which an inquiry into titles has been made under the provisions of Bombay Act IV. of 1868, which have been hitherto

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- (2) Respect must be had to all rights legally subsisting in the case of lands partially exempt from land-revenue, or the liability of which to payment of land-revenue is subject to special conditions or restrictions (Section 52, proviso, and Section 100, paragraph 2.)

“ 5. Occupied lands in village sites may be divided into three classes (namely) :—

- (1) Lands granted under British rules ;
- (2) Lands held from a time anterior to the British rule ;
- (3) Lands unauthorizedly occupied since the introduction of the British rule.

“ 6. Lands of the 1st class have, I believe, generally been granted on stated terms under a written agreement or lease or similar document and either the first or the second of the two limitations mentioned in paragraph 4 would prevent any modification of those terms now.

“ 7. In the second class there would, I imagine, be few lands for which an original documentary title could be proved. But in most instances possession from time immemorial could be established, and in such circumstances the Civil Courts would presume a valid grant and recognize the claimants' proprietary right. Along with the fact of immemorial possession, the holders of these lands would, as a rule, be able to show that they have never been subject to the payment of land-revenue.

“ 8. The holders of lands of the third class would, of course, have no documentary evidence of title. All that they could establish would be, at the most, about sixty years' possession and immunity all that time from payment of land-revenue.

“ 9. The City Survey Act ( Bombay Act IV. of 1868 ) confirmed every entire or partial exemption from land-revenue proved to have been enjoyed for five years previous to the application of that Act or of Bombay Act I. of 1865 to the town or city. When the Land Revenue Code Bill was first introduced it was proposed to extend this rule to all village-sites, but after much discussion the provisions finally adopted were those set forth in paragraph 4. According to these, in the absence of a ' special contract

ordinarily used for agricultural purposes only; but the provisions of the said Acts shall not be deemed applicable to any other lands within the limits of the site of any such town or city.

128. The existing exemption from payment of land-revenue of lands other than lands which have hitherto been ordinarily used for purposes of agriculture only, situate within the sites of towns and cities in

Existing exemption when continued in case of certain lands.

with Government,' it has to be seen whether any land in a village-site is exempted from land-revenue under 'any law for the time being in force'; if it is not so exempted it is liable to be assessed, subject to the orders of Government, either by the Collector under Section 52 of the Code or by the officer in charge of a Survey under Section 100.

"10. The only Acts under which such exemption might possibly be claimed are Act X. of 1852 and Bombay Acts II. and VII. of 1863, in the provinces to which they are respectively applicable. Government are aware that the High Court held some years ago that previous to the passing of Bombay Act IV. of 1868, neither Regulation XVII. of 1827, nor Bombay Act VII. of 1863 applied to village-sites. By Section 17 of Act X. of 1876 the Legislature, however, declared that Regulation XVII. of 1827 should be deemed to be and to have always been in force in the sites of villages, towns and cities. No such general declaration has been made with regard to Bombay Act VII. of 1863. But Section 127 of the Code enacts that Act XI. of 1852 and Bombay Acts II. and VII. of 1863 shall be deemed to be applicable and to have always been applicable to all lands within the sites of cities and towns in which an enquiry under Bombay Act IV. of 1868 has been made, which have been hitherto ordinarily used for purposes of agriculture only; but that the provisions of those Acts shall not be deemed applicable to any other lands within the limits of the sites of the said cities and towns. The effect of these two enactments, Section 17, Act X. of 1876, and Section 127 of the Land Revenue Code is, I think, to confirm the previous decision of the High Court as to Bombay Act VII. of 1863. The Judges would say that the Government of India, whilst declaring that Regulation XVII. of 1827 is in force in the sites of villages, towns and cities, made no mention of Bombay Act VII. of 1863 and that therefore their previous decision as regards that Act remains unaffected. Moreover the local legislature has since declared of that Act XI. of 1852 and Bombay Act II. of 1863 that their provisions do apply to certain lands within the sites of certain towns and cities, thus leaving it to be inferred that they do not apply within the sites of other towns and cities or of villages.

"11. For these reasons it appears to me that Act XI. of 1852 and Bombay Acts II. and VII. of 1863 are not applicable to lands within the

which an inquiry into titles has been made under the provisions of Bombay Act IV. of 1868, shall be continued.

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

sites of villages, towns and cities, except to the extent indicated in Section 127 of the Land Revenue Code. If this view is correct it follows that all such lands are liable to be assessed to the land-revenue unless they are exempted therefrom under the provisions of any express contract with Government. Therefore all lands in the second class, except the few which can establish a documentary title to exemption, and all lands in third class are liable to be assessed, under the law as it now stands, to the land-revenue.

“ 12. \* \* \* \* \*

“ 17. But if it is not the present intention of Government to assess occupied lands in village sites generally, it seems to me impossible to justify the assessment of such holdings in isolated cases. On the principle that the greater includes the less, the Land Revenue Code, which empowers Government to direct the assessment of all such lands, may, of course, be held to authorize the assessment of any one particular holding. But such laws are not enacted to enable Government or their officers to levy a tax from one person out of a thousand and to let the other nine hundred and ninety-nine go free, and I very much doubt whether the Civil Courts would uphold a levy made on such a system.

“ 18. \* \* \*

“ 19. The old rule regarding *pardi* lands has been embodied in No. 54 ( now omitted ) of the Land Revenue Code Rules. It applies only to patches of open ground ‘surrounding houses.’ So long as a piece of ground is ‘*pardi* land’ within the above description it is subject to the same rules regarding assessment as the house-site which it surrounds. When, however, it ceases to answer to the above description, the question of assessing it or of putting fresh assessment upon it is, I think, legally open to consideration under paragraph 2, Section 48 of the Land Revenue Code. But if in the village or town in which the land is situate, house-sites generally are not subject to assessment, it seems to me that it would be unreasonable for the Collector to place an assessment upon that piece of land alone.”

The above letter of the Remembrancer of Legal Affairs was disposed of by G. R. No. 1344, dated 18th June 1886.

*2nd.*—If such lands have been held wholly or partially exempt from the payment of land-revenue for a period of not less than five years before the application of Bombay Act I. of 1865 or IV. of 1868 to such town or city.

*3rd.*—If such lands, for whatever period held, have been held wholly or partially exempt from payment of land-revenue under a deed of grant or of confirmation issued by an officer whom Government recognize as having been competent to issue such deed.

Right to exemption determined by Collector.

129. Claims to exemption under the last preceding section shall be determined by the Collector after summary inquiry, and his decision shall be final.

(1) **Assignment of power to decide claims to exemption.**—It is better to assign powers (specially) under this section than to trust to Section 2 as continuing the powers already conferred by the Collector upon enquiry officers under Act IV. of 1868. The order passed by such officers shall be final in the sense of Section 212, but they may be modified by Government or a suit brought under Section 135. ( G. R. No. 5728, dated 27th October 1879. )

130. In towns and cities to which Section 128 applies, the holders of any lands other than lands which have hitherto been used for purposes of agriculture only, which have been unauthorizably occupied for a period commencing less than two years before Bombay Act I. of 1865 or IV. of 1868 was applied to the town or city in which the said lands are situate, shall be liable to pay the price of the occupancy of the said lands in addition to the land-revenue assessed thereupon. The said occupancy-price shall be determined according to the provisions of Section 62.

*Miscellaneous.*

131. If the Governor-in-Council shall at any time deem it expedient to direct a survey of the lands other than those used ordinarily for the purposes of agriculture only within the site of any village, town or city, under the

Survey of lands in such sites how to be conducted.

provisions of Section 95, or a fresh survey thereof under the provisions of Section 106, such survey shall be conducted, and all its operations shall be regulated, according to the provisions of Chapters VIII. and IX. of this Act; provided that nothing contained in Sections 96, 97, 101, 103, 104, or 118 thereof shall be considered applicable to any such survey in any town or city containing more than two thousand inhabitants.

Proviso.

132.<sup>1</sup> When a survey is extended under the provision of the last preceding section to the site of any town or city containing more than two thousand inhabitants, each holder of a building-site shall be liable to the payment of a survey-fee to be assessed by the Collector under such rules as may be prescribed in this behalf from time to time by Government, provided that the said fee shall in no case exceed rupees five for each survey number. The said survey-fee shall be payable within six months from the date of a public notice to be given in this behalf by the Collector after the completion of the survey of the site of the town or city, or of such part thereof as the notice shall refer to.

In any town or city in which Bombay Act IV. of 1863 was in force before the passing of this Act, a similar public notice shall be issued by the Collector within six months after the passing of this Act.<sup>2</sup>

133.<sup>3</sup> Every holder of a building site as aforesaid shall be entitled, after payment of the said survey-fee, to receive from the Collector, without extra charge, one or more sanads, in the form of Schedule H, specifying by plan and description the extent and conditions of his holding:

<sup>1</sup> See Rule 79 of the Rules under Section 214 of the Code.

<sup>2</sup> Words repealed by Act XVI. of 1895 have been omitted.

<sup>3</sup> See Rule 53 of the Rules under Section 214 and also rules under Section 218.

Provided that if such holder do not apply for such sanad or sanads at the time of payment of the survey-fee or thereafter within six months from the date of the public notice issued by the Collector under the last preceding section, the Collector may require him to pay an additional fee not exceeding one rupee for each sanad.

Every such sanad shall be executed on behalf of the Secretary of State for India in Council by such officer as may from time to time be lawfully empowered to execute the same.

134. If any land within the site of any village, town or city, hitherto ordinarily used for agricultural purposes only, with respect to which a summary settlement has been made between Government and the holder under the provisions of any law for the time being in force, be appropriated<sup>1</sup> to any other purposes, it shall be liable to payment of one-eighth of the rate fixed for unalienated land used for similar purposes in the same locality, in addition to the quit-rent payable under the terms of such summary settlement.

135. Any suit instituted in a Civil Court to set aside any order passed by the Collector under Section 37 or 129, in respect of any land situate within the site of a village, town or city, shall be dismissed, although limitation has not been set up as a defence, if it has not been instituted within one year from the date of the order.

(1) On the 1st of September 1882, the Collector of Ahmednagar, by an order under Section 37, granted a piece of open ground to N for building purposes. On 31st March 1888 S brought a suit against N and the Secretary of State. The suit was held to be time-barred, not being brought within one year from the date of the Collector's order, as provided for in Section 135. (I. L. R. 15 Bom. 424, *Nagu v. Salu.*)

<sup>1</sup> Vide G. R. under Section 65 about the word "appropriated."

## CHAPTER XI.

*Of the Realization of the Land-revenue and other Revenue demands.**Responsibility for Land-revenue.*

136.<sup>1</sup> The registered occupant shall be primarily responsible to Government for the land-revenue of unalienated land, and the superior holder shall be primarily responsible to Government for the land-revenue of alienated land.

Primary responsibility.

Recovery of land-revenue if person primarily responsible fails to pay it.

On failure of the person primarily responsible to Government for the land-revenue to pay the same according to the rules legally prescribed in that behalf, it may be recovered from the co-occupant of unalienated land or the co-sharer of alienated land, or in either case from the inferior holder or person in actual occupation of the land.

When land-revenue is recovered from any such co-occupant, co-sharer, inferior holder or other person, he shall be allowed credit for all payments which he may have made to the registered occupant or superior holder, or to his landlord, at or after the prescribed or usual times of such payments, and he shall be entitled to credit in account with the registered occupant or superior holder or with his landlord for the amount recovered from him.

(1) **Can revenue be recovered from co-sharers when the principal sharer is willing to pay.**—The eldest superior-holder of an Inam village maintained that no part of the revenue in respect of the shares of his co-sharers should be received by Government direct from them as he was responsible for the payment of the Revenue of the whole village under Section 136 of the Land Revenue Code. The co-

<sup>1</sup> See order No. (9) printed under Section 74.



sharers on the other hand alleged that they were also superior holders in respect of their shares and that the revenue of those shares should be levied from them direct. In connection with this case the following questions were referred for the orders of Government:—

1. When there is more than one superior holder, can Government under Section 136 hold the eldest or principal superior holder primarily responsible for the payment of Government revenue?
2. If so, can they refuse to accept Government revenue from any other superior holder, should he be ready and willing to pay it?
3. In the event of the right of a junior superior holder to pay his share being recognized, would it be open, in the case of default of Government revenue to the principal sharer to say that he could not be held primarily responsible as Government had already held others to have the right of direct payment and he was no more a superior holder than they were?

These questions were disposed of by Government orders to the following effect:—

The Land Revenue Code does not expressly provide for the registration of the principal of the several co-holders of alienated land, and for the registered holder alone being ordinarily recognized by the Collector in matters affecting the revenue of the land. It has always been the practice, however, to register only the name of the principal holder of alienated land and for the Collector to look primarily to the registered holder for the payment of revenue. This is an arrangement necessary in the interests of Government, for it is obviously much more convenient that the Collector for the purposes of collecting the land-revenue should have to recognize only one registered holder in respect of each holding, than that he should have to call upon each of the several co-sharers (some of whom often hold very minute shares) to pay his quota of the revenue. That the legislation of the system was intended by the Code is clear from paragraph 2 of Section 136. In this it is enacted that "on failure of the person primarily responsible to Government for the land-revenue," that revenue may be recovered "from the co-occupant of unalienated land or the co-sharer of alienated land." This provision places co-occupants of unalienated land and co-sharers of alienated land in corresponding positions; and the use of the words "co-sharer of alienated land" would be meaningless, if the term "the superior holder" as used in paragraph 1 of the section where he is said to be primarily responsible for the revenue of alienated land were meant to include co-sharer's as well as the principal or registered superior holder. So also Section 79 shows that the registration of holders of alienated land as well as occupants of unalienated lands was in the mind of the legislature, and from a comparison of Section 76 with paragraph 2

of Section 74 it is clear that registration of only the principal holders of alienated land was intended.

The last of the three questions above referred to indicates one class of difficulty which may arise if the long established practice of holding registered superior holder of alienated land alone responsible primarily for the land-revenue of his holding is abandoned. The only safe course therefore is for that practice to be maintained, at any rate as long as a registered holder is willing to pay the whole amount due on his holding. If he makes default, the Collector can recover, under paragraph 2 of Section 136 of the Land Revenue Code, from his co-sharers.

When the Code comes under revision the opportunity will be taken of making its provisions more clearly conform to the established practice and it will be easier to do this if in the meantime no departure from the existing practice has been made. (G. R. No. 5519, dated 12th August 1891.)

### *Priority of Government claim for Land-Revenue.*

137.<sup>1</sup> The claim of Government to any moneys recoverable under the provisions of this chapter shall have precedence over any other debt, demand, or claim whatsoever, whether in respect of mortgage, judgment-decree, execution or attachment, or otherwise howsoever, against any land or the holder thereof.

138. In all cases the land-revenue for the current year, of land used for agricultural purposes, if not otherwise discharged, shall be recoverable, in preference to all other claims, from the crop of the land subject to the same.

### *Land-revenue when leviable.*

139. The land-revenue shall be leviable on or at any time after the first day of the revenue year for which it is due; but except when precautionary measures are deemed necessary under the provisions of Sections 140 to 144, payment will be required only on the dates to be fixed under the provisions hereinafter contained.

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<sup>1</sup> See order No. (11) printed under Section 80

*Precautionary Measures for the securing of  
the Land-revenue.*

140. When the crop of any land or any portion of the same is sold, mortgaged or otherwise disposed of, whether by order of a Civil Court or other public authority, or by private agreement, the Collector may prevent its being removed from the land until the current year's revenue of the said land has been paid, whether the date fixed for the payment of the same, under the provisions hereinafter contained, has yet arrived or not. But in no case shall a crop, or any portion of the same, which has been sold, mortgaged or otherwise disposed of, be detained on account of more than one year's revenue.

Removal of crop which has been sold, etc., may be prevented until revenue paid.

141.<sup>1</sup> It shall be lawful for the Collector, in order to secure the payment of the land-revenue by enforcement of the lien of Government on the crop—

To secure land-revenue Collector may

(a) to require that the crop growing on any land liable to the payment of land-revenue shall not be reaped until a notice in writing has first been given to himself or to some other officer to be named by him in this behalf, and such notice has been returned endorsed with an acknowledgment of its receipt ;

(b) to direct that no such crop shall be removed from the land on which it has been reaped, or from any place in which it may have been deposited, without the written permission of himself or of some other officer as aforesaid ;

(c) to cause watchmen to be placed over any such crop to prevent the unlawful reaping or removal of the

<sup>1</sup>(1) *Vide* orders printed under Section 86.

(2) The forms of orders to be issued under this section have been sanctioned by Government in their Resolution No. 674, dated 27th January 1891, and are printed as Appendix XII.

same, and to realize the amount required for the remuneration of the said watchmen, at such rate not exceeding the rate of pay received by the peons on his establishment as he may deem fit, as an arrear of land-revenue due in respect of the land to which such crop belongs.

**(1) Inamdar's power to take precautionary measures and to attach property.**—An Inamdar who holds a commission conferring upon him the power described in clause (a) of Section 88 of the Land-Revenue Code is entitled to take "such precautions as the Collector is authorized to take under Sections 141 to 143." Referring to Section 138 of the Code it appears that the Collector is only authorized to take precautions under Sections 141 to 143 for the recovery of the land-revenue of the current year and Inamdar's power is similarly restricted.

The power to attach property conferred upon an Inamdar under clause (a) of Section 88 of the Code is not restricted by any reference to any other section or provision of that enactment, and there is no reason for holding that the Inamdar is bound to issue a notice of his demand before proceeding to attach his defaulter's property. There can be no legal objection to his sending a preliminary notice to the defaulter if he thinks fit to do so; such a course would be commendable, but it is not obligatory, and the Inamdar would not be entitled afterwards to recover as a revenue demand the cost of issuing and serving such notice. (G. R. No. 2901, dated 15th April 1880.)

**(2) The effect of prompt measures for attachment.**—The provisions of Section 140 and the last sentence of Section 145 also make it clear that Sections 141-143 are intended to be used only in the case of current demands. In regard to the revenue for the past year, the Collector can recover as arrear by attachment and sale of the crops (balance after paying the current year's demand) as immoveable property under clause (d) of Section 150 if they are standing and (c) if they are reaped.

If the Collector takes prompt measures for the attachment by separate process on account of arrears of the balance of the crop which is realised on recovery of revenue due for the current year, the result would probably be much the same as if Sections 141-143 were resorted to with regard to the whole claim. (G. R. No. 498, dated 24th January 1903.)

142. The Collector's order under either clause (a) or clause (b) of the last preceding section may be issued generally to all the holders of land paying revenue to Government in a village, or to individual holders merely.

If the order be general, it shall be made known by public proclamation to be made by beat of drum in the village and by affixing a copy of the order in the Chauri or some other public building in the village. If it be to individual holders, a notice thereof shall be served on each holder concerned.

Any person who shall disobey any such order after the same has been so proclaimed, or a notice thereof has been served upon him, or who shall, within the meaning of the Indian Penal Code, abet the disobedience of any such order, shall be liable, on conviction after a summary inquiry by the Collector, to a fine not exceeding double the amount of the land-revenue due on the land to which the crop belongs in respect of which the offence is committed.

143. The Collector shall not defer the reaping of the crop, nor prolong its deposit, unduly, so as to damage the produce; and if within two months after the crop has been deposited the revenue due has not been discharged, he shall either release the crop and proceed to realize the revenue in any other manner authorized by this chapter or take such portion thereof as he may deem fit, for sale under the provisions of this chapter applicable to sales of moveable property in realization of the revenue due and of all legal costs, and release the rest.

Reaping, &c., not to be unduly deferred.

Crop when to be released.

144. If, owing to disputes amongst the sharers, or for other cause, the Collector shall deem that there is reason to apprehend that the land-revenue payable in respect of any holding consisting of an entire village or of a share of a village will not be paid as it falls due, he may cause the village or share of a village to be attached and taken under the management of himself or any agent whom he appoints for that purpose.

Temporary attachment and management of village or share of village.

The provisions of Section 160 shall apply to any village or share of a village so attached, and all surplus profits of the land attached, beyond the cost of such attachment and management, including the payments of the land-revenue and the cost of the introduction of a revenue survey, if the same be introduced under the provisions of Section 111, shall be kept in deposit for the eventual benefit of the person or persons entitled to the same, or paid to the said person or persons from time to time as the Collector, subject to the orders of the Commissioner, may direct.

Powers of manager, and disposal of surplus profits.

145. The precautionary measures authorized by the last five sections shall be relinquished if the person primarily responsible for the payment of revenue, or any person who would be responsible for the same if default were made by the person primarily responsible, shall pay the costs, if any, lawfully incurred by the Collector up to the time of such relinquishment, and shall furnish security<sup>1</sup> satisfactory to the Collector for the payment of the revenue, at the time at which or in the instalments if any, in which it is payable under the provisions hereinafter contained.

Precautionary measures to be relinquished on security being furnished.

#### *Regulation of payment of Land-revenue.*

146. Land-revenue, except when it is recovered under the provisions of the foregoing Sections 140 to 144, shall be payable at such times, in such instalments, to such persons and at such places as may from time to time be determined by the orders of Government.

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

<sup>1</sup>The form of security-bond to be furnished under this section has been sanctioned by Government in their Resolution No. 674, dated 27th January 1891, and is printed as Appendix XIII.

*Defaulters.*

147.<sup>1</sup> Any sum not so paid becomes thereupon an arrear of land-revenue, and the persons responsible for it, whether under the provisions of Section 136 or of any other section, become defaulters.

148. If any instalment of land-revenue be not fully paid within the prescribed time it shall be lawful for the Collector to proceed to levy at once the entire balance of land-revenue due by the defaulter for the current year, in addition to such charge as a penalty or by way of interest, as may be authorized according to a scale to be fixed from time to time under the orders of the Governor in Council.

(1) **Maximum Penalty.**—A maximum penalty not exceeding  $\frac{1}{4}$ th of the amount of land-revenue over-due should be fixed and resort had to the provisions of this section in the case of the rayat who is known to be able to pay but wilfully delays to do so. The penalty imposed may be remitted if the officer imposing it afterwards finds that the rayat was not able to pay punctually. (G. R. No. 2485, dated 27th March 1883.)

(2) **Levy of penalty in alienated villages and its disposal.**—In cases where assistance is given by revenue officers for the recovery of revenue due to holders of alienated villages, or other superior holders, if any penalty is ordered and levied under this section for default in punctual payment of revenue, it should be paid over to the superior holder. The Collector need not levy any penalty under this section, except in cases where he may consider that the superior holder is entitled to something more than his bare rent. (G. R. No. 9586, dated 4th December 1884.)

149.<sup>2</sup> A statement of account, certified by the Collector or by an Assistant or Deputy Collector shall, for the purposes of this chapter, be conclusive evidence of the existence of the arrear, of the amount of land-revenue due, and of the person who is the defaulter.

<sup>1</sup> In the Revenue Recovery Act I. of 1890, which extends to the whole of British India, the word "defaulter" is defined to mean "a person from whom an arrear of land-revenue is due," and to include "a person who is responsible as surety for the payment of any such arrear or sum."

<sup>2</sup> Before the passing of the Revenue Recovery Act (I. of 1890) the

On receipt of such certified statement, it shall be lawful for the Collector of one district to proceed to recover the demands of the Collector of any other district under the provisions of this chapter as if the demand arose in his own district. A similar statement of account, certified by the Collector of Bombay, may be proceeded upon as if certified by the Collector of a district under this Act.

Collectors may realize each other's demands.

(1) **Recovery outside British India.**—Revenue cannot be realized outside British India by coercive process. (G. R. No. 3392, dated 20th April 1894.)

(2) **Recovery of other than land-revenue in another Collectorate.**—It is necessary to send a certificate under Section 3 of the Revenue Recovery Act when any amount recoverable as land-revenue (but not necessarily itself land-revenue) due in one district is to be recovered from a person residing in any other district of the Bombay Presidency to which the Land Revenue Code applies. (G. R. No. 552, dated 29th January 1901.)

### *Recovery of Arrears.*

150. An arrear of land-revenue may be recovered by the following processes:—

(a) by serving a written notice of demand on the defaulter, under Section 152 ;

Collector of a district in the Bombay Presidency could not,\* under the provisions of the Code, proceed to recover an arrear of land-revenue due on

\* In a case where the Collector of Bellary (a district in the Madras Presidency) had requested the Collector of Dharwar to recover from certain persons in the Dharwar district arrear of land-revenue due on lands in the Bellary district. Government decided that the Land Revenue Code being applicable only to the Bombay Presidency, the Collector of Bellary was not a Collector within the meaning of Section 149, nor the land-revenue due on lands in the Bellary district the land-revenue within the meaning of Section 187 and that therefore the Collector of Dharwar could not proceed under the Code to recover the arrears, though he might use his influence for the recovery thereof. (G. R. No. 2877, dated 21st May 1881.)

lands situated in a district belonging to any other Presidency.

lands situated in a district belonging to any other Presidency. This difficulty has now been removed by the above-mentioned Act. This Act extends to the whole of British India, and under Section 3 thereof the Collector of a district in one Presidency can recover an arrear of land-revenue due on



(b) forfeiture of the occupancy or alienated holding in respect of which the arrear is due, under Section 153 ;

(c) by distraint and sale of the defaulter's moveable property, under Section 154 ;

(d) by sale of the defaulter's immoveable property, under Section 155 ;

(e) by arrest and imprisonment of the defaulter, under Sections 157 and 158 ;

(f) in the case of alienated holdings consisting of entire villages, or shares of villages, by attachment of the said villages, or shares of villages, under Sections 159 to 163.

(1) **Remedy where revenue cannot be recovered as a Land Revenue Demand.**—In a case where Forest Revenue could not be realized as a revenue demand, or the purchaser lived in a native State, Government ruled that a suit should be filed in the court within whose jurisdiction the cause of action arose, service of summons being effected under the Civil Procedure Code. On a decree being obtained, execution will be obtained by transfer of the decree to the proper court.

If the debtor appears in the British territory he should be detained till he gives security to appear and answer any decree that might be passed against him. ( G. R. No. 7103, dated 29th September 1889. )

(2) **Service free of charge by Nizam Government and Bombay Government.**—Service of notices for the recovery of

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Section 3 of the above mentioned Act (I. of 1890) runs as follows:—

3. (1) Where an arrear of land-revenue, or a sum recoverable as an arrear of land-revenue, is payable to a Collector by a defaulter, being or having property in a district other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate\* in the form, as nearly as may be of the Schedule, stating—

(a) the name of the defaulter, and such other particulars as may be necessary for his identification, and

(b) the amount payable by him and the account on which it is due.

(2) The certificate shall be signed by the Collector making it, and, save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated.

(3) The Collector of the other district shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land-revenue which had accrued in his own district.

land-revenue, issued to defaulters by the Nizam Government as also by the British Government, should be free of charge. (G. R. No. 2610, dated 15th April 1890.)

(3.) **The preliminaries of a distraint.**—The following general orders are issued for the guidance of Collectors and other officers concerned:—

2. It should be clearly intimated to taluka authorities, as well as to all village officers, that in each and every case before making any distraint an express order must be obtained from the Mamladar, Mahalkari or other officer, duly empowered under Section 154, and any violation of this rule by the village officers will meet with severe punishment. When asking for orders in such cases the village officers should state the amount of arrears due, the approximate outturn of the defaulter's crop, the extent of his general means, and the reasons for supposing him to be contumacious. In proposing the attachment of cattle, the area of the holding and the number of cattle that will remain should be noted.

3. A separate register should be kept in every village of all distraints made by the village officers, with a note of the orders authorising the same. An abstract of the entries in this register should be forwarded annually to the taluka to form the basis of Jamabandi Form No. 9. The village register of coercive processes and the taluka returns should be most carefully examined by Assistant or Deputy Collectors and compared with the various cases with the object of securing that all cases of distraint are brought on record, and no distraints are made without full legal authority.

4. The attachment of such articles as cots, children's cradles, household utensils, grinding stones, and the like should not be permitted in future, except with the permission of the sub-divisional officer, which should be given only when a special reason, such as removal of more valuable property is shown. (G. R. No. 8932, dated 23rd December 1901.)

(4) **Arrears of land-revenue, how to be apportioned when the revenue of some of the numbers of a defaulter has been paid.**—It is only the occupancy or alienated holding *in respect of which an arrear of land-revenue is due*, that can be forfeited under Sections 150 (b) and 153. And it is only the right, title and interest of the *defaulter* in any immoveable property other than the land on which arrear is due that can be sold under Sections 150 (d) and 155. Neither Section 56 nor Section 150 (b) nor Section 153 legalises the forfeiture and sale of any other land but the occupancy or alienated holding in respect of which the arrear of land-revenue is due (compare I. L. R. XV., Bombay 67). It may, in some cases, be impossible to assign an arrear of land-revenue to one particular survey number out of several entered in the name of one registered occupant, as, for instance, if one instalment of the land-revenue due on all those numbers has been paid and the other instalments left unpaid, in such a case all the survey numbers in respect of

which the second instalment was unpaid could be forfeited under Section 153, unless any of the holders or other persons interested availed themselves of the right given by Section 80. But even in such a case the Collector can act under rule 58. But the *latter declaration* (under Section 155) is to be used "in cases of necessity," a provision having the force of law.

When an alienated holding is legally declared forfeited to Government, the land can be fully assessed, just as in the case of a resumption of an *imam* by Government (compare I. L. R. IX. Bom. 419). (G. R. No. 4567, dated 30th June 1899.)

151<sup>1</sup>. The said processes may be employed for the recovery of arrears of former years as well as of the current year, but that preferences given by Sections 137 and 138 shall apply only to demands for the current year:

Revenue demands of former years how recoverable.

Provided that any process commenced in the current year shall be entitled to the said preferences, notwithstanding that it may not be fully executed within that year.

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#### *Notice of Demand.*

152<sup>2</sup>. A notice of demand may be issued on or after the day following that demand may issue. on which the arrear accrues.

<sup>1</sup> See para. 1 of G. R. No. 498, dated 24th January 1903, quoted under Section 141.

<sup>2</sup> In supersession of all previous orders and rules on the same subjects, the Commissioner in Sind and the Commissioners, N. D., C. D., and S. D., have with the sanction of the Governor in Council framed the following rules under Sections 152, 158 and 183 of the Bombay Land Revenue Code, 1879:—

#### *I.—Notices of Demand (Section 152).*

1. Notices of demand shall be issued by the Mamlatdar or Mahalkari within whose charge an arrear accrues.

2. Such notices shall not usually be issued until ten days after the arrear has accrued.

3. The costs of issuing notices of demand shall be leviable in the shape of a fixed fee of four annas for each notice, if the amount of the arrear does not exceed rupees five, and of eight annas in any other case.

The Commissioner may from time to time frame rules for the issue of such notices, and with the sanction of the Governor in Council shall fix the costs recoverable from the defaulter as an arrear of revenue, and direct by what officer such notices shall be issued.

(1) **Levy of notice fee.**—The levy of fees for all notices issued, whether they are actually served or not, should be the practice. The rule under which remission may be granted makes sufficient provision for the avoidance of undue hardship. A notice should be held to be issued when it has been signed and dated. (G. R. No. 1194, dated 16th February 1898.)

4. The Collector, or the Assistant, or Deputy Collector in charge of a taluka may, at his discretion, remit the fee in any case if it shall appear to him that its levy will occasion undue hardship.

*II.—Arrest and imprisonment of Defaulters (Section 158).*

1. The powers of arrest conferred by Section 157 may be exercised by Collectors and by any Assistant or Deputy Collector in charge of talukas specially empowered by the Collector in this behalf, and by subordinate officers acting in each case under the express authority of a Collector or of any such Assistant or Deputy Collector.

2. The costs of arrest shall be according to the following scale:—

		Rs. a.
If the amount for the recovery of which the ar- rest is made,	{	does not exceed Rs. 25 ... .. 0 4
		exceeds Rs. 25 but does not exceed Rs. 100...0 8
		"    100    "    "    "    500...1 0
		"    500    "    "    "    1,000...2 0
		"    1,000  "    "    "    5,000...4 0
	"    5,000  ... .. 8 0	

3. The subsistence-money to be paid by Government to any defaulter under detention or imprisonment shall be fixed by the Collector, or by the Assistant or Deputy Collector, who orders the arrest within the following limits, viz:—

	Not less than Not more than	
	Rs. a.	Rs. a.
If the defaulter is a European ... ..	1 0	1 8
If the defaulter is a Eurasian or a native of Portuguese descent ... ..	0 8	1 0
In any other case ... ..	0 3	0 12

*III.—Expenses of Sale (Section 183).*

1. The expenses of a sale shall be taken to be two annas in the case of moveable property and four annas in the case of immoveable property or, in either case  $\frac{1}{64}$  of the amount, if any, realized by the sale whichever is the greater. (G. R. No. 2459, dated 26th March 1883.)

(2) **Effect of transfer of forfeited land without sale to a superior holder.**—Upon a declaration of a forfeiture under Section 153, owing to the failure of the tenant to pay rent not followed by a sale but by an order transferring possession to the lessor under Section 157, it does not follow that the holding thereupon becomes the property of the superior holder, or that he becomes *ipso facto* seized of his original estate in the forfeited holding. Therefore, an encumbrance created by the tenant is binding on the superior holder notwithstanding the forfeiture. (Printed Judgments 463, *Narayan v. Purshottam.*)

*Forfeiture of occupancy or alienated holding.*

153.<sup>1</sup> The Collector may declare the occupancy or alienated holding, in respect of which an arrear of land-revenue is due, to be forfeited to Government, and sell or otherwise dispose of the same under the provisions of Sections 56 and 57, and credit the proceeds, if any, to the defaulter's accounts :

<sup>1</sup> Occupancy or alienated holding for which arrear is due may be forfeited.

<sup>2</sup> Provided that the Collector shall not declare any such occupancy or alienated holding to be forfeited,

Proviso.

(a) unless previously thereto he shall have issued<sup>3</sup> a proclamation and written notices of the intended declaration in the manner prescribed by Sections 165 and 166 for sales of immovable property, and

(b) until after the expiration of at least fifteen days from the latest date on which any of the said notices shall have been affixed as required by Section 166.

(1) **Watan land, forfeiture of.**—Watan land is "alienated land" within the meaning of clause 19, Section 3, of the Code, and when an arrear of land-revenue is due in respect of any such alienated holding, the Collector may under this section declare it to be forfeited to Government. The Collector, when he has forfeited any such alienated holding should

<sup>1</sup> *Vide* order No. (4) printed under Section 56 and also orders under Sections 169 and 185, also G. R. Nos. 2072, dated 16th March 1897 and 4567, dated 30th June 1899, printed under Section 150.

<sup>2</sup> This proviso to Section 153 was added by Bombay Act VI. of 1901, Section 16.

<sup>3</sup> *Vide* Appendix XIX.

not sell it but should enter the land comprised therein in his records as unoccupied unalienated land and deal with it according to the law and rules relating to such land. The arrear of Judi will still be recoverable from the Watandars under Chapter XI. The above orders are made applicable to all unalienated lands by G. R. No. 3796, dated 21st July 1880. (G. R. No. 3016, dated 10th June 1880.)

(2) **Course to be followed in case of non-payment of Judi, &c., by inferior Watandar.**—In cases in which the Mahar or Jaghia being poor is unable to pay the Judi on the watan land which he holds as remuneration for his service, the Collector should deduct from his land a portion equal to the Judi payable and add it on to one of the neighbouring numbers if waste, or if occupied, to it, if the occupant should agree to take it up. If the land to be deducted is sufficiently large to form a separate survey number it should be made into a separate number.

There might be cases in which this course could not be followed owing to the occupants of neighbouring numbers declining to take it up and the area being too small to be made a separate number. In such cases the Collector should report separately, and Government can then consider whether it would not be better and more economical to remit the Judi altogether than to resume the land and have to pay a cash remuneration. (G. R. No. 4375, dated 20th August 1880.)

(3) **Necessity of the Collector's knowing severe measures adopted.**—It is the plain duty of Collectors to keep themselves fully informed of the extent to which recourse is being had to the severe forms of compulsory process for the collection of revenue and where they have been largely employed, of the special reasons which have qualified or necessitated their employment. (G. R. No. 5603, dated 8th August, 1901.)

### *Sale of defaulter's property.*

Distrain and sale of defaulter's moveable property. 154.<sup>1</sup> The Collector may also cause the defaulter's moveable property to be distrained and sold.

Such distraints shall be made by such officers or class of officers as the Commissioner under the orders of Government may from time to time direct.

(1) **Distrain may be made by—Tappeddar or Munshi.** Distraints under Section 154 of the Code may be made in Sind by any Tappeddar or Munshi provided that he can read and write. (G. R. No. 3390, dated 13th June 1881.)

<sup>1</sup> Vide G. R. No. 8932, dated 23rd December 1901, under Section 150.

(2) **Taluka Karkuns, Kulkarnis, Talatis and Patels.**—Distrains under Section 154 of the Land Revenue Code should be made by Taluka Karkuns, Kulkarnis, Talatis and Patels provided that they should be executed only by persons able to read and write. In special cases, however, the Collectors and their Assistants may direct the warrant to any person whom they may consider competent to execute it. (G. R. No. 7858, dated 23rd December 1881.)

(3) **Eviction for non-payment not to be enforced in certain cases.**—It is harsh and impolitic to evict an occupant who has fallen into arrears by no fault of his own but under the inevitable stress of famine as such eviction is attended by the loss of any improvements he may have made in his holding. The views of Government on this point which were set forth in their circular letter to the Commissioners, No. 4454, dated 25th August 1879, have been repeated in Sections 138 to 143 of the Famine Relief Code. Section 142 of this Code which directly bears on this point is given below:—

“In no case should the Collector apply such pressure to obtain payment as will cause an occupant to sell his plough cattle or agricultural implements, or prevent or retard the resumption of agriculture. The recovery of arrears, if any, should be from a surplus of means after sufficient is allowed for the subsistence of the occupant and his family and the restoration of his position as a revenue payer, and occupants should not be driven to borrow from *Sarkars* in order to pay arrears.” (G. R. No. 8757, dated 6th November 1884.)

(4) **Dwelling houses not to be broken into.**—Dwelling houses are not to be broken into for the purpose of distraining goods for the recovery of arrears of land-revenue. (G. R. No. 9982, dated 19th December 1884.)

(5) **Form of warrant of distraint.**—The Code does not require any standard form of warrant for distraint, nor is such a form necessary or expedient for use by revenue officers.

The order of distraint may take the form of an ordinary order in the course of correspondence. (G. R. No. 1302, dated 15th February 1889.)

(6) **Delegation to Mamlatdars and Mahalkaris of the power to distrain.**—His Excellency the Governor in Council is pleased to authorize the Collectors to delegate the powers exercised by them under Section 154 of the Land Revenue Code, to Mamlatdars and Mahalkaris. (G. R. No. 5954, dated 31st August 1891.)

155.<sup>1</sup> The Collector may also cause the right, title and interest of the defaulter in any immoveable property other than the land on which the arrear is due to be sold.

Sale of defaulter's immoveable property.

<sup>1</sup> *Vide* G. R. No. 4567, dated 30th June 1899, under Section 150.

(1) **Difference of the effect of Sections 155 and 153.**—In the case of a sale under Section 155 encumbrances created by the occupant remain whereas they disappear in the case of forfeiture under Section 153 followed by sale under Section 56. (G. R. No. 6391, dated 9th September 1890.)

156. All such property as is by the Civil Procedure Code<sup>1</sup> exempted<sup>2</sup> from attachment or sale in execution of a decree shall also be exempt from distraint or sale under either of the last two preceding sections.

The Collector's decision as to what property is so entitled to exemption shall be conclusive.

(1) **Exemption from distraint—Of houses dwelt in by agriculturist.**—The expression "materials of houses and other buildings belonging to, and occupied by, agriculturists," used in Section 266, clause (c) of the Code of Civil Procedure, is intended to exempt, from attachment and sale, the house dwelt in by an agriculturist as such, and the farm buildings appended to such dwelling.

<sup>1</sup> This reference to Act X. of 1877 is altered in accordance with Act XIV. of 1882, Section 3.

<sup>2</sup> The proviso to Section 266 of the Civil Procedure Code exempts the following articles from attachment or sale:—

- (a) The necessary wearing apparel and bedding of the judgment-debtor, his wife and children ;
- (b) Tools of artisans, and where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may in the opinion of the Court be necessary to enable him to earn his livelihood as such ;
- (c) The materials of houses and other buildings belonging to and occupied by agriculturists ;
- (d) Books of account ;
- (e) Mere rights to sue for damages ;
- (f) Any right of personal service ;
- (g) Stipends and gratuities allowed to military and civil pensioners of Government, and political pensions ;
- (h) The salary of a public officer or of any servant of a Railway Company or local authority to the extent of—
  - (i) the whole of the salary where the salary does not exceed twenty rupees monthly ;
  - (ii) twenty rupees monthly where the salary exceeds twenty rupees and does not exceed forty rupees monthly ; and
  - (iii) one moiety of the salary in any other case.



The exemption does not extend to other houses not in the physical occupation of an agriculturist owner, as a dwelling appropriate or convenient for his calling. The exemption extends, after the death of an agriculturist debtor, to his representative who occupies the house in good faith as an agriculturist, and who does not take it up merely with the view of defrauding his creditor. ( *Radhakisan Hakumji vs. Balvant Ramji.*— I. L. R. Bombay, Volume VII., page 530, 1883. )

(2) **Of materials of houses belonging to an agriculturist.**—The materials of a house or other building belonging to an agriculturist are exempted from distraint and sale under Section 156 of the Bombay Land Revenue Code, as (except in the one case, which can never arise under the Bombay Land Revenue Code, of a decree for rent) they would be under Section 266 of the Civil Procedure Code. (G. R. No. 2179, dated 26th March 1891.)

### *Arrest and Imprisonment.*

157.<sup>1</sup> At any time after an arrear becomes due, the

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- (i) The pay and allowances of persons to whom the Native articles of war apply;
  - (j) The wages of labourers and domestic servants;
  - (k) An expectancy of succession by survivorship or other merely contingent or possible right or interest;
  - (l) A right to future maintenance;
  - (m) Any allowance declared by any law passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council to be exempt from liability to attachment or sale in execution of a decree;
  - (n) Where the judgment-debtor is a person liable for the payment of land-revenue, any moveable property which under any law applicable to him is exempt from sale for the recovery of an arrear of such revenue.

*Explanation.*—The particulars mentioned in clauses (g), (h), (i), (j), and (m) are exempt from attachment or sale whether before or after they are actually payable:

Provided also that nothing in this Section shall be deemed—

(a) To exempt the materials of houses and other buildings from attachment or sale in execution of decrees for rent; or,

(b) To affect the Army Act, 1881, or any similar law for the time being in force.

<sup>1</sup> Section 342 of the Civil Procedure Code lays down that no person shall be imprisoned in execution of a decree for a longer period than six months, or for a longer period than six weeks if the decree be for the payment of a sum of money not exceeding fifty rupees.

defaulter may be arrested and detained in custody for ten days in the office of the Collector or of a Mamlatdar or Mahalkari, unless the revenue due, together with the penalty or interest and the costs of arrest and of notice of demand, if any, have issued, and the cost of his subsistence during detention is sooner paid.

If, on the expiry of ten days, the amount due by the defaulter is not paid, then, or if the Collector deem fit on any earlier day, he may be sent by the Collector with a warrant, in the form of Schedule C, for imprisonment in the Civil Jail of the district :

Imprisonment in Civil Jail. Provided that no defaulter shall be detained in imprisonment for a longer period than the time limited by law in the case of the execution of a decree of a Civil Court for a debt equal in amount to the arrear of revenue due by such defaulter.

Limit to detention of defaulters.

(1) **Power of arrest to be executed by Assistant or Deputy Collector when specially delegated.**—The power of arrest should be exercised by the Collector or the Assistant or Deputy Collector in charge of any Taluka to whom the power has been specially delegated by the Collector, it being remembered that Government are not in favor of arrest of defaulters except in extreme cases. (G. R. No. 1743, dated 1st March 1883.)

158.<sup>1</sup> The Commissioner may, with the sanction of the Governor-in-Council, from time to time declare by what officers, or class of officers, the powers of arrest conferred by Section 157 may be exercised, and also fix the costs of arrest and the amount of subsistence-money to be paid by Government to any defaulter under detention or imprisonment.

#### *Attachment of Villages.*

159. If the holding in respect of which an arrear is due consists of an entire village or of a share of a

<sup>1</sup> See footnote under Section 152.

village, and the adoption of any of the other processes before specified is deemed inexpedient, the Collector may, with the previous sanction of the Commissioner, cause such village or share of a village to be attached and taken under the management of himself or any agent whom he appoints for that purpose.

160. The lands of any village or share of a village so attached shall revert to Government unaffected by the acts of the superior holder or of any of the sharers, or by any charges of liabilities subsisting against such lands, or against such superior holder or sharers as are interested therein, so far as the public revenue is concerned, but without prejudice in other respects to the rights of individuals ;

and the Collector or the Agent so appointed shall be entitled to manage the lands attached and to receive all rents and profits accruing therefrom to the exclusion of the superior holder or any of the sharers thereof, until the Collector restores the said superior holder to the management thereof.

**(1) The Collector cannot demand more than the stipulated rent.**—The plaintiffs were the tenants of the Thakor of G. The Collector undertook the management of his estate and had under Section 144 attached the village G. *Held* that the plaintiffs as tenants of the Thakor were liable to pay to the Collector the stipulated rent only and that Section 160 did not entitle him to demand more. (Printed Judgments 323, the Collector of Ahmedabad v. Mosan '92).

161. All surplus profits of the lands attached, beyond the cost of such attachment and management, including the payment of the current revenue and the cost of the introduction of a revenue survey, if the same be introduced under the provisions of Section 111<sup>1</sup> shall be applied in defraying the said arrear.

<sup>1</sup> Words repealed by Bombay Act III. of 1886 have been omitted.

162.<sup>1</sup> The village or share of a village so attached shall be released from attachment, and the management thereof shall be restored to the superior holder on the said superior holder's making an application to the Collector for that purpose at any time within twelve years from the 1st of August next after the attachment :

if at the time that such application is made it shall appear that the arrear has been liquidated;

or if the said superior holder shall be willing to pay the balance, if any, still due by him, and shall do so within such period as the Collector may prescribe in that behalf.

The Collector shall make over to the superior holder the surplus receipts, if any, which have accrued in the year in which his application for restoration of the village or share of a village is made after defraying all arrears and costs ; but such surplus receipts, if any, of previous years shall be at the disposal of Government.

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<sup>1</sup> The position of a Khot, in the villages to which the Bombay Khoti Act I. of 1880 has been extended, is that of a superior holder, and in the event of attachment of his village his rights in respect of Khoti profits on his resuming the management of the village would be regulated by Section 162 (1) of the Revenue Code.

Under Section 162 the village or share of a village so attached shall be released from attachment, and the management thereof shall be restored to the superior holder on the said superior holder's making an application to the Collector for that purpose at any time within twelve years from 1st of August next after the attachment.

The Collector shall make over to the superior holder the surplus receipts, if any, which have accrued in the year in which his application for restoration of the village, or share of a village, is made, after defraying all arrears and costs; but such surplus receipts, if any, of previous years shall be at the disposal of Government.

But this rule does not hold good where the village attached is one in the Kolaba district to which the Khoti Settlement Act (I. of 1880) has not been extended, unless the Khots therein are Sanadi or Vatandar Khots. ( *Bhikaji Ramchandra Oak vs. Nizam Ali Khan*, —I. L. R. Bombay, Volume VIII., page 525, 1884. )

163. If no application be made for the restoration of a village or portion of a village so attached within the said period of twelve years, or if, after such application has been made, the superior holder shall fail to pay the balance, if any, still due by him within the period prescribed by the Collector in this behalf, the said village or portion of a village shall thenceforward vest in Government free from all incumbrances created by the superior holder or any of the sharers or any of his or their predecessors in title, or in any-wise subsisting as against such superior holder or any of the sharers, but without prejudice to the rights of the actual occupants of the soil.

Village, etc., to vest in Government, if not redeemed within twelve years.

*Stay of Proceedings.*

164. Any defaulter detained in custody or imprisoned shall forthwith be set at liberty, and the execution of any process shall, at any time, be stayed, on the defaulter's giving before the Collector or other person nominated by him for the purpose, or if the defaulter is in jail, before the officer in charge of such jail, security in the form of Schedule D, satisfactory to the Collector or such other person or officer.

Processes to be stayed on security being given.

And any person against whom proceedings are taken under this chapter may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment the proceedings shall be stayed.

Or on amount demanded being paid under protest.

*Procedure in respect of Sales.*

165. When any sale of either moveable or immoveable property is ordered under the provisions of this chapter, the Collector shall issue a proclamation,<sup>1</sup> in the verna-

Procedure in effecting sales.

<sup>1</sup> For form of proclamation and written notice of sale under Sections 165 and 166, see Appendix M to the rules issued under this Code,

cular language of the district, of the intended sale specifying the time and place of sale, and in the case of moveable property, whether the sale is subject to confirmation or not, and, when land paying revenue to Government is to be sold, the revenue assessed upon it, together with any other particulars he may think necessary.

Such proclamation shall be made by beat of drum at the head-quarters of the taluka, and in the village in which the immovable property is situate, if the sale be of immovable property; if the sale be of moveable property the proclamation shall be made in the village in which such property was seized, and in such other places as the Collector may direct.

166. A written notice of the intended sale of immovable property and of the time and place thereof shall be affixed in each of the following places, namely, the office of the Collector of the district, the office of the Mamlatdar or Mahalkari of the taluka or mahal in which the immovable property is situate, the chauri or some other public building in the village in which it is situate, and the defaulter's dwelling place.

In the case of moveable property, the written notice shall be affixed in the Mamlatdar's or Mahalkari's office, and in the chauri or some other public building in the village in which such property was seized.

The Collector may also cause notice of any sale, whether of moveable or immovable property, to be published in any other manner that he may deem fit.

167. Sales shall be made by auction by such persons as the Collector may direct.

No such sale shall take place on a Sunday or other general holiday recognized by Government nor until after the expiration of at least thirty days in the case of im-

Time when sale may be made.

Sale by whom to be made.

moveable property, or seven days in the case of moveable property, from the latest date on which any of the said notices shall have been affixed as required by the last preceding section.

Postponement of sale. The sale may from time to time be postponed for any sufficient reason.

168. Nothing in the last three sections applies to the sale of perishable articles. Such articles shall be sold by auction with the least possible delay, in accordance with such orders as may from time to time be made by the Collector either generally or specially in that behalf.

169.<sup>1</sup> If the defaulter, or any person on his behalf, pay the arrear in respect of which the property is to be sold and all other charges legally due by him at any time before the day fixed for the sale, to the person appointed under Section 146 to receive payment of the land-revenue due, or to the officer appointed to conduct the sale or if he furnish security under Section 164, the sale shall be stayed.

(1) **Giving of security not to affect forfeiture.**—Although proceedings could be stayed under Sections 164 and 169 if security were given or the arrears paid, the forfeiture would not thereby be cancelled. The holding of a defaulter cannot be sold unless it is first declared forfeited. (G. R. No. 4891, dated 16th September 1880.)

(2) **Date up to which defaulters to pay arrears.**—Under Section 169 of the Land Revenue Code a defaulter is only at liberty to pay the arrears in respect of which the land is to be sold at any time before the day fixed for the sale. The arrears paid after the day fixed for the sale should be refunded to the defaulter. (G. R. No. 6130, dated 20th November 1880.)

170. Sales of perishable articles shall be at once finally concluded by the officer conducting such sales. All other sales of moveable property shall be finally concluded by the officer conducting such sales, or shall be subject to confirmation, as may be directed in

<sup>1</sup> Sales of moveable property when liable to confirmation.

<sup>1</sup> See order No. (1) printed under Section 183.

orders to be made by the Collector either generally or specially in that behalf. In the case of sales made subject to confirmation, the Collector shall direct by whom such sales may be confirmed.

171. When the sale is finally concluded by the officer conducting the same, the price of every lot shall be paid for at the time of sale, or as soon after as the said officer shall direct, and in default of such payment the property shall forthwith be again put up and sold. On payment of the purchase-money the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute as against all persons whomsoever.

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

172. When the sale is subject to confirmation, the party who is declared to be the purchaser shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit, the property shall forthwith be again put up and sold. The full amount of purchase-money shall be paid by the purchaser before sunset of the day after he is informed of the sale having been confirmed, or, if the said day be a Sunday or other authorized holiday, then before sunset of the first office day after such day. On payment of such full amount of the purchase-money the purchaser shall be granted a receipt for the same, and the sale shall become absolute as against all persons whomsoever.

*Payment when sale is subject to confirmation.*

(1) **Purchaser shall deposit 25 per centum on purchase-money.**—The orders contained in G. R. No. 793, dated 16th February 1871, which forbade the receiving of deposit of 25 per centum on the amount of auction bid of Rs 5 and under, are to be considered to have been superseded by the provisions of Sections 172 and 173 of the Land Revenue Code. These provisions leave no option but require that the purchaser should deposit 25 per centum on the amount of his bid, whatever that amount may be. (G. R. No. 369, dated 19th January 1882.)

(2) **The effect of a sale without a forfeiture.**—Section 72 applies to sales of moveable property only.



It cannot be assumed that the Collector has declared under Section 153 the holding to be forfeited from the mere fact that, that would be the legal consequence of failure to pay assessment.

If there has been no forfeiture, a mere sale does not extinguish existing incumbrances.

( Printed Judgments 70, *Govind Vithal Topkhane v. Bhiva Maruti Vani*, '95. )

173. In all cases of sale of immoveable property the party who is declared to be the purchaser shall be required to deposit immediately twenty-five per centum on the amount of his bid, and in default of such deposit the property shall forthwith be again put up and sold.

Deposit by purchaser in case of sale of immoveable property.

174. The full amount of purchase-money shall be paid by the purchaser before sunset of the fifteenth day from that on which the sale of the immoveable property took place, or, if the said fifteenth day be a Sunday or other authorized holiday, then before sunset of the first office day after such fifteenth day.

Purchase-money when to be paid.

(1) **How to calculate the fifteen days, when is the deposit to be paid.**—The period of 15 days for the payment of the balance of purchase-money should count from the date of the conclusion of the sale by the Mamlatdar. The payment of a deposit of twenty-five per cent. to the karkun before the conclusion of the sale is an irregularity. ( G. R. No. 809, dated 4th February 1898, )

175. In default of payment within the prescribed period of the full amount of purchase-money, whether of moveable or immoveable property, the deposit, after defraying thereout the expenses of the sale, shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

Effect of default.

176. If the proceeds of the sale which is eventually made be less than the price bid by such defaulting purchaser, the difference shall be recoverable from him by the Collector as an arrear of land-revenue.

Liability of purchaser for loss by re-sale.

**Liability of defaulting purchasers in auction sales of the occupancy right of Government land.**—The memorandum of the conditions of sale printed as Appendix III. is practically a reproduction of the provisions of the Code, and clause 5, which corresponds to Section 176, should come after clause 7, which corresponds to Section 175. The arrangements of the clauses should be altered accordingly.

The view of Sir C. Ollivant that Section 176 relates only to a purchaser who makes default under Section 174 is, in the opinion of the Governor in Council, clearly correct. There is no legal authority for the practice, which is said to prevail in some districts, of applying Section 176 to the case of bidders who fail to deposit twenty-five per cent. of the amount of the bid. Under Section 173 a bid in such a case is null and void, and no penalty is provided by the Land Revenue Code for such a bid, nor is any needed, seeing that the only result is the delay of a few minutes in the completion of a sale. A person who deliberately causes inconvenience by making a bid without intending to fulfil the conditions is liable to punishment under Section 185 of the Indian Penal Code. (G. R. No. 6334, dated 20th August 1898.)

177. Every re-sale of property in default of payment of the purchase-money, or after postponement of the first sale, shall, except when such re-sale takes place forthwith, be made after the issue of a fresh notice in the manner prescribed for original sales.

Notification before re-sale.

(1) **Forfeiture of deposit and re-sale of property.**—Certain land was put up to auction by the Collector in execution of a Civil Court's decree. It fetched a bid of Rs. 25, but the purchaser failed to make full payment. The deposit was forfeited to Government and the property again put up to sale, but no bidder appeared. The whole of the price bid at the former sale was recovered from the defaulting purchaser, and the deposit (being one-fourth of the bid) was credited to Government under Section 174 of the Land Revenue Code. In this case the question raised was what was to be done with remaining three-fourths. With reference to this it was decided that as there was no bidder at the second auction, no sale of property was effected and Section 176 of the Land Revenue Code was inapplicable. The Collector was not authorized to recover the balance (three-fourths of the former bid) from the defaulting purchaser inasmuch as no second sale was made; the sum so recovered was therefore ordered to be refunded. (G. R. No. 4779, dated 5th July 1886.)

178. At any time within thirty days from the date of the sale of immoveable property, application may be made to the Collector to set aside the sale on the ground

Application to set aside sale.

of some material irregularity or mistake, or fraud, in publishing or conducting it;

but except as is otherwise provided in the next following section, no sale shall be set aside on the ground of any such irregularity or mistake, unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof.

If the application be allowed, the Collector shall set aside the sale, and direct a fresh one.

179. On the expiration of thirty days from the date of the sale, if no such application as is mentioned in the last preceding section has been made, or if such application has been made and rejected, the Collector shall make an order confirming the sale: provided that, if he shall have reason to think that the sale ought to be set aside notwithstanding that no such application has been made or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside the sale.

180. Whenever the sale of any property is not confirmed, or is set aside, the purchaser shall be entitled to receive back his deposit or his purchase-money, as the case may be.

181. After a sale of any occupancy or alienated holding<sup>1</sup> has been confirmed in manner aforesaid, the Collector shall put the person declared to be the purchaser into possession of the land included in such occupancy or alienated holding, and shall cause his name to be entered in the revenue records as occupant or holder in lieu of that of the defaulter, and shall grant

<sup>1</sup> Under rule 65 (d) of the Rules forfeited alienated land is to be disposed of as unoccupied unalienated land.

him a certificate to the effect that he has purchased the occupancy or alienated holding to which the certificate refers.

(1) **Certificates of sales.**—Certificates of sale granted by the Civil Courts as well as those granted by the Revenue Officers are liable to stamp duty under article 16, Schedule 1 of the Stamp Act. ( G. R. No. 3009, dated 15th June 1880. )

(2) **Form of.**—Government Resolution No. 6905, dated 4th October 1882, directing the use of printed forms for certificates of sale granted under Section 181 of the Land Revenue Code is cancelled. The certificates should be engrossed on impressed stamp papers. ( G. R. No. 6023, dated 15th August 1883. )

(3) **Collector's obligation to grant.**—*Lex non cogit ad impossibilia.* The Collector can only fulfil the obligation imposed upon him by Section 181, of granting a certificate of sale when the purchaser produces a stamped paper of such value as the Stamp Act requires that the certificate shall be engrossed upon.

The Collector should tell the purchaser that he would grant the certificate only after the proper stamp was produced and not otherwise. ( G. R. No. 1266, dated 11th February 1885. )

182. The certificate shall state the name of the person declared at the time of sale to be the actual purchaser; and any suit brought in a Civil Court against the certified purchaser on the ground that the purchase was made on behalf of another person not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed.

183. When any sale of moveable property under this chapter has become absolute, and when any sale of immoveable property has been confirmed, the proceeds of the sale shall be applied to defraying the expenses of the sale and to the payment of any arrears due by the defaulter at the date of the confirmation of such sale, and recoverable as an arrear of land-revenue,

and the surplus ( if any, shall be paid to the person whose property has been sold.

The expenses<sup>1</sup> of the sale shall be estimated at such rates and according to such rules as may from time to time be sanctioned by the Commissioner under the orders of Government.

Expenses of sale  
how calculated.

(1) **Collector not bound to sell forfeited occupancy.**—Under Section 153 the Collector is not bound to sell the forfeited occupancy, but may at his discretion sell or otherwise dispose of it. If the forfeited occupancy is sold the proceeds must be credited to the defaulter's account. Care should be taken in every case to avoid selling more of a defaulter's property than is sufficient to realise the arrears due. (G. R. No. 7285, dated 2nd December 1881.)

(2) **Remission or reduction of expenses.**—Collectors are authorized to remit or reduce the amount of expenses of sale under Section 183 with the sanction of the Commissioner. (G. R. No. 6575, dated 19th October 1900.)

184. The said surplus shall not, except under an order of a Civil Court, be payable to any creditor of the person whose property has been sold.

Payment of surplus.

(1) After the arrears have been recovered from the sale proceeds under Section 183, the excess, if any, must be treated as a sum to the defaulter's credit and is claimable by his creditors. (G. R. No. 5730, dated 27th October 1879.)

185. The person named in the certificate of title as purchaser of any land shall be liable for all instalments of land-revenue becoming due in respect of such land subsequently to the date of the sale.

Liability of purchaser for revenue.

(1) **Distribution of sale proceeds of forfeited occupancies.**—The purchaser of forfeited occupancies sold at once should not be required to pay one anna in each rupee of the price realized to local funds, nor should one anna in the rupee of the wholesale proceeds be credited to local cess. But as the one anna cess is chargeable on arrears of assessment and recoverable as land-revenue the sale proceeds of such lands should be credited in accordance with Section 183 of the Code.

(a) to expenses of sale

(b) to arrears of

(1) land revenue

(2) one anna cess

<sup>1</sup> As to scale of expenses of sale, see rules printed under Section 152.

the surplus if any being paid to the defaulter. ( G. R. No. 2002, dated 10th March 1883. )

(2) **Purchaser of forfeited occupancy must enter into an agreement.**—In the case of a sale of an occupancy for arrears of revenue, the purchaser of a forfeited occupancy does not succeed either to the rights or liabilities of the previous occupant and in order to bind him he must enter into responsibility on his own account and for this he must enter into an agreement in the form of Appendix D ( now B ) to the rules. ( G. R. No. 2600, dated 31st March 1883. )

(3) **Sale proceeds of lands originally granted free of occupancy price.**—Persons to whom Government have granted lands for cultivation free of occupancy price on condition that if they did not desire to retain the lands they should resign them to Government but not transfer to any other person, are not entitled to the balance of sale proceeds of such lands, if they are put to sale for the recovery of Government revenue, after the Government demands have been satisfied. ( G. R. No. 6806, dated 6th October 1887. )

186. If any claim shall be set up by a third person to moveable property attached under the provisions of this chapter, the Collector shall admit or reject his claim on a summary inquiry held after reasonable notice. If the claim be admitted wholly or partly, the property shall be dealt with accordingly. Except in so far as it is admitted, the property shall be sold and the title of the purchaser shall be good for all purposes, and the proceeds shall be disposable as hereinbefore directed.

(1) **Delegation of the powers to Mamlatdars and Mahalkaris.**—The Collectors are authorized to delegate the powers exercised by them under Section 186 of the Land Revenue Code to Mamlatdars and Mahalkaris when the adoption of such a course may appear to them desirable. ( G. R. No. 8785, dated 19th November 1889. )

*Application of the Provisions of this Chapter.*

187.<sup>1</sup> All sums due on account of land-revenue, all

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<sup>1</sup>(1) Irrigation miscellaneous receipts are not to be regarded as ordinary land-revenue. Local fund cess cannot therefore be levied on them. ( G. R. No. 6959, dated 2nd October 1890. )

(2) There is nothing in the Irrigation Act ( Bombay VII. of 1879 ) which would authorize the recovery, as an arrear of land revenue, of the

quit-rents, nazranas, succession duties, transfer duties and forfeitures, and all cesses, profits from land, emoluments, fees, charges, penalties, fines and costs payable or leviable under this Act or under any Act or Regulation hereby repealed, or under any Act for the time being in force relating to land revenue ;

What moneys leviable under provisions of Chapter.

and all moneys due by any contractor for the farm of customs-duties, or of any other duty or tax, or of any other item of revenue whatsoever, and all specific pecuniary penalties to which any such contractor renders himself liable under the terms of his agreement;

and also all sums declared by this or by any other Act or Regulation at the time being in force to be leviable as an assessment, or as a revenue demand, or as an arrear of land-revenue,

shall be levied under the foregoing provisions of this chapter.

And all persons who may have become sureties under any of the provisions of this Act or of any Act or Regulation hereby repealed, or for any such contractor as aforesaid

Sureties liable as revenue-defaulters.

for any sum of money shall, on failure to pay the amount or any portion thereof for which they may have become liable under the terms of their security-bond, be liable to

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Penalty alluded to in the form of the security bond required to be executed by an applicant who is not the registered occupant of the land he wishes to irrigate.

With a view to give legal form to such bonds as also to ensure the penalty alluded to thereon being recovered as an arrear of land-revenue, it is proposed to amend the provisions of Section 187, when the Code comes under amendment. (G. R. Nos. 22 W. I.—105 and 23 W. I.—106; P. W. D., dated 19th January 1892, and G. R. No. 8882, dated 11th November 1892.)

he proceeded against under the provisions of this chapter as revenue-defaulters.

And in the event of the resumption of any such farm as is aforesaid, no person shall be entitled to credit for any payments which he may have made to the contractor in anticipation.

On resumption of farm, no payments to contractor in advance admitted.

(1) **Recoveries of amounts payable as remuneration.**—Amounts payable by Inamdars to Watandars, on account of their remuneration, if not duly paid, are recoverable as arrears of land revenue under the provisions of Section 187 of the Land Revenue Code. (G. R. No. 3378, dated 2nd May 1883. )

(2) **When moneys belonging to other Departments are recovered by Revenue Department.**—In cases in which the recoveries of revenue or moneys due to other Departments are made by the officers of the Revenue Department under Section 187 of the Land Revenue Code, the notice fee, cost of arrest and expenses of sale leviable under Sections 152, 158 and 183 respectively, should be credited to "Land Revenue", and the penalty or interest leviable under Section 148 should be credited to the Department for which the recovery is made. (G. R. No. 9587, dated 4th December 1884. )

(3) **Boundary mark charge recoverable as arrears of land revenue.**—The effect of Section 187 of the Bombay Land Revenue Code (Act V. of 1879) is to make the provisions of Sections 153 and 56 and also those of Section 155, applicable to sales for the recovery of charges assessed under Section 122 in connection with boundary marks.

Such charges may be recovered either by forfeiture of the occupancy in respect of which the arrear is due, or by sale of the defaulter's immovable property other than the land on which the arrear is due. In the former case the land is sold free from all incumbrances created by the occupant. In the latter case the rights of incumbrancers are not touched. (Venkatesh Ramkrishna vs. Mhal Pai Bin Naru Pai, —I. L. R. Bombay, Volume XV., page 67, 1891. )

(4) **The penalty for neglecting to remove trees cannot be recovered.**—A penalty for neglecting to remove trees by a specified date is not recoverable under this section, as the contractor was not a contractor for the farm of any item of revenue. A deposit or substantial security should therefore be taken for the fulfilment of contracts of this kind. (G. R. No. 4064, dated 7th May 1894. )



CHAPTER XII.

*Procedure of Revenue Officer.*

188. In all official acts and proceedings a revenue officer shall, in the absence of any express provision of law to the contrary, be subject as to the place, time and manner of performing his duties to the direction and control of the officer to whom he is subordinate.

Subordination of revenue officer.

189. Every revenue officer, not lower in rank than a Mamlatdar's first karkun, or an Assistant Superintendent of Survey, in their respective departments shall have power to summon any person whose attendance he considers necessary either to be examined as a party or to give evidence as a witness or to produce documents for the purposes of any inquiry which such officer is legally empowered to make. A summons to produce documents may be for the production of certain specified documents, or for the production of all documents of a certain description in the possession of the person summoned.

Power to summon persons to give evidence and produce documents.

All persons so summoned shall be bound to attend, either in person or by an authorized agent, as such officer may direct: provided that exemptions under Sections<sup>1</sup> 640 and 641 of the Code of Civil Procedure shall be applicable to requisitions for attendance under this Section;

and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements,

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<sup>1</sup> The exemptions under these Sections apply to (1) women who, according to the customs and manners of the country, ought not to be compelled to appear in public, and to (2) persons whom the local Government, by notification in the official Gazette, exempt from personal appearance in Court.

and to produce such documents and other things as may be required.

(1) **Mamlatdar cannot summon a person to appear before a Deputy Collector.**—Section 189 does not empower a Mamlatdar to summon any person to attend before a Deputy Collector, who was making certain inquiries about the appointment of a Patil for a certain Inam village ( Criminal Reports, 52—22nd August 1889—Imperial *vs.* Vidiadhar Gangadhar Lele ).

190. Every summons shall be in writing, in duplicate, and shall state the purpose for which it is issued, and shall be signed by the officer issuing it, and if he have a seal shall also bear his seal ;

Summons to be in writing, signed and sealed.

and shall be served by tendering or delivering a copy of it to the person summoned, or, if he cannot be found, by affixing a copy of it to some conspicuous part of his usual residence.

How to be served.

If his usual residence be in another district, the summons may be sent by post to the Collector of that district, who shall cause it to be served in accordance with the preceding clause of this Section.

Service in district other than that of issuer.

191. Every notice under this Act, unless it is otherwise expressly provided, shall be served either by tendering or delivering a copy thereof to the person on whom it is to be served or to his agent, if he have any ;

Mode of serving notices.

or by affixing a copy thereof to some conspicuous place on the land, if any, to which such notice refers.

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

Notice not void for error.

Procedure for procuring attendance of witnesses.

192.<sup>1</sup> In any formal or summary enquiry if any party desires the attendance of witnesses, he shall follow the procedure prescribed by the Code of Civil Procedure, Section 160.<sup>2</sup>

(1) **Formal, summary and other enquiries under the Code.**—Revenue officers are generally empowered under Chapter XII. of the Code, Section 189, to summon any person whose attendance may be considered necessary in any enquiry which such officers are legally empowered to make.

2. Such enquiry must either be a formal enquiry or a summary enquiry or an enquiry which the Act does not require to be either formal or summary.

3. A formal or summary enquiry is, under Section 196, deemed to be a “judicial proceeding” and the officer holding it is deemed a Civil Court for the purposes of such enquiry. Section 192 provides that in any formal enquiry or summary enquiry if any party desires the attendance of witnesses he shall pay the necessary expenses of witnesses into Court.

For every notice or summons...3 annas.

For every warrant of arrest issued on application of parties...6 annas.

4. As regards formal and summary enquiries, the officers holding them can be deemed to be Revenue Courts and the process fees sanctioned in the notification of Government at page 687 of the *Bombay Government Gazette*, Part I., of 8th July 1875 are applicable to such Courts.

5. Other enquiries under the Code are not deemed to be “judicial proceedings” and the officers conducting them are not Revenue Courts. They are conducted according to general or special rules prescribed by the Governor in Council, or in the manner provided in Section 197. In such enquiries no process fees are chargeable. ( G. R. No. 3007, dated 27th May 1881. )

(2) **Officer holding summary enquiry to be deemed a Civil Court.**—The officer or any authority holding a summary

<sup>1</sup> See order No. (1) printed under Section 125.

<sup>2</sup> The party applying for a summons shall, before the summons is granted, and within a period to be fixed by the court, pay into the court such a sum of money as appears to the court to be sufficient to defray the travelling and other expenses of the person summoned, in passing to and from the court in which he is required to attend and for one day's attendance.

If the Court be subordinate to a High Court, regard shall be had in fixing the scale of such expenses to the rules (if any) laid down by competent authority. ( Section 160 of the Civil Procedure Code. )

enquiry under the provisions of this Code is a Civil Court for the purposes of such enquiry, and such court may direct by whom the costs of each party are to be paid whether by himself or by any other party to the enquiry and whether in whole or in what part or proportions. Such costs can be levied under the provisions of Chapter XI. of this Code. (G. R. No. 4468, dated 10th July 1882.)

(3) **Serving of processes in formal and summary enquiries.**—The processes in summary and formal enquiries under the Land Revenue Code, 1879, should be served by means of persons temporarily employed and the charge incurred on account of such processes should be debited to "Land Revenue." (G. R. No. 7350, dated 21st October 1882.)

(4) **Rules regarding subsistence allowance and travelling expenses to be paid to witnesses.**—The following are the rules laid down by the High Court, under Section 160 of the Code of Civil Procedure, regarding the amount of subsistence allowance and travelling expenses to be paid to witnesses summoned to attend in Courts subordinate to the High Court.

(a) European and East Indian witnesses are to be allowed their actual expenses for carriage when the same are not in excess of six annas a mile. They are also to be allowed a sum not exceeding Rs. 2-8 a day for subsistence allowance for the time of their attendance at and journey to and from the Court, if they demand the same.

(b) Native witnesses of the better class as Patels, Pandharpeshas, Merchants, Vakils and persons of corresponding rank, are to be allowed from 8 annas to 1 rupee a day, and artizans 6 annas a day, as subsistence allowance.

(c) Native witnesses of the class of cultivators and menials who would not, under ordinary circumstances, voluntarily incur any expense on account of special lodging when away from home, are to be allowed subsistence money at the rate of 4 annas per day.

(d) The persons mentioned in clauses (b) and (c) are also to receive railway and other travelling expenses actually incurred by them, provided the same be reasonable. When the journey to and from the Court is made by railway or other means of conveyance, the time for which subsistence allowance is paid, should be that actually spent on the journey. Where the journey is made on foot 15 miles per day should be reckoned as a day's journey and subsistence allowance should be paid accordingly.

(e) Peculiar cases not provided for in the above rules are to be dealt with according to their own merits, and at discretion of the Court from which subsistence money or travelling allowance is demanded. (High Court's Circular orders, pages 151 and 152.)

*Formal Inquiry.*

193. In all formal inquiries the evidence shall be taken down in full, in writing, in the language in ordinary use in the district, by, or in the presence and hearing and under the personal superintendence and direction of, the officer making the investigation or inquiry, and shall be signed by him.

In cases in which the evidence is not taken down in full in writing by the officer making the inquiry, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by such officer with his own hand, and shall form part of the record.

If such officer is prevented from making a memorandum as above required, he shall record the reason of his inability to do so.

When the evidence is given in English, such officer may take it down in that language with his own hand, and an authenticated translation of the same in the language in ordinary use in the district shall be made and shall form part of the record.

194. Every decision, after a formal inquiry, shall be written by the officer passing the same in his own handwriting, and shall contain a full statement of the grounds on which it is passed.

*Summary Inquiry.*

195. In summary inquiries the presiding officer shall himself, as any such inquiry proceeds, record a minute of the proceedings in his own hand in English or

in the language of the district, embracing the material averments made by the parties interested, the material part of the evidence, the decision, and the reasons for the same :

Provided that it shall at any time be lawful for such officer to conduct an inquiry directed by this Act to be summary under all, or any, of the rules applicable to a formal inquiry, if he deem fit.

196.<sup>1</sup> A formal or summary inquiry under this Act shall be deemed to be a "judicial proceeding" within the meaning of Sections 193, 219 and 228 of the Indian Penal Code, and the office of any authority holding a formal or summary inquiry shall be deemed a Civil Court for the purposes of such inquiry.

Formal and summary inquiries to be deemed judicial proceeding.

Every hearing and decision, whether in a formal or summary inquiry, shall be in public, and the parties or their authorized agents shall have due notice to attend.

Hearing and decisions. Notice to parties.

197.<sup>2</sup> An inquiry which this Act does not require to be either formal or summary, or which any revenue officer may on any occasion deem to be necessary to make, in the execution of his lawful duties, shall be conducted according to such rules applicable thereto, whether general or special, as may have been prescribed by the Governor-in-Council, or an authority superior to the officer conducting such inquiry, and, except in so far as controlled by such rules, according to the discretion of the officer in such way as may seem best calculated for the ascertainment of all essential facts and the furtherance of the public good.

Ordinary inquiries how conducted.

<sup>1</sup> *File G. R. No. 4932, dated 8th August 1900, under Section 86.*

<sup>2</sup> The Code requires that inquiries to be held under Section 118 (Rule 2), should be "formal," while those to be held under Section 85, 87, 91, 93, 125, 129, 142, 186 and 202 to be "summary"; but under Section 195, clause 3, an inquiry which the Code directs to be "summary" may, if the inquiring officer deems fit to do so, be conducted under all or any of the rules applicable to a "formal inquiry."

198. In all cases in which a formal or summary inquiry is made, authenticated copies and translations of decisions, orders, and the reasons therefor, and of exhibits, shall be furnished to the parties, and original documents used as evidence shall be restored to the persons who produced them, or to persons claiming under them on due application being made for the same, subject to such charges for copying, &c., as may, from time to time, be authorized by Government.

(1) **Application for return of documents filed, exempt from court fees.**—In supersession of notification No. 4347, dated the 26th November 1886, and in exercise of the powers conferred by Section 35 of the Court Fees Act, 1870, the Governor-General in Council is pleased to remit the fee payable under the said Act on an application presented by any person for the return of a document filed by him in any Court or public office. (G. of I. N. No. 2111, dated 22nd April 1887, published in the B. G. G. Part I, page 368, 1887.)

(2) **Documents may be returned to the parties producing them on application.**—Documents produced in evidence in cases under the Land Revenue Code may be returned to the parties producing them if they apply for their return after keeping copies thereof for Government records made at the expense of the applicants. (G. R. No. 8667, dated 21st December 1887.)

(3) **Return of documents produced.**—In all cases under the Land Revenue Code, the subject matter of which concerns private individuals only, the documents produced in evidence, whether they are in original or are certified copies, shall be returned to the person entitled to receive them back. It is unnecessary to retain copies of such documents except when the application for the return of the documents is made before the time for appeal has expired or before the disposal of the appeal already preferred, in which case certified copies of such documents should be kept at the expense of the applicants. (G. R. No. 4492, dated 9th July 1898.)

199. Whenever it is provided by this Act that a defaulter or any other person may be arrested, such arrest shall be made upon a warrant issued by any officer competent to direct such person's arrest.

Arrest of defaulter to be made upon warrant.

200. It shall be lawful for any revenue officer at any time, and from time to time, to enter, when necessary, for the purposes of measurement, fixing or inspecting boundaries, classification of soil, or assessment, or for any other purpose connected with the lawful exercise of his office

Power of revenue officer to enter upon lands or premises for purposes of measurement, &c.

under the provisions of this Act, or of any other law for the time being in force relating to land-revenue, any lands or premises, whether belonging to Government or to private individuals, and whether fully assessed to the land-revenue or partially or wholly exempt from the same:

Provided always, that no building used as a human dwelling shall be entered, unless with the consent of the occupier thereof, without a notice having been served at the said building not less than seven days before such entry; and provided also that, in the cases of buildings of all descriptions, due regard shall be paid to the social and religious prejudices of the occupiers.

Proviso.

201. The Governor in Council may declare what shall, for the purposes of this Act, be deemed to be the language in ordinary use in any district.

Power to determine language of district.



202.<sup>1</sup> Whenever it is provided by this or by any other Act for the time being in force, that the Collector may or shall evict any person wrongfully in possession of land such eviction shall be made in the following manner, namely:—

by serving a notice on the person or persons in possession, requiring them within such time as may appear reasonable after receipt of the said notice to vacate the land, and

if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and

if the officer removing any such person shall be resisted or obstructed by any person, the Collector shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause, and that such resistance and obstruction still continue, may, without prejudice to any proceedings to which such person may be liable under any law for the time being in force for the punishment of such resistance or obstruction, issue a warrant for the arrest of the said person, and on his appearance commit him to close custody in the office of the Collector or of any Mamlatdar or Mahalkari, or send him with a warrant, in the form of Schedule I. for imprisonment in the civil jail of the district, for such period not exceeding thirty days as may be necessary to prevent the continuance of such obstruction or resistance.

## CHAPTER XIII.

### *Appeal and Revision.*

203.<sup>1</sup> In the absence of any express provision of this

<sup>1</sup> Vide order No. (14) printed under Section 61.

Act, or of any law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a revenue officer under this Act or any other law for the time being in force, to that officer's immediate superior, whether such decision or order may itself have been passed on appeal from a subordinate officer's decision or order or not.

(1) **Pleader not allowed.**—A pleader cannot claim to appear in proceedings under this section. ( G. R. No. 8915, dated 8th December 1897. )

204. An appeal shall lie to the Governor in Council from any decision or order passed by a Commissioner or by a Survey Commissioner, except in the case of any decision or order passed by such officer on appeal from a decision or order itself recorded in appeal by any officer subordinate to him.

205. No appeal shall be brought after the expiration of sixty days if the decision or order complained of have been passed by an officer inferior in rank to a Collector or a Superintendent of Survey in their respective departments; nor after the expiration of ninety days in any other case.

In computing the above periods, the time required to prepare a copy of the decision or order appealed against shall be excluded.

206. Any appeal under this chapter may be admitted after the period of limitation prescribed therefor, when the appellant satisfies the officer or the Governor in Council to whom he appeals that he had sufficient cause for not presenting the appeal within such period.

No appeal shall lie against an order passed under this section admitting an appeal.

207. Whenever the last day of any period provided in this chapter for the presentation of an appeal falls on a Sunday or other holiday recognized by Government, the day next following the close of the holiday shall be deemed to be such last day.

208. Every petition of appeal shall be accompanied by the decision or order appealed against or by an authenticated copy of the same.

209. The appellate authority may either annul, reverse, modify or confirm the decision or order of the subordinate officer appealed against, or he may direct the subordinate officer to make such further investigation or to take such additional evidence as he may think necessary, or he may himself take such additional evidence.

210. In any case in which an appeal lies, the appellate authority may, pending decision of the appeal, direct the execution of the decision or order of the subordinate officer to be suspended.

211. The Governor in Council and any revenue officer, not inferior in rank to a Collector or a Superintendent of Survey, in their respective departments, may call for and examine the record of any inquiry, or the proceedings of any subordinate revenue officer, for the purpose of satisfying himself as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer.

The following officers may in the same manner call for and examine the proceedings of any officer subordinate to them in any matter in which neither a formal nor a summary inquiry has been held, namely—an Assistant or Deputy

Collector, a Mamlatdar, a Mahalkari, an<sup>1</sup> Assistant Superintendent of Survey, and an Assistant Settlement Officer.

If, in any case, it shall appear to the Governor in Council, or to such officer aforesaid, that any decision or order or proceedings so called for should be modified, annulled or reversed, he may pass such order thereon as he deems fit.

And to pass orders thereupon.

212.<sup>2</sup> Wherever in this Act it is declared that a decision or order shall be final, such expression shall be deemed to mean that no appeal lies from such decision or order.

Explanation as to decisions or orders expressly made final.

The Governor in Council alone shall be competent to modify, annul or reverse any such decision or order under the provisions of the last preceding section.

## CHAPTER XIV.

### *Miscellaneous.*

213. Subject to such rules and the payment of such fees as the Governor in Council may from time to time prescribe in this behalf, all maps and survey records,<sup>3</sup> and all village accounts and land registers

Maps, land registers and village accounts, etc., open to inspection.

<sup>1</sup> "An" was substituted for "and" by Act XVI. of 1895.

<sup>2</sup> *Vide* Section 35 and the order printed thereunder.

<sup>3</sup> By "survey records" is meant completed documents prepared under Section 108 and referred to in Sections 3 (6), 95 and 119, and not the field books (such as, measurement and classification books) or other official memoranda, the *results* of which are recorded. The section gives a right of inspection only of the completed documents, and provides that certified extracts or copies should be given only in the case of "maps," registers and (village) accounts. From the position of the word "registers" after maps and before accounts it seems clear that it is intended to relate back to "survey records," and that the expression "survey records," used in this Section therefore means only such records as are prepared in the form of registers, based on information supplied by preliminary papers (such as measurement and classification field books, Bagait Taktas, etc.). The inspection, extracts or copies of such preliminary records cannot therefore be claimed as a matter of right. (G. R. No. 5138, dated 14th July 1893.)

shall be open to the inspection of the public at reasonable hours, and certified extracts from such maps, registers and accounts, or certified copies thereof, shall be given to all persons applying for the same.

214. The Governor in Council may from time to time make, and from time to time vary or rescind, rules or orders not inconsistent with this Act—

(a) determining the qualifications to be required of all members of establishments appointed under Section 21 ;

(b) regulating the power of fining, reducing, suspending and dismissing revenue officers under Section 32 ;

(c) prescribing the purposes to which land liable to the payment of land-revenue may be appropriated under Section 48 ;

(d) regulating the system and manner of assessing land to the land-revenue under Sections 52 and 100 ;

(e) for the disposal of forfeited occupancies or alienated holdings under Section 56 ;

(f) fixing the maximum amount of fine leviable under Section 61 when land which has been unauthorizedly occupied is appropriated to any non-agricultural purpose ;

(g) for the administration of any survey settlement and the maintenance of boundary marks ;<sup>1</sup>

(h) prescribing the mode, form and manner in which appeals under chapter XIII<sup>2</sup> shall be drawn up and presented ;

(i) generally for the guidance of all persons in matters connected with the enforcement of this Act, or in cases not expressly provided for therein.

<sup>1</sup>1. These words were inserted in clause (g) of Section 214 by Bo. Act VI. of 1901.

<sup>2</sup> Words repealed by Bo. Act III. of 1886 have been omitted.

Rules or orders made under any of the above clauses, (c), (d), (e), (f) or (i), may be made either generally or in any particular instance.

215. All general rules or orders made by the Governor in Council under the last preceding section shall be published, and when published shall, until cancelled or amended, have the force of law.

Rules to be published.

It shall be lawful for the Governor in Council, in making any such general rule, to attach to the breach of it, in addition to any other consequences which would ensue from such breach, a punishment, on conviction before a Magistrate, not exceeding one month's imprisonment<sup>1</sup> or five hundred rupees' fine, or both.

Power to provide for penalties.

216.<sup>2</sup> Save as is otherwise provided in Section 111 and hereinafter in this section, the provisions of chapters

<sup>1</sup> The portion repealed by the Bombay General Clauses Act III. of 1886 has been omitted.

<sup>2</sup>(1) See orders printed under Section 217.

(2) Waste Inam fields, on which boundary mark charges are due, are to be sold annually as grass lands if the Inamdars are not present, and the charges liquidated from the proceeds.

If the Inamdars are present the payment of money should be perpetually enforced as a revenue demand under Section 6 of Act III. of 1846 (now Section 122 of the Code). (G. R. No. 3976, dated 17th October 1851.)

(3) Inamdars who desire it may be allowed to pay the survey expenses in two equal instalments. (G. R. No. 543, dated 12th February 1852.)

(4) The owners of the alienated villages which have been surveyed, by virtue of their being held on service tenure, or at the express desire of the alienee, should be requested to cause the boundary marks to be examined by the village officers, to test these examinations themselves or by their agents and to report the result to the Assistant Collector in charge of the Taluka. (G. R. No. 2581, dated 19th June 1865.)

(5) The following rules relate to the Survey of alienated villages:—

I. The boundaries of all alienated villages to be surveyed at the expense of Government.

II. The lands of alienated villages held on hereditary tenure, of which the alienee makes the annual settlement, not to be

VIII. to X.<sup>1</sup> shall not be applied to any alienated village except for the purposes of fixing the boundaries of any such village, and of determining any disputes relating thereto.

But the provisions of the said chapter shall be applicable to—  
 (a) all unalienated lands situated within the limits of an alienated village ;

(b) villages of which a definite share is alienated, but of which the remaining share is unalienated ;

(c) alienated villages, the holders of which are entitled to a certain amount of the revenue, but of which the excess, if any, above such amount, belongs to Government.

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subjected to the usual revenue survey operations, excepting at the request of the alienee, and his expressing his intention to adopt the rates fixed by the Survey Department and sanctioned by Government.

III. In the event of the alienee fulfilling his intention the expense of the operations to be borne by Government, in the event of his not doing so, by the alienee.

IV. Villages held on service tenure by hereditary officers to be subjected to the revenue survey operations, but the holders of such villages need not be constrained to introduce the survey rates.

V. The lands of villages which have been declared already liable to assessment on account of Government (Khalsa) but the levy of land revenue in which has been deferred as an indulgence during the life of present incumbent, are to be surveyed and classed at the same time as the lands of other Khalsa villages in the District, but the new rates are not to be imposed against the will of the alienees until their decease. The occupants are, however, to be answerable for the maintenance of the field boundary marks. (G. R. No. 1223, dated 10th February 1851, No. 3479, dated 29th December 1855, and No. 3613, dated 28th September 1863.)

(6) It was not the intention of Government to rescind the rules of the 13th March 1851, whereby the cost of surveying alienated villages is undertaken by Government on the condition that the alienee accepts and adheres to the terms of the settlement. Government will defray the expenses of revision operations in cases where the rules and rates have been adhered to and where a guarantee to this effect is given for the future.

As regards Jaghirs or Estates held on political tenure, Government can no longer consent to bear the cost. (G. R. No. 373, dated 21st January 1875.)

<sup>1</sup> Words repealed by Bombay Act III. of 1886 have been omitted.

But it shall be lawful for the Governor in Council, on an application in writing being made by the holder of any such village to that effect, to authorize the extension of all or any of the provisions of the said chapters to any such village.

(1) **Extension of the provisions of the Code to Inam villages settled under Act I. of 1865.**—Government concur in the views expressed by the Commissioner, C. D., and the Legal Remembrancer that Section 217 of the Code applies at once to alienated lands which have been settled by the Survey Department under Act I. of 1865, and that no application from the alienee under Section 216 is requisite. The application by the Inamdar contemplated by the last paragraph of Section 216 is required only for future extension of the survey to an Inam village. ( G. R. No. 6709, dated 16th December 1879. )

(2) Section 2 of the Code provides that all orders issued and notifications published under any of the enactments repealed by the Code (including Bombay Act I. of 1865) shall be deemed to have been issued and published under the Code. Section 49 of Bombay Act I. of 1865 provided that the Governor in Council had power to extend by notification in the *Government Gazette* all or any of the provisions of the Act to any alienated village on application made in writing by the holder thereof. It seems quite clear from this that existing surveys which have been thus notified or authorized by the Governor in Council are in force just as if they had been notified or authorized under the Code. Yet from Section 216 of the Code it would seem that the purposeless formality of a written application must be complied with by an Inamdar before Section 112 can be extended to his village. ( G. R. No. 6925, dated 19th November 1881. )

(3)<sup>1</sup> **Separate sanction to survey rates in Inam villages unnecessary.**—The general sanction granted by G. R. No. 5921,

<sup>1</sup> (1) In future, proposals for the introduction of the survey assessment in Inam villages should always be submitted for the sanction of Government either specially or with those for the remainder of the Taluka in which they may be comprised. ( G. R. No. 3504, dated 15th June 1876. )

(2) It is the wish of Government that full details be given when proposals for assessing alienated villages are submitted. ( G. R. No. 7390, dated 15th December 1876. )

(3) The suggestion of the Survey Commissioner that the special report for Inam villages in Talukas already settled, to be made under G. R. No. 3504, dated 15th June 1876, may be dispensed with, and that rates sanctioned for adjacent Government villages previously settled may be held applicable to Inam villages coming under settlement at any time after the settlement of the Taluka is approved. ( G. R. No. 5921, dated 16th November 1878. )



dated 16th November 1878, in respect to Inam villages, should be deemed to be the sanction required by Sections 102 and 103 of the Land Revenue Code, 1879. (G. R. No. 6386, dated 6th December 1880.)

(4) **Inamdar to pass agreements to pay remuneration to village officers.**—Before the survey rates are introduced in an alienated village an agreement<sup>1</sup> on a stamped paper of the value of 8 annas should be taken from the alienee binding himself and his successors to pay the village officers according to the scale in force in Government villages. (G. R. No. 6401, dated 6th December 1880, and No. 7322, dated 3rd December 1881.)

(5) **To furnish agricultural statistics.**—Agricultural statistics for alienated villages which have been surveyed and assessed may be obtained even under the present law with the co-operation of the owner. Such co-operation may be made a condition of the grant of powers under Section 88. (G. R. No. 7136, dated 24th September 1883.)

(6)<sup>2</sup> **Inamdar's consent necessary for surveying his village.**—If the survey operations are conducted in an alienated village with the Inamdar's consent merely they will have no legal value, and the officers conducting them will not be able to exercise any legal authority in connection with them, unless the appropriate provisions of Chapter VIII. of the Code have, in the first instance, been extended to the village upon the Inamdar's written application under Section 216. No survey operations will therefore be commenced in an alienated village until action has been taken by the Inamdar and the Government under the last clause of Section 216. (G. R. No. 6225, dated 2nd August 1884.)

(7) **Inamdar's consent not necessary in the case of a Sharakati village.**—Where a Survey Settlement was introduced into a village of which bali is held in Inam without the consent of the Inamdar, it was decided that the survey was quite lawful, and that the Inamdar was bound by the assessment placed by the Survey Department on his holding. (G. R. No. 1243, dated 26th February 1887.)

(8) **Inamdar's consent not necessary for a rough survey for the purposes of summary settlement.**—The question whether the estate of Inamdars who have not voluntarily applied for a survey can be roughly surveyed for the purpose of fixing the Judi has been disposed of by the following opinion of the Remembrancer of Legal Affairs concurred in by Government:—

“2. I am of opinion that Section 216 of the Land Revenue Code does not in any way affect the provisions of Bombay II. of 1863 or Bombay VII. of 1863.

<sup>1</sup>As to form of agreement, see Appendix XV.

<sup>2</sup>Vide order No. (2) printed under Section 88.

"3. The original draft of the Land Revenue Code incorporated the provisions of these two Acts (Bombay II. and VII. of 1863), which it was then proposed to repeal in Schedule A appended to that bill.

"4. Chapter VII. of the original draft corresponded almost *verbatim* with these Acts, and Section 156 of the original draft, which corresponded with Section 216 of the Land Revenue Code provided, as Section 49 of Bombay I. of 1865 provided, that the procedure applicable to unalienated lands should not apply except on the application of the holder to alienated villages or estates.

"5. It therefore appears that Section 216 was not intended to interfere with the provisions of Bombay II. and VII. of 1863, as a section to the same effect as Section 216, was incorporated in an Act retaining practically the same provisions as Bombay II. and VII. of 1863.

"6. Although Chapters VIII. to X of the Land Revenue Code cannot apply to wholly alienated villages, except subject to the provisions in Section 216, the provisions of Section 2, rule 1, of Bombay II. of 1863 and Section 6, rule 1, of Bombay VII. of 1863, are unaffected.

"7. Both the last mentioned sections provide for three classes of cases—

- (a) those in which the assessment had already been fixed by the Survey;
- (b) those in which it was agreed on between the Collector and holder;
- (c) All other cases.

"8. In respect of classes (a) and (b) the assessment so fixed was evidently not liable to revision.

"9. In respect of class (c) it is evident from the proviso that an attempt to obtain an amicable settlement of the assessment was to be deemed a condition precedent to the exercise of the power given to survey officers to enter upon and fix the assessment.

'But if no such arrangement can be otherwise arrived at by the Collector and the owner or holder, then whether the owner or holder assent or no, the survey officers are empowered to enter upon the lands and fix and make an assessment.'

"10. The only effect of Section 216 of the Bombay Land Revenue Code is Chapters VIII. to X. of that Code do not apply to any such assessment.

"11. I think therefore that in cases in which Summary Settlement Sanads have been issued, the consent of the owner or holder is not necessary to empower Survey Officers to enter and fix and make an assessment, if an attempt to effect an amicable arrangement has been made and has failed." (G. R. No. 7363, dated the 6th November 1888.)

(9) **Settlements to be sanctioned by Commissioners—when.**—Commissioners should sanction settlements in Inam villages when the maximum rates have been already decided by Government for the Government villages of the taluka. (G. R. No. 3691, dated 31st May 1902.)

(10) **Meaning of "holder."**—The "holder of the village" in the concluding paragraph of Section 216 must be read as meaning the "holder of the assessment or any part thereof of an alienated village." (I. L. R. 18 Bom. 525, —Gangadhar Hari Karkare vs. Morbhat Purohit.)

(11) **It is sufficient if one<sup>1</sup> of the co-sharers applies.**—Under Section 216 it is competent to one out of several co-sharers of an alienated village to apply on behalf of, and with the consent of, all the other co-sharers for the introduction of survey into the village; and it is not open to the cultivators of lands in the village to question the action of Government in introducing the survey on such application. The section does not require that the application should be made or signed by all the sharers. (I. L. R. 24 Bom. 539, —Gopikabai vs. Lukshman.)

217.<sup>2</sup> When a Survey Settlement has been introduced, under the provisions of the last section or of any law for the time being in force, into an alienated village, the holders of all lands to which such settlement extends, shall have the same rights and be affected by the same responsibilities in respect of the lands in their occupation as occupants in unalienated villages have, or are affected by, under the provisions of this Act, and all the provisions of this Act relating to occupants and registered occupants shall be applicable, so far as may be, to them.

(1) **Rights of occupants in Inam villages surveyed and settled before the passing of the Code.**—Section 217 was inserted in the Code for the express purpose of giving the rayats in alienated villages to which a survey settlement might be extended, the same occupancy rights which are enjoyed by holders of land in unalienated villages into which a survey settlement has been introduced. But this section cannot, of course, be construed retrospectively. (G. R. No. 3045, dated 14th April 1884.)

Holders of alienated villages to which a revenue settlement has been applied under Bombay Act I. of 1865 have the rights of occupants equally when the settlement is under the Code. The *status quo ante* is reverted to on the expiry of the term of the settlement introduced when there was no law in force. (G. R. No. 5735, dated 29th July 1895.)

<sup>1</sup> Vide order No. (5) under Section 217.

<sup>2</sup> See orders printed under Sections 74 and 216.

(2) **After the passing of the Code.**—When on the application of the holder of an alienated village made in accordance with the last clause of Section 216, the Governor in Council has sanctioned the extension of the provisions of Chapters VIII. to X. of the Code to that village, the holder has then no option but must have the provisions of those chapters extended to, and enforced in, that village, whether the effect of any of those provisions be acceptable to him or not.

A case in point recently occurred in which, on the expiration of the original settlement introduced into an alienated village, the holder thereof made an application under Section 216, to have the provisions of Chapters VIII. to X. of the Code extended to the village with a view to revision survey rates being introduced into it. The application was granted and after the necessary preliminary operations revised rates were proposed and sanctioned for that village. Before the formal introduction of those rates, however, the holder of the village expressed his unwillingness to accept those rates and as the original settlement lease had expired, commenced to levy assessment at the Mamul rates, *i. e.*, the rates prevailing before the introduction of the original settlement. In this case the following questions were referred for the orders of Government :—

- (1) Whether on the expiration of the original settlement the relations between the holder of the village and his rayats did not revert to the *status quo ante* (as held in G. R. No. 3045, dated 14th April 1834); and if so,
- (2) Whether it was lawful for the holder of the village to levy assessment at the Mamul rates; and
- (3) Whether in that case the local fund cess should be levied,
  - (a) on the assessment at Mamul rates; or
  - (b) on the assessment at rates of the original settlement lately expired; or
  - (c) on the assessment at the revised survey rates fixed by the Survey Department and not accepted by the holder of the village.

These questions were disposed of by the following opinion of the Remembrancer of Legal Affairs, concurred in by Government :—

“ In order to ascertain how matters now stand it seems desirable to recapitulate the material facts regarding the Inam village in question.

“ 2. An original survey settlement was introduced into the village under Bombay Act I. of 1865 in the year 1875-76, on the application of the Inamdar. That settlement expired in 1881-82.

“ 3. On the 2nd October 1884, the Inamdar applied to Government that the provisions of Chapters VIII. to X. of the Land Revenue Code be extended to the village in order that revision survey operations might be introduced into it. This application was allowed by His Excellency and a notification extending the said provisions to the village was published in the *Bombay Government Gazette*.

" 4. On the authority of the above notification revision survey rates were sanctioned by the Survey Commissioner for the village, but the rates have not been formally introduced into the village because the Inamdar refused to accept them.

" 5. The Commissioner, Central Division, and the Survey Commissioner were asked by Government to report through this office the circumstances under which it had been thought that the Inamdar was at liberty to accept or reject the revised rates and they replied that paragraph 2 of the agreement into which the Inamdar entered before Chapters VIII. and IX. were extended to his village implied that he was at liberty to accept or reject the rates.

" 6. The following is a rough translation of the agreement referred to:—

To

Government

Kabulayat executed by the Inamdar of the village of \* \* \* Taluka of \* \* \* To wit. In 1875-76 the Survey Settlement was extended to the said village and in accordance therewith the revenue is being recovered. Now revision settlement is to be effected in the said Taluka. In accordance therewith I am willing to have revision settlement extended to my village and to keep records according to the forms applicable to Government villages as follows:—

2. The work of measurement and classification, &c., be carried out at the expense of Government and after the rates having been settled in conformity with the system in Khalsa villages, if I refuse to accept the amount which may be according to the sanctioned rates, then I will pay to Government in cash all expenses of measurement, classification and of the records connected therewith and of the boundary marks. If I agree to accept the amount according to the sanctioned rates and make wahiwat as stated in paragraph 1 the said expenses should not be recovered from me \* \* \*

" 7. These being the circumstances connected with the village, I think it is quite clear that since Chapters VIII. and IX. of the Land Revenue Code have been lawfully extended to that village any revised survey rates which are duly fixed for the lands therein by the survey authorities and sanctioned by Government under Section 102 and introduced in the manner provided in Section 103 of the Code, must be levied by the Inamdar for the period of the guarantee, or, at least, the Inamdar must not levy rates in excess of those so fixed.

" 8. The form of the agreement taken from the Inamdar apparently dates from a time anterior to the passing of the Land Revenue Code, and it should, I think, have been reconsidered before being used for villages to which the provisions of Chapters VIII. and IX. of that Code have been, or are to be applied.

"9. I do not feel able to advise that the extension of the provisions of Chapters VIII. and IX. of the Code to the village annulled that agreement, for there is no authority of law for such advise, and moreover when applying to Government for the extension of the above provisions to his village, the Inamdar in his written application expressly stated that he had 'duly entered into necessary agreements in order that the revision survey and survey operations should be introduced into his village,' from which it seems (as it is no doubt the case) that the local revenue authorities required the agreement from him.

"10. I think, therefore, that Government must abide by the agreement and bear the cost of the revision survey of the Inamdar's village unless the rates which are finally sanctioned are acceptable to him; but the survey rates must prevail and be enforced whether the rates are acceptable to the Inamdar or not.

"11. With reference to the question of Local fund cess I would observe that my report on which (G. R. No. 3045, dated 14th April 1881) was based, applied solely to the case of an Inamdar whose village was surveyed and settled before even Bombay Act I, of 1865 became law, and who on the expiry of the term of the settlement applied neither for a revision settlement nor for the application to his village of any of the provisions of the Land Revenue Code. In the present case the Inamdar entered into an agreement for a revised survey very soon after the term of the old settlement had expired and subsequently obtained the extension of the provisions of Chapters VIII. and IX. of the Code to his village. In his case, I am of opinion, that Local fund cess should be calculated on the old survey rates until the revised settlement is introduced and thereafter on the new rates." (G. R. No. 3600, dated 26th May 1891.)

(3) **Fixing of survey rates for Inam villages.**— Under Section 217 of the Code an Inamdar is bound to levy only the Survey rates introduced into his village by the Survey Department whatever they may be. It may be the case that the effect of insisting that Inamdars should adhere to the ordinary survey rates would be to deter them from applying for the extension of the survey settlement to their villages under Section 216 of the Code, but His Excellency in Council does not consider this to be a sufficient reason for the adoption in the case of Inam villages of a principle different from that followed in the case of Government villages. The Survey Department should, in the case of Inam villages, determine what are the survey rates as fixed according to general rules to be levied, but should not increase those rates without the special sanction of Government under Section 102 of the Land Revenue Code. When the maximum dry-crop and garden rates to be imposed in any alienated villages are determined according to the usual method of the Survey Department, Government can, if they think proper, sanction an addition to them in any particular case, but Survey Department should not introduce rates which produce a revenue equal to the Inamdar's demand (if such demand is in excess of the survey assessment), without fully explaining the grounds for

the adoption of such rates and without obtaining the sanction of Government to their introduction. (G. R. No. 3436, dated 12th May 1886.)

(4) **Native States.**—It is the desire of Government that no pressure should be put on Native Chiefs to adopt British Survey rates, but every encouragement should be given to them to adopt the methods of classification and survey followed in British territory. The important matter in the case of Native States is not so much low rates as equality of rating. For higher rates than those prevailing in British territory, Government must not assume any responsibility and this should be made clear in cases where the technical operations are carried out by British Officers. (G. R. No. 4280, dated 9th July 1837.)

(5) **Consent of all the sharers necessary for the introduction of survey settlement.**—The view, that the assent of a co-sharer in an Inam village is not necessary to the introduction of survey rates into that village, is not correct. Under Section 217 the holders of all lands in a village into which a Survey settlement has been introduced, acquire thereby the same rights, and are affected by the same responsibilities as occupants in unalienated villages have or are affected by. Among other results the introduction of the survey settlement would bar the right of the Inamdars to enhance the rayat's rents above the survey assessment.

It does not appear that the subsharer's rights in this and other respects could be limited without his assent.

Section 216, Bombay Land Revenue Code, requires as the conditions on which Chapters VIII. to X. can be extended to alienated villages that there should be an application in writing, made by the holder of the village.

"Holder"—is defined in Section 3 (11) of the Bombay Land Revenue Code, as 'the person in whom a right to hold land is vested whether solely on his own account, or wholly or partially in trust for another person, or for a class of persons, or for the public.'

"Village"—Under Section 3 (20) includes all lands belonging to the village.

It does not appear that one of two or more sharers can be said to be vested with a right to hold all the lands in his village either solely on his own account, or wholly or partially in trust for the other sharers.

Until therefore the assent of all those in whom such right is vested has been obtained no extension of Chapters VIII. to X. of the Bombay Land Revenue Code can, it appears, be legally authorized under Section 216. (G. R. No. 3346, dated 7th May 1889.)

(6) **When settlement is once introduced no consent of new coming shareholders necessary.**—When the provisions of Chapters VIII. and IX. of the Code have once been extended to an Inam village with the assent of all the then existing co-sharers and on their application in writing under Section 216, it is not necessary to again extend those provisions to the village in case the number of co-sharers

<sup>1</sup> Compare order No. (11) under Section 216.

increases. A subsequent increase in the number of co-sharers in the village will not affect in any way the rights and responsibilities which on the introduction of a survey settlement attach to all the holders therein under Section 217. Among these rights and responsibilities must be included the rights and responsibilities of the holders arising on a fresh revenue survey and revision being directed under Section 106 in Chapter IX. of the Code.

It is only in the case of Survey Settlements introduced into an Inam village prior to the passing of the Code that on the expiry of the term fixed for the same, the mutual relations of the Inamdar and his rayats revert to the *status quo ante*. But when a survey settlement has once been introduced under Section 216 into an alienated village, all the provisions of the Act relating to occupants and registered occupants become applicable to the holders of all lands therein and the subsequent dissent on their part or on the part of their successors cannot annul the operation of the law. Section 217 has barred the right of Inamdars to enhance their rayat's rents beyond the Survey Assessment. ( G. R. No. 693, dated 26th January 1883. )

(7) **Standard form of agreement to be passed by Inamdars.**—The form of agreement which it was usual to take from the Inamdars before the introduction of the survey rates into their villages having been declared inconsistent with the provisions of the Code (*vide* G. R. No. 3600, dated 26th May 1891), it was suggested that a standard form of agreement to be taken from the Inamdars should be authoritatively laid down for future use. In accordance with this suggestion the form of agreement printed as Appendix XV. has been sanctioned by Government. ( G. R. No. 4011, dated 9th May 1892. )

(8) **Should not be departed from.**—In a case in which the holder of an alienated village objected to pass an agreement in the form prescribed by G. R. No. 4011, dated 9th May 1892, a suggestion was made to make certain modifications in that form. This suggestion has been negatived by Government by whom it has further been directed that the form above referred to having been approved after a full consideration, should not be departed from. ( G. R. No. 9381, dated 29th November 1892. )

218. Nothing in this Act, which applies in terms to unalienated land or to the holders of alienated land, or of Government, in respect of any such land, and no presumption shall be deemed to arise either in favour, or to the prejudice, of any holder of alienated land from any provision of this Act in terms relating to unalienated land only.

Construction of Act. of unalienated land only, shall be deemed to affect alienated land, or the holders



# SCHEDULES.

## SCHEDULE A.

( See Section 2.)

Number and year.	Subject.	Extent of repeal.
<b>BOMBAY REGULATIONS.</b>		
IV. of 1827 ...	Forms of proceeding of the Courts of Law.	Clauses 2 and 3 of Section 69.
XVI. of 1827 ...	Duties and powers of the Collector and Subordinate Revenue Officers.	So much as has not already been repealed.
XVII. of 1827 ...	Assessment and realizations of the Land Revenue.	Ditto
V. of 1830 ...	Revenue Commissioners and Sub-Collectors.	Ditto
XV. of 1831 ...	Punishment of Patels falsifying revenue records.	Ditto
II. of 1832 ...	Realization of Revenue from Farmers.	Ditto
V. of 1833 ...	Embezzlement, Hereditary, District and Village Officers.	Ditto
<b>ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.</b>		
XVIII. of 1838.	Security ... ..	The whole Act.
XIII. of 1842 ...	Collection of Inamdar's Revenue.	Ditto
XVII. of 1842 ...	Revenue Commissioners...	So much as has not already been repealed.
III. of 1846 ..	Boundary-marks... ..	Ditto
XII. of 1850 ..	Public Accountants ... ..	The whole Act so far as it applies to revenue officers in the Presidency of Bombay.
XXI. of 1852 ..	Deputy Collectors ... ..	So much as has not already been repealed.
<b>ACTS OF THE GOVERNOR OF BOMBAY IN COUNCIL.</b>		
VII. of 1863 ...	Summary Settlement ... ..	Sections 4 and 5.
I. of 1865 ...	Survey ... ..	The whole Act, except Sections 37 and 38.
I. of 1866 <sup>1</sup> ...	Extending Bombay Act I. of 1865.	The whole Act.
I. of 1869 ...	Powers and Duties of Assistant and Deputy Collectors.	Ditto
IV. of 1868 ...	City Surveys ... ..	Ditto
I. of 1875 ...	Amendment of (Bombay) Act I. of 1865.	Ditto

<sup>1</sup> This schedule, so far as it relates to Bombay Act I. of 1866, was repealed by Act XVI. of 1895.

## SCHEDULE B.

*Form of Bond to be required under Section 23.*

Whereas I,  
inhabitant of  
have been appointed to the office of  
and have been called upon to furnish security under the provisions of Section 23 of the Bombay Land Revenue Code for the due discharge of the trusts of the said office, or of any other office to which I may be hereafter appointed, and for the due account of all moneys, papers, and other property which shall come into my possession or control by reason of any such office, I hereby bind myself to pay to the Secretary of State for India in Council the amount of any loss or defalcation in my accounts and to deliver up any papers or other property within such time, and to such person, as shall be demanded by the person at the head of the office to which I belong, such demand to be in writing and to be left at my office or place of residence, and in case of my making default therein, I bind myself to forfeit to the Secretary of State for India in Council the sum of \_\_\_\_\_ Rupees.

\*(The above bond will be retained by Government for one year after the said \_\_\_\_\_ has vacated his appointment.)

Dated \_\_\_\_\_

(Signature.)

*Form of Security to be subjoined to the Bond of the Principal.*

We

hereby declare ourselves sureties for the abovesaid that he shall do and perform all that he has above undertaken to do and perform, and in case of his making default therein, we hereby bind ourselves to forfeit to the Secretary of State for India in Council such sum as shall be deemed sufficient by the

\_\_\_\_\_ to cover any loss or damage which the Government may sustain by reason of such default.

Dated \_\_\_\_\_

(Signature.)

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\* The words enclosed in brackets have been ordered to be added to the Form of Bond under G. E. No. 6920, dated 28th August 1884.—For further addition, *Vide* Bombay Act IV. of 1905, Schedule 1.

## SCHEDULE C.

*Form of Warrant to be issued by the Collector under Section 25 or 157.*



To

The Officer in charge of the Civil Jail at

Whereas *A B* of                      was on the                      day of                      19

ordered by                      to (*here state the substance of the demand made*); and whereas the said *A B* has neglected to comply with the said order, and it has therefore been directed, under the provisions of Section                      of the Bombay Land Revenue Code, that he be imprisoned in the Civil Jail until he obey the said order or until he obtain his discharge under the provisions of Section 25 or 28 (*or Section 157 or 164 as the case may be*) of the said Code; you are hereby required to receive the said *A B* into the jail under your charge and to carry the aforesaid order into execution according to law.

Dated this                      day of                      19 .

(Signature of Collector.)

## SCHEDULE D.

*Form of Bond to be required under Section 28 or 164.*

Whereas I,

have been ordered by

to (*here state the nature of the demand*)

and whereas I dispute the right of the                      to make the said order, I hereby bind myself to file a suit within fifteen days from the date of this bond in the District Court of                      to contest the justice of the demand and do agree that, in the event of a decree being passed against me, I will fulfil the same and will pay all amounts, including costs and interests, that may be due by me, or that if I fail to institute a suit as aforesaid, I will, when required, pay the abovementioned amount of                      Rupees

(*or will deliver up the abovementioned papers or property, as the case may be*), and in the case of my making default therein, I hereby bind myself to forfeit to the Secretary of State for India in Council the sum of

Rupees.

Dated

(Signature.)

*Form of Security to be subjoined to the Bond of the Principal.*

We

hereby declare ourselves securities for the abovesaid that he shall do and perform all that he has above undertaken to do and perform, and in case of his making default therein, we hereby bind ourselves to forfeit to the Secretary of State for India in Council the sum of \_\_\_\_\_

Dated \_\_\_\_\_

Rupees.  
(Signature.)

## SCHEDULE E.

(See Section 84.)

I.—*Form of Notice to be given by Landlord to Tenant to quit.*

To

A. B.

I do hereby give you notice that I do intend to enter upon, and take possession of, the land ( *here give the description* ) which you now hold as tenant under me, and you are therefore required to quit and deliver up possession of the same at the end of this current year, terminating on the \_\_\_\_\_ of \_\_\_\_\_ 19 \_\_\_\_\_

Dated this \_\_\_\_\_

day of \_\_\_\_\_

(Signed) C. D.

19 .

II.—*Form of Notice to be given by Tenant to Landlord of his intention to quit.*

To

C. D.

I do hereby give you notice that I shall quit and deliver up to you at the end of this current year, terminating on the \_\_\_\_\_ of \_\_\_\_\_ 19 \_\_\_\_\_ the land ( *here give the description* ) which I hold from you.

Dated this \_\_\_\_\_

day of \_\_\_\_\_

(Signed) A. B.

19 .

## SCHEDULE F.

*Form of Commission to be issued to a Holder of Alienated Lands or Villages or his Agent under Section 89.*



The Governor in Council of Bombay, by virtue of the powers vested in him by the Bombay Land Revenue Code, is pleased to confer on you

(Jahgirdar, etc., or Agent, etc., as the case may be) power to in (or in respect of) the villages and lands specified in this Commission, in the manner prescribed in (or in Section of) the said Code.

The villages and lands over which the power thus conferred upon you extends, are as follows :—

*(Here enter the description.)*

The within delegated power is vested in you during the pleasure and subject to the recall of the said Governor in Council.

(Signed)

## SCHEDULE H.

*(See Section 133.)*

*Form of Sanad for Building Sites.*

*(Royal Arms.)*

THE SECRETARY OF STATE IN COUNCIL,

To \_\_\_\_\_

Whereas His Excellency the Governor of Bombay in Council, with a view to the settlement of the land revenue, and the record and preservation of proprietary and other rights connected with the soil, has, under the provisions of the Bombay Land Revenue Code, directed a survey of the lands within the of and ordered the necessary inquiries connected therewith to be made, this Sanad is issued under Section 133 of the said Code to the effect that—

There is a certain plot of ground occupied by you in the division of the of register No. in the map marked sheet

No. and facing towards the the road leading from to , containing about square yards, and of the following shape and about the following dimensions :—

You are hereby confirmed in the occupancy of the above described ground, exempt from all land revenue (or subject to the payment of Rs. per annum to the land revenue).

The terms of your tenure are such that your occupancy is both transferable and heritable, and will be continued by the British Government, without any objection or question as to title, to whosoever shall from time to time be its lawful holder (subject only to the condition of the payment annually of the above land revenue according to the provi-

sions of the Bombay Land Revenue Code or of any other law for the time being in force, and to the liability to have the said rate of assessment revised at the expiration of a term of \_\_\_\_\_ years reckoned from the

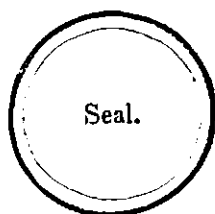
, and thereafter at successive periods of \_\_\_\_\_ years in perpetuity, and to the necessity for compliance with the provisions of the law from time to time in force as to the time and manner of payment of the said assessment, and to the liability of forfeiture of the said occupancy and of all rights and interests connected therewith in case of your failure to pay the said assessment as required by law).

This Sanad is executed on behalf of the Secretary of State for India in Council by order of the Governor in Council of Bombay, by and under the hand and seal of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ one thousand nine hundred and \_\_\_\_\_ A. D.

(Signed)

## SCHEDULE I.

*Form of Warrant to be issued by the Collector under Section 202.*



To the Officer in charge of the Civil Jail at \_\_\_\_\_

Whereas *A B* of \_\_\_\_\_ has resisted ( or obstructed ) *C D* in removing *E F* (or himself, that is the said *A B*) from certain land in the village of \_\_\_\_\_, in the \_\_\_\_\_ taluka, and whereas it is necessary, in order to prevent the continuance of such obstruction (or resistance), to commit the said *A B* to close custody. You are hereby required under the provisions of Section 202 of the Bombay Land Revenue Code to receive the said *A B* into the jail under your charge, and there to keep him in safe custody for \_\_\_\_\_ days.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

( Signature of Collector. )

## APPENDICES TO THE CODE.

## APPENDIX I.

( Referred to in footnote on page 26.)

Register of landed property held by public servants.

District.	Name of officer or candidate for office.	Appointment held or sought.	Landed property in possession.						REMARKS.
			Nature of property.	The approximate value of the property.	Where situated.	How acquired.	When acquired.	Extent in Acres.	

## APPENDIX II.

( Referred to in footnotes on pages 51, 66, 78, and 89. )

The subjoined table shows how the altered assessment and fine leviable under Sections 41, 61, 65, and 66 and the rules framed thereunder, on account of unauthorized occupation and appropriation of un-

alienated land as also of authorized appropriation of any unalienated land assessed for agricultural purposes to any non-agricultural purpose:—

When any unalienated land assessed or held for purposes of agriculture only is appropriated to any purpose unconnected with agriculture by the occupant of the land.		Any person who shall unauthorisedly occupy any land set apart for any special purpose or any unoccupied land which has not been alienated shall	
With permission.		Without permission.	If he have appropriated it to any non-agricultural purpose
Fine leviable under Section 65 of the Code.		Fine leviable under Sec. 66 of the Code.	Fine leviable under Section 61.
1	2	3	4
Classes into which villages, towns, and cities in their respective divisions are divided by the Commissioners under rule 71 for the purpose of determining the amount of fine.	Under the provisions of para. 2, Section 48, the assessment of the land so appropriated shall be altered in accordance with the rates fixed in rule 56, viz., whichever be the greater of the following.	In addition to the altered assessment under rule 56 the amount of fine leviable shall ordinarily be at the following rates (vide rule 73). In special cases the Collector may require the payment of a fine not exceeding the rate fixed for the 1st class.	Shall be fixed by the Collector at his discretion, but shall not exceed five times the amount imposable by him under Section 65 of the Code (vide rule 74), viz., not exceeding the following sums.
	at Rs. per acre.	No. of times the assessment for agricultural purposes.	
I. ...	10-0-0 or Ten times	Rs. 250	Rs. 1,250
II. ...	5-0-0 „ Five times.	150	750
III. ...	2-0-0 „ Three times.	100	500
IV. ...	1-0-0 „ Double.	50	1,000
V. ...	No alteration in the assessment shall ordinarily be made.	No fine shall ordinarily be levied.	250
			500
			Rs. 2,500
			1,500
			1,000
			500
			500

And shall also be liable at the discretion of the Collector to a fine not exceeding five rupees or a sum equal to ten times the amount of assessment payable by him for one year if such sum be in excess of five rupees.



## APPENDIX III.

(Referred to in footnote on page 77.)

The following Memo. of conditions imposed in respect of sale by auction of the occupancy-right of Government lands has the approval of Government in their Resolution No. 1189, dated 13th February 1886:—

Memo. of the conditions of sale of the occupancy-right of the following unoccupied land to be held at \_\_\_\_\_ on the day of \_\_\_\_\_ 19 \_\_\_\_\_, *vis.* :—

Survey No.		, area about	
Acres,	Gunthas,	Assessment Rs.	in the
village of		Taluka	
and bounded			
on the North by			
on the South by			
on the East by			and
on the West by			

1. The sale shall be subject to confirmation by the Collector, or by some other revenue officer duly authorized to confirm the same.

2. It shall be in the discretion of the Collector or other officer aforesaid, to accept or not to accept, the highest bid.

3. The highest bidder shall have no ground for complaint if the sale be not confirmed, or if there be delay in the confirmation of the sale.

4. The party who is declared, subject to confirmation of the sale as aforesaid, to be the purchaser shall be required to deposit immediately 25 per centum on the amount of his bid, and, in default of such deposit, the occupancy-right shall forthwith again be put up and sold.

5.<sup>1</sup> The full amount of the purchase-money shall be paid by the purchaser before sunset of the fifteenth day from that on which the auction takes place, or if the said fifteenth day be a Sunday or other authorized holiday, then before sunset of the first office day after such fifteenth day.

6.<sup>1</sup> In default of payment within the said period of the full amount of the purchase-money, the deposit, after defraying thereout the expenses of the sale, shall be forfeited to Government and occupancy-right shall be resold, and the defaulting purchaser shall forfeit all claim to the occupancy-right, or to any part of the sum for which it may be subsequently sold.

7.<sup>1</sup> If the proceeds of the sale, which is eventually made, be less than the price bid by such defaulting purchaser, the difference shall be recoverable from him by the Collector as an arrear of land revenue.

8. If the sale is not confirmed, the purchaser shall be entitled to receive back his deposit or his purchase-money, as the case may be.

<sup>1</sup> The arrangement of these clauses has been altered in compliance with G. R. No. 6334, dated 20th August 1898, printed on page 222.

9. The purchaser shall, previously to entering upon occupation of the land, obtain the permission in writing of the Mamlatdar or Mahalkari under Section 60 of the Land Revenue Code. Such permission will only be accorded on the purchaser's paying local fund cess at the rate of one anna in the Rupee on the amount of the purchase-money, and on his executing an agreement (which should be executed within thirty days of the receipt of intimation by him of the confirmation of the sale) in the form of Appendix B to the rules framed under the Land Revenue Code. If the land is occupied without such permission being first obtained, the occupation will be liable to be treated as unauthorised under Section 61 of the Land Revenue Code.

10. The purchaser will have to pay the assessment of the land and local fund cess thereon commencing with the year.

Provided that, if without his own fault, he does not obtain possession of the land in due time to make use of it that year, he shall not be chargeable with the assessment and local fund cess thereof till the next following year.

11. The sale is subject to the right of Government to the following trees standing in the land which have been specially reserved (namely) :—  
(Here enter the number and description of trees, to be reserved.)

The trees, other than the reserved ones, are sold along with the occupancy-right.

(Where there are toddy and other juice producing trees the following conditions should be inserted.)

12. Government reserves to itself the right of prohibiting the extraction of the juice of all cocoanut, toddy, bherlimad, shindi, or other trees growing in the land, and of permitting any person to extract it on certain conditions. The purchaser must afford all reasonable facilities and conveniences to any person licensed by, or under the authority of Government to extract the juice from any such tree.

(Signed)

Collector ( or Mamlatdar or Mahalkari, as the case may be. )

#### APPENDIX IV.

(Referred to in footnote on page 140.)

The following form of notice to be issued under Section 87 to an inferior holder or co-sharer has been sanctioned by Government in their Resolution No. 5126, dated 5th September 1881 :—

No.

Application under Section 86 of Bombay Act V. of 1879 to the Collector of

A. B. Applicant superior holder.

vs.

C. D. inferior holder (co-sharer.)

To,

Claim Rs.

C. D. resident of

in Taluka

District.

Whereas the superior holder abovenamed has made an application for the recovery of (land-revenue) rent on account of Survey No. situated in the village of Taluka, from you the (co-sharer) inferior holder abovenamed, which (land-revenue) rent has become payable during the current (revenue year) year of your tenancy;

You are hereby required to attend before me either in person or by recognized agent at o'clock of the noon at my office (camp at ) in the Taluka on the day of 18 at which time and place enquiry into the said application will be made. And you are hereby required to produce before me at the abovenamed time and place any evidence you may wish to be heard, and further to show cause why the said application should not be granted.

If you fail to attend either in person or by recognized agent in pursuance of this notice, the abovementioned matter will be decided upon in your absence, and you will not afterwards be entitled to be heard with respect thereto. Dated this day of 19 .

(Signed)

Designation of officer.

### APPENDIX V.

(Referred to in footnote on page 146.)

In exercise of the power conferred by Section 216 of the Bombay Land Revenue Code, 1879, the Governor in Council is pleased to authorize the extension of the provisions of Sections of the said Code to the village of in the Taluka of the District.

By order, etc.,

Chief Secretary to Government, Revenue Department.

### APPENDIX VI.

(Referred to in footnote on page 158.)

*Form<sup>1</sup> of Declaration under Section 102 of the Land Revenue Code.*

WHEREAS Government have sanctioned the assessments fixed by the officer in charge of the in the case of such lands as are now actually used for the purposes of agriculture alone, and in the case of unoccupied cultivable lands, within the village of \_\_\_\_\_ in the taluka of the \_\_\_\_\_ district : and whereas the assessments hereinafter mentioned

\_\_\_\_\_ : and whereas the assessments in the case of the said lands so used as aforesaid have been announced as required by Section 103 of the Bombay Land Revenue Code, 1879, in the said village and the Survey Settlement has thereby been introduced into \_\_\_\_\_ villages

<sup>1</sup> This form was approved by Government in their Resolution No. 1582, dated 16th June 1904.

the said  $\frac{\text{village}}{\text{villages}}$ : Now in exercise of the power conferred by Section 102 of the said Code the Governor in Council is pleased to declare all the assessments above referred to, *with the modifications hereinafter specified in respect thereof* (omit the words in italics, if there are no such modifications), fixed for a term of \_\_\_\_\_ years commencing with the revenue year of \_\_\_\_\_ and ending with the revenue year of \_\_\_\_\_

(If there is more than one village, here enter the villages referred to above specifying the particular taluka, district, etc., to which they belong.)

By order, etc.,

Secretary to Government.

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## APPENDIX VII.

(Referred to in footnote on page 166.)

It is hereby made known to the occupants and landholders of village \_\_\_\_\_ of Taluka \_\_\_\_\_ of Zilla \_\_\_\_\_ that the classification of the lands is about to be carried out by the Survey Officers, and they are warned that while the classing process is going on, those who are concerned therein should bring to the notice of the Assistant Superintendent of Survey, who is in charge of the party of classers, any improvements or other circumstances bearing on the value of their land which they consider should be taken into account in fixing the values of their fields. If dissatisfied with the manner in which their representation is dealt with by that officer they may appeal to the Superintendent of Survey. Moreover they are hereby advised to make known in writing to the Survey Officers through their revenue patel or "panchayat," while the classing operations are in progress, any facts which they consider entitle their village to special consideration in fixing the standard of the new rates.

Superintendent of Revenue Survey.

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## APPENDIX VIII.

(Referred to in footnote on pages 166 and 168.)

It is hereby made known to the people of the undermentioned villages of Taluka \_\_\_\_\_ of Zilla \_\_\_\_\_ that the revision of the survey assessment of the lands of the said villages is about to be effected and that it is proposed to divide the said villages into the following groups, the existing and proposed maximum rates of each village being as shown against its name in the list.

APPENDIX Q.—Effect of Revision Settlement proposals on Government land.

४३

Number.	Name of Village.	By Former Survey.															By Revision Survey.															Percentage Increase.	Name of Village.	Number.	
		Maximum Rates.		Dry Crop.		Rice.		Garden.		Total.			Maximum Rates.		Dry Crop.		Rice.		Garden.		Total.														
		Dry Crop.	Rice.	Area.	Assessment.	Average.	Area.	Assessment.	Average.	Area.	Assessment.	Average.	Dry Crop.	Rice.	Garden.	Area.	Assessment.	Average.	Area.	Assessment.	Average.	Area.	Assessment.	Average.											
3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36		
1	2																																		

For a period of two months from the date of the publication of this notification the Collector will be prepared to receive objections made by any village community to the proposed grouping of their village and the maximum rate thereof, which objections must be presented in writing by the revenue patel of the village as the representative of such village community.

Superintendent of Revenue Survey.



# APPENDIX X.

( Referred to in footnote on page 169.)

(a)—Form of Akarband used in the Deccan Survey.

Akarband of Mouje \_\_\_\_\_ Taluka \_\_\_\_\_ District \_\_\_\_\_ showing  
Area and Assessment according to Revenue Survey.

APPENDIX X.

No.	Per No.	Area. A.	Deduct uncul- turable Area. A. G.	Details of Remaining Culturable Area.														
				Dry Crop.			Rice.			Garden.			Total Assesment.			Soil Asses- ment.	Water cess.	
				A. G.	Rate.	Asses- ment.	A. G.	Rate.	Asses- ment.	A. G.	Rate.	Asses- ment.	A. G.	Kacha Asses- ment.	Paka Asses- ment.			
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	

APPENDIX X.—continued.  
 (b)—Form of Akarband used in the Gujrat Survey.  
 Akarband of Mouje \_\_\_\_\_ Taluka \_\_\_\_\_ District \_\_\_\_\_ showing Area and Assessment according to Revenue Survey.

1	Survey.			Number.
2	Pot.			
3	Description of Land and Tenure.			
4	Total Area.			Total Area.
5	Deduct Kharab.			
6	Remaining Culturable.			
7	Distance in Miles between the Numbers and the Village-site.			
8	Area.	Details of Lands shown in Column 6 with its Classification Sanctioned Rate, etc.		
9	Soil Classification Annas.	Jirayat.	Rice.	Land watered by Dhekndhis.
10	Assessment per Acre.			
11	Total Assessment.			
12	Area.	Soil.	Water.	Water.
13	Classification Annas.			
14	Assessment per Acre.			
15	Total Assessment.			
16	Area.	Soil.	Water.	Soil.
17	Classification Annas.			
18	Assessment per Acre.			
19	Total Assessment.			
20	Area.	Soil.	Water.	Water.
21	Classification Annas.			
22	Assessment per Acre.			
23	Total Assessment.			
24	Area.	Soil.	Water.	Water.
25	Classification Annas.			
26	Assessment per Acre.			
27	Total Assessment.			
28	Area.	Soil.	Water.	Water.
29	Classification Annas.			
30	Assessment per Acre.			
31	Total Assessment.			
30	Total of Cols. 11, 15, 18, 22, 25, and 29.			
31	Assessment finally fixed after making Dharsod.			
32	Bagait Kasar.			
33	Total of Columns 31 and 32.			



# APPENDIX XI.

( Referred to in footnote on page 169. )

Sud Monje

Taluka

District

1	Survey No.
2	Name of Field.
3	Government or alienated.
4	Description of Land.
5	Pot No.
6	Phalni No.
7	Total Area.
8	Deduct Unculturable Area.
9	Remaining Culturable Area.
10	Assessment, Rs.
11	Judi.
12	Assessment on Inam Land minus Judi.
13	Name of Occupant.

## APPENDIX XII.

( Referred to in footnote on page 199.)

The following forms of orders to be issued under Section 141 have been sanctioned by Government in their Resolution No. 674, dated 27th January 1891 :—

(a) Form of order preventing the reaping of the crop—

It is hereby directed under Section 141 (a) that no crop growing on the lands following ( that is to say )  
 Survey No.                      in the village of                      shall be reaped until notice  
 in writing given to                      has been returned to                      endorsed with  
 acknowledgment of its receipt.

Notice of the above order is hereby given to (all the holders of land paying revenue to Government in the village of                      or to you A. B. holder of the lands aforesaid in the village of,                      as the case may be).  
 Given under my hand and the seal of the office                      dated the  
 day of                      18 .

Mamlatdar.

(b) Form of order preventing the removal of the crop—

It is hereby directed that no crop reaped on the following lands (that is to say)  
 Survey No.                      in the village of                      shall without the written permission of                      be removed from the said lands or from any other place wherein it may have been deposited.

Notice of the above is hereby given to (all the holders of land paying revenue to Government in the village of                      or to you A. B. holder of the lands aforesaid in the village of                      as the case may be).  
 Given under my hand and the seal of the office                      dated the  
 day of                      18 .

Mamlatdar.

## APPENDIX XIII.

( Referred to in footnote on page 202.)

The following is the form of security-bond sanctioned by G. R. No. 674, dated 27th January 1891 :—

Whereas A. B. residing at                      in the Taluka of                      the District                      is responsible to Government for the payment of revenue or in the instalments following, viz. :—

                    on the                      day of  
                     on the                      day of

I residing at                      village in the                      Taluka of the District hereby declare myself surety for the said A. B. and do hereby bind myself and all my heirs and executors that the said A. B. shall duly and punctually pay to the                      the said sums on the dates

on which they are respectively hereinbefore stated to be payable by him, and in case of the said A. B. making any default in any of the instalments in respect of any of the said sums or any part thereof, I do hereby bind myself and all my heirs and executors to pay to the the whole of the said sums or such part thereof as the said A. B. may have failed duly and punctually to pay as aforesaid.

Signature of surety  
In the presence of

## APPENDIX XIV.

( Referred to in footnote on page 205. )

From

The Collector of

To

The Collector of

Dated the                      of                      18

The sum of Rs.                      is payable on account of                      by                      , son of                      , resident of                      , who is believed ( to be at                      ) (to have property consisting of                      at                      ) in your district.

2. Subject to the provisions of the Revenue Recovery Act, 1890, the said sum is recoverable by you as if it were an arrear of land-revenue which had accrued in your own district, and you are hereby desired so to recover it and to remit it to my office at

A. B.  
Collector of

## APPENDIX XV.

( Referred to in footnote on page 245 and in order No. (7) on page 252. )  
*Agreement made by A. B., inamdar of the village of                      in the Taluka of the                      District.*

Whereas I am making an application to Government that under Section 216 of the Bombay Land Revenue Code, 1879, the provisions of Chapter VIII to X of that Code may be extended to my aforesaid village of                      ; and whereas, in the event of my said application being granted, Government undertakes, on condition of my agreeing to the stipulations hereinafter contained, to bear the costs of the survey and settlement of my said village, as well on the first occasion of the same being effected after the date of this agreement as also hereafter whenever any revision survey or settlement is introduced by order of Government according to law into my said village; I do hereby for myself, my heirs, executors and administrators agree as follows, viz. :—

1. That I will pay the salaries and perquisites of the village officers of the said village according to the scale which may from time to time be in force for the payment of village officers of Government villages in the district;

2. That I will remunerate the said village officers for the collection of local fund cess from the rayats of the said village according to the scale which may from time to time be in force for the payment of village officers of Government villages in the said district for the collection of the said cess from the rayats of those villages ;

3. That the salaries, perquisites and remuneration of the village officers according to the foregoing clauses 1 and 2 shall be a first charge on my revenue and may from time to time be deducted by the village officers from the said revenue before making payment thereof to me, in accordance with such directions as the Collector of \_\_\_\_\_ shall from time to time think fit to issue in this behalf ;

4. That I will from time to time, at my own expense, cause to be prepared and to be furnished with punctuality such periodical or other agricultural and vital statistics concerning the said village as may be required by the Collector, and that in the event of my failure at any time to discharge this obligation to the satisfaction of the Collector, the Collector may make such arrangements as he deems fit for obtaining such statistics as aforesaid, and the costs which he incurs in so doing shall be a first charge on my revenue recoverable as provided in clause 3 of this agreement.

Executed at  
this \_\_\_\_\_ of \_\_\_\_\_ 18 .  
Signed by A. B.  
in the presence of \_\_\_\_\_

(Signed)  
A. B.

## APPENDIX XVI.

(Referred to in a footnote on page 43.)

(Form of Sanad for the planting of trees in open places in villages sanctioned by G. R. No. 8966, dated 27th December 1901.)

Whereas \_\_\_\_\_ resident of Mouze \_\_\_\_\_ Taluka \_\_\_\_\_ in the District of \_\_\_\_\_ has applied to plant and rear (here enter the description of trees) trees in Government land \_\_\_\_\_ and whereas the aforesaid application has been duly sanctioned under the authority of G. R. No. 4118, dated 14th June 1901.

Now the Sanad is hereby granted to the said \_\_\_\_\_ authorizing him, his heirs and ancestors to plant and rear (Here enter the description of trees) trees in the marginally noted Government land of the village of \_\_\_\_\_ Taluka \_\_\_\_\_ in the district of \_\_\_\_\_ and to enjoy the produce thereof without any question on the part of Government and

without paying to Government any assessment or rent otherwise leviable under the Land Revenue Code or any other similar law in force from time to time on account of the land occupied by or under the trees, subject to the below-mentioned conditions, namely :—

1. No right of ownership in or over the soil of the land in which the trees are planted shall thereby be acquired.
2. The said land shall be kept open and no fence or other obstruction shall be placed thereon, other than a separate fence round each tree such as may be necessary for its proper protection.
3. The wood of the trees shall be the property of Government.
4. The trees shall be given up without compensation if the land be required by Government or the Local Board for any public purpose.
5. No compensation shall be claimed or given for any damage done to the trees by any excavation or work done connected with an adjoining tank.
6. Trees growing on land forming part of the village site may be lopped by the orders of the Collector, if necessary, without giving any compensation.

This Sanad is executed on behalf of the Secretary of State in Council by order of the Governor-in-Council of Bombay, by and under the hand and seal of  
 Esquire, Assistant Collector of  
 this                      day of

## APPENDIX XVII.

(Referred to on page 116.)

Form of quarterly returns of forfeiture to be submitted under G. R. No. 7444, dated 23rd October 1901, G. of I., No. <sup>2187</sup>/<sub>192-23</sub>, dated 9th October 1901. (*Vide* Section 80.)

District.	Resettled on non-transferable tenure.	Compulsory forfeiture.				Voluntary forfeiture.			
		No. of Cases.	Area.	Assessment.	Arrears.	No. of Cases.	Area.	Assessment.	Arrears.
1	2	3	4	5	6	7	8	9	10

## APPENDIX XVIII.

( See Appendix E under the rules. )

( Referred to in footnote on page 86. )

The following form of Sanad was sanctioned by G. R. No. 4738, dated 8th July 1901.

Whereas the land hereinafter described by measurement and by the boundaries specified in the schedule ( and delineated in the map hereto appended ) and forming ( part of ) Survey No. \_\_\_\_\_, in the village of \_\_\_\_\_, in the taluka of \_\_\_\_\_ district registered in the name of A. B., resident of \_\_\_\_\_, has been hitherto assessed as land appropriated for purposes of agriculture at the rate of \_\_\_\_\_; and whereas the said land has been appropriated to other purposes and such assessment has thereby become liable under Section 48 of the Bombay Land Revenue Code, 1879, to be altered and fixed at a different rate.

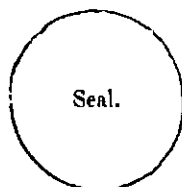
Now this is to certify that under the provisions of the said Code and Rules in force thereunder the assessment of the amount to be paid annually as land revenue on the said land has been fixed for a term of \_\_\_\_\_ years from the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ at the sum of Rs. \_\_\_\_\_ ( figures ) Rupees \_\_\_\_\_ ( words ) payable in each year of the said term by instalments of the amounts and accruing due on the dates following, that is to say—

On the expiry of the said term the assessment aforesaid will be liable to revision in accordance with the said Code and the rules thereunder.

Schedule hereinbefore referred to.

Length and breadth.		Total measurement, superficial area.	Forming part of Survey No., Pot No., or part of.	Boundaries.				Remarks.
North to South.	East to West.			North.	South.	East.	West.	

In witness whereof the Collector has hereto set his hand and the seal of his office this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_



Collector.

## APPENDIX XIX.

(Referred to in footnote on page 209.)

**Form of proclamation and written notice under Section 153 of the Land Revenue Code.**

(Sanctioned by G. R. No. 4236, dated 21st June 1902.)

Whereas \_\_\_\_\_ residing at \_\_\_\_\_ has

Year.	Survey Nos.	Land Revenue.	Local Fund Cess.
Total...			

not paid a sum of Rs.

due by him for Land Revenue and Local Fund Cess on the Survey Nos. as specified in the margin in the village of \_\_\_\_\_ in the taluka of \_\_\_\_\_

in the \_\_\_\_\_ district.

Notice is hereby given that on and after the \_\_\_\_\_ day of \_\_\_\_\_ 190\_\_\_\_, unless the arrears are sooner paid, the Collector proposes to declare the holding to be forfeited.

Dated \_\_\_\_\_

Collector.

**Form of slip to be issued along with the above notice.**

With reference to the attached Notice under Section 153 of the Land Revenue Code \_\_\_\_\_, residing at \_\_\_\_\_ is informed that the Collector proposes, after declaring his holding forfeited, to regrant it to him subject to the condition that the occupant shall not transfer it in any way to another person without the sanction in writing of the Collector.

Dated \_\_\_\_\_

Collector.

## APPENDIX XX.

(Under Sections 65, 66, and 67.)

(These forms were sanctioned by G. R. No. 1188,  
dated 13th February 1904.)

## FORM A.

(To be used where applicant applies for permission to appropriate to building purposes land hitherto used for agricultural purposes.)

*( Royal Arms. )*

*N.B.*—Under the provisions of Section 67 of the Bombay Land Revenue Code, 1879, the applicant should be the registered occupant before an Agreement under that section is entered into with him. If necessary, the land appropriated under the Agreement should be demarcated as a separate number under section 116 of the Land Revenue Code, and the applicant entered as the registered occupant thereof.

THIS AGREEMENT made this \_\_\_\_\_ day  
of \_\_\_\_\_ one thousand nine hundred and \_\_\_\_\_  
between the SECRETARY OF STATE  
FOR INDIA IN COUNCIL (hereinafter referred to as  
"the Secretary of State") on the one part and  
\_\_\_\_\_ inhabitant of \_\_\_\_\_  
( hereinafter  
referred to as " the applicant ") on the other part.

WHEREAS the applicant being the registered  
occupant of \_\_\_\_\_ of \_\_\_\_\_

Taluka \_\_\_\_\_ District \_\_\_\_\_  
has applied to the Collector of \_\_\_\_\_

( hereinafter referred to as  
" the Collector ") under Section 65 of the Bombay  
Land Revenue Code, 1879 (hereinafter referred to as  
" the said Code "), for permission to appropriate to  
building purposes the plot of land indicated by the  
letters \_\_\_\_\_ on the site-plan hereto  
annexed,\* forming part of the said

\* Care must be  
taken that this is  
duly annexed.

and measuring \_\_\_\_\_  
square yards, be the same a little more  
or less.

AND WHEREAS the Collector has been autho-  
rized by Government to grant, under Section 67 of the  
said Code, the permission applied for subject to the  
provisions of the said Code, and rules and orders  
thereunder, and to the terms and conditions hereinafter  
contained,



NOW IT IS HEREBY AGREED between the Secretary of State and the applicant that permission to appropriate to non-agricultural purposes the plot of land indicated by the letters \_\_\_\_\_ on the said site-plan (which plot of land is hereinafter referred to as "the said plot of land") in the particular manner shown in the said site-plan, namely,—

\* Here insert the particular purpose for which the building is to be erected, such as "a residential bungalow and attached out-houses other than a stable or privy."

(A) an area of \_\_\_\_\_ square yards indicated by a \_\_\_\_\_ colour and the letters \_\_\_\_\_ for the purpose of \*

or for the purpose of an open compound only :

(B) an area of \_\_\_\_\_ square yards indicated by a \_\_\_\_\_ colour and the letters \_\_\_\_\_ for the purpose of †

† Here insert the particular 'purpose' for which the building is to be erected, such as "a shop" or "a privy."

or for the purpose of an open compound only :

(C) an area of \_\_\_\_\_ square yards indicated by the uncoloured portion of the said plot for the purpose of an open compound only :

shall be and is hereby granted subject to the provisions of the said Code, and rules and orders thereunder, and on the following special terms and conditions, namely:—

- (1) The applicant in lieu of the present assessment leviable in respect of the said plot of land shall pay to Government without deduction on the \_\_\_\_\_ day of \_\_\_\_\_ in each and every year an annual assessment of Rupees \_\_\_\_\_ (Rs. \_\_\_\_\_) during the fifty (50) years commencing on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, and ending on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ or in composition therefor a lump sum of Rupees \_\_\_\_\_ (Rs. \_\_\_\_\_) being twenty-five (25) times the said annual assessment and thereafter such revised assessment as may from time to time be fixed by the Collector under the said Code and the rules and orders thereunder :

*N. B.*—Omit this clause in cases where no such surrender is made.

(2) The applicant hereby gives up, resigns and relinquishes to Government without claiming any compensation therefor all interest in, and the Collector on behalf of Government is hereby permitted without further notice to the applicant to enter upon and take possession of the following pieces of land, that is to say :—

(a) for the purpose of widening and forming part of the road on the side of the aforesaid plot a strip of land containing by ad-measurement square yards, be the same a little more or less, indicated by a colour and the letters on the site-plan hereto annexed; and

(b) for the purpose of being used as a sweeper's passage (and not as a public thoroughfare) a strip of land situate along and within the boundary of the aforesaid plot and indicated by a colour and the letters on the said site-plan and containing by admeasurement square yards, be the same a little more or less :

(3) The applicant is hereby prohibited under the last paragraph of Section 48 of the said Code from appropriating, without the previous permission in writing of the Collector, any part of the said plot of land to any purpose other than that for which permission to appropriate it is hereinbefore granted to the applicant :

Provided that :—

(i) nothing in the above shall be deemed to prohibit the applicant—

(a) from erecting or constructing, without such previous permission, in the portion (C) (*i. e.*, appropriated for the purpose of an open compound only) boundary-walls not exceeding four feet in height, garden-fountains, uncovered steps and similar structures, not being projections from a building, such as verandahs, balconies, eaves or shopboards;

\* Here insert any special exception or reservation that may be necessary, such as "save on the sides indicated by the lines CD, EF, on the said site-plan, where the existing margin as shown therein is allowed to remain."

† Omit this sub-clause (c) if applicant has not agreed to pay full assessment in respect of the portion (C) so as to be entitled to this concession.

‡ Omit the words in italics if sub-clause (c) has been omitted.

§ Enter the amount calculated at five times the rate of assessment on the land permitted to be built over under the Agreement (see paragraph 4 of G. R., R. D., No. 6411 of the 16th September 1903).

(b) from constructing, without such previous permission, wells or tanks in any part of such portion (C) that does not lie within a margin consisting of a strip feet broad along and inside the perimeter of the said plot of land.\*

(c)† from appropriating, without such previous permission, to any non-agricultural purpose, other than that of a shop, a stable or a privy, to an extent not exceeding in total admeasurement square yards, any part of such portion (C) that does not lie within the aforesaid margin;

and

(ii) where any such prohibited appropriation is permitted by the Collector the applicant shall, ‡ *except in the case of an appropriation of any part of the land measuring* *square yards* and specified in sub-clause (c) of proviso (i) above, be liable to pay from the date of the appropriation in respect of the land so appropriated such enhanced assessment not exceeding § Rupees (Rs. ) per hundred (100) square yards as the Collector may deem fit to impose, and in any such case the total amount payable under clause (1) of this Agreement shall be modified accordingly;

(4) If at any future date the Collector gives the applicant notice in writing that any portion of the margin specified in sub-clause (b) of proviso (i) to clause (3) of this Agreement is required by Government for the purposes of a road, the applicant shall, at the expiration of one month after the receipt of such notice, quietly surrender and hand over possession of such portion to the Collector

on behalf of Government in consideration of receiving from Government in exchange and as full compensation therefor a sum equivalent to thirty (30) times the assessment proportionately payable upon the portion so surrendered, namely, an assessment at the rate of Rupees\*

(Rs. ) per  
hundred (100) square yards :

\* Enter the amount calculated in accordance with paragraph 1 of G. R., R. D., No 1188, of the 13th February 1904.

† This proviso was added by G. R. No. 6088, dated 4th July 1904.

† Provided that, where the materials of any gate, wall, pavement or other such authorized erection or construction on such portion cannot in the opinion of the Collector be removed without appreciable loss, such further compensation on this account shall be paid to the applicant as the Collector may deem fit :

- (5) The applicant shall within three (3) years from the date of this Agreement, that is before the \_\_\_\_\_ day of \_\_\_\_\_

19 \_\_\_\_\_, erect and complete on the said plot of land † of a substantial and permanent description, and shall in regard thereto duly comply in every respect with the building regulations contained in the Schedule hereto annexed :

- (6) The applicant shall remove the existing \_\_\_\_\_ indicated on the site-plan hereto annexed by a \_\_\_\_\_ colour and the letters \_\_\_\_\_ within a period of \_\_\_\_\_ from the date of this Agreement :

- (7) Nothing in this Agreement shall affect the applicant's liability to any payment which may be required under any law for the time being in force for the construction and maintenance of roads and drains :

- (8) The Collector may without prejudice to any other penalty to which the applicant may be liable under the provisions of the said Code, or rules or orders thereunder, direct the removal or alteration of any building or structure erected contrary to clause (3) or

† Here insert description of the buildings, such as " a residential bungalow and out-houses."

N. B.—Omit this clause in cases where there are no existing buildings to be removed.

## APPENDIX XX.

\* Omit the words in italics in cases where clause (6) is omitted.

(5), \* or not removed in accordance with clause (6), of this Agreement within a time prescribed in that behalf by the Collector, and on such removal or alteration not being carried out within the prescribed period may cause the same to be carried out at the expense of the applicant :

- (9) AND IT IS HEREBY LASTLY AGREED between the parties hereto that in this Agreement the words "the Secretary of State" shall include the Secretary of State, his successors and assigns, and the words "the applicant" shall include the applicant, his heirs, executors, administrators and assigns, and the words "the Collector" shall mean the Collector of

for the time being or any other officer whom the Governor of Bombay in Council or the Commissioner,

Division, or the Collector, directs to exercise the powers or perform the duties of the Collector under this Agreement. And also that the applicant shall bear and discharge all the costs and expenses incurred in the preparation execution, stamping and registration of these presents.

A.B.—Two copies should be executed, one to be kept by the Collector, and the other to be handed to the applicant.

IN WITNESS WHEREOF the Collector of has by order of the Governor of Bombay in Council hereunto set his hand and the seal of his office, on behalf of the Secretary of State for India in Council, and the applicant has also hereunto set his hand the day and year first above written.

Signed by

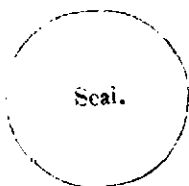
(Applicant's signature.)

in the presence of

Signed by

Collector of

in the presence of



Seal.

(Collector's signature.)

## FORM B.

(To be used where applicant has already appropriated Land to Building purposes without permission and applies for permission to continue so to appropriate it.)

(Royal Arms.)

N. B.—Under the provisions of Section 67 of the Bombay Land Revenue Code, 1879, the applicant should be the registered occupant before an Agreement under that section is entered into with him. If necessary the land appropriated under the Agreement should be demarcated as a separate number under Section 116 of the Land Revenue Code, and the applicant entered as the registered occupant thereof.

\*Care must be taken that this is duly annexed.

**THIS AGREEMENT** made this day of                    one thousand nine hundred and                    between the **SECRETARY OF STATE FOR INDIA IN COUNCIL** (hereinafter referred to as "the Secretary of State") on the one part and                    inhabitant of                    (hereinafter referred to as "the applicant") on the other part.

**WHEREAS** the applicant being the registered occupant of                    Taluka                    District has appropriated to building purposes without the permission of the Collector of                    (hereinafter referred to as "the Collector") being first obtained as required by Section 65 of the Bombay Land Revenue Code, 1879 (hereinafter referred to as "the said Code"), the plot of land indicated by the letters                    on the site-plan hereto annexed,\* forming part of the said                    and measuring                    square yards, be the same a little more or less, and has thereby become liable to the penalties prescribed by Section 66 of the said Code,

**AND WHEREAS** the applicant has applied for permission to remain in possession of and to continue to appropriate the above said plot of land to building purposes,

**AND WHEREAS** the Collector has been authorized by Government to grant, under Section 67 of the said Code, the permission applied for subject to the provisions of the said Code, and rules and orders thereunder, and to the terms and conditions hereinafter contained.

**NOW IT IS HEREBY AGREED** between the Secretary of State and the applicant that permission to appropriate to non-agricultural purposes the plot of land indicated by the letters                    on the said site-plan (which plot of land is hereinafter referred to as "the said plot of land") in the particular manner shown in the said site-plan, namely,—

\* Here insert the particular purpose for which the building is to be erected, such as "a residential bungalow and attached outhouses other than a stable or privy."

† Here insert the particular purpose for which the building is to be erected, such as "a shop" or "a privy."

(A) an area of \_\_\_\_\_ square yards indicated by a \_\_\_\_\_ colour and the letters \_\_\_\_\_ for the purpose of\*

or for the purpose of an open compound only:

(B) an area of \_\_\_\_\_ square yards indicated by a \_\_\_\_\_ colour and the letters \_\_\_\_\_ for the purpose of †

or for the purpose of an open compound only:

(C) an area of \_\_\_\_\_ square yards indicated by the uncoloured portion of the said plot for the purpose of an open compound only :

shall be and is hereby granted subject to the provisions of the said Code, and rules and orders thereunder, and on the following special terms and conditions, namely:

(1) The applicant in lieu of the present assessment leviable in respect of the said plot of land shall pay to Government without deduction on the \_\_\_\_\_ day of \_\_\_\_\_ in each and every year an annual assessment of Rupees (Rs. \_\_\_\_\_) during the fifty (50) years commencing on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, and ending on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, or in composition therefor a lump sum of Rupees (Rs. \_\_\_\_\_) being twenty-five (25) times the said annual assessment, and thereafter such revised assessment as may from time to time be fixed by the Collector under the said Code and the rules and orders thereunder.

(2) The applicant hereby gives up, resigns and relinquishes to Government without claiming any compensation therefor all interest in, and the Collector on behalf of Government is hereby permitted without further notice to the applicant to enter upon and take possession of, the following pieces of land, that is to say :—

(a) for the purpose of widening and forming part of the \_\_\_\_\_ road on the \_\_\_\_\_ side of the aforesaid plot a

N. B.—Omit this clause in cases where no such surrender is made.

strip of land containing by admeasurement square yards, be the same a little more or less, indicated by a colour and the letters on the site-plan hereto annexed; and

- (b) for the purpose of being used as a sweeper's passage ( and not as a public thoroughfare ) a strip of land situate along and within the boundary of the aforesaid plot and indicated by a colour and the letters on the said site-plan and containing by admeasurement square yards, be the same a little more or less:

- (3) The applicant is hereby prohibited under the last paragraph of Section 48 of the said Code from appropriating, without the previous permission in writing of the Collector, any part of the said plot of land to any purpose other than that for which permission to appropriate it is hereinbefore granted to the applicant:

Provided that—

- (i) nothing in the above shall be deemed to prohibit the applicant—
- (a) from erecting or constructing, without such previous permission, in the portion (C) (i.e., appropriated for the purpose of an open compound only) boundary-walls not exceeding four feet in height, garden-fountains, uncovered steps and similar structures, not being projections from a building such as verandahs, balconies, eaves, or shop-boards ;
- (b) from constructing, without such previous permission, wells or tanks in any part of such portion (C) that does not lie within a margin consisting of a strip feet broad along and inside the perimeter of the said plot of land\*

\* Here insert any special exception or reservation that may be necessary, such as "save on the sides indicated by the line CD, EF, on the said site-plan, where the existing margin as shown therein is allowed to remain."



\* Omit this sub-clause (c) if applicant has not agreed to pay full assessment in respect of the portion (C) so as to be entitled to this concession.

- (c) \* from appropriating, without such previous permission, to any non-agricultural purpose, other than that of a shop, a stable or a privy, to an extent not exceeding in total admeasurement square yards, any part of such portion (C) that does not lie within the aforesaid margin ;

and

- (ii) where any such prohibited appropriation is permitted by the Collector, the applicant shall, *† except in the case of an appropriation of any part of the land measuring square yards and specified in sub-clause (c) of proviso (i) above*, be liable to pay from the date of the appropriation in respect of the land so appropriated such enhanced assessment not exceeding † Rupees (Rs. ) per hundred (100) square yards as the Collector may deem fit to impose, and in any such case the total amount payable under clause (1) of this Agreement shall be modified accordingly :

† Omit the words in italics if sub-clause (c) has been omitted.

‡ Enter the amount calculated at five times the rate of assessment on the land permitted to be built over under the Agreement (see paragraph 4 of G. R., R. D., No. 6411 of the 16th September 1903).

- (4) If at any future date the Collector gives the applicant notice in writing that any portion of the margin specified in sub-clause (b) of proviso (i) to clause (3) of this Agreement is required by Government for the purposes of a road, the applicant shall, at the expiration of one month after the receipt of such notice, quietly surrender and hand over possession of such portion to the Collector on behalf of Government in consideration of receiving from Government in exchange and as full compensation therefor a sum equivalent to thirty (30) times the assessment proportionately payable upon the portion so surrendered, namely, an assessment at the rate of Rupees § (Rs. ) per hundred (100) square yards :

§ Enter the amount calculated in accordance with paragraph 1 of G. R., R. D., No. 1188 of the 13th February 1904.

<sup>1</sup> Provided that, where the materials of any gate, wall, pavement or other such authorised erection or construction on such portion cannot in the opinion of the Collector be removed without appreciable loss, such further compensation on this account shall be paid to the applicant as the Collector may think fit :

\* Here insert description of the buildings, such as "a residential bungalow and out-houses."

(5) The applicant shall within three (3) years from the date of this Agreement, that is, before the \_\_\_\_\_ day of 19\_\_\_\_, erect and complete on the said plot of land<sup>2</sup>

of a substantial and permanent description, and shall in regard thereto duly comply in every respect with the building regulations contained in the Schedule<sup>2</sup> hereto annexed :

N. B.—Omit this clause in cases where there are no existing buildings to be removed.

(6) The applicant shall remove the existing \_\_\_\_\_ indicated on the site-plan hereto annexed by a \_\_\_\_\_ colour and the letters \_\_\_\_\_ within a period of \_\_\_\_\_ from the date of this Agreement :

(7) Nothing in this Agreement shall affect the applicant's liability to any payment which may be required under any law for the time being in force for the construction and maintenance of roads and drains :

(8) The Collector may, without prejudice to any other penalty to which the applicant may be liable under the provisions of the said Code, or rules or orders thereunder, direct the removal or alteration of any building or structure erected contrary to clause (3) or (5), † or not removed in accordance with clause (6), of this Agreement within a time prescribed in that behalf by the Collector, and on such removal or alteration not being carried out within the prescribed period may cause the same to be carried out at the expense of the applicant :

† Omit the words in italics in cases where clause (6) is omitted.

<sup>1</sup> This proviso was added by G. R. No. 5088, dated 4th July 1904.

<sup>2</sup> For Schedule of Building regulations, see pages 294—296.

## (9) AND IT IS HEREBY LASTLY AGREED

between the parties hereto that in this Agreement the words "the Secretary of State" shall include the Secretary of State, his successors and assigns, and the words "the applicant" shall include the applicant, his heirs, executors, administrators and assigns, and the words "the Collector" shall mean the Collector of \_\_\_\_\_ for the time being or any other officer whom the Governor of Bombay in Council or the Commissioner, \_\_\_\_\_ Division, or the Collector, directs to exercise the powers or perform the duties of the Collector under this Agreement. And also that the applicant shall bear and discharge all the costs and expenses incurred in the preparation, execution, stamping and registration of these presents.

*N.B.*—Two copies should be executed, one to be kept by the Collector, and the other to be handed to the applicant.

IN WITNESS WHEREOF the Collector of \_\_\_\_\_ has by order of the Governor of Bombay in Council hereunto set his hand and the seal of his office, on behalf of the Secretary of State for India in Council, and the applicant has also hereunto set his hand the day and year first above written.

Signed by

(Applicant's signature.)

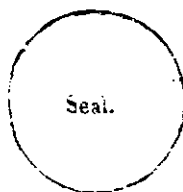
in the presence of

Signed by

Collector of \_\_\_\_\_

in the presence of

(Collector's signature.)



## FORM C.

(To be used where applicant has appropriated Land to Building purposes with permission, but is willing to comply with the terms of this Agreement in order to gain the benefits thereof.)

(*Royal Arms.*)

N. B.—Under the provisions of Section 67 of the Bombay Land Revenue Code, 1879, the applicant should be the registered occupant before an Agreement under that Section is entered into with him. If necessary, the land appropriated under the Agreement should be demarcated as a separate number under Section 116 of the Land Revenue Code, and the applicant entered as the registered occupant thereof.

\* Care must be taken that this is duly annexed.

**THIS AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_ one thousand nine hundred and \_\_\_\_\_ between the SECRETARY OF STATE FOR INDIA IN COUNCIL (hereinafter referred to as "the Secretary of State") on the one part and \_\_\_\_\_ inhabitant of \_\_\_\_\_ (hereinafter referred to as "the applicant") on the other part.

**WHEREAS** the applicant being the registered occupant of \_\_\_\_\_ of \_\_\_\_\_

Taluka \_\_\_\_\_ District \_\_\_\_\_ has appropriated to building purposes with the permission of the Collector of \_\_\_\_\_ (hereinafter referred to as "the Collector") granted under Section 65 of the Bombay Land Revenue Code, 1879 (hereinafter referred to as "the said Code"), the plot of land indicated by the letters \_\_\_\_\_ on the site-plan hereto annexed,\* forming part of the said \_\_\_\_\_ and measuring \_\_\_\_\_ square yards, be the same a little more or less :

**AND WHEREAS** the applicant has applied, in lieu of the said permission of the Collector, for permission to appropriate the aforesaid plot of land to building purposes on certain special terms and conditions :

**AND WHEREAS** the Collector has been authorized by Government to grant, under Section 67 of the said Code, the permission applied for subject to the provisions of the said Code, and rules and orders thereunder, and to the terms and conditions hereinafter contained.

**NOW IT IS HEREBY AGREED** between the Secretary of State and the applicant that permission to appropriate to non-agricultural purposes the plot of land indicated by the letters \_\_\_\_\_ on the said site-plan (which plot of land is hereinafter referred to as "the said plot of land") in the particular manner shown in the said site-plan, namely,—

\* Here insert the particular purpose for which the building is to be erected, such as "a residential bungalow and attached out-houses other than a stable or privy."

† Here insert the particular purpose for which the building is to be erected, such as "a shop" or "a privy."

- (A) an area of \_\_\_\_\_ square yards indicated by a \_\_\_\_\_ colour and the letters \_\_\_\_\_ for the purpose of \*  
or for the purpose of an open compound only:
- (B) an area of \_\_\_\_\_ square yards indicated by a \_\_\_\_\_ colour and the letters \_\_\_\_\_ for the purpose of †  
or for the purpose of an open compound only:
- (C) an area of \_\_\_\_\_ square yards indicated by the uncoloured portion of the said plot for the purpose of an open compound only:

shall be and is hereby granted subject to the provisions of the said Code, and rules and orders thereunder, and on the following special terms and conditions, namely:—

- (1) The applicant in lieu of the present assessment leviable in respect of the said plot of land shall pay to Government without deduction on the \_\_\_\_\_ day of \_\_\_\_\_ in each and every year an annual assessment of Rupees \_\_\_\_\_ (Rs. \_\_\_\_\_) during the fifty (50) years commencing on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, and ending on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, or in composition therefor a lump sum of Rupees \_\_\_\_\_ (Rs. \_\_\_\_\_), being twenty-five (25) times the said annual assessment, and thereafter such revised assessment as may from time to time be fixed by the Collector under the said Code and the rules and orders thereunder;
- (2) The applicant hereby gives up, resigns and relinquishes to Government without claiming any compensation therefor all interest in, and the Collector on behalf of Government

N. B.—Omit this clause in cases where no such surrender is made.

is hereby permitted without further notice to the applicant to enter upon, and take possession of, the following pieces of land, that is to say:—

- (a) for the purpose of widening and forming part of the road on the side of the aforesaid plot a strip of land containing by admeasurement square yards, be the same a little more or less, indicated by a colour and the letters on the site-plan hereto annexed; and
- (b) for the purpose of being used as a sweeper's passage (and not as a public thoroughfare) a strip of land situates along and within the boundary of the aforesaid plot and indicated by a colour and the letters on the said site-plan and containing by admeasurement square yards, be the same a little more or less:
- (3) The applicant is hereby prohibited under the last paragraph of Section 48 of the said Code from appropriating, without the previous permission in writing of the Collector, any part of the said plot of land to any purpose other than that for which permission to appropriate it is hereinbefore granted to the applicant:

Provided that:—

- (i) nothing in the above shall be deemed to prohibit the applicant—
- (a) from erecting or constructing, without such previous permission, in the portion (C) (i.e., appropriated for the purpose of an open compound only) boundary-walls not exceeding four feet in height, garden-fountains, uncovered steps and similar structures, not being projections from a building such as verandahs, balconies, eaves or shop-boards;

\* Here insert any special exception or reservation that may be necessary, such as "save on the sides indicated by the lines CD, EF, on the said site-plan, where the existing margin as shown therein is allowed to remain."

† Omit this sub-clause (c) if applicant has not agreed to pay full assessment in respect of the portion (C), so as to be entitled to this concession.

‡ Omit the words in italics if sub-clause (c) has been omitted.

§ Enter the amount calculated at five times the rate of assessment on the land permitted to be built over under the Agreement (see paragraph 4 of G. R., R. D., No. 6411 of the 16th September 1903).

(b) from constructing, without such previous permission, wells or tanks in any part of such portion (C) that does not lie within a margin consisting of a strip  
feet broad along and inside the perimeter of the said plot of land\*

(c)† from appropriating, without such previous permission, to any non-agricultural purpose, other than that of a shop, a stable or a privy, to an extent not exceeding in total admeasurement  
square yards, any part of such portion (C) that does not lie within the aforesaid margin ;

and

(ii) where any such prohibited appropriation is permitted by the Collector, the applicant shall, † *except in the case of an appropriation of any part of the land measuring square yards and specified in sub-clause (c) of proviso (i) above*, be liable to pay from the date of the appropriation in respect of the land so appropriated such enhanced assessment not exceeding § Rupees

(Rs. ) per hundred (100) square yards as the Collector may deem fit to impose, and in any such case the total amount payable under clause (1) of this Agreement shall be modified accordingly :

(4) If at any future date the Collector gives the applicant notice in writing that any portion of the margin specified in sub-clause (b) of proviso (i) to clause (3) of this Agreement is required by Government for the purposes of a road, the applicant shall, at the expiration of one month after the receipt of such notice, quietly surrender and hand over

possession of such portion to the Collector on behalf of Government in consideration of receiving from Government in exchange and as full compensation therefor a sum equivalent to thirty (30) times the assessment proportionately payable upon the portion so surrendered, namely, an assessment at the rate of Rupees\*

\* Enter the amount calculated in accordance with paragraph I of G. R. E. D., No 1188 of the 13th February 1904.

(Rs. ) per hundred (100) square yards :

Provided<sup>1</sup> that, where the materials of any gate, wall, pavement or other such authorized erection or construction on such portion cannot, in the opinion of the Collector, be removed without appreciable loss, such further compensation on this account shall be paid to the applicant as the Collector may think fit :

- (5) The applicant shall within three (3) years from the date of this Agreement, that is, before the day of 19 , erect and complete on the said plot of land†

† Here insert description of the buildings, such as "a residential bungalow and out-houses."

of a substantial and permanent description, and shall in regard thereto duly comply in every respect with the building regulations contained in the Schedule<sup>2</sup> hereto annexed :

N. B.— Omit this clause in cases where there are no existing buildings to be removed.

- (6) The applicant shall remove the existing indicated on the site-plan hereto annexed by a colour and the letters within a period of from the date of this Agreement :
- (7) Nothing in this Agreement shall affect the applicant's liability to any payment which may be required under any law for the time being in force for the construction and maintenance of roads and drains :

<sup>1</sup> This proviso was added by G. R. No. 5088, dated 4th July 1904.

<sup>2</sup> For Schedule see pages 294-296.



\* Omit the words in italics in cases where clause (6) is omitted.

(8) The Collector may without prejudice to any other penalty to which the applicant may be liable under the provisions of the said Code, or rules or orders thereunder, direct the removal or alteration of any building or structure erected contrary to clause (3) or (5), *\*or not removed in accordance with clause (6),* of this Agreement within a time prescribed in that behalf by the Collector, and on such removal or alteration not being carried out within the prescribed period may cause the same to be carried out at the expense of the applicant :

(9) AND IT IS HEREBY LASTLY AGREED between the parties hereto that in this Agreement the words "the Secretary of State" shall include the Secretary of State, his successors and assigns, and the words "the applicant" shall include the applicant, his heirs, executors, administrators and assigns, and the words "the Collector" shall mean the Collector of

for the time being or any other officer whom the Governor of Bombay in Council or the Commissioner, Division, or the Collector, directs to exercise the powers or perform the duties of the Collector under this Agreement. And also that the applicant shall bear and discharge all the costs and expenses incurred in the preparation, execution, stamping and registration of these presents.

N.B.—Two copies should be executed, one to be kept by the Collector, and the other to be handed to the applicant.

IN WITNESS WHEREOF the Collector of  
has by order of the  
Governor of Bombay in Council hereunto set his hand  
and the seal of his office, on behalf of the Secretary of  
State for India in Council, and the applicant has also

hereunto set his hand the day and year first above written.

Signed by

(Applicant's signature)

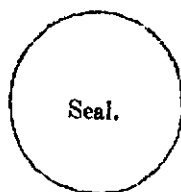
in the presence of

Signed by

Collector of

(Collector's signature)

in the presence of



### **SCHEDULE OF BUILDING REGULATIONS.**

*Definitions.*

1. In these rules—

(i) "dwelling" means any building or part of a building used or intended for use as a dwelling for human beings, horses, or cattle;

(ii) "window" includes an open space running right through a wall so as to admit of the entry of air.

*Plinth.*

2. Every building intended to be used as a dwelling for human beings, or as a privy or kitchen, shall have a plinth at least two feet above ground level.

*Ventilation.*

3. (i) Every room that is a dwelling shall be at least eight feet high at every point.

(ii) Every such room shall have a window opening directly into the air outside the house.

(iii) In every such room the total area of such outside windows shall be not less than one-tenth of the floor area.

(iv) In every such room every window shall be so constructed that at least its upper half is open or can be opened.

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<sup>1</sup> These regulations are common to three forms given above.

## Privies.

4. (i) No privy shall be built within five feet of any dwelling or within twenty feet of any kitchen, public road or place of public resort, or within thirty feet of a well or other source of water-supply.

(ii) For every twenty persons a house is intended to accommodate there shall be at least one privy.

(iii) Every privy shall be provided with a moveable receptacle for night-soil with a capacity of not more than two cubic feet.

(iv) Every privy shall be so constructed that the bottom of the receptacle for night-soil, urine, or ablation-water shall be at a level at least two feet above ground level.

(v) There shall be ventilation-holes at the bottom both of the door of the privy and the door of the chamber for the night-soil receptacle and also as near the top of the privy as practicable, these latter top-holes aggregating at least two square feet in area.

(vi) The sides and floor of the chamber for the receptacle shall be constructed of hard smooth stone, brickwork plastered with cement, or other non-absorbent material; and the floor shall be so sloped that any liquid discharged on it shall rapidly and easily flow to an outlet.

(vii) The door of the said chamber shall occupy the whole height and width of the chamber and shall open outwards on to a space screened in behind the privy and so arranged that a sweeper may conveniently do his work there without being seen by anyone outside.

(viii) Arrangements shall be made to allow of the receptacle for night-soil being so fixed that it projects on all sides at least one inch beyond the space vertically below the aperture through which night-soil falls.

(ix) Every privy shall be so constructed that urine, and such ablation-water as is not actually used for ablation can be disposed of without entering the receptacle for night-soil.

## Cess-pools.

5. (i) No cess-pool shall be built within twenty feet of a dwelling or kitchen, or within thirty feet of a well or other source of water-supply.

(ii) Every cess-pool shall be constructed of good masonry, at least one foot thick, plastered inside with cement, and shall be perfectly water-tight.

(iii) The bottom of every cess-pool shall be at a level not lower than one foot below ground level.

(iv) The sides of every cess-pool shall project above ground sufficiently to prevent the inflow of surface drainage.

(v) Every cess-pool shall be entirely open to sun and air and shall have a superficial area of at least two square feet.

Urine, sullage  
water, etc.

6. (i) Every outlet for the passage of urine, sullage water or other filthy liquid from any building shall be at a height of at least two feet above ground level.

(ii) Arrangements shall be made for all such urine, sullage water or other filthy liquid either—

(a) to flow rapidly without touching the walls of the building or the ground through drains of glazed earthenware or other hard, impervious material to points at least twenty feet from the nearest point of every dwelling or kitchen; or

(b) to fall without touching the walls of the building into a water-tight removeable receptacle entirely above ground level and open to light and air.

(iii) Every such drain that is not open to the air shall be trapped at the end nearest the building from which it runs.

Prevention of stag-  
nation.

7. All land within one hundred yards of any dwelling shall be so cleared and sloped as effectually to prevent the formation of pits or hollows in which water may stagnate, other than cess-pools satisfying rule 5.

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# RULES UNDER THE LAND REVENUE CODE, 1879.

## UNDER SECTION 213.<sup>1</sup>

### I.—INSPECTION.<sup>2</sup>

1.<sup>3</sup> The documents, maps, registers, accounts and records, the right of inspection of which is provided for in Section 91

<sup>1</sup>(1) The rules under Section 213 for the inspection, search, and furnishing of copies or extracts, &c., do not apply to municipal records. These rules are framed by Government, and they are therefore only applicable to those public officers who are subject in such matters to the orders of Government. Municipal Corporations and their officers are not so subject to Government, and the rules in question do not affect them or any documents in their charge or control. (G. R. No. 1579, G. D., dated 18th May 1884.)

(2) These rules (Nos. 1 to 17) were made—(1) under Section 91 of the Registration Act; (2) under Section 213 of the Land Revenue Code; and (3) in exercise of all other powers possessed by the Governor in Council in this behalf. They are therefore applicable to survey and village documents as well as to all other documents which are public documents within the meaning of Section 74 of the Indian Evidence Act. (G. R. No. 7065, dated 6th October 1890.)

<sup>2</sup>It is the wish of Government that no needless restrictions should be placed on the right of inspection of public documents, which are applied for by parties to suits. It would not be possible to define precisely what particular class of documents should be allowed to be inspected and copied, but in withholding permission the officer in charge of the records should be guided mainly by the consideration whether or not the public interests would suffer by the disclosure. Under Section 162 of the Evidence Act, the head of the department, and not the Court, is made the judge whether a public document is to be withheld on the ground that it relates to affairs of State. The Collector should, therefore, be careful, before allowing inspection or granting copies of documents from his records, to ascertain that the public interests are not likely to suffer by the disclosure. And in cases in which, though compelled to bring a document into Court, he considers it would be detrimental to the public service to produce it, he should attend personally to state his objection. (G. R. No. 5487, dated 3rd October 1873.)

<sup>3</sup>(1) See footnote to Section 213 on page 240.

(2) Sanads being documents which Government give into the hands of the persons whose title they evidence they do not form part of the

of the Indian Registration Act ( III. of 1877 ),<sup>1</sup> and in Section 213 of the Bombay Land Revenue Code, 1879, and all public documents which any person has, under the provisions of any law for the time being in force, a right to inspect, shall be open to inspection in the office of the officer in charge of the same during the usual office-hours every day, except Sundays and public holidays, on payment of the fee hereinafter prescribed in this behalf: Provided always that no fee shall be levied by any village officer for allowing inspection of any such document, map, register, account, or other public document as aforesaid which is in his charge.

2. Except in the cases named in the last preceding rule, no inspection of any public document will be allowed.

#### II.—EXTRACTS AND COPIES.

3. No uncertified copy or extract shall be obtainable of or from any document other than those described in Rule 1, nor otherwise than under this rule.

Any person entitled to inspect any public document under Rule 1 may himself make a copy, or employ his own agent to make a copy, of any public document, or of any portion of any public document of which he has duly obtained inspection, but no copy so made shall be certified by any public officer.

4. The officer in charge of any public document des-

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records of any Government office. The only record kept of them is a register. Hence the law provides for extracts being given from these registers when applied for, but not for the grant of copies of the sanads themselves.

In cases in which it is found necessary to make out a sanad in the names of several sharers, a copy may be given gratis to each, but each of such copies should be signed and executed by the same officer and treated as an original document. In no other case can a copy of a sanad, but an extract from the register of sanad, may be given on payment of the fees prescribed in the rules under Section 213 of the Land Revenue Code, and Section 91 of the Registration Act. ( G. R. No. 4180, dated 2nd June 1883.)

<sup>1</sup> Amended by Act VII. of 1886, Section 6.

cribed in Rule 1 shall cause to be prepared, and give a certified copy of the same, or of any portion thereof under his own signature, to any person applying for such copy, on payment ('except in the case provided for in Rule 5A')<sup>1</sup> of the fee hereinafter prescribed in this behalf: Provided that every application for a certified copy of any public document in the charge of a village officer shall be made to the Mamlatdar or Mahalkari to whom such officer is subordinate, who shall cause the copy to be prepared by the village accountant. Every such copy, after being compared by the village accountant with the original, shall be signed by him in token of its being correct, and shall be sent by him to the Mamlatdar or Mahalkari for the purpose of being certified and made over to the applicant. No village officer shall himself certify a copy to be a true copy, or receive or grant an application for any such copy.

5. Subject to the proviso contained in the last preceding rule, certified copies of public documents, or of portions of public documents, other than those described in Rule 1, may be granted by the officer in charge thereof to any person applying for the same, on payment ('except in the case provided for in Rule 5 A')<sup>1</sup> of the fee hereinafter prescribed in this behalf: Provided—

(a) that in disposing of any such application the officer to whom the same is made shall be guided by the orders of Government and of any officer to whom he is subordinate, and in case of doubt shall, before disposing of the same, refer to his immediate superior for instructions ;

(b) that no copy of any official correspondence or of any opinion of a Government law officer, or of any order or resolution embodying any such

<sup>1</sup> Words in parenthesis have been added by Government Notification No. 6981, dated 7th October 1903—*vide* page 1285 of B. G. G., Pt. I., of 1903—cancels Notification No. 2302, dated 31st March 1890.

opinion, shall be given by any officer subordinate to a Collector without the Collector's previous permission, or by any survey officer without the previous permission of the Survey Commissioner;

- (c) that no copy shall be granted of any record, map or plan which has been printed or lithographed and published under the authority of Government;
- (d) that no copy of any document is to be given in any case in which it is obvious that such a course would be prejudicial to Government.

‘5 A. Where any public servant is departmentally fined, reduced, suspended or dismissed, he shall be entitled to receive, free of charge, a certified copy of the final order recorded in his case.’<sup>1</sup>

Certified copies to be given free in certain cases.

6. On every certified copy or extract granted under these rules there shall be endorsed, by the officer who receives the fee for the same, a receipt in the following form (namely):—

“Received Rs.                      a.                      , being the fee for this certified copy.

*Dated the                      of                      190 .*

(Signed) *A. B.*”

7. The certificate on all certified copies or extracts granted under these rules shall be in the form prescribed by Section 76<sup>3</sup> of the Indian Evidence Act ( I. of 1872 ).

<sup>1</sup> This Rule was added by Government Notification No. 6981, dated 7th October 1903—page 1285 of B. G. G., Pt. I., of 1903.

<sup>3</sup> This section requires the Officer granting copy of any document to certify below such copy that it is a true copy of such document or part thereof as the case may be, and to date and subscribe such certificate with his name and official title.



## III.—SEARCHES.

8. When an application is made for an inspection or copy of any public document, or of any portion of a public document, and such application does not distinctly describe the number, date and nature of the document required ; or if the description given in such application is incorrect, and it shall in consequence be necessary for the officer in charge of the document to search his records in order to find it, a fee, at the rate hereinafter prescribed, shall be payable by the applicant for such search, whether the inspection or copy for which he applies shall, on examination of the said document by the said officer, be granted or not: Provided that no such fee shall be levied by a village officer.

IV.—FEES.<sup>1</sup>

9. The following fees shall be levied in cash, under these rules (namely):—

(1) For every inspection granted under Rule 1 by any officer other than a village officer ... 8 annas.

(2) For every certified copy of a public document not falling under Article (3) of this Table:—

(a) if the original be in English, for every 100 words or fraction of 100 words ... 2 annas.

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<sup>1</sup>(1) Non-official copyists should be paid at a rate varying from two-thirds to the full amount of the fees leviable under Rule 9. (G. R. No. 7669, dated 26th September 1884.)

(2) Kulkarnis and Talatis are to be permitted to take fees for making copies of maps and plans. (G. R. No. 4106, dated 21st May 1885.)

(3) In calculating the fees for copying figures are to be counted as if written in words.

(b) if the original be in the vernacular, for every 100 words or fraction of 100 words.

(c) if the original be in a tabular form, whether in English or the vernacular ...

1½ annas.

twice the rates respectively named in clauses (a) and (b).

(3) For every certified extract from a Register of Alienations granted under Section 53 of the Bombay Land Revenue Code ... ..

1 anna for every rupee of the amount of alienated revenue (or, if the sanad<sup>1</sup> lost or destroyed had been granted under Bombay Act IV. of 1868 or under Section 133 of the Bombay Land Revenue Code, 1879, a sum equal to one-half of the Survey fee, which the holder of the building-site included in the sanad would be liable to pay under Section 132 of the said Code if not exempted by the second paragraph of that section)<sup>2</sup>: Provided that the fee shall in no case exceed Rs. 10 or be less than 8 annas.

<sup>1</sup>(1) See G. R. No. 4180, dated 2nd June 1883, printed as order No. (2) under Section 53 of the Code.

(2) The law does not provide for copies of sanads being granted. Notification No. 3410 published at page 333 of the *Bombay Government Gazette* of 3rd May 1883 provides for the levy of special fees for certified extracts from registers of sanads granted under Bombay Act IV. of 1868 or under Section 133 of the Bombay Land Revenue Code, and it is intended that that Notification should remain in force. (G. R. No. 6307, dated 25th August 1883.)

<sup>2</sup>The portion enclosed in brackets has been inserted under G. N. No. 3410, dated 2nd May 1883, published in the B. G. G., Part I., page 333, 1883.

(4) For every certified copy of a map of a survey number, or of a recognized share of a survey number, or of a field, or of any ordinary (un-coloured) map, or plan of any immoveable property. 1 rupee.

(5) For every certified copy of a map or plan, or of any portion of a map or plan not falling under Article (4) of this Table.

Such fee not exceeding fifteen rupees,<sup>1</sup> and not less than one rupee, as the officer who certifies the copy shall determine: Provided that no fee exceeding Rs. 5 shall be charged by any officer subordinate to a Collector except with the permission of the Collector, or by a survey officer except with the permission of the Survey Commissioner.

(6) For every search made by any officer other than a village officer ... } 1 rupee for each year of which the records shall be searched.

(7)<sup>2</sup> For every authenticated translation of decision, orders, and the reasons therefor, and of exhibits in formal or summary inquiries under

<sup>1</sup> The maximum fee chargeable for a copy of a map or plan under Rule 9 is Rs. 15. When a map or a plan is printed and printed copies are available, the applicant should be allowed copies thereof at the usual fixed price. In such case no certified copies need be issued.

<sup>2</sup> This was added by Government Notification No. 6981, dated 7th October 1903—B. G. G., Part I., of 1903, page 1285.

the Bombay Land-Revenue Code, 1879:—

- (a) for the first 100 or fraction of 100 words. 8 annas.
- (b) for every subsequent 100 or fraction of 100 words. 4 annas.

10. Every fee payable in accordance with the foregoing Table shall be paid in advance.

11. The amount of all fees so received shall be entered in a separate book to be kept for this purpose by the officer in charge of the records, and shall be remitted before the close of each month to the nearest Government Treasury after deducting the amount paid, in the case of certified copies and extracts, to section-writers<sup>1</sup> under Government Resolution No. 3356, dated 11th November 1874, Financial Department, or under any other orders of Government that may be hereafter issued.

**Fees for copying, &c.—(1) By Government servants.**—The fees for comparing and examining a copy which is the proper duty of establishment should be credited to Government. One-fourth of the fee levied for translation should however be credited to Government, and the remainder paid to the translator. There is no objection to pay the translation fee to a clerk who translates for private persons beyond office hours on the same principle on which he is allowed fee for section-writing under G. R. No. 1287, dated 17th April 1875, and No. 1076-F. D., dated 23th March 1879. If however the establishment is sufficient to examine these translations within office hours the whole fee should be credited to Government. (G. R. No. 3101, dated 20th April 1883.)

**(2) By others who are not Government servants.**—The proposal that only copyists and draftsmen who are not Government servants should be paid for preparing copies of maps and plans at a rate

<sup>1</sup> Save with the special sanction of the Local Government, no person in the receipt of a salary from Government may receive payment for section-writing. This applies to section-writing paid for by Government, and after office hours clerks may copy for private persons at section rates. (G. of I. R. No. 4018, dated 5th November 1872, and No. 2030, dated 31st March 1875.)

varying according to the nature of the work, from two-thirds to the full amount leviable under Rule 9 of the rules under Section 213 of the Land Revenue Code is approved. ( G. R. No. 7669, dated 26th September 1884.)

(3) **Examination of certified copies.**—Copies of papers which have to be certified should be examined and compared by Government servants who are not entitled to any fees for that duty; it is not considered necessary to prescribe what portion of the fees leviable under the rules ( published in Government Notification No. 7368, dated 6th December 1881 ) is intended to be a payment for the examination and comparison of the copies. ( G. R. No. 1935, dated 6th March 1885. )

(4) **Village officers not Government servants for the purposes of copying, &c.**—The village accountants (whether stipendiary or watandar) are not to be considered as Government servants for the purposes of the above Resolution; they are permitted to take fees for making copies of maps, &c. ( G. R. No. 4106, dated 21st May 1885. )

(5) **Scale of fees for section-writing.**—The Governor in Council considers that one anna for hundred words is a sufficient rate of payment for section-writing in English, and the scale of payment to section-writers for English copies should be limited to this rate. ( G. R. No. 3933-F. D., dated 21st December 1888. )

(6) **Carbon paper copies.**—When extra copies of the same document are taken by means of carbon paper, typist should be paid double the usual fees, whatever the number of copies supplied, the amount recovered from the parties applying for the copies being credited to Government. ( G. R. No. 8151, dated 28th December 1900. )

## V.—MISCELLANEOUS.

12. Every application under these rules, except an application under Rule I to a village officer, must be made in writing.

13. Every such application shall be numbered and filed by the officer to whom it is presented, and shall be endorsed with a memorandum, under his signature, stating the date on which it was presented, the amount of fees, if any, received either at the time of presentation thereof or subsequently at any time, and the date and manner in which the application was disposed of.

14. In considering any application purporting to be made under Sections 90 and 91 of the Indian Registration Act, 1877, or under Section 213 of the Bombay Land Revenue Code, 1879, or under any other law which grants to any person a right of inspection, special care must be taken to see that the public document, with respect to which such application is made, is one to which the law relied upon is applicable, and that the applicant is a person entitled to inspection (and, therefore, if he requires it under Section 76 of the Indian Evidence Act, to a copy) before granting the application as a matter of right.

15. Nothing in these rules is to be deemed to affect the provisions of the Stamp Act<sup>1</sup> or Court Fees Act.<sup>2</sup> The stamp-duty or court-fee with which any application, copy or extract made or furnished under these rules may be chargeable, is to be deemed to be in addition to the fees prescribed by Rule 9, and care is to be taken that the requirements of the Stamp Act and Court Fees Act are properly fulfilled in respect of every such application, copy or extract.

'15A.<sup>3</sup> Nothing in these rules shall apply to any record or register kept under the Bombay Land Record of Rights Act, 1903, unless it is specially applied thereto by any rule under Section 14 of the said Act.'

Saving of certain records and registers.

16. In these rules the words "public document" are to be deemed to have the same meaning as in the Indian Evidence Act I. of 1872 (*see* Section 74 of that Act).

17. Nothing in these rules applies to the city of Bombay or to any Civil or Criminal Court.

<sup>1</sup> Act No. II. of 1899 (India).

<sup>2</sup> Act No. VII. of 1870 (India).

<sup>3</sup> This rule was added by Government Notification No. 6981, dated 7th October 1903—page 1285, B. G. G., Part I. of 1903.

## RULES UNDER THE LAND REVENUE CODE.<sup>1</sup>—SECTION 214.

In exercise of the powers conferred by Section 214 of the Bombay Land Revenue Code, 1879 ( Bom. V. of 1879 ), and of all other powers enabling him in this behalf, and in supersession of the existing rules and orders published with Government Notification No. 7368, dated the 6th December 1881, as subsequently from time to time amended, the Governor in Council is pleased to make the following General Rules and Orders, namely :—

### I.—PRELIMINARY.

Short title.                    1. These Rules and Orders may be called the Land Revenue Code Rules.

Interpretation.            2. In these Rules and Orders, unless there is anything repugnant in the subject or context,—

(a) words and expressions which are defined in the Bombay Land Revenue Code, 1879, shall have the same meaning as in that Code ; and

(b) “ chapter ” and “ section ” shall mean respectively a chapter and a section of that Code.

<sup>1</sup> (1) These rules have been finally passed by Government in their Notification No. 5223 of 28th June 1905—pages 757 to 782 of B. G. G., Part I., of 1905.

(2) As to the extent to which these rules are applicable to khoti villages, see G. N. No. 6794, dated 11th September 1889, printed as Appendix N.

(3) The general rules and orders prescribed by Government under Section 214 of the Revenue Code were made in supersession of all existing orders on the same subject. Anything contained in those general rules and orders which is applicable to city surveys and the lands affected by them must, therefore, be deemed to supersede previous rules or orders on the same subject, but except to such extent as they may have been thus superseded the old rules and orders are still in force.

So much of the general rules and orders framed under Section 214 of the Code as is applicable to such lands as come under a city survey must be deemed to apply to them and to supersede any previous rules inconsistent therewith. ( G. R. No. 2218, dated 17th March 1883. )

## II.—SECURITY TO BE FURNISHED BY REVENUE-OFFICERS.

[SECTIONS 23 and 214 (i).]

By what Revenue-officers and to what amounts security is to be furnished.

3.<sup>1</sup> The Revenue-officers hereinbelow mentioned shall, previously to entering upon their office, furnish security to the following respective amounts, namely :—

	Rs.
1. Head Accountants ... ..	} 5,000
2. Mamlátdárs ... ..	
3. First Kárkúns to Mámálatdárs ... ..	1,000
4. Treasury ditto ... ..	500
5. Maháلكari with Treasury ... ..	1,500
6. First Kárkún to ditto ... ..	500
7. Maháلكari without Treasury ... ..	500
8. Treasurer at Poona ... ..	80,000
9. Ditto at Kánara, Kolába and Ratnágiri ... ..	20,000
10. All other Treasurers ... ..	40,000
11. First Kárkún to Treasurers of Kánara and Ratnágiri ... ..	1,000
12. All other First Kárkúns to Treasurers ... ..	2,000
13. Second Kárkún to Poona Treasurer ... ..	2,000
14. Kárkúns other than and of the foregoing employed in Huzúr or Mámálatdárs' offices on shroff's work ... ..	1,000
15. Ditto in Maháلكaris' offices ... ..	500
16. Tapedárs in Sind whose pay exceeds Rs.20. ... ..	500
17. Other Tapedárs in Sind ... ..	300

<sup>1</sup> Instruments executed by Government officers and their sureties to secure the due accounting for property received by such officers by virtue of their office, are exempt from stamp duty. (G. of I. N. No. 2778, dated 2nd September 1881, published in the B. G. G., Part I., page 493, 1881, and G. of I. N. No. 5855, dated 22nd November 1889, published in the B. G. G., Part I., page 1808, 1889.)



18. Stipendiary Patels or Village-accountants<sup>1</sup> appointed under Section 16, whose annual emoluments exceed Rs.50... } Rs. 200, or the amount of one year's emoluments, whichever is less.
19. Karkúns or clerks who write the registers of copying, comparing, search and inspection fees, and take charge of moneys advanced for those purposes in Revenue Courts ... .. 200

Provided that in the case of the officers specified in Nos. 3 and 14 the amount of security to be furnished may be raised by the Commissioner to such amount not exceeding five thousand rupees as he thinks fit.

(1) **Stamp Karkuns not Revenue-officers.**—As the treasury Karkuns who *have* charge of stamps do not have charge thereof *quá* 'Revenue-officers', a rule for security to be furnished by them as custodians of stamps would be foreign. (G. R. No. 736, dated 15th March 1886, F. D.)

4. Where any person, who has furnished no security, is appointed to officiate in any office specified in Rule 3, whatever may be the probable duration of his tenure thereof, he shall before entering thereon furnish security to the amount specified or to such smaller amount as the Collector may, in the particular case, deem reasonable and sufficient.

5. (1) An officer who has furnished security to any amount required by Rule 3, shall not ordinarily, on being temporarily appointed to officiate in any office for which security to a greater amount is required by Rule 3, be required to furnish additional security, unless his tenure of such office is in the opinion of the Collector likely to last more than three months.

<sup>1</sup> No security is to be taken from Patels or Kulkarnies who hold office hereditarily, or who are members of the watan, nor from any whose emoluments are less than Rs. 10 a month. (G. R. No. 2036, dated 20th May 1869.)

(2) Every officer appointed to officiate in any office specified in Rule 3, shall, if his tenure thereof is in the opinion of the Collector likely to last more than three months, furnish before entering thereon the full security required by Rule 3.

6. (1) It shall be at the option of any officer required to furnish security to deposit Government paper or to execute a bond for the amount of his security.

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

(1) **Form of security bond under Section 23 when to be used.**—In cases in which Government paper is deposited under Section 23 a bond should be executed in the form prescribed in G. R. No. 3739, dated 2nd October 1879, but the form prescribed by Section 23 must continue to be used in other cases. ( G. R. No. 4486, dated 22nd November 1882. )

(2) **Option to be exercised with Government sanction.**—The option of executing bonds in places of depositing Government paper is in future to be exercised with the special sanction of Government in each case. ( G. R. No. 829, dated 28th February 1883. )

(3) **It is optional either to execute bonds or to deposit Government paper.**—It is optional with the subordinate revenue officers who are entrusted with the charge of public money either to deposit Government promissory notes or to execute a bond in the form contained in Schedule B of the Land Revenue Code. ( G. R. No. 3031, dated 17th August 1883. )

(4) **Securities and sureties to be given by Treasurers.**—The Government of India originally ordered that Treasurers' security should consist of a deposit of Government paper but in supersession of that order, sanctioned in their Resolution No. 2232, dated 25th July 1883, the proposal of the Bombay Government that an option should be given to Treasurers and certain other officers of either depositing Government paper or giving security according to Schedule B of the Land Revenue Code. This option is also allowed under Rule 3 ( now rule 4 ) of the rules under Section 214 of the Code.

When security is given according to Schedule B of the Land Revenue Code, the Treasurer binds himself in a certain sum named in Rule 2 ( now Rule 3 ) of the rules under the Land Revenue Code ( 214 ) which varies according to the Treasuries. He also gives sureties. These do not bind themselves in any specific sum, but agree to make good all losses caused to Government by their principals' default. What precautions should

be taken to ensure the liability of a surety to fulfil, should occasion arise, the obligation thus undertaken by him is an executive not a legal question. It appears to Government that inasmuch as they have fixed the amounts of the securities to be given by the various Treasurers in consideration of the responsibilities undertaken at their respective Treasuries, those amounts may be held to sufficiently accurately represent the sums which the principals might possibly have to make good, and which, therefore, each surety may possibly have to make, should the principal and the other surety fail to do so. Before accepting a man as surety for a Treasurer therefore he should be ascertained to be worth the amount fixed for the Treasury in question. In Rule 2 (now Rule 3) of the rules under the Land Revenue Code, 214, it is not sufficient to ascertain that two sureties combined are worth that sum, for the very object of requiring two sureties of one is to ensure that even if the principal and one surety are not in a position to pay anything the other surety may be called upon, and may be able to pay the full amount.

When Government paper is deposited, it is necessary also under Chapter 17, Rule 4, Civil Account Code, that a bond should be given in the form in Schedule C, Civil Account Code, Volume I., by the principal and his sureties. As by this bond they are bound severally as well as jointly, it is necessary to ascertain that each surety is worth the amount of the bond. It has not apparently been expressly decided hitherto what the amount of this bond should be, but it may be considered to be the amount fixed as the security to be given by each Treasurer under Rule 2 (now Rule 3) of the Land Revenue Code Rules, 214.

It is observed that in both cases the principals' personal bond is for the same amount, and in both cases also, two sureties, each worth that amount, are provided. The obligations are therefore practically the same in the two cases, except that in the second case (mentioned in the last preceding paragraph) the Treasurer has the additional obligation of depositing 40,000 worth of Government paper. He gets no advantage, but additional and serious disadvantage by adopting the second course. Consequently it is highly probable that any Treasurer with a knowledge of the rules would adopt the second course, and the rule allowing him an option must be superfluous. It seems to the Governor in Council simpler, and therefore of more practical use, to require surety in all cases according to Schedule B of the Land Revenue Code. (G. R. No. 3687, F. D., dated 7th November 1890.)

(5) **Security bonds how long to be preserved.**—A security bond should not be destroyed until so long after the principal has ceased to occupy an office that there is no probability of its being of any use. If a fresh bond is for any reason taken, the old one should still be preserved as security against defalcations which may have occurred before the date of the new one. (Financial Circular No. 3449, dated 14th October 1890.)

(6) **Liability of the Principal.**—The sureties and their heirs cannot be held liable for any defalcations subsequent to the transfer of the principal. (G. B. No. 2419, dated 4th April 1894.)

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

Duties of heads of offices in respect of securities.

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

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

8. (1) The Collector shall keep a register<sup>1</sup> of all securities furnished by each officer in his district in accordance with Rule 3 or 4, for scrutiny by the Commissioner during the course of his annual tour, and shall submit annually to the Commissioner, on or before the 1st October, a certificate that all such securities are good and sufficient.

A register of securities to be kept by Collector.

(2) The register prescribed by Sub-rule (1) shall contain such particulars as the Commissioner may from time to time direct.

### III.—DISPOSAL OF LAND, ETC., THE PROPERTY OF GOVERNMENT.

[ Sections 37, 52, 62 and 214 (i). ]

#### (1) *Grant of Occupancies.*

##### (a) *General.*

9. Land and all rights in or over the same or appertaining thereto, which are the property of Government, may be disposed of by the Collector in any manner authorized in this Part, but not otherwise, except with the previous express sanction of Government.

Collector to dispose of land, etc., only as authorized in these rules.

<sup>1</sup> For particulars and form see Appendix J.

Proviso as to salt lands.

Provided that—

- (a) the occupancy of salt lands, or of lands occasionally overflowed by salt water, shall not ordinarily be disposed of without first ascertaining by reference to the Salt Department whether they are wanted or likely to be wanted for salt manufacture; and
- (b) on receiving an intimation from the Collector of Salt Revenue that any unoccupied land at the disposal of the Collector of the district is wanted or likely to be wanted for salt manufacture, the Collector of the district may, if he sees no objection to its appropriation for that purpose, dispose of such land to the Salt Department, and shall, in such case, cause a note to that effect to be made in the Village Register, and shall also cause to be cancelled any entry in that register as to any assessment fixed on it as land appropriated for purpose of agriculture.

Such land shall thenceforth be at the disposal of the Collector of Salt Revenue, subject to the general orders of Government, to let for the manufacture of salt or to make other arrangements as to its use for that purpose, on such conditions and for such period as, subject to the said orders, he may deem fit.

(1) **Railway D lands.**—Previous sanction of Government is necessary before Class D Railway land not required for railway purposes can be disposed of, and a note to that effect should be entered in the Village Field Register. (G. R. No. 9199, dated 8th November 1894.)

(b) *Occupancies, Revenue-free.*

10.<sup>1</sup> Except in any case where the value of the land, estimated as a revenue-free holding, does not exceed one hundred rupees, and it is clear that the sale of the occupancy revenue-free is preferable to any other course on grounds of

Sale of land revenue-free

<sup>1</sup> For form of statement of alienations to be submitted annually, see Appendix R.

obvious convenience to Government no less than to the parties concerned, the occupancy of land of any description shall not be sold revenue-free in perpetuity to any private person for any private purpose without the previous sanction of the Government of India; and, except as is otherwise provided in these rules, the occupancy of land of any description shall not be sold revenue-free for a term without the previous sanction of the Governor in Council.

(1) **Government Departments exempted.**—This refers to G. R. No. 3942, dated 23rd September 1876, F. D., which directs that no charge should be preferred for ground rent or assessment on Government Department (such as Educational or P. W. Departments, etc.) for holding Government land. (G. R. No. 4428, dated 9th November 1892.)

(2) **Redemption requires the sanction of the Government of India.**—In future no redemption of land revenue for the purposes of dwelling houses, factories, gardens, plantations and other similar purposes should be permitted without the sanction of the Government of India. (Government of India No.  $\frac{13}{73-17}$ , dated 17th September 1897; G. R. No. 7332, dated 6th October 1897; and G. R. No. 7432, dated 18th December 1876.)

11. The occupancy of any land shall not be granted revenue-free, whether in perpetuity or for a term, without the previous sanction of the Government of India for any purpose hereinbelow mentioned, where the value of the land, estimated as a revenue-free holding, exceeds the amount herein-

below specified in respect of such purpose:—

Purpose of grant.	Value of grant not to be exceeded without sanction of the Government of India.
(1) For sites for the construction, at the cost of Local or Municipal Funds, of (a) schools or colleges (b) hospitals (c) dispensaries, and (d) other public works ... ..	} Rs. 3,000
(2) For any other public purpose or to any private individual for services to be performed to the State.	} Rs. 500
(3) To a private individual for services to be performed to the community ... ..	} Rs. 100

12. The occupancy of land may be granted revenue-free, where the value of the land, estimated as a revenue-free holding, does not exceed one hundred rupees in each case, by the Commissioner, for the purposes of religious, charitable, or educational edifices or institutions :

Limit of revenue-free grants by Commissioner for religious, charitable or educational purposes.

Provided that the occupancy of land in the neighbourhood of railway stations shall not be granted revenue-free for dharamshálas to be erected by private persons, unless such dharamshálas, when erected, are to be in the charge of the Local Board or Municipality concerned.

Proviso as to land near railway stations.

(1) **Redemption of Local Fund Cess.**—In future the payment or the redemption of the Local Fund Cess should, as a rule, be made a condition of the transfer of lands on redemption of assessment, except in the case of Railway Companies. ( G. R. No. 2452, dated 23rd April 1887. )

13. (1) In order to provide against abuse of any grant made under Rule 12, a sanad,<sup>1</sup> in such form as may from time to time be prescribed by Government, shall be issued to the grantee by the Collector. Where any occupancy is granted revenue-free with the sanction of Government for any purpose not mentioned in Rule 12, the form of sanad to be issued by the Collector will be specially prescribed by Government.

Sanads to be issued in case of revenue-free grants.

(2) Every sanad issued under this rule shall be registered in the register prescribed by Rule 58.

(3) The Collector and all Revenue-officers subordinate to him shall exercise due vigilance to prevent the terms of any such sanad being either exceeded or evaded.

(1) **Absence of Sanads.**—In the case of a religious endowment or public institution no sanad is necessary as has been decided by the High Court in the printed judgment in the case of *Manohar Ganesh vs. Laxmiram*. In the case of a grant of land for such a purpose it will be sufficient if a clear entry to that effect is made in the Government Register. ( G. R. No. 2023, dated 23th March 1888. )

<sup>1</sup> For form of Sanad, see Appendix K.

(2) **Absence of Devasthan Sanads.**—The above G. R. was not issued with any intention of super-ceding the rules, requiring that the terms of future Devasthan grants should be embodied in sanads, but merely to point out that in the case of existing grants, the absence of a sanad did not necessarily stand in the way of a summary resumption of, or rather the levy of full assessment on, land not applied to purposes for which it was recorded as held. (G. R. No. 1856, dated 6th March 1895.)

14. (1) In the district of Dharwar, whenever unoccupied land is available for the purpose, the Collector may grant revenue-free the occupancy of land bearing an annual assessment not exceeding thirty rupees to any shetsandi who is willing to hold the same in lieu of the usual annual cash remuneration :

Revenue-free grants in the Dharwar District to shetsandis.

Provided that no such grant shall be made in respect of land of which the value exceeds five hundred rupees.

Provido. Provided that no such grant shall be made in respect of land of which the value exceeds five hundred rupees.

(2) Where a grant is made under this rule, no sanad need be issued to the grantee, but it is to be distinctly understood that the occupancy is granted revenue-free only in consideration of the shetsaudi's service, and that the land is resumable at the pleasure of Government.

Sanad unnecessary in such cases.

need be issued to the grantee, but it is to be distinctly understood that the occupancy is granted revenue-free only in consideration of the shetsaudi's service, and that the land is resumable at the pleasure of Government.

15. (1) Except as otherwise provided in Rule 12, the occupancy of any land shall not be granted revenue-free and no right in, or over, or appertaining to, any land belonging to Government, shall be exercised to or by a Municipality or a Local Board without the previous sanction of Government.

Transfer of land, &c., belonging to Government not to be made to Municipalities or Local Boards without previous sanction of Government.

Except as otherwise provided in Rule 12, the occupancy of any land shall not be granted revenue-free and no right in, or over, or appertaining to, any land belonging to Government, shall be exercised to or by a Municipality or a Local Board without the previous sanction of Government.

(2) Every such sanction may be given subject to such conditions as Government think fit in each case to prescribe.

(3) But nothing in this rule shall be deemed to prevent the grant of occupancies to Municipalities or Local Boards on the same terms as are applicable to such grants to other persons.

(1) **Alienation of land-revenue to Municipalities not permissible.**—Municipalities have no claim to the assignment of land.



revenue assessed upon lands within their limits, which, like all land-revenues, is an imperial asset. The Governor-General in Council is wholly opposed to the alienation of this revenue to Municipalities, and no such alienation should be made hereafter. (G. R. No. 132, dated 15th January 1880.)

(2) **Commissioner to sanction appropriation of land for roads.**—The Commissioners of Divisions are authorized to sanction the appropriation of lands for roads, whether Provincial or Local Fund, when no compensation has to be paid by Government for the lands taken up. (G. R. No. 6884, dated 4th October 1882.)

(3) **For Schools and Dharmshalas.**—The Commissioners are empowered to sanction appropriations of land for roads, schools, dharmshalas and other public works subject to the limitation that the market value of the unassessed land appropriated does not exceed Rs. 100 in each case. (G. R. No. 729, F. D., dated 8th March 1887.)

(4) **For other public purposes.**—The Commissioners have also power to sanction appropriation for any public purpose other than roads of Government assessed land provided that the assessment of the land appropriated does not exceed Rs. 5 per annum, and provided also that half-yearly returns are furnished to Government showing the number of sanctions given, the area and assessment of land in each instance, and the purpose for which it is appropriated. (G. R. No. 8558, dated 6th December 1882.)

(5) **When there is sufficient reason for transfer.**—The Commissioners should be careful when sanctioning appropriation of land paying assessment under the powers delegated to them (by G. R. No. 6884, dated 4th October 1882, *vide* order No. (2) above) to assure themselves that the sacrifice is unavoidable and that the object is of sufficient public importance to justify the loss of revenue which the transfer of the land will occasion. (G. R. No. 3621, dated 12th May 1883.)

(6) **Revenue of lands transferred to Municipality or other public company.**—Where land is taken up under the Land Acquisition Act for a Municipality or Company, such Municipality or Company should be held liable for the revenue, but might be allowed to compound for it. (G. of L. letter No. 446, dated 12th September 1879, quoted in G. R. No. 4390, dated 2nd June 1884.)

(7) **Demarcation of lands taken up for roads.**—The principle that the land required for road purposes shall be demarcated at the expense of the road and by the officer entrusted with its construction is approved and should be given effect to in the case of all new roads. The most satisfactory method of demarcation is by means of continuous catch water drain, and this system should be adopted where suitable, elsewhere the demarcation must be by stones or earthen mounds as may be most convenient. A record of the area so demarcated and deducted from each survey holding as "Pot kharab" should be kept in the office of the Executive Engineer of the District. (G. R. No. 692-C. W. 1783, P. W. D., dated 21st November 1883.)

(8) **Disposal of strips cut off by roads.**—Government further approve of the recommendation that when a line of road cuts off a portion of a survey number so small or so irregularly shaped as to render its cultivation unprofitable to the occupant, such portion should be acquired at the expense of the road. The disposal of the plots so acquired must be left to the discretion of the Executive Engineer of the District or of the Local Boards concerned in the case of local roads. In some instances they may be useful for stacking material or for barrow pits for murrum for road repairs, in some they may with advantage be disposed of to the owners of neighbouring fields, which should be arranged for through the Collector, and in others the best method of treating them will be to hand them over to the Revenue Department for tree plantation. (*Ibid.*)

(9) **Disposal of strips cut off by canals.**—In future portions of survey number cut off by canals which the occupant cannot cultivate or dispose of should be taken over by the Irrigation Department and planted with trees. (G. R. No. 221-W. I. 538, P. W. D. dated 15th December 1885.)

(10) **Demarcation of roads constructed before the original Survey.**—Where a road is found at revision survey to have been constructed since the original survey and that the usual demarcation has not been carried out, the area occupied by the road having simply been deducted as "Pot khurab," the officer in charge of the survey establishment should not compel the rayats to put up marks to define the road, but should call the attention of the Executive Engineer or the President, Local Funds Committee, to the fact, and the demarcation should be undertaken as soon as possible by the agency by which the road has been constructed. (G. R. No. 84-C. W. 261, P. W. D., dated 18th February 1886.)

(11) **Lands intersected by Railways.**—In the case of lands intersected by railways the procedure should be that hitherto followed, *viz.*, to acquire the odd corners and then to make them over to the adjacent cultivators on easy terms. (G. R. No. 100, P. W. D., dated 13th January 1886.)

(12) **Exemption from stamp duty of instrument relating to exchange lands for public purposes.**—In exercise of the powers conferred by Section 8 of the Indian Stamp Act, 1879, the Governor-General in Council is pleased to remit the stamp duty payable by private persons under Section 29 (f) of the Act on instruments of exchange executed by them when lands are given by them for public purposes in exchange for other land granted to them by Government. (G. of I. N. No. 6503, dated 8th December 1887, published in the B. G. G., Part I., page 970, 1887.)

(13) **Free grant of lands to Local Boards and Municipalities.**—Under Rule 12 (new Rule 15) of the rules under the Land Revenue Code free grant of lands to Local Boards and Municipalities only can be made with sanction of the Government. (G. R. No. 3191, dated 19th May 1888.)

(14) **Principle to be observed in such grants.**—His Excellency the Governor in Council has come to the conclusion that the principle which should be observed in dealing with questions of land required for Municipal purposes, is that Government land should only be granted free or at reduced rates to Municipalities in very special and exceptional circumstances, which must be clearly established before any such grant can be authorized. In cases in which no such circumstances are shown to exist no Government land should be granted to Municipalities for any purpose save on payment of a reasonable price representing approximately its market value. (G. R. No. 4678, dated 14th July 1888.)

(15) **Placing of Government building at the disposal of Municipalities.**—The placing of any Government building at the disposal of a Municipality without the consent of the Executive Engineer of the District and the sanction of Government in the P. W. D. is forbidden. (G. R. No. 2211, dated 22nd March 1889.)

(16) **Abatement of assessment on lands taken up by the Public Works Department.**—His Excellency the Governor in Council is pleased to direct that the authority of sanctioning abatement of assessments on lands taken up by the Public Works Department for irrigation works should, in future, be exercised by the Commissioners of Divisions. The Public Works Department should obtain any statements required by it direct from those officers. (G. R. No. 5627, dated 3rd August 1889.)

(17) **Conditions on which free grants of land are made to public bodies.**—In future, when any immovable public property is made over to a local authority for public purposes, the grant shall be made expressly on the condition, in addition to any others that may be settled, that, should the property be at any time resumed by Government, the compensation payable therefor shall in no case exceed the amount (if any) paid to the Government for the grant, together with the cost or their present value, whichever shall be the less, of any buildings erected or other works executed on the land by the local authority. (G. of I. R. No. 4374, dated 23rd October 1891, and G. R. No. 8167, dated 28th November 1891.)

(18) **Need not be insisted on when land is sold.**—In cases in which the land is sold to a local body for its full marked value as a business transaction and no concession to the local body is involved in the transfer the condition prescribed in the Resolution of the 23rd October 1891 need not be insisted upon. The Government of India has, however, no objection to the Local Government imposing the condition if considered desirable and if the local body is willing to take the land subject to such a condition. (G. of I. letter No. 848, dated 29th February 1892, quoted in G. R. No. 1849, dated 17th March 1892.)

(19) **Appropriation of lands held for Mil any purposes and within Cantonment limits.**—The Governor-General

in Council has decided that, in supersession of all previous orders on the subject, no land, whether

- (I) within cantonment limits,
- (II) forming part of a military encamping ground, or
- (III) otherwise held for military purposes,

shall be entered upon or occupied for constructing a railway, erecting buildings, or for any other purpose, either by private persons or person acting under the orders of any Department of the State, until the sanction of the Government of India in the Military Department to the occupation or use of the land has first been obtained and communicated to the General Officer Commanding the District by the Quarter-Master-General in India, or by the Quarter-Master-General of the Madras or Bombay Army, as the case may be. ( G. of I. R. No. 2407-M. W., dated 22nd August 1892, and G. R. No. 9085, dated 18th November 1892. )

(20) **Abatement of assessment.**—Sanction of Government is not necessary to the abatement of assessment on land taken up for a public purpose. G. R. No. 5627, dated 3rd August 1889, refers only to land acquired for irrigational work. ( G. R. No. 7314, dated 19th October 1903. )

(21) The Collectors are authorized to sanction the abatement of assessment on land that has been acquired by a local body for a public purpose. ( Entry No. 12 of G. R. No. 4347, dated 25th June 1902. )

(22) Under G. R. No. 1788, dated 7th March 1904, no abatement of assessment is to be granted without the sanction of Government. ( G. R. No. 3969, dated 25th May 1904. )

(23) The abatement of assessment on land acquired for a public purpose means merely the elimination from the accounts of assessment which is due and all that is authorized by Order 12 in G. R. No. 4347, dated 25th June 1902 (*vide* Order No. 21 above), is that when sanction has been accorded by the proper authority to the relinquishment of revenue which is involved in making a free grant of land, the Collector may, without further reference to higher authority, make the necessary entries in the records of the reduction of assessment which has been sanctioned. As there is nothing in the existing code or rules contrary to such an order, the order is in force from the date of that resolution.

When land is acquired for a local body or for a company it might in certain cases (roads) be appropriate to award to Government the capitalized value of the assessment and that the Collector could, under the order referred to, strike the assessment off the accounts without further order. If either the assessment or capitalized value of it is to be foregone, then there is, of course, a revenue-free grant which requires the sanction of Government. ( G. R. No. 1812, dated 3rd March 1905. )

(24) **Meaning of the rule.**—The restriction imposed by Rule 15 is subject to the exception stated in the opening phrase of that rule, and in accordance with that exception, Commissioners are authorised to make

revenue-free grants of land to Local Boards and Municipalities to the extent and for the purposes mentioned in Rule 12. ( G. R. No. 7910, dated 29th September 1905. )

(25) **Commissioner's power to sanction appropriations.**—Leases of transfers of land on ordinary survey tenure to Local Boards should not appear in the statements to be submitted to Government by Commissioners about appropriations sanctioned by them.

Care should be taken to submit statements which should contain entries relating only to appropriations under Section 37, Land Revenue Code, of lands for roads, schools, dharmashalas, village sites, P. W. D. quarries, improvement of canals, chowkis, etc., of the Forest, Salt, Opium, Customs and Police Department, and other public purposes sanctioned by Commissioner within the limits authorized in the orders

(1) G. R. No. 8558, dated 6th December 1882. specified in the margin. In supersession of G. R. No. 555, dated 29th January 1901, appropriations for religious uses, such as sites for *idgas*, mosques, temples should also be included in the statements.

(2) Entry No. 3 of Schedule A appended to G. R. No. 720, dated 8th March 1887. The proportionate assessment if the land is assessed or the market value if it is unassessed, of the area appropriated should be invariably given in the statements. As pointed out in G. R. No. 3317, dated 12th May 1899, items of assignments of land under Section 38 such as grants for threshing floors, burning and burial grounds should not find place in these statements. ( G. R. No. 6095, dated 10th August 1904. )

16. (1) Every grant under any of the Rules 11 to 15 shall be made expressly on the following conditions in addition to any others that may be prescribed in particular cases, namely:—

Conditions attached to grants under Rules 11 to 15.

- (a) that the property shall be liable to be resumed by Government if used for any purpose other than the specific purpose or purposes for which it is granted, or if required by Government for any public purpose ; and
- (b) that, if the property is at any time resumed by Government under condition (a), the compensation payable therefor shall not exceed the amount ( if any ) paid to Government for the grant, together with the cost or value at the time of resumption, whichever is less, of any building or other works authorizedly erected or executed on the land by the grantee.

(2) Where exemption from payment of revenue is granted on land already occupied by the grantee, the following condition shall be imposed, in addition to any others that may be settled in particular cases, namely, that if the land is used for any purpose other than the specific purpose or purposes for which exemption is granted, it shall, in addition to the assessment to which it becomes liable under Section 48, become liable to such fine as may be fixed in this behalf by the Collector under the provision of Section 66, as if the land, having been appropriated to purposes of agriculture only, had been unauthorizedly appropriated to any purpose unconnected with agriculture.

(c) *Occupancies for agricultural purposes.*

17. (1) The occupancy for agricultural purposes of any unoccupied survey-number not assigned for any special purpose may, at the Collector's discretion, be granted to such person as the Collector deems fit, either upon payment of a price fixed by the Collector, or without charge, or may be put up to public auction and sold, subject to his confirmation, to the highest bidder.

(2) The Collector may in his discretion delegate to the Mámíatdár or Mahálkari the power of confirming the sale at any such auction in cases where an upset-price for the occupancy has previously been fixed by the Collector, and the final bid is not less than such upset-price.

18. Where any survey-number disposed of under Rule 17 has not already been assessed, it shall be assessed by the Collector (after reference to the Commissioner<sup>1</sup> of Survey) at the rates placed on similar soils in the

Occupancy of survey-numbers how to be disposed of.

Survey-number not already assessed to be assessed before occupancy disposed of.

<sup>1</sup> Vide footnote 1 on page 15.

same or neighbouring villages; and the assessment so fixed shall hold good for the period for which the current survey-settlement for the village in which the land is situated has been guaranteed, and shall be liable thereafter to revision at every general survey-settlement of the said village.

(1) **Rent of waste lands.**—The question is whether it is legal to give out assessed waste lands temporarily for cultivation at a rental higher than the survey assessment.

The survey assessment is the assessment payable by a survey occupant, and there is nothing to prevent Government from giving out waste lands of which under Section 37 they are themselves the owners, on temporary leases on any terms they please, whether as to rent or tenure. (G. R. No. 5634, dated 3rd July 1894.)

19.<sup>1</sup> Where it appears that the bringing of any survey-number under cultivation will be attended with large expense, or where for other special reasons it seems desirable, it shall be lawful for the Collector (with the previous sanction of the Commissioner, in cases where the assessment on the land included in the total grant exceeds one hundred rupees) to give the occupancy of the survey-number revenue-free or at a reduced assessment for a certain term, or revenue-free for a certain term and at a reduced assessment for a further term, and to annex such special conditions to the occupancy as the outlay or other reasons aforesaid may seem to him to warrant:

Where occupancy of survey-numbers may be given at reduced assessment.

Provided always that, on the expiry of the said term or terms, the survey-number shall be liable to full assessment under the rules then in force for lands to which a survey-settlement has been extended.

20. The occupancy of salt land or land occasionally overflowed by salt water, provided it is not required or likely to be required for salt manufacture, may be granted for purposes of reclamation by the Collector, subject to the confirma-

<sup>1</sup> For form of lease on special terms to be granted under this rule see G. R. No. 7033, dated 3rd September 1884, printed as Appendix L.

tion of the Commissioner, on the following maximum terms, and with such modifications in particular cases as may be deemed fit :—

- (a) no revenue shall be charged for the first ten years;
- (b) revenue at the rate of four annas per acre shall be levied for the next twenty years on the whole area granted, whether reclaimed or not ;
- (c) at the end of thirty years the land shall be assessed to the land-revenue and shall be continued under the rules then in force for lands to which a survey-settlement has been extended ;
- (d) any portion of the land appropriated for public roads shall be exempt from the payment of revenue ;
- (e) if half the area is not reclaimed so as to be in a state fit for use for agricultural purposes at the end of ten years, and the whole at the end of twenty years, or if the reclamation is not carried on with due diligence within two years, or until clause (c) comes into force, if any land once reclaimed as aforesaid is not maintained in a state fit for use for agricultural purposes, the grant shall be liable to cancellation at the discretion of the Collector ;
- (f) if the land reclaimed is appropriated to any non-agricultural purpose, it shall be liable to be dealt with under Rule 56, notwithstanding that any of the periods specified above may not have expired.

21. The occupancy of land situated in the bed of any river and not included in a survey-num-

Occupancy of land in beds of rivers. ber shall, save as otherwise provided in Rule 46, ordinarily be sold annually by auction to the highest bidder for the term of one year or such further period as the Collector thinks fit, the bidders being informed that under Rule 54 such land will not be held liable for land-revenue.



(1) **Suggestion to modify the rule regarding disposal of melon lands, &c.**—The word "shall" in this rule is imperative and leaves no option to the Collector to stop the sales in cases in which he considers it expedient, on grounds of public health and convenience, to prohibit the cultivation of melons in particular localities. A modification of the rule was therefore suggested, but Government have ruled that the Collector might exercise his discretion in dealing with such cases and should put off the sale in cases in which he thinks that the cultivation of melons would be injurious to public health. (G. R. No. 8931, dated 21st December 1886.)

(2) **Port lands.**—There is no objection to land between high and low water mark and not within port limits, being given out for grazing or temporary occupation on yearly leases. (G. R. No. 986, dated 6th February 1895.)

(3) All Collectors should be directed to enter lands within port limits as in the charge of the Salt and Customs Department, or to have a note made in Village Form No. 1 that such lands are within port limits and should not be disposed of without reference to the Collector of Salt Revenue. (G. R. No. 4408, dated 4th June 1897.)

(d) *Occupancies for non-agricultural purposes.*

22. The occupancy of land for building-sites or other non-agricultural purpose shall ordinarily be sold by auction to the highest bidder whenever the Collector is of opinion that there is a demand for land for any such purpose; but the Collector may, in his discretion, dispose of the occupancy of such land by private arrangement, either upon payment of a price fixed by him, or without charge, as he deems fit.

23. Auctions held under Rule 22 shall ordinarily be conducted in the town or village in which the land is situated, and the power of confirming any such sale may be delegated by the Collector to the Mám-latdár or Mahálkari.

24. Save in special cases in which the Collector with the sanction of Government otherwise directs, or where, as in the case of building-sites at hill-stations, Government have prescribed special rules to the con-

trary, occupancies of building-sites shall be disposed of under the following rules :—

- I. The occupancy shall be granted in perpetuity, subject to the provisions of the first paragraph of Section 68. In every case the right of occupancy only, subject to the provisions of Section 69, and not full proprietary right in the soil, shall be so granted.
- II. Where the land has not already been assessed, the assessment shall be fixed by the Collector at an amount equivalent to such percentage on the value of the building-site ( as estimated by the Collector ) as Government, having regard to the current rate of interest, may from time to time by general order direct :

Provided that in any locality for which a standard rate of assessment has been fixed under Rule 56, the Collector shall ordinarily fix the assessment at such rate.

- III. Where the land has already been assessed for purposes of agriculture only, the assessment shall be altered in accordance with the provisions of Rule 56 ( II. to IV. ).
- IV. The period for which the assessment is ordinarily to be fixed under Rule II. or III. shall be fifty years from the date of the grant of permission to occupy the land, or of the commencement of actual occupation, whichever is the earlier. On the expiry of such period, and at such further intervals as may be from time to time directed by Government in this behalf, the assessment fixed shall be liable to revision in accordance with the Bombay Land-Revenue Code and the rules and orders for the time being in force thereunder.

- V. Where the assessment has been fixed for fifty years under Rule IV., the assessment for that period, instead of being rendered annually, may, with the consent of the Collector, be compounded for by the occupant by a lump payment of twenty-five years' assessment, or commuted on such other terms as may from time to time be authorised by Government; and a note of such payment or commutation shall be made in or at the foot of the lease or agreement executed in respect of the occupancy under Rule 31 or 32.
- VI. The occupancy of land in towns and other places of considerable size or of increasing importance shall be disposed of subject to such conditions as to the style, number and size of the buildings to be erected thereon, etc., as the Collector may, under the general or special orders of Government, direct; and where the reduced rate of assessment specified in Rule 56 (III.) is applied in fixing the assessment, the occupant shall enter into a written agreement with Government in the form from time to time prescribed in this behalf.

25. (1) Where the occupancy of land of the kind described in Rule 24 (VI.) is to be disposed of, the land shall, in the first instance, be marked out in convenient lots and mapped in such a manner that persons desirous of becoming occupants may clearly know what plots are available.

(2) Due provision should be made in the plans for roads and approaches and access of air and light, and careful regard should be had to sanitary requirements.

(1) **Waste lands near Railways.**—Before giving permission to construct buildings on waste or occupied Government lands in the neighbourhood of railway stations, Collectors should consult the railway administration concerned. In the event of a difference of opinion the matter should be referred to the Divisional Commissioners. (G. R. No. 4606, dated 3rd July 1899.)

(2) **P. W. D. lands.**—Lease by the Collector of P. W. D. land requires the previous approval of Government in the P.W. Department. (G. R. No. 8394, dated 24th November 1899.)

26.<sup>1</sup> Where a new village-site is established in lieu of a former one, which it is determined for any reason to abandon, the new site shall be carefully marked out and mapped in the manner prescribed in Rule 25, and an agreement shall be taken, in the form of Appendix A, from each registered occupant previous to his being permitted, under Section 60, to enter upon occupation of any lot.

27. Where an entirely new village-site is established, or an addition is made to an existing site, the provisions of Rule 25 shall be observed for demarcating such new or additional site, but the disposal of the lots therein should be made under the rules ordinarily applicable to the disposal of building-sites.

**(1) Grant of lands for new sites.**—Persons who obtain new sites on resigning old ones are to sign the form of agreement (Appendix A), that is to say, they resign their old sites and become occupants of the new sites free of land revenue until Government may be pleased to impose any under the Land Revenue Code. There is no hardship in this, because the old sites are not exempt from assessment to the land revenue unless exemption can be proved under any special contract with Government or any law for the time being in force. (G. R. No. 3042, dated 18th April 1883.)

**(2) Power of Government to assess building-sites.**—Land Revenue is by law chargeable on building-sites unless Government has alienated the right to charge revenue, and His Excellency the Governor in Council is not prepared to abandon the power of assessing such sites when circumstances may require the adoption of this course, as in the case of a village growing into an important town. Even when the villagers pay the price of the right of occupancy of the village-site in whole or part, they are liberally treated when allowed to hold the site free of revenue during the pleasure of Government. (G. R. No. 4333, dated 29th May 1885.)

28. Where the occupancy of unalienated land is granted for non-agricultural purposes other than building-sites, the Collector shall annex such conditions thereto as may be directed by Government or, in the absence of any order of Government, may annex

<sup>1</sup> Vide G. R. No. 9021, dated 6th November 1885, printed as footnote to Appendix A.

such conditions thereto as he thinks fit, subject to the control of the Commissioner; and where the land has already been assessed for purposes of agriculture, the assessment of such land shall, in the absence of any order of Government to the contrary, be altered in accordance with the provisions of Rule 56. Where it has not already been so assessed, its assessment shall similarly be fixed by the Collector, as far as may be, in accordance with the principles of the same provisions.

(e) *All Occupancies.*

29. The occupancy of land to which none of the foregoing rules is applicable, and concerning which no special orders have been passed by Government, shall be disposed of in such manner, for such period and subject to such special conditions, if any, as the Collector, subject to the control of the Commissioner, deems fit.

Disposal of occupancy of land to which foregoing rules are inapplicable.

30. Where an occupancy is sold by public auction, an upset-price shall, if the Collector thinks fit, be placed thereon.

Upset-price may be placed on all occupancies sold by auction.

31.<sup>1</sup> (1) Where the occupancy of land is granted on special terms, whether as to the amount of assessment or as to the conditions of the tenure in cases other than that provided for in Rule 32, Sub-rule (2), a written lease shall be executed by the Collector clearly setting forth the terms of the grant.

Where leases are to be granted.

<sup>1</sup> (1) For form of register of leases executed under this rule, see G. R. No. 8959, dated 6th December 1883, printed as Appendix M.

(2) For form of lease on special terms, vide G. R. No. 7033, dated 3rd September 1884, printed as Appendix L.

(3) Under Section 8 of the Indian Stamp Act, 1879, the Governor-General in Council has exempted both prospectively and retrospectively all agreements executed and leases granted regarding the occupancy of land under the Land Revenue Code, and this and other rules thereunder from the payment of stamp duty. (G. N. No. 1798, dated 23rd March 1887,

(2) Every such lease shall be in a form<sup>1</sup> sanctioned by Government, and, if no suitable form has been already so sanctioned, reference shall be made and a sanctioned form obtained before the lease is executed.

(3) A duplicate shall be kept of every lease executed under this rule.

(1) **Procedure to be adopted on the expiration of lease.**—In the case of those tenants, whose leases have already expired without being renewed, the proper course to adopt would be, for the Collector, to serve each one with a notice reminding him that his lease has expired and that as he is holding over he is liable to be ejected at the close of the current year on receipt of six months' notice, that he should consider the said notice to be a notice to quit at the end of the current year (care being taken that six months of the current year shall have still to run when it is served) and that the notice will be enforced unless in the meantime he applies for a renewal of the expired lease when such his application will be considered. If an application for a renewed lease is made there will be no objection to its being granted. (G. R. No. 2028, dated 10th March 1883.)

(2) **Terms specified in leases to be respected.**—Rules 28, 49 and 51 (now 50 and 52) apply only to leases, and grants of occupancies which have been made since they were passed and have no retrospective effect. The rights of a lessee or grantee of a land leased or granted before the passing of the rules must be ascertained from, and regulated by, the conditions specified in his lease or deed of grant. A leaseholder has no proprietary rights in the soil, and therefore no right to the minerals or trees. His rights are such only as his lease conveys to him. (G. R. No. 3482, dated 5th May 1883.)

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published in the B. G. G., Part I., page 254, 1887; and G. N. No. 8968, dated 27th November 1889, published in the B. G. G., Part I., page 1067, 1889.)

(4) As regards the question whether a *Kabulayat* accepting the lease need be taken from the lessee, and whether such a *Kabulayat* is required to be registered under the Registration Act, it has been decided that if the signature of the lessee were simply taken in a register acknowledging that he had received a lease in the prescribed form but containing no promise to abide by its terms, it would for all practical purposes afford sufficient proof of his acceptance of the lease and avoid all difficulties about registration. (G. R. No. 1309, dated 24th February 1888.)

<sup>1</sup> Leases which require alterations in, or additions of special clauses to, the sanctioned form should be prepared by the Solicitor to Government at the expense of the lessee. (G. R. No. 3208, dated 16th May 1888.)

(3) **Persons temporarily cultivating alluvial lands not occupants.**—The persons who are permitted to cultivate temporarily have no right in the land and are not occupants as defined in the Land Revenue Code. The Rules 31 and 32 do not apply to them, and the form of agreement in Appendix D (now B) is not suitable to their case. In such cases the Collector may take from them a simple agreement to pay the assessment fixed and to refrain from injuring trees which it is desirable to preserve. (G. R. No. 9194, dated 20th November 1884.)

(4) **Avalkarkuns may accept relinquishment and agreements.**—His Excellency the Governor in Council is pleased to direct that Avalkarkuns may, during the absence of Mamlatdars from headquarters, accept on their behalf notices of relinquishment under Section 74 of the Land Revenue Code and agreements under Rules 32 and 75 (now Rules 32 and 77) of the rules framed thereunder. Whenever Mamlatdars accept, without further inquiry, notices of relinquishments and agreements executed and duly endorsed by an Avalkarkun they will be held by Government to have exercised the due care enjoined by Rule 76 (now Rule 78) of the rules framed under Section 214 of the Land Revenue Code. (G. R. No. 1743, dated 2nd March 1889.)

(5) **Form of lease.**—G. R. No. 3208, dated 16th May 1882, is applicable to all leases. Simple forms of leases or the like which are sufficient in the mofussil should be prepared by the Legal Remembrancer, documents to be drafted in the English fashion should be prepared by the Solicitor to Government. (G. R. No. 7578, dated 2nd October 1895.)

32. (1) In every case in which a lease is not executed under Rule 31 an agreement, in the form of Appendix B, shall be taken from the person who is to become the registered occupant, and every such agreement shall be endorsed by two respectable witnesses and by the patel and village-accountant of the village in which the land to which it relates is situate, to the effect prescribed below the said form; and the Mamlatdar or Mahalkari who takes the said agreement will be held responsible for exercising due care in ascertaining the identity of the persons signing the same, and their fitness to be accepted as occupants responsible for the payment of land-revenue, notwithstanding that the agreements have been duly endorsed as hereinbefore required :

Provided always that no such agreement shall be necessary when an agreement, in the form of Appendix A, is taken under Rule 26.

(2) Where the occupancy is granted subject to the condition that the occupant shall not transfer it in any way to another person without the sanction of the Collector, the form of Appendix B should be modified as shown in the footnote to the second clause thereof.

33. (1) It shall be the duty of every village-accountant, if so desired by any occupant in his village or by any person about to become an occupant of land in his village, to prepare any agreement that may be necessary under either Rule 26, or Rule 32, without fee or charge of any kind.

Village-accountants to prepare agreements under Rules 26 and 32 without charge, when so desired.

(2) A village-accountant who prepares any such agreement shall affix his signature beneath the words "written by" on the lower left-hand corner of such agreement.

34. (1) The permission in writing to be given by a Mámíatdár or Mahálkari under Section 60 to enable an intending occupant to enter upon occupation shall be in the form of Appendix C.

Form of written permission to occupy under Section 60.

(2) No such permission shall be given until either a lease or an agreement has been duly executed and delivered under either Rule 31, 32 or 26, as the case may be.

(f) *Special Rules.*

35. (1) In Municipal districts, building-sites and plots of open ground, which have not been dedicated to public use or already transferred to the Municipality, are specially reserved by Government under Sub-section (2) of Section 50 of the Bombay District Municipal Act, 1901.

Unoccupied building-sites, &c., within Municipal limits to be distinguished from lands forming part of public streets.

This reservation does not apply to small pieces of ground lying between the houses and the road-way in an irregular street or road of varying width, which should be recognized as forming part of the street and vesting in the Municipality, unless private individuals have rights thereto. But separate vacant sites between houses do not vest in the Municipality



even though they are unenclosed, unless they have been transferred to the Municipality by Government.

(2) Where the right to any piece of ground is in dispute between a Municipality and Government, the Collector shall endeavour to decide the dispute in accordance with the foregoing principles. Where the Collector is in doubt, or the Municipality does not accept his decision, the case shall be referred to the Commissioner.

36. Except as may be otherwise specially directed by Government, nothing in Rules 17 to 34, both inclusive, shall be applicable to the grant of occupancies of any lands to which a City Survey has been extended under Bombay Act IV. of 1868 or under Section 131, within the sites of the towns and cities of Ahmedabad (inclusive of its suburbs of Saraspur, Dariápur-Kájipur, Rájpur-Hirpur and Asarwa ), Broach, Surat, Ránder, Bulsar and Godhra, or of any other town or city to which Government may by notification in the *Bombay Government Gazette* extend this rule. In such cases the grant of occupancies by the Collector shall, save as aforesaid, be made in accordance with the following rules:—

I. Whenever the holder of a building-site desires to acquire any small strip of ground belonging to Government which is adjacent to his site and which could not reasonably be disposed of by the Collector as a separate site, the Collector may, if he thinks fit and notwithstanding anything contained in Rule 10 to the contrary, dispose of such strip to the said holder by sale, subject to the same tenure and to payment of ground-rent or assessment at the same rate, if any, on which he holds the said site.

II. The occupancy of any unoccupied land within the site of any of the said towns or cities not assigned for special purposes may, at the Collector's discretion, be granted to such

Questions of rights between Government and Municipality how to be dealt with.

Special rules for the sites of Ahmedabad, Broach, Surat, Ránder, Bulsar and Godhra.

Disposal of strips of land adjacent to existing building sites.

Mode in which other lands may be disposed of.

person as the Collector deems fit either for purposes of agriculture only or for other purposes; but, except as provided in Rule I, the Collector shall not

- (a) dispose of the proprietary right in the soil of any such land, or
- (b) grant the occupancy thereof for any greater period than is prescribed in Rules IV., V. and VI. respectively.

III. The occupancy of any land shall ordinarily be sold by auction to the highest bidder; but the Collector may in his discretion sell the same by private arrangement:

Provided that, except under special circumstances, no sale of an occupancy of land for a building-site shall be made by the Collector for less than one rupee per square yard.

IV. The occupancy of land for building-sites shall be granted under written leases in a form approved by Government, for terms expiring on the date fixed in this behalf by Government for each city or town, at a ground-rent of two pice per square yard per annum.

V. The occupancy of land eventually intended for building-sites, but of which the immediate disposal for the said purpose appears to the Collector to be undesirable, may be let, under written leases in a form approved by Government, for short terms not exceeding in any case seven years, at a ground-rent of one anna per square yard per annum.

VI. The occupancy of land for purposes of agriculture only shall be granted for terms of one year only. An agreement in the form of Appendix B, with such modifications as may be necessary, shall be taken from every person who is to become a registered occupant of land under this rule, and the provisions of Rule 32 shall be applicable to every agreement so taken.

VII. The permission in writing required under Section 60 to enable an intending occupant to enter upon occupation shall not be given except by the Collector of the district or by an Assistant or Deputy Collector to whom power in this behalf has been assigned by the Collector under Section 10, or until either a lease or an agreement has been duly executed and delivered under Rule IV., V. or VI., as the case may be. Such permission shall be in the form of Appendix C, with such modifications as may be necessary.

(2) *Disposal of minor rights.*

37. (1) The produce of trees belonging to Government may be sold by auction annually.

(2) Where any such trees are sold under Section 41, the sale shall be by auction or otherwise as the Collector may direct.

**Disposal of grass and produce of trees in Government buildings.**—(1) In the case of Government buildings, hospitals, asylums, &c., the Public Works Department is the custodian of the property, but the disposal of the produce of the compounds may be left to the head of the establishment occupying the premises, subject to the conditions that the proceeds are credited to Public Works Provincial Revenues, and that no trees are felled without the previous consent of the Executive Engineer. ( G. R. No. 178A-1187, P. W. D., dated 4th July 1888. )

(2) The proceeds of the sale of all trees, fruit and grass in the compounds of Government buildings used as offices, hospitals, &c., should be credited to Public Works Provincial Revenues, the disposal of the timber being in the hands of the Executive Engineer, and that of the other products in those of the head of the establishment occupying the premises.

The proceeds of the sale of all trees in Government buildings occupied as residences will be paid in to the Executive Engineer, without whose sanction no trees should be cut down, to be credited to the Public Works Provincial Revenues. The produce of all fruit, trees, grass, &c., will be the property of the tenant for the time being, and the value of the same should be taken into consideration when fixing the rents of such buildings. ( G. R. No. 364A-1964, P. W. D., dated 6th December 1887, and G. R. No. 139A-086, P. W. D., dated 6th April 1889. )

(3) **No Local Fund Cess on sales of trees.**—The Local Fund Cess cannot be levied on simple sales of trees whether the sale proceeds are credited to Forest or to Land Revenue. ( G. R. No. 9993, dated 19th December 1884. )

38. The grazing or other produce of all unoccupied land vesting in Government, whether a

Grazing and other similar produce to be ordinarily disposed of by sale for periods not exceeding five years.

survey-settlement has been extended to such land or not, and whether the same is assessed or not, and of all land especially reserved for grass or for grazing (except land assigned to villages for free pasturage) may be sold by public auction

or otherwise as the Collector deems fit, year by year, or for any term not exceeding five years, either field by field or in tracts, and at such time as the Collector shall determine :

Provided that the purchaser's rights over such land shall entirely cease on the dates respectively fixed for the several districts and provinces in the following table, unless, under special circumstances, the Collector deems it necessary to extend the time so fixed for any period not exceeding one month:—

Collectorate.	Waste assessed Dry-crop Land.	Waste assessed Rice Land.	Reserved Kurans and un- assessed Waste.
Bijapur ... ..	31st March ...	31st March...	1st May.
Satara ... ..	Do. ...	Do. ...	Do.
Belgaum ... ..	Do. ...	1st December.	Do.
Dharwar ... ..	Do. ...	Do.	Do.
Kanara ... ..	Do. ...	1st October ...	Do.
Other Deccan Collectorates...	Do. ...	31st March ...	Do.
Konkan Collectorates ...	Do. ...	Do. ...	31st December for cutting and up to the mon- soon for grazing.
Gujarát Collectorates ...	Do.	Do.	1st May.

(1) **Mahalkaris empowered to grant occupancies of waste lands.**—His Excellency the Governor in Council is pleased to authorize the Collectors of Satara, Poona and Khandesh to assign to the

Mahalkaris in their respective districts the power to sell by auction the grazing of all unoccupied lands vested in Government within their charges and to confirm the sale when the sum finally bid is below Rs. 50. ( G. R. No. 5430, dated 3rd July 1885. )

(2) **Upset price on grazing.**—There is no reason why an upset price suitable to circumstances should not be imposed, but the procedure should not be adopted to compel the villagers to pay more than is a reasonable equivalent for the value of grazing. ( G. R. No. 6709, dated 10th August 1894. )

39.<sup>1</sup> (1) The Collector may, at his discretion, sell by public auction, or otherwise dispose of the right to remove earth, stone, kankar, sand, muram or any other material which is the property of Government for such periods, in such quantities and on such terms as he thinks fit:

Disposal of earth, stone, &c., by the Collector.

Provided that such sale or other disposal shall be made subject to the privileges conceded by Rules 40 and 41.

(2) The rate charged by the Collector under this rule, when the right in question is not put up for sale by public auction, may be either a lump sum, or so much per cubic foot of excavation, or, in the case of a Railway Company requiring land for excavating ballast, so much per mile of the railway-line for which ballast is obtained, or otherwise as the Collector thinks fit.

**Removal of sand, muram, &c.**—(1) **Within Municipal limits.**—The proceeds of sand, gravel and stone gathered or quarried within Municipal limits should be credited to Municipal Funds. ( G. R. No. 1026, dated 28th March 1884. )

(2) **In creeks.**—The right to collect and remove sand in creeks is sold by Government. The right to collect and remove—shells from the bed of a creek is equally saleable. ( G. R. No. 2143, dated 18th March 1886. )

<sup>1</sup> (1) Fees levied on quarries, stone, sand, &c., have been assigned to Local Funds. ( G. R. No. 4550, dated 25th August 1874. )

(2) *Vide* G. R. No. 2799, dated 9th April 1895, given under Rule 33.

(3) **Scale of fees for.**—Fees to be levied for the removal of earth, kankar, etc., from Government lands under Rule 38 (now Rule 39) of the rules under the Land Revenue Code are shown in the table given below:—

Material.	Royalty to be paid per 100 cubic feet.	Method of measurement.
	Rs. a. p.	
Stones, "building" ..	0 8 0	Actual quantity of stone in a building as per actual measurement.
Surplus ... ..	0 8 0	Actual quantity of surplus building stone on hand and removed from the quarry, 125 cubic feet to be taken as equal to 100 cubic feet on which royalty is to be charged.
Ballast ... ..	0 2 0	Actual measurement of ballast as delivered alongside the line or at a depôt.
Concrete ... ..	0 2 0	Actual measurement of concrete.
Used for any special purpose as pitching.	0 2 0	Method of measurement to be arranged between the Railway and Civil Officers at the time of commencing work.
Kankar taken from cultivated land.	0 4 0	Actual measurement of amount delivered to Railway.
Sand ... ..	0 1 0	Actual measurement of amount delivered.

NOTE.—The above rates are for materials only. In addition to this it will generally be found that compensation will have to be paid for damage done to grass or cultivation in quarrying stone. Stone is very often found in grass tracts that are annually let by auction for grazing, and as cartmen employed in carrying away quarried stone graze their cattle, disputes constantly occur which can be avoided by having previously settled what compensation the grass owner is to get.

It is also important if disputes are to be avoided that the Railway Officer should always consult the Civil Officer in whose charge the land is that he proposes to get stone from. He should obtain this officer's permission to quarry and give him full information as to what contractors are working for railway and where. (G. R. No. 6262, dated 2nd September 1886.)

(4) G. R. No. 6262, dated 2nd September 1886, should not be held applicable to the G. I. P. and B. B. & O. I. Railway Companies and to the railways in Sind. (G. R. No. 844, dated 4th February 1887.)

(5) The rates proposed by the Collector of Poona for

(i) Boulder stones removed from the surface of the ground	... } per 100 cubic feet,
(ii) Kankar taken from unoccupied unassessed land	... } Re. 0-2-6
	... } „ 0-1-6

are sanctioned. The rate for muram or white earth should be one anna per 100 cubic feet, as suggested by the Chief Engineer, S.-M. Railway Company.

As regards the date from which the orders passed in G. R. No. 6262, dated 2nd September 1886, shall have effect, the Collector should be informed that all claims not settled prior to the issue of the Resolution should be paid at the rates fixed by the Resolution and that claims already settled and paid should not be re-opened. (G. R. No. 1041, dated 14th February 1887.)

(6) **Right of Municipalities to levy fees for quarrying.**—Municipalities are not entitled to levy fees from the public for quarrying in assessed lands within Municipal limits. (G. R. No. 4225, G. D., dated 30th November 1888.)

(7) **Revenue realised from quarries in Government forests.**—The revenue realized from quarries and from minor mineral products in Government forests and lands which are under the management of the Forest Department, should be credited to forest, and where such forests and lands are not under the management of that Department, to Land Revenue (miscellaneous). (G. of I. letter No. 65, dated 24th January 1889, and G. R. No. 1253, dated 14th February 1889.)

(8) **Miscellaneous revenue from forests.**—The miscellaneous revenue realized from forests and lands, not under the management of the Forest Department, is to be continued to be credited to the Local Funds as heretofore. (G. R. No. 5042, dated 15th July 1889.)

(9) **Abatement of assessment on lands taken up by Public Works Department.**—His Excellency the Governor in Council is pleased to direct that the authority of sanctioning abatement of assessment on lands taken up by the Public Works Department for Irrigation Works should in future be exercised by the Commissioners of Divisions. The Public Works Department should obtain any statements required by it direct from those officers. (G. R. No. 5627, dated 3rd August 1889.)

(10) **How to credit quarrying fees for lands within and outside Municipal limits.**—The Commissioner, C. D.'s proposal that all fees for quarrying stone, muram, etc., levied in respect of land outside the Municipal limits should be credited to Local Funds, and that within Municipal limits they should be credited to Local Funds, or to Municipalities according as the property in the land vests in Government or the Municipality, is sanctioned in supersession of all previous orders on the subject and should be adopted.

It should be clearly understood that the permission given to Local Funds to appropriate the fees derived from quarrying or delving in waste lands is not to prejudice in any way the proprietary rights of Government as to its power of disposal over the lands in question. ( G. R. No. 1057, dated 8th February 1890. )

(11) **Remission of quarrying fees.**—The power of remission of quarrying fees is vested in the Commissioner by Government. ( Serial No. 15 in the statement accompanying G. R. No. 4347, dated 25th June 1902. )

(12) The order under No. 15 in the statement accompanying G. R. No. 4347, dated 25th June 1902, is sufficient to empower Collectors and Commissioners to remit quarry fees in certain cases. No amendment of Rule 38 ( now Rule 39 ) is necessary. ( G. R. No. 8237, dated 24th November 1902. )

(13) **Procedure in cases of Railway contractors.**—Fees levied from contractors are to be credited to Local Funds and then contractors are to draw bills on Government. ( G. R. No. 1629, dated 15th August 1882, Railway. )

(14) Contractors in the Railway Department should be charged fees for materials in accordance with Rule 38 ( now Rule 39 ) of the Land Revenue Code. ( G. R. No. 2503, dated 28th March 1883. )

(15) **Stones, etc., for Government works.**—No fees should be charged for stones, etc., removed from forests for Government or Local Fund works. ( G. R. No. 9365, dated 20th December 1883. )

(16) **Stones, etc., for Municipalities.**—The above Government Resolution is also applicable to Municipalities. They should, however, obtain permission of District Officers. ( G. R. No. 2490, dated 21st March 1884. )

(17) **Concessions of quarrying to Local Funds Department.**—Loose stones and the ruins of old buildings, whether composed of cut stones or bricks, clearly do not come within the category of articles included in the definition of forest produce in the Indian Forest Act.

The concessions granted to the Public Works Department exempting that Department from the payment of fees for stones obtained for public purposes from quarries situated in lands included within reserved forests, may be extended to the Local Funds Department. ( G. R. No. 1802, dated 28th March 1881. )



(18) **Quarrying fee rules by Municipalities.**—Fees for quarrying are not taxes, and the rules in this respect made by Municipalities and Cantonment Committees are *ultra vires*, and therefore the rules should recognize all exemptions allowed by Government. ( G. R. No. 2743, dated 19th April 1894. )

(19) **Quarrying in forest.**—Forest land is unassessed land and Rule 41 ( now Rule 42 ) is applicable to it, the permission being given with the acquiescence of the forest officers. ( G. R. No. 5147, dated 9th July 1895. )

(20) **Quarrying fee.**—The proceeds of all fees levied under Bombay Act V. of 1879 for permission to remove sand or to quarry are to be credited to the Local Fund constituted by Bombay Act I. of 1884 ( see Section 44 of the latter Act ).

40<sup>1</sup>. (1) Except as otherwise provided in this rule,

Removal of earth, stone, etc., by villagers for their own use without fee with the permission of the revenue patel.

(a) any person may for his own *bond fide* domestic or agricultural purposes, and

(b) any potter, or maker of bricks or tiles, may for the *bond fide* purposes of his trade as well as for his domestic and agricultural purposes

with the previous permission in writing of the revenue patel, but without payment of fee, remove earth, stone, kan-kar, sand, muram or other material from the bed of the sea or from the beds of creeks, rivers and nalas, or from any unassessed waste land not assigned for special purposes, within the limits of the village in which he resides.

(2) In any case where

(a) excavation of the soil is likely to damage or destroy any valuable building or any land required for any special or public purpose, or

(b) an extensive trade is carried on by potters, or makers of bricks or tiles, in respect of such materials,

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<sup>1</sup> Vide G. R. No. 6111, dated 9th September 1887, printed as order No. 10 under Section 61 of the Code.

the previous sanction of the Mámíatdár to any such removal shall be required ; and where it appears to the revenue patel that the case is one of those specified above, he shall refer the application for permission to remove the materials to the Mámíatdár for orders.

(3) Where it appears to the Mámíatdár that the removal of any such materials is likely to damage or destroy any valuable building or any land required for any special or public purpose, he shall in any case referred to him under Sub-rule (2) or otherwise coming to his notice, refuse permission to the extent necessary to prevent such damage or destruction, and for that purpose may forbid the removal of such materials from any site specified by him or from any sites except those specified by him.

(4) Where it appears to the Mámíatdár that the trade carried on by any potter, or maker of bricks or tiles, is sufficiently extensive and lucrative to render such a charge fair and equitable, the Mámíatdár may, in any case referred to him under Sub-rule (2) or otherwise coming to his notice, grant permission only on payment of fees at such rates as may be prescribed by the Collector in this behalf under Rule 39.

(5) In such cases as he thinks fit, the Collector may prohibit the Mámíatdár or the revenue patel from giving permission without obtaining his previous sanction ; and in any such case the revenue patel shall refer the application for permission to the Mámíatdár for the Collector's orders.

(6) Where the revenue patel refuses permission when the same is applied for under Sub-rule (1) or does not refer the application to the Mámíatdár under Sub-rule (2) or (5), an appeal shall lie to the Mámíatdár.

(1) "**Pot kharab**" is not unassessed waste.—The expression "any unassessed waste land not assigned for special purposes" (in clause 1 of this rule) does not include "Pot kharab" or unculturable land included in an assessed survey number, for, although no assessment is charged in respect of such "Pot kharab," it forms a part of an assessed survey number, and is held by the occupant of the number along with the rest of the land therein for the purpose of cultivation. It is not therefore waste land within the meaning of this rule. (G. R. No. 3291, dated 23rd April 1885.)

(2) **Removal of loose stones by occupants.**—The Collector need not, under this rule, interfere in any way with an occupant who merely gathers loose surface stones off his field, whether he sells them or not. ( G. R. No. 4788, dated 11th June 1885. )

(3) **Removal of earth from village-sites not permissible.**—It would be inadvisable as injurious to sanitation to permit villagers to remove earth from village-sites or from localities in the vicinity of villages. No modification of this rule is therefore required. ( G. R. No. 14, dated 5th January 1886. )

(4) **Material taken for State Railways exempt from fees.**—It has been decided that no fees should be charged on material taken from beds of nalas, etc., for use of State Railway works. ( G. R. No. 3170, dated 8th May 1891. )

(5) **No fee on occupied assessed land.**—No fees or charge of any sort should be levied if the material was removed from occupied assessed land without rendering it unfit for cultivation. ( G. R. No. 3455, dated 29th April 1884. )

41. Any person may, with the sanction of the revenue patel, take free of all charge from village etc., from village tanks as much earth, stone, kankar, sand, tanks. muram or other material as he requires, provided that no stones shall be removed that may have fallen in from the banks of built tanks, and that no excavation shall be made within ten cubits of the foot of the embankment of any such tank.

(3) *Miscellaneous.*

42. Every sale by auction, under these rules, or in pursuance of any of the provisions of the Land Revenue Code, shall be conducted, so far as may be, in accordance with Sections 165, 166, 170 to 177, both inclusive, and 180. The proclamation and written notice of sale required to be issued under Sections 165 and 166 shall be in one of the forms contained in Appendix D, with such modifications, if any, as may be necessary :

Provided that, in conducting the following sales, namely :—

- (a) sales of the right of grazing and of the right to take or cut grass in waste lands ;

(b) sales of the right to take the fruit of specified Government trees for a specified period ; and

(c) sales of dead wood,

the procedure shall be in accordance with such orders as may from time to time be made by the Collector either generally or specially in this behalf, instead of the procedure prescribed in Sections 165 and 166.

#### IV.—ASSIGNMENT OF LAND FOR SPECIAL PURPOSES.

[Section 38.]

43. Burial and burning grounds, spots near villages on which the village cattle<sup>1</sup> stand, and lands Cattle-stands and dhobis' and potters' grounds. for the use of village dhobis and potters should be assigned for these purposes respectively, according to the reasonable requirements of the villagers without charge.

(1) **Assignment of burial grounds.**—The Commissioner's assertion that it is the duty of Government to provide burial grounds can only be accepted in a very restricted sense. The duty is essentially one that devolves on local authorities and the cost should be met from local funds. ( G. R. No. 4953, dated 9th August 1900. )

#### V.—ALLUVION AND DILUVION.

[Sections 47 and 214 (i).]

44. Where a holding is bounded on any side by the bank or shore of a river,<sup>2</sup> creek or nála or of the Holders of land with shifting boundaries may enjoy upto such boundaries.

<sup>1</sup> Vide footnote to the words "cattle of the village" in Section 39 of the Code.

<sup>2</sup> Whatever may be the nature of the tenancy, the occupants of the land abutting on the stream, and not the Government, are entitled to the enjoyment and benefit of the water as it flows past. No doubt, all the occupants of land on the banks being equally entitled, each occupant or set of occupants is bound to use his right so as not materially to interfere with an equally beneficial enjoyment of it by the other occupants. An action will lie where the use by any of the occupants of the common right is unreasonable. But Government cannot arbitrarily curtail or interfere with, at any time during the occupancy, the enjoyment of the water by each occupant as it existed at the commencement of his occupancy and which must have constituted a most important consideration in fixing the amount of land assessment which each occupant agreed to pay. ( Printed Judgments of 1882, p. 53, and I. L. R. 7 Bombay 209. )

sea,<sup>1</sup> the holder will be permitted, subject in the case of unalienated holdings to such orders as may be legally passed under Rule 46, to occupy and use the land up to such bank or shore, notwithstanding that its position may shift from time to time.

45. It shall be the duty of the village officers, subject to the orders of the Mámlatdár or Mahálkari and of the Collector or of the Assistant or Deputy Collector in charge of the taluka, to ascertain from time to time and to record the changes caused by alluvion and diluvion in every holding subject to such changes.

Changes in holdings from alluvion and diluvion to be ascertained and recorded.

46. (1) The village officers shall report to the Mámlatdár when the area of any newly-formed alluvial land or island, or of any abandoned river-bed, to which the provisions of Section 46 or 64 apply, exceeds the limit prescribed in those sections, and the Mámlatdár shall deal with it under the orders of the Collector or Assistant Collector in the manner prescribed in the said sections respectively.

The officer who does the jamabandi to give effect to provisions of Sections 46 and 64.

(2) Newly-formed alluvial lands and islands, and abandoned river-beds, to which the provisions of the said sections do not apply, may be disposed of by the Collector under the rules and orders applicable to unoccupied land belonging to Government.

Land to which Sections 46 and 64 do not apply, to be disposed of by the Collector.

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<sup>1</sup> The right of the public to fish in the sea, whether it and its subjacent soil be or be not vested in the Crown, is common, and is not the subject of property. This right in certain portions of the sea may be regulated by local custom. Members of the public exercising the common right to fish in the sea, are bound to exercise that right in a fair and reasonable manner, and not so as to impede others from doing the same; and conduct which prevents another from a fair exercise of his equal right, if special injury thereby results to him, is actionable. (I. L. R. 2 Bombay 19.)

47.<sup>1</sup> (1) Claims to decrease of assessment on account of

The officer who does the jamabandi to dispose of claims under Section 47. diluvion under Section 47 shall be heard and disposed of by the officer who makes the annual jamabandi settlement.

(2) In order to provide against undue loss of revenue, care must be taken, whenever such claims are allowed, to trace out and assess the corresponding accretions of alluvial land, if any, in the same or in some other village.

(1) **Decrease of assessment on lands lost by diluvion.**—A decrease of assessment can only be granted under this section if the portion of the holding, i. e., of "a survey number or any division of land on which a distinct or aggregate assessment has been fixed," lost by diluvion amounts to not less than half an acre and to one-tenth or more of the holding. Both conditions must be fulfilled to entitle the holder of the land to a decrease of assessment. (G. R. No. 773, dated 13th February 1880.)

(2) In all cases in which the area of a holding is less than half an acre, only the one condition should be required of the loss by diluvion exceeding one-tenth of the holding affected. (G. R. No. 2771, dated 12th April 1886.)

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

[ Sections 48, 65 and 214 (c) and (i). ]

48. Land included as unarable in a survey number<sup>2</sup>

Land occupied by a road or tank, &c., in an occupant's holding may not be cultivated. assessed for purposes of agriculture only may ordinarily be brought under cultivation without extra charge by the occupant of such number, or by any one claiming under him, but such cultivation is prohibited in the following cases, namely:—

(a) when the land is occupied by a road or recognised foot-path or by a tank used for irrigation or for drinking or domestic purposes;

<sup>1</sup> For rules regarding alluvion and diluvion owing to changes in the course of the river Indus, or other waters, in the Province of Sind, see Appendix O.

<sup>2</sup> As land encroached on by accused formed part of a public road, cultivation of it was not prohibited by Rule 48, as that rule related only to land included in a survey number assessed for agriculture and occupied by a road, conviction under Rule 111 (now Rule 103) reversed and fine ordered to be refunded. (High Court Criminal Ruling No. 13 for April 1899.)

- (b) when the land is used as a burial ground or burning ground ;
- (c) when the land has been assigned for the use of the village potters, or other public purposes :

Provided that this prohibition shall not apply in the case of a tank, when such tank is used for irrigation only and waters only land which is in the sole occupation of the occupant, or when the privilege of cultivating the dry bed of the tank has been specially conceded to the occupant.

**(1) How Pot kharab was dealt with at Revision Surveys.**—Land classed as unarable and included in a survey number is called Pot kharab. Pot kharab is of two kinds :—

(i) Pot kharab over which the occupant of the number in which it is included has the sole occupancy rights, such as patches unfit to bear assessment, farm buildings, threshing floors, &c.

(ii) Pot kharab over which the occupant of the number in which it is included has not the sole occupancy rights, but which being devoted to public purposes is the common property of the village community, such as tanks, burial grounds, places assigned to village potters to dig earth from, &c.

At the Revision Survey it is the practice to exclude the second kind of Pot kharab from the survey number in which it was included at the original survey and to make it into a separate survey, or Pot number. This practice, though in conformity with the law and the orders of Government on the subject is calculated to affect the rights of the occupant from whose number the Pot kharab is excluded, and to put him to a disadvantage, inasmuch as by the separation of the Pot kharab he is deprived of the prospective right to cultivate it, should the kharab at some future time cease to be used for the purpose to which it is at present devoted—an advantage to which he would be entitled if the kharab were allowed to remain in his number. In such cases, therefore, with a view to save the occupants from this disadvantage it has been decided to enter the Pot kharab in the name of the occupant from whose number it has been excluded, and to record a note against it describing the purpose for which it is used by the village community, and prohibiting the cultivation thereof without the permission of the Collector. ( G. R.No. 696, dated 27th January 1891. )

**(2) Removal of earth, stone, &c., from unarable land by persons other than occupants or tenants.**—Removal of earth, stone, &c., for sale or profit or for anybody's use but that of the occupant or his tenant, &c., is nowhere permitted, and such removal would be an appropriation which, under Section 65, requires the Collector's permission. ( G. R. No. 3291, dated 23rd April 1885. )

49. No occupant of unalienated land shall appropriate the same or any part thereof to the manufacture of salt without the previous permission in writing, first of the Collector of Salt Revenue, and then of the Collector of the District. The Collector of the District may, in any case where such permission is granted, either—

Appropriation of land to the manufacture of salt prohibited except on certain conditions.

- (a) require the applicant to relinquish his occupancy rights, and to enter into an agreement that such land shall be placed at the disposal of the Salt Department, subject to a lease in favour of the applicant on such terms as the Collector of Salt Revenue under the general orders of Government may require; or
- (b) permit the appropriation applied for without requiring the occupant to relinquish his occupancy rights on
  - (i) payment of such fine, not exceeding half the amount leviable under Section 65, as the Collector may deem proper, and
  - (ii) the execution of an agreement—
    - (1) that the applicant shall pay, in lieu of the existing assessment and Local Fund Cess, such amount or rate as may be imposed by the license to be granted by the Collector of Salt Revenue in accordance with the general and special orders of Government, and shall also in respect of the land appropriated conform to all the conditions of such license, and
    - (2) that, whenever the Collector of Salt Revenue declares that the land, or any part thereof, is not used or has ceased to be used for the manufacture of salt, such land shall forthwith become liable to the survey assessment which was chargeable upon it immediately



before it was permitted to be appropriated for the manufacture of salt.

50.<sup>1</sup> Save as provided in Section 65 and Rule 49, no occupant of land assessed or held for purposes of agriculture only, and no person claiming under any such occupant, shall excavate or remove earth, stone other than loose surface stones, kankar, sand, muram or any other material of the soil thereof, or make any other use of the land, (a) so as, in the opinion of the Collector, thereby to destroy or materially injure the land for cultivation, or (b) for purposes of trade or profit, or any other purpose except his own *bonâ fide* domestic or agricultural purposes.

51. No occupant of land assessed or held as a building-site, or lease-holder of a building-site in a hill-station, and no person claiming under any such occupant or lease-holder shall, subject to any special provision in the conditions annexed to his occupancy under Section 62, Section 67 or otherwise, or prescribed by his lease, excavate or remove, for any purpose whatever, earth, stone other than loose surface stones, kankar, sand, muram or any other material of the soil thereof, except with the previous permission in writing of the Collector, or, in a hill-station, of the Superintendent for such hill-station, and in accordance with such terms (including the payment of fees for any such excavation or removal) as the Collector or such Superintendent in each case thinks fit to prescribe.

52. No unalienated land within the site of any city, town, or village shall be excavated without the previous permission, in writing, of the Collector, for any purpose except the laying of foundations for buildings, the sinking of wells and the making of grain-

<sup>1</sup> *Vide* G. R. No. 4783, dated 11th June 1835, printed as order No. (2) under Rule 40.

pits. When permission is granted by the Collector to excavate any such land as aforesaid for any purpose other than those abovementioned, such excavation shall not be made otherwise than in accordance with such terms (including the payment of fees for any such excavation) as the Collector, in each case, thinks fit to prescribe.

53. No application under Section 65 for permission to appropriate land within the sites of certain cities and towns to non-agricultural purposes when to be refused.

appropriate to a non-agricultural purpose any land, to which a City Survey has been extended under Bombay Act IV. of 1868 or under Section 131, within the sites of the towns and cities of Ahmedabad (inclusive of its suburbs of Saraspur, Dariapur-Kajipur, Rajpur-Hirpur and Asarwa), Broach, Surat, Ránder, Bulsar and Godhra, or of any other town or city to which Government may by notification in the *Bombay Government Gazette* extend this rule, or to have land so appropriated, demarcated and made into a separate number under Section 116, shall be granted by the Collector, if the superficial contents of the land to which the application relates is less than two hundred square yards.

## VII.—ASSESSMENT OF LAND REVENUE.

[Sections 48, 52, 100 and 214 (b).]

### (1) *Unsurveyed Lands.*

54.<sup>1</sup> No assessment shall be placed on land situated in the bed of any river, which is dealt with under Rule 21. The land revenue chargeable on such land shall be deemed to be included in the price of the occupancy thereof obtained in auction under that rule.

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<sup>1</sup> See order No. (1) under Rule 32.

(2) *Surveyed Lands.*

55.<sup>1</sup> The following rules, unless otherwise directed by Government, shall be observed in the conduct of revenue surveys of lands used, or which may be used, for the purposes of agriculture :—

## Survey Rules.

I. (a) Every occupancy separately recognized in the village accounts, if not less in extent than the

<sup>1</sup> The following correspondence relating to the original framing and subsequent alterations in Rule 55 is given here for reference:—

1. Please see footnote No. (1) to Section 3, clauses (6) and (7). In that note it has been stated that the Code does not separately recognize the sub-division of land which is commonly known by the term "Pot number." According to the definitions of "survey number" and "recognized share of a survey number" as given in the Code this sub-division (Pot number) could be considered either as "survey number" or as "recognized share of a survey number." It could be considered as a "survey number" because it was a portion of land of which the area and other particulars were separately entered under an indicative number in the survey records of the village, town or city in which it was situated. It could be considered as a "recognized share of a survey number" because it was a sub-division of a survey number separately assessed and registered.

2. When the rules under the Code were framed the term "subordinate survey number" was first defined in Rule 55. This rule ran as follows:—

(1) Every separate occupancy recognized in the village accounts shall be separately measured, classed, assessed and defined by boundary marks and shall be comprised in a survey number or in a subordinate survey number.

By "subordinate survey number" is meant a portion of survey number bearing a subordinate survey number and separately demarcated and assessed.

3. The rules under the Code having the force of law, the legal status of a "Pot number" comprising, as it did, a separately recognised occupancy was the same as that of a survey number, although in practice it was, being a portion of a survey number, considered and treated as a recognized share of a survey number. (*Vide* Section 3, Clauses (6) and (7) of the Code.)

4. Shortly after the above rules were framed a case occurred in which the question raised was whether in the case of a survey number containing two or more Pot numbers, if one was relinquished, the holders of others would be held responsible for the assessment thereon until they relinquished their shares as required by the provisions of Section 99 (b) of the Code. The officer by whom this question was raised observed :—

"In village forms Nos. 1 and 3 these (Pot numbers) are shown under

minimum for survey numbers fixed in relation to such land under Section 98, shall be separately measured, classified and assessed and defined by boundary marks, and shall be made a survey number.

(b) Every occupancy separately recognized in the village accounts which is less in extent than

the head number, area and assessment being separately given, and in the field they are denoted by separate boundary marks. They are virtually separate fields, but I believe they are not so recognized by the Survey Department, and they would seem to fall under exception (b) of Section 99 of the Land Revenue Code."

5. This question was referred to (1) the Survey Commissioner, and (2) the Remembrancer of Legal Affairs for opinion.

(1) The Survey Commissioner observed:—

" \* \* \* \* \*

" 6. In the early days of the survey in the Bombay Presidency there was no such thing as a Pot or subordinate survey number. Several occupancies were frequently found clubbed together into one survey number without any subordinate measurements being made. Subsequently the custom of making recognized sub-divisions of fields of a certain area into Pot numbers was adopted and has continued up to the present time with a few modifications and variations. When, however, such sub-divisions in the field have not been made by the survey it has been customary at the field inspection ( Pot Pahani ) made by the Mamlatdars previous to settlement, to fix and register after rough measurement, if necessary, the share of assessment to be paid by each sharer in the field who has a separate Khata in the village accounts. Sub-divisions so made in this way at Pot Pahani correspond with the definition of recognized share of a survey number as given in the Land Revenue Code.

" 7. If the above opinion be correct, a Pot number can be registered without the liability of the other Pot sharers being enforced as in clause (b) of Section 99 of the Code, but a share of a survey number made previous to the settlement by agencies other than the survey for account purposes cannot. There exists at present a great variety in practice in different collectorates on this point, and it is necessary that one uniform system should be introduced. It might be well that Government should obtain a formal opinion on the subject from the Legal Remembrancer with a view to an authoritative interpretation being issued.

" 8. If it be conceded that the law is ambiguous and capable of interpretation as shown above, the Survey and Settlement Commissioner hopes that it may be made clear that a subordinate or Pot number cannot

the minimum for survey numbers fixed under Section 98 in relation to such land, shall, unless the Commissioner of Survey otherwise directs, be separately measured, classified and assessed and defined by boundary marks, and the Commissioner of Survey may, at any time either by general order or in any particular case or

be relinquished without the liability of the holders of other Pot numbers in the main survey number being enforced. It is necessary for simplicity of revenue administration that only the survey unit proper, *i.e.*, the survey number, should be capable of unconditional relinquishment. In the Konkan and even in parts of the Deccan many survey numbers contain from 30 to 50 Pot numbers, some of very small area, and the confusion which would occur, if one or more of these plots were to be permitted to be unconditionally relinquished, may be readily imagined. Not only would there arise confusion in the accounts, but it would be a matter of some difficulty for the village accountant without the assistance of the holders of other Pot numbers to identify the Pot numbers relinquished when carrying out the inspection of waste lands with a view to the sale of the grazing, and the same difficulty would be experienced by an applicant who desired to take up the relinquished land. Subordinate survey numbers are demarcated by the Survey Department as required by the rules, but the demarcation is done as inexpensively as possible to save the pockets of the cultivators, and where, as often happens in rice lands, there exist well defined embankments it is considered sufficient to indicate the boundaries of each plot by one or two small stones. . . . ."

(2) The Legal Remembrancer observed :—

"The Survey and Settlement Commissioner, I think, takes a perfectly correct view of the law . . . . ."

"3. As the law now stands, a subordinate survey number falls within the definition of a survey number and must, I think, be treated in all respects as if it were an entirely distinct survey number.

"4. When an opportunity occurs, the law may, of course, be amended in any manner that Government think expedient. But looking to the fact that each subordinate survey number marks a 'separate occupancy recognized in the village accounts' it would seem that however inconvenient and troublesome it may be for administrative purposes to be obliged to recognize the separate existence of such small holdings, it is only fair to the holders that they should not be burdened with the responsibility for their neighbour's affairs which the Survey and Settlement Commissioner proposes in his para. 8. If their occupancies are separately recognized in the village accounts and each of them therefore has, or may have, I presume, a separate Khata, it seems to be in the

class of cases, direct that such operations shall not be proceeded with unless and until an application accompanied with prepayment of all the costs of such operations, or such portion thereof as the Commissioner of Survey may direct, has been presented by the parties interested.

Recognized shares of survey numbers so defined by

highest degree unreasonable to say that if one or more of these small holdings should be relinquished the responsibility for their assessment shall be thrown upon the holders of *all the other* subordinate numbers in the main survey number . . . . . ”

6. On receiving these opinions Government passed orders on the question referred to in their Resolution No. 898, dated 2nd February 1883. The Resolution ran as follows:—

“ \* \* \* \* \*

“ 2. Cases of the kind referred to . . . . are not of rare occurrence, and if the liability in respect of the . . . . relinquished shares cannot be enforced upon the other sharers in the main survey number loss of revenue to Government may not unfrequently occur, and the only way to avoid it would be to amend the law as it stands on the subject, and the sooner this is done the better. . . . . ”

7. The question was then referred to the Divisional Commissioners who were asked to state their opinions in the matter after consulting the Survey and Settlement Commissioner.

8. The Commissioners discussed the question in Committee and submitted a joint report after consulting the Survey Commissioner in the matter. This report was disposed of by Government in their Resolution No. 1542, dated 19th February 1884, which ran as follows:—

“ \* \* \* \* \*

“ 3. It is to be inferred that the cultivation of a field by a number of co-sharers as an undivided occupancy is and has always been a common practice. In Sind, for instance, it is said to be convenient and popular, ‘ because joint action is necessary in making and clearing branch canals, water-courses, &c.’ It is recognized in various sections of the Land Revenue Code, such as Sections 80, 81, 136, joint responsibility is established in case of relinquishment of shares by Section 99 (b), and the Legal Remembrancer recognizes this responsibility as equitable when the shares are undivided and the sharers have separate accounts, and concurs in its extension to the case of a share being forfeited, in which Government have concurred.

“ 4. This kind of holding, where the undivided occupancy is not large, is convenient to the executive, and therefore in such cases the

boundary-marks shall be called "subordinate survey numbers," but shall be regarded for all purposes as recognized shares of survey numbers.

II. Where an occupancy is held by two or more co-occupants in shares, and each of the said occupants has a separate account to which he pays his quota of the land revenue due in respect of the occupancy separately, but the proper share

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practice has been not to demarcate the shares on the ground but to parcel out the assessment into shares by annas, and enter the payers and the sum due from each in the village records.

"5. Now this practice points to a minimum of area, below which Government will not consent to demarcate the land into separate survey numbers. This regulation is reasonable and is not contrary to the principles of the rayatwari tenure. It has accordingly been confirmed by law, Land Revenue Code, Section 98. Government do not intend to abandon the right to refuse to subdivide land below a fixed minimum area. On the other hand His Excellency in Council considers that objection should not be offered to the recognition as survey numbers of shares which have been defined by partition and are above the minimum area, or not so much below it as to make their recognition inexpedient.

"6. This being so, Government should not be compelled to recognize a share of a field below the minimum as a separate survey number, merely because for administrative convenience, it may have been roughly marked off from other similar shares in the field. Rule 99 (2) (now Rule 96) provides for this.

"7. On the other hand it is held that when part of a survey number has been separately demarcated and assessed in a formal way, it becomes, under the Act and rules in force to all intents and purposes, a survey number, and that Section 99 (b) is no longer applicable to it and the other subordinate numbers similarly demarcated which are comprised in a survey number.

"8. Moreover under the proviso to Section 98, any subordinate numbers which have up to this date become survey numbers, by being recognized as such although of less than the minimum area, must be held exempt from Section 99 (b). No holding need be recognized as a survey number if it is less than the minimum, but if it has once been recognized as such it is 'deemed to have been authorizedly made whatever its extent.'

"9. There are then only two classes to consider (1) survey numbers whether integral or subordinate, and (2) recognized shares. And the important point is to maintain the minimum, and not to recognize as survey numbers holdings of smaller size except with due deliberation and

of each occupant has not been permanently divided from the rest, the entire occupancy shall be comprised in a survey number; and each co-occupant's share therein shall be recorded as a recognized share of such survey number, together with the proportion reckoned in annas, which such share bears to the whole survey number and the assessment of such share.

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forethought. This rests with the Survey Commissioner under Section 98, clause 2.

" 10. Rule 55 therefore appears to be somewhat too wide and to need the addition of a proviso that a 'separate occupancy recognised in the village accounts' shall not, merely because it is separately defined by boundary-marks for administrative convenience, become a survey number under the Act, if its area is less than the minimum area fixed for the district.

" 11. The necessity of this proviso may have been overlooked. On the other hand it may have been considered that, as rules framed under Section 214 must be consistent with the Act, subordinate survey numbers under Rule 55 (1) are subject to the provisions of Section 98. It is certain that the Survey Commissioner had no intention to lower the minimum and recognize *all* subordinate survey numbers as integral survey numbers, and it is a question whether *Pot* numbers have been recognized in the sense of Section 98, clause 2. The intention of Rule 55 seems to have been that every 'separate occupancy recognized in the village accounts' should be separately demarcated, whatever its area. Now the Act does not lay down that a recognized share shall in no case be demarcated, or that if it is demarcated it shall become a survey number exempt from Section 99 (b). On the contrary, Section 99 (a), by enacting that it shall not be obligatory to demarcate recognized shares separately seems to imply that they may be demarcated without ceasing to be recognized shares under that section.

" 12. While therefore it may be very proper to recognize any holding of a certain size as a survey number, it does not appear clear that the Act at any rate makes it obligatory on Government to abandon Section 99 (b) in every case where a holding has been defined by boundary-marks and entered in the record under a subsidiary number. What the minimum size of recognized survey numbers should be in any case rests with the Commissioner of Survey under Section 98, and this discretion should in the opinion of His Excellency in Council be used with reference to the views stated in paras. 3 to 6 of this Resolution.

" 13. The principle to be followed being thus laid down, it is for consideration how far concessions beyond it have already been made under the existing Act and rules, and what changes in them are necessary to give effect to it.



III. All measurements shall be recorded in a book to be kept in such form as shall be prescribed by the Commissioner of Survey for each survey. The said books when prepared shall be preserved as a record of the survey.

IV. The original measurements made by the subordinate survey officers employed for the purpose shall be tested by the officers in charge of measuring establishments in such

" 14. It is not clear to His Excellency in Council that it is necessary to alter the Act for this purpose, though an amendment of Section 99 is necessary to extend clause (b) to forfeitures, also the force of the words 'and includes a recognized share of survey number' at the end of Section 3 (6) is doubtful. Rule 55 and perhaps some others should be recast. The rules under Section 214 may be varied or rescinded at discretion, but the effect of any rule or proceedings taken while it is in force must be considered.

" 15. His Excellency in Council thinks it advisable to refer the subject back at this stage to the Legal Remembrancer and Commissioner of Survey in turn for further consideration of the views stated in this resolution and the best way of giving effect to them."

9. The opinions called for in para. 15 of the above resolution were submitted to Government, who in their Resolution No. 4892, dated 18th June 1884, stated their conclusion on this difficult question in the following terms :—

\* \* \* \* \*

" 2. First to revert to Bombay Act I. of 1865. This Act and the rules framed under it recognized only (1) the field or number, and (2) the recognized share of a field. The latter was defined to be a portion of a field entered in the name of any one in the survey papers or other public accounts, and this definition included what are now known as subordinate survey numbers as well as recognized shares of survey numbers. Rule 15 under Act I. of 1865 enforced therefore in both cases the liability of all the other sharers of a survey number when one sharer relinquished his share.

" 3. It is stated in these papers that 'the provision regarding the liability of the other holders of subordinate survey numbers in the case of relinquishment of a subordinate survey number is one to which the cultivators have become accustomed from the earliest days of the survey.' Again, the Commissioners of Divisions say :—'The practice against which Mr. Naylor argues of enforcing a responsibility of co-sharers in a survey field when one of the occupants of a subordinate share relinquishes his occupancy, is one which has prevailed since the earliest days of the survey.'

Survey and Settlement  
Commissioner's memo-  
randum No. 443 of 24th  
February 1883, para.  
11.

Joint report No. R.  
357, dated 17th July  
1883, para. 5.

manner and to such extent as the Commissioner of Survey shall deem sufficient.

V. Village maps shall be prepared under the orders of the Commissioner of Survey showing each survey number. The positions of the boundary-marks of each survey number shall also be shown on the said maps.

VI. For the purposes of assessments all land shall be

The Legal Remembrancer himself writes:—

‘I readily own that the recognition of shares of survey numbers when the shares are undivided and the sharers have separate accounts is a convenience to the sharers themselves and a necessity for the purpose of facilitating the village account-keeping, and I do not think that the sharers have anything to complain of in its being laid down that when one sharer relinquishes his share the rest of them must be responsible for its assessment, and I agree with the Commissioners of Divisions that the same liability might legitimately be imposed if a share is forfeited.’

But he argues that these liabilities should be confined to those who form a body of co-sharers each entitled to a certain portion of the field, and that the survey system before the Land Revenue Code unjustly extended the liabilities to subordinate survey numbers, the holder of any one of which has no connection with the holder of any other.

“4. The question whether the Land Revenue Code of 1879 altered the previous law on this subject, and, if so, to what extent. Act V. of 1879 speaks only of ‘survey numbers’ and ‘recognized shares of survey numbers.’ The expression ‘survey numbers’ includes ‘a recognized share of a survey number,’ and the latter is ‘subject to the same provisions of this Act as are applicable to entire survey numbers’ except that (99 (a)) it need not be demarcated and (99 (b)) recognized sharers are subject to the joint liability above described. ‘Recognized share’ is defined (Section 3 (7)) to be ‘a sub-division of a survey number separately assessed and registered,’ but it is not said whether by the Survey Department or by the Mamlatdar.

“5. It is clear then that the Act of 1879 equally with the Act of 1865 contemplated only two divisions of land, viz., the survey unit and its recognized part. Section 99 (b) of the Act of 1879 attached to the latter the same liability as Rule 15 under the Act of 1865.

“6. The condition of a survey number or unit is laid down in Section 93, viz., that it shall not be less than a fixed minimum. This condition is carefully upheld in other sections. Thus in Section 113 a partition which would sub-divide land in a way to make survey numbers below the minimum is not permitted. In Section 115 the survey officer in revision is not to sub-divide a survey number into two or more distinct numbers if the latter would fall below the minimum area. It is clear that in these

classed with respect to its productive qualities. The number of classes and their relative value reckoned in annas shall be fixed under the orders of the Commissioner of Survey with reference to the circumstances of the different tracts of country to which the survey extends and to the nature of the cultivation.

### VII. Every classer shall keep a field-book and record

cases there may be a plot of land, the holder of which has no joint interest with the holders of other plots comprised in the same survey number, except as regards the liability imposed by Section 99 (b), yet such plots remain recognized shares subject to that liability, because they are below the minimum area of a survey number.

" 7. Now by Section 98 the minimum of area is, with an exception to be noticed below, to be fixed by the Survey Commissioner with the sanction of Government. Rule 55 is a rule purporting not to be inconsistent with the Act, and made for the guidance of the Survey Commissioner. Rule 55 (1), as it is construed by the Legal Remembrancer, lays down that 'every separate occupancy recognized in the village accounts' shall in fact be a distinct survey number with either a principal or subordinate number. But the 'recognized share' is an occupancy (see Section 99 (b)), and it is 'separately assessed and registered' in the village accounts. The Survey Commissioner says that 'if a piece of land in the occupancy of an individual is found with an area exceeding the minimum area prescribed for a survey number, it is made into a survey number and never into a subordinate survey number. Only those occupancies found to be of less area than the prescribed minimum are made into subordinate survey numbers.' It is obvious that a rule which requires the Survey Commissioner to make into a survey number every area which is a separate occupancy though less than the minimum area, is not consistent with Section 98, which enacts that no survey number shall be less than the fixed minimum, or with the exercise by the Survey Commissioner of the power given to him by Section 98 of fixing the minimum with the sanction of Government, or with Section 113 (2) or Section 115.

" 8. Again, Rule 55 (1) is inconsistent with the spirit of Rule 99 (now Rule 96) which entitles a co-occupant to have his name and 'the share in fractional parts of a rupee of each such co-occupant in the occupancy' entered in the village records. But in such cases the provisoes to Rule 99 (1) still maintain the liability of Section 99 (b), and (2) forbid the constitution of such a share into a distinct survey number if it is below the minimum area.

" 9. Government have already . . . . . accepted the general principle advocated by the Legal Remembrancer, viz., that the revenue law should not inflict hardship which can be avoided, and

## SEC. 214, RULE 55.

therein the particulars of his classification of such survey number and subordinate survey number and the reason which led him to place it in the particular class to which in his estimation it should be deemed to belong. Such field books shall be preserved as permanent records of the survey.

the Act (Section 98, clause 2) gives the Survey Commissioner authority either generally or in any particular instance to make a survey number of an occupancy which is of less than the minimum area. This clause provides for cases such as that . . . . from which the present correspondence arose. If a Collector meets with any case in which extreme hardship would in his opinion result from enforcing the liability under Section 99 (4), he should move the Survey Commissioner to recognize any subordinate survey number affected as a distinct survey number, and in this matter Government desire that as much consideration as is practicable should be shown to occupants of shares. But Government cannot admit the propriety of altering the Act by a rule which compels the Survey Commissioner to make every separate occupancy into a survey number whatever its area may be. As the object of Section 98 is to prevent extreme sub-division, it is evidently frustrated by a rule which transfers the power of deciding what the area of a survey number shall be from Government and the Survey Commissioner to the occupants.

"10. If, on the other hand, Rule 55 (1) is interpreted to mean merely that, whereas under Section 99 (a) it is not obligatory to demarcate recognized shares, the Survey Commissioner shall nevertheless separately measure, class, assess, and define by boundary marks every recognized share which is a separate occupancy recognized in the village accounts, it is not open to the same exception. But, as already remarked, a proviso is necessary to make this clear, and Rule 55 (1) should be amended by striking out the last sentence, 'and shall be comprised in a survey number or in a subordinate survey number,' and substituting the words 'and shall, if not deemed entitled to be made a survey number, under any of the provisions of Section 98, be constituted a subordinate survey number.' And a third clause should be added—'Subordinate survey numbers are recognized shares of survey numbers for the purposes of Section 99, clause (6).' Rule 55, clause (2), is unnecessary and may be rescinded.

"11. Rule 55 has been in force as law only since the date of its publication, *viz.*, 6th December 1881, and clause (1) affects only subordinate survey numbers treated under it since that date, if any. Even in regard to these the rule is not valid where the subordinate number is not qualified to be a survey number under Section 98.

"12. With regard to the other exceptions of Section 98, clause 2, the Governor in Council of course does not dispute them. They meet the case of old survey numbers accepted because existing as distinct numbers at the time of survey and settlement. But with regard to the last sen-

VIII. A test of the original classification made by the subordinate officers employed for this purpose shall be taken by the officers in charge of classing establishments, in such manner and to such extent as may be directed by the Commissioner of Survey. The said test shall be an independent

tence of the clause, it cannot be held that a 'Pot' number separately measured and defined by boundary marks at the original settlement is therefore a survey number, seeing that it is *ex hypothesi* a portion of a survey number, and the whole cannot be the same thing as its part. A subdivision of a survey number separately assessed and registered is by definition a recognized share of a survey number, and though its demarcation is not obligatory it is by inference permissible and does not, *ipso facto*, make it a distinct survey number."

10. In accordance with the above orders, clauses (1) and (2) of Rule 55 and Rule 99 (2) of the Revenue Code Rules were amended by G. N. No. 5546, dated 8th July 1885, published in the B. G. G., Part I., page 867, 1885, as shown below:—

Rule 55—(1) Every separate occupancy recognized in the village accounts shall be separately measured, classified and assessed and defined by boundary marks and shall be comprised in a survey number or, if the area of the occupancy does not entitle it, under the provisions of Section 98, to be made into a survey number, in a recognized share of a survey number.

Recognized 'shares of survey numbers so defined by boundary marks shall be called subordinate survey numbers,' but shall be regarded for all purposes as recognized shares of survey numbers.

(2) When an occupancy is held by two or more co-occupants in shares, and each of the said occupants has a separate account to which he pays his quota of the land revenue due in respect of the occupancy separately, but the proper share of each occupant has not been permanently divided from the rest, the entire occupancy shall be comprised in a survey number, and each co-occupant's share therein shall be recorded as a recognized share of such survey number, together with the proportion, reckoned in aunas, which such share bears to the whole survey number and the assessment of such share.

Rule 99—(2) be deemed to constitute the share to which it relates a recognized share of the survey number.

11. The above rules were in force until amended in accordance with the orders contained in G. R. No. 357, dated 15th January 1889. This Resolution was passed on the Survey Commissioner's report explaining the rules and principles followed in the Survey Department in the demarcation of subdivisions of survey numbers.

12. Government said:—

"Section 98 of the Land Revenue Code provides that as a rule no survey number shall be made of less extent than a minimum to be fixed

test, that is to say, it shall be made by the testing officer in entire ignorance of the original classer's proceedings or record until it has been completed and its results have been finally determined, when only the original classing valuation and the test valuation shall be compared and their separate results recorded.

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from time to time. The minimum size of survey numbers was prescribed under the old Act IV of 1868, Rule 2, Section 17, which corresponds with Section 98 of the Land Revenue Code, and under Section 2 of the latter the orders prescribing those areas are in force until revised.

"2. Section 99 of the Land Revenue Code authorises the treatment of recognized shares of survey numbers in the same manner as entire numbers and subjects them to the provisions of the Act. They are, therefore, for purposes of separate demarcation governed by the rules prescribing minimum areas.

"3. Section 115 of the Land Revenue Code gives survey officers power to subdivide any survey number into two or more distinct numbers. This power of course includes that of making recognized shares into subordinate survey numbers, but the power is again subject to the provisions of Section 98, and the rules having force under it regarding minimum areas. These rules are even held binding in the case of partitions under decree of a Civil Court . . . .

"4. It must be noted that Section 99, dealing with the recognition of shares, provides that it shall not be obligatory to demarcate them separately.

"5. There can be no doubt that it was the original design that survey numbers should be made of such size as would meet the convenience of cultivators without reference to the partition of property within each number, the assessment representing, not a tax on individual properties, but a share in the produce of such an area as might be conveniently held to one kind of cultivation each year by one person, or such as might be determined by the limits incidental to particular classes of cultivation, rice land, gardens, etc.

"6. Such being the theory and the law, the practice of the Survey Department is described by the Survey and Settlement Commissioner as follows:—

"2. As regards survey numbers Government are right in their supposition that any separate recognized occupancy which is above the minimum prescribed by the Commissioner of Survey, under Section 98 of the Land Revenue Code, is at revision survey made into a new survey number regularly demarcated and assessed. But as regards recognized occupancies of a smaller area than the minimum prescribed for a survey number, there appears to be some misapprehension, the opinion of Government apparently being that the rules laid down under Act IV of 1868 are designed to prescribe the minimum size for subordinate or pot

IX. When rates of assessment have been sanctioned by Government, the assessment to be imposed on each survey number or subordinate survey number shall be determined according to the relative classification value of the land comprised therein.

numbers. The scale, however, laid down under clause 2, Section 17, of that Act, referred to the making of new 'survey numbers' out of existing 'survey numbers' and the minima fixed, related to cases of such subdivision only. The scale could have had no reference to subordinate (pot) numbers, as in 1868, when the Act was passed, the system of subdividing survey numbers into subordinate numbers did not exist in the Gujarat, Deccan and Southern Maratha Country surveys, while in the Konkan, where the system had been introduced in the case of rice, rabi and garden lands only, there was from the very first no minimum limit to the area of the subordinate number. The plan of subdividing into subordinate numbers elsewhere dates from the first revision surveys only, and it has gradually developed until it has been given the force of law by Rule 55, clause 1, of the rules issued under the Land Revenue Code. Under this rule every separate occupancy recognized in the village accounts is required to be made into a survey number or a subordinate survey number and to be measured, demarcated, classified and assessed on its own individual merits. The only exception is in the case of the warkas lands of the Konkan, which are not subdivided into subordinate numbers, but are broken up into subdivisions called 'phalni tukras,' the technical difference being that the occupants are spared the legal necessity of demarcating their holdings by boundary marks. It must be understood that whereas survey numbers are fully defined by boundary marks according to the rules in force, subordinate survey numbers are comparatively roughly demarcated, four stones, one at each main corner, being usually considered sufficient.

'3. The present rules for subdivision of lands have been gradually adopted after prolonged experience gained in all parts of the presidency. Commencing with a system of somewhat arbitrary division of lands into survey numbers, the survey has now become virtually a survey of holdings. But all that is done now in the matter of subdivision is done in the interests of good revenue administration only, and not for the convenience of the cultivators. Any subdivision over and above that required by the rules is only undertaken at the expense of the occupants . . . .'

'It is clear that the practice is in accordance with (substituted) clause (1) under Rule 55 of the Land Revenue Code rules, but it apparently would have been well in order to bring the distinction made in that rule between 'subordinate numbers' and ordinary survey numbers more into accord with Section 99 of the Land Revenue Code, if it had been distinctly ruled that the orders under Section 98 prescribing minimum areas for survey numbers should not apply to the demarcation of recognized shares now called 'subordinate numbers'.

X. Matters of detail not provided for in the foregoing survey rules shall be determined in each survey in accordance with such general or special orders as the Commissioner of Survey, acting under the general control of Government, may from time to time deem fit to issue.

" 7. Considering also the limited degree of the public interest in the subdivision of numbers according to property and the fact that the shares existing at any given date are necessarily liable to change from increase or decrease of population, transfers, etc., it may be questioned whether the discretion as to demarcation of shares allowed in Section 99, Land Revenue Code (a), should have been altogether abrogated by the rules without a provision that some part at least of the cost of demarcation should be borne by the occupant. Doubtless there are many cases in which the separate demarcation and classification of recognized shares has been well worth the cost incurred, secured, securing not only a more equitable adjustment of demand, but a better revenue than under the system of proportioning demand on each sharer to his interest, such as is prescribed for occupancies held in common; but it is difficult to believe that in tracts of a homogeneous character or in the warkas areas of the Konkan there are any such public advantages in demarcation of shares as to warrant the entire cost of the operations necessary being borne by Government.

" 8. No general rule is possible, but His Excellency the Governor in Council thinks that it may be left to the discretion of the Commissioner to sanction the refusal by the Superintendent of Survey, in any class of cases of the separate demarcation of recognized shares, without payment of the cost or a portion thereof. This would require an addition to Rule 55, and the Survey and Settlement Commissioner should be requested to put himself in communication with the Remembrancer of Legal Affairs on the subject of this addition and of the alteration, suggested in paragraph 6 above, and to report the result of his consultation as to the best method of giving effect to the views above stated."

13. In accordance with the above orders the first portion of Clause (1) of Rule 55 was cancelled and clauses (a) and (b) as now printed were substituted for it under G. N. No. 4062, dated 4th June 1889, published in the B. G. G., Part I., page 509, 1889, and are now in force.

14. Thus in accordance with the principles and orders set forth in the above summary it is clear that when the area of a pot number (i. e., a sub-division of land separately assessed and demarcated) exceeds the limit prescribed in Section 98, it becomes a survey number to all intents and purposes, and is to be dealt with accordingly. If the area of such sub-division is less it is to be considered a recognized share and is to be dealt with accordingly irrespective of whether it comprises a separately recognized occupancy and whether it is separately assessed and demarcated or not.



(3) *General.*

56. Where unalienated land assessed or held for purposes of agriculture only is subsequently appropriated to any purpose unconnected with agriculture, the assessment upon the land so appropriated, shall, except in the case of land appropriated to salt manufacture, for which special provision is made in Rule 49, or unless otherwise directed by Government, be altered in accordance with the provisions of the second paragraph of Section 48 and fixed and revised by the Collector subject to the following rules:—

I.<sup>1</sup> In all places other than those provided for in Rule II. or III., the assessment shall be fixed at such sum not in excess of that leviable at the following rates as the Collector thinks fit:—

If the village, town or city in which the land is situated is classed, under Rule 71, in Class I. ...

Rs. 10 per acre or ten times the assessment for agricultural purposes, whichever be the greater.

„ „ „ II. ...

Rs. 5 or five times the assessment do.

„ „ „ III. ...

Rs. 2 or three times do.

„ „ „ IV. ...

Re. 1 or double the assessment.

If the village, town or city in which the land is situated is classed, under Rule 71, in class V., no alteration in assessment shall ordinarily be made.

II. If the land is in any area or place, to which on account of there being a keen demand for building-sites or for any other special reason Government may by notification

<sup>1</sup> As regards determining special assessments, see table given in Appendix II. to the Code.

in the *Bombay Government Gazette* extend this rule, the assessment shall ( except in cases where the land is taken up or appropriated for any temporary purpose unconnected with agriculture, and which may, under the general or special orders of Government, be dealt with under Rule I. ) be altered in proportion to the situation-value ( as estimated by the Collector ) resulting from such demand.

The Collector may, with the previous sanction of Government from time to time, fix standard rates of assessment to be charged in different localities under this rule. For the purpose of fixing such rates regard shall be had to the average market value, as shown by actual sales for occupancy as building sites of unoccupied Government land or of inam land in the locality or otherwise, and there shall be deducted therefrom the average agricultural value, which shall be determined on the basis of the result of sales in the district of land for which there is no demand for building. The standard rate of assessment shall ordinarily be such percentage of the difference between these average values as Government having regard to the prevailing rate of interest may determine, the agricultural assessment being foregone. The standard rate of assessment fixed for any locality with the sanction of Government shall not be departed from without special reasons to be recorded but it shall be within the discretion of the Collector, with the sanction of the Commissioner, to apply a higher or lower rate in the case of a site specially favourably situated or in the case of land bearing a high agricultural assessment ; in the latter case the situation-value shall be determined by deducting the estimated agricultural value of the land from its estimated market value for occupancy as a building site and the percentage on the situation value so ascertained shall be levied in addition to the agricultural assessment.

In cases dealt with under this rule a sanad shall be given by the Collector to the occupant in the form of Appendix B, or as near thereto as may be.

III. In any area or place in which special encouragement of building is considered desirable to relieve over-

crowding in adjoining towns and to which Government may by notification in the *Bombay Government Gazette* extend this rule, the rate of assessment leviable under Rule II shall, in the case of land appropriated for building-sites, be reduced to such a proportion thereof, as Government may by general order direct, provided the occupant enters into a written agreement with Government under Section 67 in the form from time to time prescribed in this behalf.

IV. In the case of lands appropriated for building-sites the altered assessment shall be chargeable upon the whole of the land within the compound of a building and not merely upon the area actually covered with buildings, but in any locality in which, on account of the desirability of securing open areas around dwelling houses, Government, by a general order in this behalf notified in the *Bombay Government Gazette*, so direct, there shall be charged such reduced assessment, not being less than the agricultural assessment, in respect of the land not covered with buildings, as Government may from time to time prescribe.

V. The period for which the altered assessment is ordinarily to be fixed shall in cases under Rule I be contemporaneous with the Survey-settlement of the land appropriated to non-agricultural purposes and in cases falling under Rule II or III shall be for fifty years counted from the date of the grant of permission to appropriate the land to non-agricultural purposes, or, where no permission is granted, from the date of the commencement of the appropriation :

Provided that in cases under Rule II or III no increased assessment shall be levied for the revenue year in which permission was granted or the building or other appropriation commenced, as the case may be, unless the grant of permission or commencement of the building or other appropriation took place before the 1st November in such year.

On the expiry of such period, and at such further intervals as may be from time to time directed by Government in this behalf, the assessment fixed shall be liable to revision in

accordance with the Bombay Land Revenue Code and the rules and orders for the time being in force thereunder.

VI. In cases where the altered assessment is fixed for fifty years under Rule V, the assessment for that period, instead of being rendered annually, may, with the consent of the Collector, be compounded for by the occupant by a lump payment of twenty-five years' assessment, or commuted on such other terms as may from time to time be authorized by Government; and a note of such payment or commutation shall be made in or at the foot of the sanad granted, or written agreement executed, in respect of the occupancy under Rule II or III.

VII. Nothing in the foregoing rules shall be deemed to affect the power of Government to deal with special cases in any other manner under Section 67; and any cases in which the above rules are inapplicable, or their application considered by the Collector to be undesirable, should be submitted by him for the orders of Government through the Commissioner.

(1) **Collectors bound by Rules 57 and 58.**—In fixing building assessments under Sections 52 and 43, Collectors are bound by the provisions of Rules 56 and 56 A (now Rules 56 and 57) so long as they remain in force and unmodified by other orders. (G. R. No. 10468, dated 19th December 1894.)

57. (1) Nothing in Rule 56 shall be applicable to any lands, to which a City Survey has been extended under Bombay Act IV of 1868 or under Section 131, within the sites of the towns and cities of Ahmedabad (inclusive of its suburbs of Saraspur, Dariapur-Kajipur, Rajpur-Hirpur and Asarwa), Broach, Surat, Rander, Bulsar and Godhra, or of any other town or city to which Government may, by notification in the *Bombay Government Gazette*, extend this rule.

(2) In the said sites the rate to be imposed upon land appropriated as aforesaid shall be two pies per square yard.

## VIII.—REGISTER OF ALIENATIONS.

[Sections 53 and 214 (i).]

58. The register of alienations to be kept under Section 53 shall be in the form of Appendix F.

59.<sup>1</sup> No new alienation may be made except by Government. In every new alienation the right of Government to mines and minerals should be expressly reserved in the following terms or in terms to the same effect, namely:—

“This grant is made subject to the reservation of the right of the Secretary of State for India in Council to all mines and mineral-products, and of full liberty of access for the purpose of working and searching for the same with all reasonable conveniences.”

## IX.—DISPOSAL OF FORFEITED HOLDINGS.

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

60.<sup>2</sup> Where the Collector thinks it advisable that the holding of a defaulter should, after forfeiture, be either restored to the defaulter, or given out to any other person, subject to the condition that he shall not transfer it in any way to another person without the previous sanction in writing of the Collector, the Collector may, without having resort to any of the other means provided in Chapter XI. for the recovery of an arrear of land-revenue, declare such holding to be forfeited to Government, and restore it, or give it out (as the case may be) accordingly.

<sup>1</sup> Royalties on mines and quarries must be credited to Imperial revenue, but this does not apply to stone quarries nor to sand removed from the seashore or from beds of rivers. (G. of I. No. 5108, dated 12th October 1872, and No. 4914, dated 12th August 1874.)

<sup>2</sup> (1) *Vide* G. R. No. 4297, dated 25th July 1881, printed as order No. 5 under Section 56 of the Code.

(2) *Vide* also G. R. No. 8757, dated 6th November 1884, printed as order No. 3 under Section 154 of the Code.

61. Where Rule 60 does not apply, resort should not be had to forfeiture of a holding unless it appears to the Collector that the arrear cannot be readily recovered by any of the other means provided in Chapter XI.

Forfeiture only where other means of recovery fail.

(1) **Defaulter's holding not to be forfeited as a matter of course.**—It is not the wish of Government that holdings in respect of which arrears of land revenue are due should *ipso facto* be declared forfeited, but that the provisions regarding forfeiture are to be held to apply only to those cases in which the Collector deems it necessary to have recourse to them for the recovery of arrears.

Where there is reason to think that if the people have time given them they will not fail to discharge their liabilities, it would be hard to treat them as contumacious defaulters or as hopelessly insolvent. In such cases it is not the wish of Government that the power of forfeiture should be enforced to the risk of the outstanding revenue. (G. R. No. 4949, dated 18th September 1880.)

62. Where the holding in respect of which the arrear is due consists of two or more survey-numbers or of two or more portions of land or estates separately assessed, and the Collector is of opinion that the whole amount of such arrear could be realized by the sale of some one or more only of such survey-numbers, portions or estates, he may, in his discretion, restrict the forfeiture to such one or more of such survey-numbers, portions or estates.

(1) **Of the proposed changes in the dates of instalments.**—In framing any rules which are to govern the regulation of instalments of revenue, it may be borne in mind that any material and sudden changes which will affect the Treasury balances are likely to embarrass the financial arrangements of the State; and are especially liable to disarrange the financial equilibrium if the changes made have any marked influence on the cash balances of November and December. As a general rule, the resource operations of Government are regulated with a view to securing a certain minimum cash balance in those months when the balances are lowest. Any measure which has the effect of postponing a considerable receipt of revenue from before December till a later date, may, if introduced without notice, embarrass the Government in dealing with the balances, and would require to be met by the establishment of a permanently enhanced balance during the rest of the year. It is, therefore, very important that the Government of India in Revenue Department should have the opportunity of studying the effect of any proposals which may influence the cash balances for November and December in the manner indicated before they are carried out. His Excellency the Governor in Council will therefore be

so good as to direct that a reference may be made to the Government of India before a decision is arrived at in regard to such proposals, except in cases where the revenue, the collection of which it is proposed to postpone, is inconsiderable in amount. (G. of I. letter No. 1337, dated 14th March 1888, and G. R. No. 2205, dated 11th April 1888.)

(2) **Remission and suspension of trifling amount.**— It seems to His Excellency the Governor in Council unnecessary to report remission or suspension when the sum involved is trifling, but any order which would involve a loss or delay in receipt of revenue of a sum exceeding rupees twenty thousand should be reported at once on its issue to the Government of India. (G. R. No. 2585, dated 27th April 1888.)

Forfeited holdings in certain cases to be sold at the desire of defaulters.

63. Where a defaulter desires that his forfeited holding be put up for sale on the ground—

- (a) that he obtained it on payment of consideration for the same to Government, or to his superior holder, or to the previous holder; or
- (b) that the land comprised in the holding has been improved since the holding was last acquired from Government, or his superior holder, or the previous holder;

the Collector shall inquire into the circumstances, and if the defaulter's request appears to him to be reasonable, shall put up the holding for sale.

64. Where a forfeited holding which falls under Rule 63 is a recognized share of a survey-number, the Collector shall first offer it at such price as it seems to him to be worth, to the holders of the other recognized shares in the survey-number in the order prescribed in Section 99, clause (b). If none of them buys it, the Collector will then deal with the holding in the manner prescribed in Rule 63.

65. Save as otherwise provided in Rules 62 and 63, forfeited holdings shall not be put up for sale in the following cases, but the holding shall be disposed of in the manner hereinafter pre-

Disposal of forfeited holdings otherwise than by sale in certain cases.

scribed for the particular case under which it falls, namely:—

- (a) where the Collector thinks that, owing to general agricultural depression or to the want of demand for land of the description comprised in the holding, or to a combination of the neighbouring landholders, or for any other special cause, there will be no bidders at the sale, or that the highest amount bid will be considerably below the upset-price or value of the holding, he shall cause the land comprised therein to be entered in the records as unoccupied and pass orders accordingly for its being dealt with under the rules and orders in force relating to land of that description;
- (b) where the Collector thinks that the land comprised in the holding is likely to be required either immediately, or within such time as he deems reasonable, for any of the purposes described in Section 38, he shall take steps for having it at once lawfully assigned for such purpose;
- (c) in the case of an occupancy, where the Collector thinks that it is expedient to restore such occupancy to the defaulter or to grant it on or without payment for occupancy-right to any other person, subject to the condition that he shall not transfer it in any way to another person without the previous sanction in writing of the Collector, he shall pass orders accordingly for the restoration or grant, as the case may be, of the occupancy to the defaulter or other person as aforesaid, upon his passing an agreement in the modified form of Appendix B referred to in Rule 34, Sub-rule (2);



- (d) in the case of unalienated holding forfeited on account of an arrear of land-revenue due to Government, where the Collector thinks that it is expedient to allow the land to continue in the possession of its actual holder or tenant as an occupancy, or otherwise to dispose of it, without sale, as if it were unoccupied unalienated land, he shall pass orders accordingly for its continuance to such holder or tenant as an occupancy, or for its disposal otherwise as unoccupied unalienated land, in accordance with the rules and orders in force relating to land of that description ;
- (e) in the case of an alienated holding forfeited on account of an arrear of rent or land-revenue due to a superior holder, for the recovery of which assistance is being rendered under Sections 86 and 87, where the Collector thinks that it is expedient to transfer the land to such superior holder, he shall pass orders accordingly for the transfer of the holding to the superior holder thereof, subject to such tenures, rights, incumbrances or equities (if any) as he may direct under Section 56;
- (f) in any other case, where the Collector thinks that it is expedient that the disposal of a forfeited holding should be otherwise than by sale and obtains the sanction of Government thereto, he shall dispose of it in accordance with the particular orders for its disposal passed or sanctioned by Government.

66. In cases not falling under Rule 65, forfeited holdings shall, subject to the provisions of Rule 68, be put up for sale for recovery of the arrears due.

Forfeited holdings to be sold for recovery of arrears in other cases.

67. (1) Every sale<sup>1</sup> of a forfeited holding, as such, shall be made subject to the same rules and orders as are applicable to the sale of unoccupied unalienated land so far as the same are consistent with the provisions of Chapter XI.; and the provisions of Rules 31 to 33, both inclusive, shall apply to the case of every such sale.

(2) The Collector should ordinarily set aside the sale of any forfeited holding under Section 179, if in his opinion—

- (a) the bidding at such sale has not been *bond-fide*, or
- (b) there has been collusion to recover the holding without payment in full of the arrears and charges due to Government or the superior holder, or
- (c) there has been some material irregularity or mistake, or fraud, in publishing or conducting such sale, which is likely to have affected the amount of the highest bid or otherwise to have caused substantial injury to any person.

68. (1) It shall be in the discretion of the Collector to restore any forfeited holding at any time previous to any sale or other disposal under these rules on payment of the arrear in respect of which

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<sup>1</sup>(1) *Vide* G. R. No. 2459, dated 26th March 1883, printed as footnote to Section 152 of the Code.

(2) His Excellency the Governor in Council is pleased to direct that the rates sanctioned by G. R. No. 2459, dated 26th March 1883, for expenses of completed sales should be extended to sales which have not been completed owing to the arrears due having been paid up on the day fixed for the sale. (G. R. No. 9482, dated 3rd December 1892.)

(3) If Resolution No. 9482, dated 3rd December 1892, is read with No. 2459, dated 26th March 1883, the alternative rate of  $\frac{1}{8}$  would seem inapplicable when no sale has taken place. Therefore, when sales are stopped due to the arrears being paid up on the day fixed for the sale  $\frac{1}{4}$  is to be calculated on the arrears realized. The intention of the orders was to apply, on the authority of Section 148, a scale of charges corresponding to those laid down by rule under Section 183. (G. R. No. 5304, dated 21st June 1894.)

the forfeiture was incurred, together with all costs and charges lawfully due, by the defaulter, or, on security being given to his satisfaction for the payment of the said arrears, costs and charges within a reasonable period :

Provided that no forfeited alienated holding, referred to in Clause (d) of Rule 65, which is not held for service, shall be restored without the previous sanction of Government.

(2)<sup>1</sup> Where, in the case of a forfeited alienated holding held for service by a watandar, the Collector is satisfied that the failure to pay the land-revenue due thereupon arose solely from the inability of the defaulter to meet the demand, he may deduct from the forfeited holding a portion of land of which the occupancy price would be likely to equal the amount of the arrear recoverable, and deal with such portion in accordance with such of Rules 63 to 67 as are applicable, and restore the remainder of the forfeited holding to the defaulter, or may restore the entire forfeited holding to the defaulter, and either remit the arrear of land-revenue due or make such arrangements for its being paid in the future as he thinks fit.

(1) **Restoration of a forfeited holding distinguished from a sale of it.**—Where a Collector restores a forfeited occupancy to the occupant, the occupant does not take the holding freed from all tenures, incumbrances and rights created by the occupant or any of his co-sharers as a purchaser would, had there been a sale under Section 56. Such incumbrances would continue on the restoration and affect the land just as much as they did before the forfeiture. (Printed Judgment 547, *Gabinajs vs. Bhikchand*, 1893.)

(2) **How to report to Government the cases of forfeited alienated holdings.**—All cases of forfeited holdings must be reported for sanction of Government before restoration. The second clause of Rule 63 (now Rule 68 (1)) is quite unconditional. The work can be somewhat lessened by sending the cases for submission in a general list, not one by one. (G. R. No. 534, dated 28th January 1901.)

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<sup>1</sup> All lapses of alienated property must be reported to Government immediately. Each report will show the name of the last incumbent, the date of lapse, the nature of the lapsed holdings, their annual value, the cause of the lapse, and the authority on which the grant was enjoyed. When the lapse is partial, a portion being continuable to heirs or others, this should be clearly and fully stated. (G. R. No. 1545, dated 25th April 1859.)

69. Where a holding which has been forfeited for default in payment of the land-revenue due thereupon is not sold, the arrear payable by the defaulter shall ordinarily be remitted without having recourse to further compulsory process against him. But it is not intended that the right of recovering arrears from defaulters by other means, notwithstanding that their holdings have been forfeited and disposed of without being sold, should be altogether relinquished; in special cases the Collector may, with the sanction of the Commissioner, enforce that right.

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

[Sections 61 and 214 (f).]

70<sup>1</sup>. The limit of fine to be levied under Section 61, where land is unauthorizedly occupied and appropriated to any non-agricultural purpose, shall be double the amount of the fine that would be leviable under Section 66, if the same land being in the lawful occupation of the trespasser had been appropriated by him to the same purpose without the permission of the Collector.

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

[Sections 65, 66, and 214 (i).]

Villages, towns and cities to be divided by the Commissioners into classes. 71. For the purpose of determining the amounts of the fines leviable under Section 65, the Commissioners shall from time to time by

<sup>1</sup> As regards determining the amount of fine, see table given in Appendix II. to the Code.

notification,<sup>1</sup> published in the *Bombay Government Gazette*, divide the villages, towns and cities in their respective divisions into five classes. Such notifications shall specify by name what villages in each district are placed in the first four of the said five classes; while the fifth class will comprise "all other villages in the taluka" not entered in the first four classes, and such villages need not therefore be specified by name.

Cases in which no fines are to be imposed under Section 65.

72. No fine under Section 65 shall be imposed by the Collector in any case where—

- (a) the land is appropriate for a building-site, or
- (b) the material of the soil of land in the occupancy of potters, or makers of bricks or tiles, is, in the opinion of the Collector, *bonâ fide* employed by them for purposes of their trade, or huts or other buildings are similarly erected on their land for the more convenient pursuit of their trade, and the land is not thereby permanently destroyed or materially injured for cultivation.

Provided that in places to which paragraph of 2 Section 48 does not apply, the Collector may impose a fine not exceeding the amount of the difference between the agricultural assessment and the assessment which would otherwise be leviable from the date of the appropriation to any purpose unconnected with agriculture to the date of the next revision settlement.

<sup>1</sup> Lists showing the classes into which the villages in the several districts comprised in the N. C. and S. Divisions have been divided by the Commissioners of those Divisions for the purposes of this rule will be found on the following pages of the B. G. G., Part. I. :—

Sind.	Pages	}	508 to 587 and 1239 of 1884.
N.D.	Pages		661 to 679 of 1882,
		}	and 513 of 1883.
C.D.	Pages		312 to 314 of 1883.
		}	317 to 321 of 1884.
S.D.	Pages		800 to 1038 of 1882.

73.<sup>1</sup> In other cases the fines leviabie under Section 65 shall, in villages, towns and cities included in the first four classes by any notification for the time being in force under Rule 71, ordinarily be at the following rates :—

Class I	Rs. 250	per acre	} of the land actually appropriated to any purpose unconnected with agriculture, and at the same rate in proportion for fractions of an acre.
„ II	„ 150	„	
„ III	„ 100	„	
„ IV	„ 50	„	

In villages, towns and cities included in Class V by any such notification, no fine shall ordinarily be levied :

Provided that, notwithstanding anything contained above in this rule and in Rule 71, the amount of fine imposable under Section 65 of the Land Revenue Code in respect of lands within certain limits, to be from time to time defined by Government by notification in the *Bombay Government Gazette*, in the neighbourhood of railway stations, large towns, military cantonments, or wherever else Government deems fit, shall be fixed by the Collector, in his discretion, at rates not exceeding Rs. 5,000 per acre within the areas so specified.

(1) **Discretion allowed.**—The adoption of a high maximum does not prevent the application of moderate rates in individual cases, the amount appropriated in each case being determined by the Collector according to his discretion. (G. R. No. 1831, dated 8th March 1897.)

(2) **Intention of Government.**—The intention is not to discourage the conversion of agricultural land into building sites, but to secure for the public the share due to it of the increase in the value of the land which is created by the demand for it for building. (G. R. No. 5206, dated 12th July 1897.)

74.<sup>1</sup> The fine leviabie under Section 66 shall be fixed

<sup>1</sup> (1) As regards determining the amount of fine see table given in Appendix II. to the Code.

(2) As to the amount of fine in respect of lands within certain limits under this rule see Appendix P.

Amount of fine to be levied under Section 66. by the Collector at his discretion, but shall not exceed five times the amount imposable by him under Section 65.

For the purposes of this rule,

(a) villages, towns or cities included in Class V by the notifications issued under Rule 71 shall be deemed to have been included in Class IV, and

(b) the fine imposable in any case falling under clause (a) or (b) of Rule 72 shall be deemed to be that leviable by the Collector under Class I of Rule 73.

75. In such cases as Government deem exceptional or unusual, the amount of the fine to be imposed by the Collector, whether under Section 65 or 66, will be specially fixed by Government at such rate as they deem fit, notwithstanding anything contained in the foregoing rules.

(1) **Interpretation.**—Rule 70 (now Rule 75) does not admit of a maximum rate being prescribed for specified areas. It enables Government to specially fix a rate in any case deemed exceptional or unusual. Cancels G. R. No. 2752, dated 18th April 1893. (G. R. No. 1831, dated 8th March 1897.)

## XII.—RELINQUISHMENT OF OCCUPANCIES.

[Sections 74 and 214 (i).]

76.<sup>1</sup> The written notice of relinquishment of an occupancy required by Section 74 to be given to the Mámlatdár or Mahálkari shall be in one or other of the forms in Appendix G.

<sup>1</sup> (1) The first and second defendants were sub-tenants of the third defendant, who had certain land which was part of the inam village of D. In 1883 the third defendant executed a Rajinama in the following terms, which he gave to the receiver who had been appointed by the Court to manage the village.

“Up to the present time my father and I have been cultivating the land, but the land belongs to the inamdar. I have no title over it, and the inamdar can give it for cultivation to any one he pleases.”

Shortly after the date of this Rajinama, the inamdar gave the land to the plaintiff, who now sued to obtain it from the defendants, who had remained in possession.

77. The written agreement to be entered into by the persons or by the principal of the persons, Form of agreement to be entered into by the transferee, if any. if any, in whose favour an occupancy is relinquished, shall be in the form of Appendix B, unless a lease has been executed in respect of the occupancy under Rule 31, in which case it shall be in the form of such lease with such modifications, if any, as may be necessary.

(1) **Agreements to occupy land. Endorsement on.**—The endorsement "we declare to the best of our knowledge, etc.," is not to be required in the case of agreements executed under this rule. (G. R. No. 3842, dated 19th June 1883.)

(2) **Exempt from court fees.**—The court fee on the agreements executed under this rule has been remitted by the Governor-General in Council under Section 35 of Act VII. of 1870. (G. of I. N. No. 7019, dated 18th September 1889, published in the B. G. G., Part I., page 808, 1889.)

(3) **Exempt from stamp duty.**—Agreements executed under this rule have been exempted from stamp duty by the Governor-General in Council under Section 8 of Act I. of 1879. (G. of I. N. No. 5855, dated 22nd November 1889, published in the B. G. G., Part I., page 1008, 1889.)

78. Every notice and every agreement given under Rules 76 and 77 shall be endorsed by two respectable witnesses to the effect prescribed below each of the said forms, and the Mámlatdár or Mahálkari who receives any such notice or agreement will be held responsible<sup>1</sup> for exercising due care in ascertaining

(a) the identity of the person who has signed the same, notwithstanding that such notice or agree-

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

Held also, that the plaintiff was entitled to sue in ejectment, although he had not been put in possession of the land. (Bhutia Dhondu *vs.* Ambo, I. L. R., Bombay, Volume XIII., page 294, 1889.)

(2) As to alienated villages, see order No. (4) under Section 74.

(3) Relinquishments are exempted from registration (*vide* Section 90 (e) by Act VII. of 1886, Section 6.

<sup>1</sup> *Vide* G. R. No 1743, dated 2nd March 1889, printed as order No. (4) under Rule 31.



ment has been duly endorsed as hereinbefore required, and

- (b) that the occupancy is transferable, or where it is not transferable without the Collector's sanction, or except upon special conditions, that such sanction has been obtained or such conditions have been duly complied with.

79. All notices and all agreements received under Rule 76 or 77 shall be kept in separate files in the records of the village-accountant until the expiry of one year after the end of the year in which they were given or executed, and afterwards in the records of the Mámlatdár or Mahálkari.

80.<sup>1</sup> (1) It shall be the duty of every village-accountant, if so desired by any occupant in his village or by any person in whose favour land is about to be relinquished by any occupant in his village, to prepare any notice or any agreement that may be necessary under Rule 76 or 77 without fee or charge of any kind.

(2) A village-accountant who prepares any such notice or agreement shall affix his signature beneath the words "written by" on the lower left-hand corner thereof.

(1) **Rajinamas executed before Forest Settlement Officers.**—Whenever the Mamlatdars accept, without further inquiry, notices of relinquishment executed and duly endorsed before a Forest Settlement Officer they will be held by Government to have exercised the due care enjoyed by Rule 76 of the rules framed under Section 214 of the Land Revenue Code. (G. R. No. 1708, dated 4th March 1886.)

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<sup>1</sup> Twenty-five printed copies of each of the forms marginally noted should be stitched or pasted together in a book form and supplied to each village officer; the cost of each book being recovered by the Mamlatdar when the officiating Kulkarni is paid his contingent allowance. (G. R. No. 6312, dated 6th September 1886.)

**FORM OF**

1 Notice of relinquishment.

2 Kabulayat or Agreement.

3 Notice of relinquishment in favour of some other person.

The forms thus stitched are now kept in the Mamlatdar's record room for sale, and the Kulkarni pays the cost when he indents for any of these.

XIII.—SURVEY-FEES IN TOWNS AND CITIES.

[ Sections 132 and 214 (i). ]

81. The towns and cities hereinbelow mentioned, to which a city survey has been extended under Bombay Act IV. of 1868 or under Section 131, are divided into the following two classes for the purpose of determining the survey-fees to be levied therein respectively under Section 132:—

Class I.	Class II.
Ahmedabad.	Rander.
Dariapur-Kajipur.	Bulsar.
Rajpur-Hirpur.	Dharwar.
Asarwa (including Haripura).	Hubli.
Surat.	Bijapur.
Broach.	Godhra.
Karachi.	
Hyderabad.	
Sukkur.	

A town or city, to the site of which a survey may hereafter be extended, shall be included for the same purpose in such of the above two classes, as Government may, by notification in the *Bombay Government Gazette*, direct.

82. Survey-fees shall be levied at one of the following rates according to the class under which each town or city falls:—

Class I.			Class II.		
Rs.	a.	p.	Rs.	a.	p.
5	0	0	3	0	0
4	0	0	2	0	0
3	0	0	1	8	0
1	8	0	0	8	0
0	8	0			

83. The rates of survey-fees to be paid by the holder of each tenement in each class shall be fixed by the Collector or, subject to revision by him, by such officer as he may empower in that behalf, on a full consideration of the position, value, rental and area of each holder's tenement and of the labour, time and expense involved in the survey of such tenement :

Provided that not more than one survey-fee shall be payable in respect of each separate tenement.

*Explanation.*—“Separate tenement” shall be deemed to include all the area within one ring-fence or in one locality and in the actual possession of one and the same person or family. Where any portion of such area is sublet or occupied separately, such portion shall be deemed a “separate tenement.”

#### XIV.—RECOVERY OF LAND-REVENUE.

[ Sections 146 and 214 (i). ]

84. All payments of land-revenue shall be made to the officers of the village in which such revenue is due : Provided that, with the sanction of the Collector, such a payment may, in special cases, be made into a Government Treasury either of the District to which the payment appertains or of any other District.

(1) **Practice of paying revenue belonging to one district into another district to be restricted.**—It is very desirable to restrict the practice of paying revenue demands at places other than those where they are due, as it often creates complications and gives rise to much avoidable correspondence. The sanction referred to in this rule should therefore be given only in special cases. (G. R. No. 3301, dated 19th May 1882.)

(2) **Not applicable to moneys other than land-revenue.**—This rule is not applicable to the moneys payable under the Local Fund, Abkari, and Toll Acts as they are not land-revenue and as the times when, the places where, and the persons to whom such moneys are payable are specified in the enactments and rules framed thereunder, relating to such moneys respectively. Moneys payable on account of kurans are land-revenue, and to them this rule is applicable. (G. R. No. 2215, dated 17th March 1883.)

(3) **Payments belonging to other districts.**—Payments on account of land revenue and local fund cess belonging to another district made into any treasury should be remitted to the treasury concerned by a remittance receipt issued at par. In cases in which payments to other treasuries are made voluntarily by landholders, the prescribed fee for remittance should be charged. (G. R. No. 9781, dated 4th December 1885.)

(4) **Payment of revenue by postal money orders.**—As the Accountant-General states that there is no account objection to land revenue being paid by a Post Office money-order, His Excellency the Governor in Council is pleased to direct that Post Office money-orders should in future be received in payment of the land assessment due by person residing in the village or villages where they hold lands in respect of which payments are due. (G. R. No. 2039, dated 13th March 1886.)

(5) **Special form of money-order not needed.**—Government do not deem it necessary that a special form of money-order should be provided for remitting payments of land-revenue, as the Director-General has sanctioned the inclusion of pies in the ordinary money-order form when made use of for remittance of land revenue. (G. R. No. 192, dated 10th January 1890.)

85. The land-revenue payable in respect of lands assessed for purposes of agriculture only shall be paid in equal or nearly equal instalments on the following dates, namely:—

Dates on which agriculturists' instalments to be paid.

- (a) in Sind—for kharif cultivation—the 15th February and the 15th April, and for rabi cultivation the 15th June and 15th July ;
- (b) in the Ratnagiri and Kanara Districts and in the Khoti villages of the Kolaba District—the 15th December, the 1st February, the 15th March and the 1st May ;
- (c) in the Thana and Kolaba Districts (excepting the Khoti villages of Kolaba)—the 1st January and the 16th February ;
- (d) in other districts—
  - in villages placed under Rule 86 in Class I—the 5th December and the 5th January ;
  - in villages placed under the said rule in Class II—the 5th January and the 5th March ;
  - in villages placed under the said rule in Class III—the 5th February and the 5th April ;

Provided that—

- (i) in any district, or in any part of a district, where the dates above specified are found unsuitable the Collector may, with the sanction of the Commissioner, fix such other dates as he may deem expedient according to the circumstances of the season and of the villages comprised in it and the character of the crops generally sown therein ;
- (ii) where the total amount of assessment is four rupees or under, it shall, if the Collector so orders, be payable in a lump sum at the date of the first instalment ;
- (iii) if the person from whom the year's revenue is due so wishes, he may in any case pay the whole amount at once instead of by instalments.

(1) **Ground rent may be accepted in lump sum.—**

There is no legal objection to the ground rent or assessment leviable for the entire period of a lease being accepted at once in a lump sum. (G. R. No. 4074, dated 30th May 1883.)

86. For the purposes of clause (d) of Rule 85 the Collec-

Method or classifications under clause (d) of the last rule.

tors of the districts to which that clause applies shall, with the sanction of the Commissioner to whom they are respectively subordinate, classify the villages in the said districts into the following three classes, namely :—

Class I shall include kharif villages in ghat districts and elsewhere where it is necessary that the revenue be secured specially early.

Class II shall include kharif villages in Gujarat and elsewhere where no such special provision is necessary.

Class III shall include rabi villages generally.

87. Land-revenue, to which the provisions of Rules 85

Instalments of land-revenue to which the last two rules are inapplicable.

and 86 are inapplicable, shall ordinarily be paid in one instalment on such date as the Collector thinks fit in each case to prescribe ; but in special cases the Collector may, in his discretion, allow the

payment to be made in two or more instalments on dates which shall be fixed by him.

Form of notice of demand. 88. (1) The notice of demand to be issued under Section 152 shall be in the form of Appendix H.

(2) The village-officers shall be held responsible by the Collector for warning land-holders verbally from time to time of the dates on which their instalments are due and for using their personal influence in securing prompt payment without resort to notices of demand or other compulsory process, and exemplary punishment should be awarded to any village-officer who is remiss in the performance of this duty.

Village-officers to be held responsible for avoiding frequent issues of such notices. 89.<sup>1</sup> The village-officers shall report to the Mamlatdars or Mahalkaris to whom they are respectively subordinate the names of the land-holders, who, they have reason to believe, will not punctually pay their instalments, in order that the precautionary measures authorized by Sections 140 to 145 may, when necessary, be adopted in due time : and shall immediately report any case where the produce of any land, on which the assessment has not been paid, has been attached by a Civil Court.

XV.—ADMINISTRATION OF SURVEY-SETTLEMENTS AND MAINTENANCE OF BOUNDARY-MARKS.

[ Section 214 (g). ]

(1) *Notification of Survey-settlement.*

90. (1) Where a survey-settlement has received the sanction of Government under Section 102 a notification shall be published in the district or portion of a district to which the survey-settlement extends, in the form of Appendix I, and when the

Notifications of settlement and of period of guarantee how to be made.

<sup>1</sup>Vide G. R. No. 7858, dated 23rd December 1881, printed as order No. 2 under Section 154 of the Code.

Governor in Council has, under Section 102, declared such assessments with any modifications which he may deem necessary, fixed for a term of years, such declaration shall be notified in the *Bombay Government Gazette*.

(2) Where the survey-settlement is introduced into a portion of a taluka already partially settled, the guarantee will be restricted to the unexpired portion of the period for which the assessments in the first settled portion of the taluka were fixed.

### (2) *Trees.*

91. (1) The extent to which the right of Government to trees is generally conceded under the *General reservations.* second paragraph of Section 40 shall be specified in the notification issued under Rule 90, Sub-rule (1). The said general concession will ordinarily extend to all trees, except the following (namely):—

- (a) all road-side trees planted by or under the orders of Government ;
- (b) teak, blackwood and sandalwood ;
- (c) trees, the produce of which has hitherto been disposed of by Government.

(2) Trees in groves, trees round temples or places of encampment declared to be such by the *Special reservations.* Collector, and trees other than teak, blackwood or sandalwood which for any reason are of special value or utility will be specially reserved at the settlement and entries to that effect made in the settlement records.

(3) The right to trees of any of the above classes which have already been specially assigned to the occupant or purchased by him, or to trees standing in public places, shall not be affected by this rule or by any notification issued under Rule 90, Sub-rule (1).

(1) **Disposal of teak trees in occupied lands. Register of such trees.**—When rights to teak trees in Government lands have been parted with, the fact should be noted in the village register, and no teak in Government land should for the future be disposed of to occupants, but should be reserved as Government property. Care should

be taken that the entries in the registers are not made without due enquiry and confirmation by the Assistant Collector, for such entries will bar the rights of Government, and there is great temptation to make them fraudulently. A statement of fields, in which Government has parted with its rights, should be prepared showing the amount paid for trees, and when the whole has been confirmed by the Assistant Collector, entries may be made. (G. R. No. 3480, dated 10th July 1878.)

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

The only way to prevent such road-side trees being cut down is to apply the provisions of Act X. of 1870 for the acquisition for public purposes either of the trees, or of both, the trees and the land on which they stand. (G. R. No. 3495, dated 3rd July 1879.)

(3) **Sale of trees on occupied lands to occupants.**—As the demarcation and settlement of forests is now well advanced, it is expedient, as a general rule, that the sale of the trees to the occupants should follow on the completion of the settlement. The area of forest will then have been finally determined, and the trees on occupied numbers not included or to be included in forest should pass into the charge of the Collector, who should offer the whole of the trees on each number to the occupant at a fair upset price. The procedure to be followed should be that the option of purchasing at that price should be continued to the cultivator for a period of, say, two years, in order that, if not possessed of the necessary funds at once, he may try to scrape the amount together. Lists showing all the numbers the reserved trees in which have not been sold outright and stating the upset price of the trees should be hung up in the chavdi of the village, so that there may be no chance of any misunderstanding.

If the occupant finally declines to purchase, the reserved trees should be cut and removed by the Forest Department. (G. R. No. 3906, dated 22nd May 1883.)

(4) **Trees in Inam lands.**—Trees in lands settled under Summary Settlement belong to the holder.—Where an Inamdar has accepted a summary settlement under Bombay Act II. of 1863, he is full proprietor of his holding, teak trees and all. (G. R. No. 2232, dated 14th March 1884.)

(5) **Where there is no evidence to the contrary Inamdar's right to trees will not be questioned.**—If it cannot be proved from the Collector's records or otherwise that the forests were at the time of the settlement in the possession of Government the title of the Inamdar will not be questioned. (G. R. No. 3079, dated 15th April 1884.)



(6) **Reservation of Honi and Matti trees in Kanara.**—The Honi and Matti trees have been reserved in Kanara and are placed at the disposal of the Forest Department. (G. R. No. 1053, dated 4th February 1885.)

(7) **Rights to trees in Service Inam Lands.**—Trees in lands held for service without proprietary right cannot be claimed as of right by the holders of the lands either

(a) as proprietors, or

(b) as occupants.

Rights to trees may be conceded by Government but cannot arise till concession has actually been made, and such concession would not be complete till communicated to the persons in whose favour it is made. (G. R. No. 2156, dated 24th March 1890.)

(8) **Reserved trees to be in charge of the Collector.**—G. R. No. 3906, dated 22nd May 1883, paragraph 4, signifies that reserved trees on occupied numbers which have not been included in reserved forests, or which it is not intended to obtain at any future time for inclusion in reserved forest, will, on the completion of the forest settlement and demarcation of the area in which such numbers are situated, pass into the charge of the Collector. (G. R. No. 4537, dated 15th June 1883.)

(9) **Upset price on trees.**—Rule 2 of the rules under Section 75 of the Indian Forest Act (published in G. R. No. 5587, dated 17th October 1879) have the force of law and cannot be repealed by a Government Resolution (such as No. 3906, dated 22nd May 1883). When the trees standing on occupied lands have been sold, they will cease to be the property of Government. As the desire of Government is to give the occupant the trees at a moderate upset price, the Forest Department should be directed to sell the trees at an all-round price of rupee one per tree. (G. R. No. 7537, dated 25th October 1890, and G. R. No. 6852, dated 6th October 1891.)

(10) **Sale of Sandalwood trees.**—Sandalwood trees standing in occupied numbers should be cut and sold by the Forest Department instead of being given at a uniform price of one rupee to the occupant. When an occupant declines to purchase all the reserved trees, other than sandalwood, on his land at an all-round rate of one rupee per tree (*vide* G. R. No. 6852, dated 6th October 1891, above), the trees should be sold by auction. He cannot be permitted to select some at the all-round rate and to refuse to buy the remainder. (G. R. No. 895, dated 2nd February 1895.)

(11) The above orders apply only to lands occupied for agricultural purposes and not to the compounds of bungalows, the owners of which may grow what trees they choose without any claim on behalf of Government. (G. R. No. 2113, dated 24th March 1898.)

92. Notwithstanding anything contained in Rule 91, Government may specially reserve their rights to all trees, or to trees of other kinds than those therein enumerated, whenever it may be deemed expedient so to do.

(1) **Power of Government to reserve any trees, rights to which have not already been conceded.**—Except as provided in the last paragraph of Rule 91 there is no legal objection to Government reserving, under Rule 92, any trees whatever in any land to which the first mentioned rule applies, *i.e.*, to lands in villages or portions of villages of which the original survey settlement shall be completed after the passing of the Land Revenue Code.

But trees in occupied land over which the rights of Government have already been conceded or sold cannot in any case be again reserved unless the owner conveys them first of all to Government. (G. R. No. 4891, dated 29th June 1883.)

(2) **Trees, rights to which have been conceded, cannot be reserved.**—Rule 92 is intended only to indicate that the preceding rules are not to be taken as limiting the powers already conferred on Government by the Legislature. The rule cannot however extend those powers so as to enable Government to make any fresh reservation of trees not already reserved on any former occasion.

The power of reservation as to trees in occupied unalienated land is defined in Section 40. In villages completely surveyed before the Code was passed, the concessions were declared complete. The section declares that all trees shall be deemed to have been conceded except those already reserved before, at or after the original settlement.

With regard to villages not completely surveyed before the Code, reservation was still possible at the *original* survey settlement, and might be made expressly or by general notification before the settlement of the District was completed, but not afterwards.

No reservation of trees in occupied lands, therefore, since the passing of the Land Revenue Code is possible, except where the survey is being introduced for the first time. (G. R. No. 5637, dated 3rd August 1889.)

93. Subject to the provisions of Rules 94 and 95, the disposal of trees on land occupied or being given out for occupation shall be regulated by the following rules:—

Disposal of trees on occupied lands.

- I. Of the trees to which the rights of Government are reserved, such numbers or kinds as Government may from time to time direct will be at the disposal of the Forest Department. Lists shall be

kept of all occupied numbers, over the trees in which the Forest Department has any control or lien; the clearing of these numbers by the Forest Department shall be arranged in concert with the Collector, and every number when cleared shall be recorded as exempt from all interference in the future on the part of the Forest Department.

II. All reserved trees not placed at the disposal of the Forest Department shall be in charge of the Collector, who may dispose of the same, or of the produce thereof, in such manner as he may from time to time deem fit.

III. In talukas in which the demarcation of forests has been completed, when the right of occupancy of any unoccupied number containing jungle or valuable trees which have not been included in any forest reserve is granted to any person, the Collector may, if he thinks it better to grant the land for cultivation than to keep it for jungle, offer the jungle or such of the trees as he may see fit, at such valuation as he may see fit, to the occupant. If the occupant agrees to purchase the same, the value shall be recovered from him by the Collector and credited as land revenue.

IV. In talukas in which the demarcation of forest reserves has not been completed, the Collector may, if he thinks fit, consult the Conservator of Forests before the occupancy of any land containing jungle or valuable trees is granted; and if the occupancy of any such land is granted to any person, the provisions of Rule III. shall apply:

Provided that specified trees of a valuable kind shall not be cut down, and that in no case shall the occupancy be granted if the land is likely to be required for forests.

V. Whenever the occupancy of a survey-number is disposed of at any time after the first introduction of a survey-settlement, trees of the kind specified in Rule 91, Sub-rule (1), Clause (e), shall be excluded from reservation, and shall be disposed of along with the occupancy under the provisions of the second paragraph of Section 62.

VI. Whenever the right to unreserved trees in any survey-number is at the disposal of Government simultaneously with the occupancy of such number, all such trees shall invariably be disposed of to the same person who acquires the occupancy and not to any other person.

VII. When the right of Government to the trees in a survey-number has been once disposed of to the occupant, or when all the reserved trees have been once cut and removed either—

(a) at the grant of the occupancy, or

(b) after such grant, or

(c) in the province of Sind at any time before such grant, or

(d) elsewhere than in the Province of Sind, within five years before such grant,

Government will have no further claim to trees which may afterwards grow in the number, or which may spring up from the old roots or stumps, so long as the land continues in occupation.

(1) **Sale proceeds of trees in lands at the disposal of the Forest Department to be credited to that Department.**—In supersession of the orders contained in G. R. No. 129, dated 6th January 1876, it is directed that the proceeds of the sale of such trees on Government assessed waste lands as Government direct to be at the disposal of the Forest Department should be credited to Forest Revenue; the proceeds of the sale of all other trees which are growing or have been growing on assessed waste land should be credited to Land Revenue. (G. R. No. 3095, dated 16th April 1884.)

(2) **Of trees in other lands to be credited to revenue Department.**—The principle laid down in the above Resolution for assessed waste should be applied also to unassessed waste not included in

forest. In occupied numbers, the sale-proceeds of trees which are placed at the disposal of the Forest Department by Rule 93 or are reserved by such a special rule as No. 98-A (now Rule 94) should be credited to the Forest Department, and the sale proceeds of all other trees to Revenue Department. (G. R. No. 4503, dated 4th June 1884.)

(3) **Rights to trees grown up in lands after the sale of occupancy right.**—The interpretation to be placed on this rule is that Government abandon their claim to any tree-growth after the sale of the occupancy right, i.e., to trees or saplings which have grown up either for the first time or from the stools, or old roots, after the occupant has obtained the land. In the cases referred to where teak has been cut by Government on waste lands which are still unoccupied, any new growth, which may rise either from the old roots or stumps, or entirely separate from those roots or stumps, prior to the sale of occupancy right of such lands, is the property of Government. (G. R. No. 4321, dated 30th June 1888.)

(4) **Reserved trees to be in charge of the Collector.**—There can be no inconsistency between the rule under Section 75 of the Forest Act and Rule 94 (now Rule 93) under Section 214 of the Land Revenue Code, because they relate to different matters—the former to occupied and the latter to waste lands. As regards the disposal of reserved trees on occupied lands, whether they were given out before or after the demarcation of forests, Rule 93 is quite clear. Such as the Government may from time to time direct are at the disposal of the Forest Department; the rest are in the charge of the Collector, who may dispose of them as he thinks fit. (G. R. No. 7969, dated 12th October 1895.)

94. (1) Nothing in Rule 93 shall be deemed to apply to *varkas* lands in the districts of Thana, Kolaba and Ratnagiri, and *beta* lands in the district of Kanara, or to any unalienated land in the Dindori Taluka or the Peint Taluka of the Nasik District, or to any land on the banks of streams and *nālas* in the Godhra Taluka of the Panch Mahals District, or to any river-side *jambhul* trees growing in occupied lands on the banks of the rivers\* noted in the margin in the Parner, Rahuri, Sangamner and Akola Talukas of the Ahmednagar District.

Saving of reserved trees in *varkas* and *beta* lands in certain districts from the operation of Rule 93.

\* Mula. : Pravara.  
Mhais. Mhalungi.

(2) In the said lands the trees on which the rights of Government are reserved shall be available for cuttings to be

made from time to time by or under the orders of the Forest Department, in consultation with the Collector.

(3) The sale of any such tree or of the timber thereof will confer no right to the after-growth from the root or stump of the tree so cut. The reservation of the rights of Government over the trees will extend to all such after-growth also.

(1) **After-growth in Ratnagiri and Dindori.**—With reference to the *last clause* of this rule it is directed that when land in the Ratnagiri District or in the Dindori Taluka of the Nasik District is held or hereafter given out for permanent cultivation as distinct from the supply of leaf manure or other materials for cultivation, the sale of trees on lands so occupied will include alienation of right to the after-growth, unless the growth of trees on the land is needed for some public purpose. (G. R. No. 5384, dated 19th July 1897.)

95. (1) And, pending the completion of the acquisition of all occupied lands within the sanctioned demarcation limits of forests in the Haveli, Purandhar and Junnar Talukas and the Ambegaon Petha nothing in Rule 93 shall be deemed to apply to teak trees growing in any unalienated land within the said limits.

Saving of teak trees in certain talukas from the operation of Rule 93.

(2) Teak trees growing in any such land shall be available for cuttings to be made from time to time by or under the orders of the Forest Department in consultation with the Collector, and the sale of any teak tree growing in any such land or of the timber thereof will confer no right to the after-growth from the root or stump of the tree so cut, but the reservation of the rights of Government over the teak trees will extend to their after-growth also.

(1) **Teak trees outside forest demarcation.**—When teak trees lying outside the sanctioned forest demarcation limits of the Haveli, Purandhar, and Junnar Talukas and the Ambegaon Peta of the Poona District have been sold to the occupants or otherwise disposed of by the Forest Department, the right to the after-growth from the roots or stumps of the trees, when cut, shall vest in the occupants of the lands concerned and not in Government. (G. R. No. 6734, dated 1st July 1896.)

(3) *Entry of Co-occupants' Names.*

96. On written application being made for this purpose to the Collector or, whilst survey operations are proceeding, to a survey officer, the names of the co-occupants of the registered occupant of any survey number and the share in fractional parts of a rupee of each such co-occupant in the occupancy may be entered in the records along with the name and share of the registered occupant of the number :

Provided that no such entry shall—

- (a) affect the liability of the occupants to Government, or amongst themselves, for the land-revenue of the number, or
- (b) be deemed to constitute the share to which it relates a recognized share of the survey number.

(4) *Maintenance and Repair of Boundary Marks.*<sup>1</sup>

97. On the introduction of a survey settlement into a district the Superintendent of Survey<sup>2</sup> shall furnish the Collector with a map and statements showing the position, size and description of the boundary marks erected or prescribed by or under the orders of the Survey Department, with a view to his taking measures for their construction, laying out, maintenance and repair under Section 124.

Details of boundary-marks to be furnished by the Survey Department to the Collector.

98. (1) The digging of earth close around an earthen boundary-mark for the purpose of repairing it is prohibited.

(2) A space of two cubits in breadth all round each such mark shall be left untouched, so as to prevent injury to the mark from water lodging in the cavities from which earth is taken for the repairs.

<sup>1</sup> Old rules about inspection of boundary-marks have been omitted, as it seems with an intention to issue executive orders on the subject.

<sup>2</sup> See footnote on page 15.

(1) **Injury to boundary-marks caused by digging around it how to be dealt with.**—In the case noted in the margin, the High Court having reversed the conviction and sentence passed on the accused for digging earth within a space of two cubits of an earthen boundary-mark—an act prohibited under Rule 101 (now Rule 98) of the rules under Section 214 (g) of the Land Revenue Code—a question was raised as to how boundary-marks were in future to be protected. In referring this question for the orders of Government, the Commissioner, N. D., observed :—

“ \* \* \* \* \*

“ 4. No. 101 (now Rule 98) of the rules made under Section 214 of the Land Revenue Code, prohibits ‘ the digging of earth close around an earthen boundary-mark,’ and enjoins that ‘ a space of two cubits in breadth all around each such mark is to be left untouched, so as to prevent injury to the mark from water lodging in the cavities from which the earth is taken. Clause 3 (a) of Rule 111 (now Rule 103) makes breaches of the above rule punishable, on conviction before a magistrate, ‘ with a fine which may extend to ten rupees.’

“ The Honourable Messrs. Justices Birdwood and Parsons have held that Rule 101 (and, consequently, Clause 3 (a) of Rule 111, now Clause 3 of Rule 103, also ) could not be legally made for reasons given in their decision.

“ 5. The Commissioner would submit that the words ‘ Administration of Survey Settlements,’ occurring in Clause (g) of Section 214, under which Rules 89 to 107 (now Rules 90 to 99) have been made, have a much wider scope than is supposed by the Honourable the Judges. Chapter VIII, of the Code, headed ‘ Survey Settlements and Partition of Estates,’ deals with the introduction and revision of survey settlements; Section 214, Clause (g), on the other hand, authorizes the framing of rules for the administration of a settlement. Preservation and maintenance of the survey boundary-marks is an essential feature of such administration, and Government therefore appear competent to frame rules on the subject.

“ 6. It may be added that under Clause (i) of Section 214, the Governor in Council has authority to make rules ‘ generally for the guidance of all persons, in matters connected with the enforcement of this Act or in cases not expressly provided for therein.’ ”

The question was referred to the Legal Remembrancer, who gave his opinion as follows :—

(a) Report No. 19, dated 4th January 1899—

“ \* \* \* \* \*

“ 7. Rules for administration generally mean departmental rules regulating the administration, and binding on persons carrying out the administration, and not rules binding on the public, and I fear from this point of view Rule 101 might be held unsustainable.



"8. But I would venture to point out that the Land Revenue Code itself provides for unintentional injury to boundary-marks, a remedy which Government might consider sufficient to meet all the practical necessities of any case that may arise.

"9. Section 123 renders every landholder responsible for the maintenance and good repair of the boundary-marks of his holding and for any charges reasonably incurred by the Revenue Officer in cases of *alteration* or *disrepair*, and in case of disrepair the Survey Officer may repair and assess all charges incurred. These duties and powers are imposed and conferred by Section 124 on Collectors, on the completion of the survey, and therefore the Collector, if any injury has been done, is not limited to the recovery of a ten rupees' fine, but can insist on full repair at the landholder's expense. 'The size, material and description of boundary-marks shall be such as may be deemed necessary by the Superintendent of Survey according to the requirements of soil and climate,' and if a strip round a mound is deemed necessary to boundary-marks, there is apparently nothing to prevent the officer charged with their maintenance and repair from insisting that such strips, if altered, should be restored at the holder's expense."

(b) Report No. 222, dated 23rd February 1889—

"After considering the correspondence which accompanied Government memorandum No. 975 of 6th February 1889, I reluctantly come to the conclusion that no rule that would stand criticism in a criminal court could be framed under Section 214 (i) of the Land Revenue Code, attaching a penalty to an injury to a boundary-mark unintentionally caused by digging within two cubits of such mark.

"2. The Honourable Mr. Stewart suggests that such a rule might be made under Section 214 (i), if not under Section 214 (g), of the Land Revenue Code.

"3. Statutory powers are always construed very strictly, especially Maxwell on interpretation of where power is given to impose statutes, pages 265 to 267. a penalty.

"4. But {Section 214 (i) only empowers the making of rules for the *guidance* of all persons in matters connected with the enforcement of the Act or in cases not expressly provided for therein.

" \* \* \* \* \*

"This is the view, I think, taken by the High Court. For the note made on the returns before the papers were called for by the High Court, runs as follows:—

'Quære whether this rule is not *ultra vires*. Section 215 gives the Local Government power to impose penalties only in the case of general rules passed under Section 214. It is not clear how this rule falls under that section. Probably Clause (i) is contemplated, but that is somewhat vague, and it seems doubtful whether a rule for the *guidance* of persons could properly have a penalty attached to it.'

"5. I do not think that under that sub-section any obligation requiring to be enforced can be imposed. No new powers or obligations could be created by rules under Section 214 (5). Such rules could only indicate the manner in which the powers and obligations already conferred or imposed by the Land Revenue Code should be carried out. There is no power under the Code to punish unintentional injury to a boundary-mark, and the only obligation under the Code, except in case of wilful injury, is to construct and repair such marks or pay the charges incurred in respect thereof.

"6. But as I have pointed out it is apparently within the discretion of the Superintendent of Survey to prescribe the size, material and description of boundary-marks according to the requirements of soil and climate. I think that where the soil and climate are of such a nature that the boundary-marks unless protected by a space of two cubits left untouched, would be liable to injury from water lodging in the cavities caused by digging round it, it would be perfectly within the powers of the Superintendent of Survey to require all boundary-marks injured from such cause to be repaired substantially with stones or in such other durable manner or material as would be costly enough to deter landholders from thoughtlessly injuring the marks." (G. R. No. 2131, dated 19th March 1889.)

99. (1) Ordinarily a general notification under the second paragraph of Section 122 requiring all landholders to repair their boundary marks within a period of ten days shall be issued for each village in October every year.

Issue of notification under Section 122.

What boundary-marks to be considered out of repair and how to be repaired.

(2) The following marks shall be considered out of repair and shall be repaired in the manner stated for each particular case, namely:—

(a) Any mound less than 1 anna high, 5 annas long and  $2\frac{1}{2}$  annas wide at bottom.

*Mode of repair.*—The mound shall be raised to full dimensions, that is,  $1\frac{1}{2}$  annas high, 5 annas long and  $2\frac{1}{2}$  annas wide at bottom.

(b) Any mound, within two cubits of which earth has been dug for repairs when such excavation has affected the stability of the mark (see Rule 98).

*Mode of repair.*—The excavation shall be filled up.

(c) Any mound considerably out of proper position or so repaired or erected as to indicate a materially incorrect line of boundary.

*Mode of repair.*—The mound shall be correctly placed.

It should, however, be remembered that the intermediate marks along the boundary of a survey-number are not placed in the exact positions indicated in the map; and provided the number of such marks is correct, no change should be made.

(d) Any stone less than  $1\frac{1}{2}$  cubits long and 3 fingers thick.

*Mode of repair.*—A proper-sized stone shall be substituted.

(e) Any stone out of the ground, or buried less than two-thirds of its length, and loose.

*Mode of repair.*—The stone shall be replaced or fixed firmly.

(f) Any stones found out of correct position.

*Mode of repair.*—The correct site shall be duly fixed.

(g) Any stone or stones unauthorizedly substituted for a mound.

*Mode of repair.*—A mound shall be erected.

(h) Any mound or stone overgrown or surrounded by rank vegetation of any kind so as not to be easily visible from the nearest mound or stone.

*Mode of repair.*—The vegetation shall be cleared away until the mound or stone is easily visible as aforesaid.

(i) Any sarbandh, or continuous embankment, shown in the map as a permanent mark, less than 1 anna high and 2 annas wide at bottom.

*Mode of repair.*—The sarbandh shall be made full 1 anna high and 2 annas wide at bottom throughout, unless the occupant prefers the substitution of mounds and stones, in which case his request shall be complied with, and the map corrected.

*Note.*—A land-holder may erect a sarbandh wholly within the boundary line of his number, but such a sarbandh cannot be recognized as a survey mark, because it does not fall on the line of boundary. Marks must be erected as if it did not exist.

If, however, sarbandhs or other permanent marks are found to have been erected along the line of boundary, and have not been shown in the map, the village-accountant or Circle Inspector shall report the case for orders, if the occupant desires that they should be treated as permanent marks; otherwise mounds and stones shall be restored if they have been obliterated.

(i) Any sarbandh similarly shown in the map, or other mounds, which has been repaired with earth dug from a public road.

*Mode of repair.*—The road shall be repaired by, or at the cost of, the land-holder to the extent of the injury done.

(j) Any hedge or other permanent mark shown in the map, which by reason of want of continuity or disrepair falls short of the requirements of a permanent mark.

*Mode of repair.*—The repairs necessary shall be reported for orders.

(k) Any boundary strip which has been ploughed or sown.

*Mode of repair.*—The circumstances shall be reported by the village-accountant or Circle Inspector for orders.

*Note.*—It is not intended that a strip, which has been dug with the object solely of clearing out kunda and bariali, to prevent these weeds from spreading over cultivated land, should be treated as a mark out of repair.

(l) Missing marks.

*Mode of repair.*—New marks shall be erected.

Provided that in any case where the boundary-mark is

an earthen mound, and such mound cannot, owing to flooding of a nála or river, be kept in repair, two stones may be substituted and the mound cancelled with the sanction of the District Inspector, unless by shifting the mound one to two chains further back a fair hope of stability can be secured. In doubtful cases a stone may be added to the mound to mark its position in case of occasional erasure by floods.

## XVI.—APPEALS.

[ Section 214 (h). ]

100. (1) Every appeal shall be made in the form of a petition addressed to the authority to whom an appeal lies, and shall be drawn up in concise, intelligible and respectful language, and bear the signature or mark of the appellant or of his duly authorized agent.

(2) The petition should give the following particulars :—

the name, father's name, occupation and place of residence or address of the appellant ;

the name and address of the writer of the petition ;

and, if possible, the date of the order or decision appealed against and the name and designation of the officer who passed it.

(3) The petition should also contain a brief and unexaggerated statement of the facts on which the appellant relies in support of his appeal ; and the grounds of the appellant's objection to the order or decision appealed against.

101. (1) Appeals may either be presented to the authority to whom an appeal lies in person, or be forwarded to him by post.

(2) Where an appeal is sent by post, the postage on the cover containing it must invariably be fully prepaid.

102. Inattention in any material respect to the requirements of Rule 100 or 101 will render an appeal liable to be rejected without enquiry into its merits.

(1) **Petitions to Government how to be drawn up.**—All petitions to Government should be written as concisely as the nature of the case admits of. If they are found to be unnecessarily prolix or to be couched in unintelligible, exaggerated or disrespectful terms they will be returned for amendment to the parties submitting them.

Petitions of appeal preferred by parties to civil and political suit should invariably be submitted in English. Petitions on other matters may be either in English or in any of the vernacular languages of this Presidency. Those written in any of the vernacular languages, when not accompanied by English translations, will be rendered into the latter language by the Oriental Translator to Government before being placed before His Excellency the Governor in Council, but manuscript petitions in the vernacular in which the words are not properly separated and the sentences punctu-

Full stop ..... | ated wherever necessary by means of the marks  
 Mark of interrogation || shown in the margin will be returned to the  
 senders to be redrafted. (G. R. No. 200, dated 27th January 1886.)

## XVII.—PENALTIES.

[Section 215.]

103. Breaches of the general rules hereunder mentioned shall be punishable on conviction before a Magistrate as follows:—

(1)<sup>1</sup> Whoever commits a breach of Rule 40, 41, 50 or 51, by excavating or removing earth, stone, kankar, sand, muram, or any other material of the soil without due authority:

with imprisonment which may extend to one month, or with fine which may extend to five hundred rupees.

(2) Whoever commits a breach of Rule 48, 49, 50 or 52, by appropriating, using or excavating land in a prohibited manner, or for a prohibited purpose, without due authority:

<sup>1</sup>(1) Where stones were dug and removed by the accused from the land in possession of a person having the rights of an occupant under this Code with the permission of that person. *Held* that the conviction could not be sustained, as such land is not land "belonging to Government" within the meaning of the clause. (Cr. R. 68, 22nd December 1890, Imp. *rs.* Bhojilal Khusal.) But the wording of the rule 111 (now 103) has been changed.

(2) An offence committed in contravention of Rule 111, clause (1) (*d*) (now clause 1 of Rule 103) is triable by any person exercising magisterial powers under the Criminal Procedure Code, and I. L. R. 8, Bombay 195, is no longer an authority. (Cr. R. 46, 16th November 1893, Imp. *rs.* Bai Emma.)

(3) Ruling No. 107, dated 28th September 1900, Imp. *rs.* Pitumal in the Court of the Judge of Karachi, holds that Rule 111, clause 1 (*d*) is *ultra vires* in the case of removal of stones from Government land without due authority—follows I. L. R. 13, Bombay 291, Imp. *rs.* Tikam (G. R. No. 7332, dated 21st November 1900). But now the wording of the new rule is different.

with fine which may extend to five hundred rupees.

- (3) Whoever commits a breach of Rule 98 by digging earth within a space of two cubits of any earthen boundary-mark :

with fine which may extend to ten rupees.

- (4) Whoever, being a village-officer, commits a breach of Rule 32, 33, 40, 41, 45, 46, 79, 80, 88 or 89,

(a) by taking or levying any fee for preparing any document or copy or extract of any document which he is bound by any such rule to prepare without charge ; or

(b) by charging any fee for granting any permission which he is authorised by any such rule to grant, but for which no fee can lawfully be charged :

with imprisonment which may extend to one month, or with fine which may extend to five hundred rupees ;

(c) by refusing or neglecting to prepare any document or copy or extract of any document, or signing or certifying the same, in the manner prescribed by any such rule ; or

(d) by neglecting to make any report or to perform any duty which he is required by any such rule to make or to perform :

with fine which may extend to five hundred rupees.

(1) **Magistrate defined.**—The word “ Magistrate ” means “ any Magistrate. ” ( G. R. No. 3103, dated 20th April 1883. )

(2) **By what Magistrate certain offences to be tried.**—The offence committed in contravention of Rule 111 (now Rule 103, clause 1), clause 1, item (d), of Rules framed under Section 214 of the Land Revenue Code (Act V. of 1879, Bombay), is exclusively triable by a Magistrate of the first class. Accordingly a conviction and sentence by a second class Magistrate were set aside by the High Court. (Queen vs. Shivram, I. L. R., Bombay, Vol. VIII, page 591, 1884.)

(3) **Fines inflicted by Magistrate, how to be recovered.**—Fines inflicted by a Magistrate under this rule should be recovered under Section 187 of the Code. (G. R. No. 4697, dated 9th June 1885.)

# APPENDICES TO THE RULES UNDER THE CODE.

## APPENDIX A. (See Rule 26.)

*Form of Agreement<sup>1</sup> for exchange to be executed by villagers  
removing to a new village-site.*

AGREEMENT executed the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ by A. B.  
resident of \_\_\_\_\_ in the \_\_\_\_\_ taluka of  
the \_\_\_\_\_ district.

WHEREAS Government have been pleased to sanction a change being made in the position of the site of the village of \_\_\_\_\_ in the registration sub-district of \_\_\_\_\_ of the \_\_\_\_\_ district, and in pursuance of such sanction the following plot of ground has been allotted to me in the new site in exchange for the ground held by me in the old site, namely, the piece of land bounded as follows, that is to say, on the North by \_\_\_\_\_, on the South by \_\_\_\_\_, on the East by \_\_\_\_\_, on the West by \_\_\_\_\_, measuring \_\_\_\_\_ in length from North to South, and \_\_\_\_\_ in length from East to West, and comprising about \_\_\_\_\_ square \_\_\_\_\_ in superficial area and numbered No. \_\_\_\_\_ in the \_\_\_\_\_ :

I do hereby agree, in consideration of the allotment to me of the new piece of land aforesaid, as follows, namely:—

(1) That all my right, title and interest in any land whatsoever, situate within the old site of the said village, shall be deemed to be, and is hereby, surrendered to Government, together with the trees standing thereon, and all rights over or other benefits arising out of, or enjoyed by me, in respect of the said land;

(2)<sup>2</sup> That I shall hold the piece of land aforesaid in the new site from the date of this agreement on the same terms and with the same rights and subject to the same liabilities as would apply to my tenure of the ground held by me in the old site, if I continued to be the holder thereof.

In witness whereof I have hereto set my hand the day and year aforesaid. Written by \_\_\_\_\_

(Signed) A. B.

Signed and delivered by \_\_\_\_\_ in our presence.

<sup>1</sup>The proper stamp duty for this agreement is four annas. See item A-7 of the Notification of the Government of India in the Finance and Commerce Department, No. 785-S. R., dated 17th February 1899.

<sup>2</sup>(1) As objection is made to clause (2) of the agreement in Appendix C under Rule 27 (now Appendix A under Rule 26) subsidiary to the



## APPENDIX B. (See Rules 32 and 77.)

*Form of Agreement to be passed by persons intending to become registered occupants.*

AGREEMENT.<sup>1</sup>

To the Mamlatdar (or Mahalkari) of

I, A. B., inhabitant of \_\_\_\_\_ in the \_\_\_\_\_ district, hereby accept, on behalf of myself and of my co-occupants, present and future, the occupancy of the land comprised in Survey No. \_\_\_\_\_ (or of the building-site hereinbelow described, or otherwise as the case may be), in the village of \_\_\_\_\_ in the \_\_\_\_\_ taluka of the \_\_\_\_\_ district, and I pray that my name be entered in the Government records as the registered occupant of the said land.

The said occupancy<sup>2</sup> has been granted to me subject to the provisions of the Bombay Land Revenue Code, 1879, and of rules in force there-

Land Revenue Code, that clause may be omitted, but by this alteration of the form of agreement Government does not abandon any right of levying land revenue which it may possess under the Land Revenue Code or otherwise. ( G. R. No. 9021, dated 6th November 1885. )

(2) This clause has been substituted under G. R. No. 10096, dated 16th December 1885, and G. N. No. 676, dated 27th January 1886, published in the B. G. G., Part I., page 81, 1886, for the clause which ran as follows:—

That I shall hold the piece of land aforesaid in the new site from the date of this agreement as the occupant of the same, free of land revenue for such period as Government may be pleased to continue such exemption, but subject nevertheless to the payment of land revenue of such amount, if any, as may hereafter at any time, or from time to time, be lawfully imposed under the orders of Government thereupon.

<sup>1</sup> This agreement is (in so far as it is an application) exempt from Court fee under item C-24 of the Notification of the Government of India, No. 4650, dated 10th September 1889. It is also exempt from stamp-duty under item A-4 of the Notification of the Government of India in the Finance and Commerce Department, No. 785-S. R., dated 17th February 1899.

<sup>2</sup> In cases where the occupancy is granted subject to the condition that the occupant shall not transfer it in any way to another person without the sanction of the Collector, the following clause should be substituted for this in the agreement to be taken from him:—

“The said occupancy has been granted to me in perpetuity from the day of \_\_\_\_\_ 19 \_\_\_\_\_, (or if the grant is not in perpetuity but

under, in perpetuity, from the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_; <sup>1</sup> and I undertake to pay the land revenue from time to time lawfully due in respect of the said occupancy (or I undertake, whenever Government shall see fit to discontinue the exemption of the said land from payment of land revenue, to pay such revenue as may be lawfully imposed, under the orders of Government, thereupon or otherwise, as the case may be).

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ at \_\_\_\_\_

Written by \_\_\_\_\_

(Signed) *A. B.*

We declare that *A. B.*, who has signed this agreement, is, to our personal knowledge, the person he represents himself to be, and that he has affixed his signature hereto in our presence.

(Signed) *C. D.*  
*E. F.*

We<sup>2</sup> declare that to the best of our knowledge and from the best information we have been able, after careful inquiry, to obtain, the person who has passed this agreement is a fit person to be accepted by Government as responsible for the punctual payment of the land revenue from time to time due on the above land.

(Signed) *G. H., Patel.*

*I. J., Village-Accountant.*

merely for a term, delete the words 'in perpetuity,' and insert here 'to the \_\_\_\_\_ day of 19\_\_\_\_', subject to the condition to which I hereby assent, namely, that I, my heirs, executors, administrators and approved assigns, may not at any time lease, mortgage, sell, or otherwise howsoever encumber the said occupancy or any portion thereof without the previous sanction in writing of the Collector, and subject also to the provisions of the Bombay Land Revenue Code, 1879, and of the rules in force thereunder; and I undertake to pay the land revenue from time to time lawfully due in respect of the said occupancy." (G. R. No. 6210, dated 22nd August 1883.)

<sup>1</sup> When an occupancy is sold for a fixed period free of land-revenue the agreement should end here, and the second endorsement may be omitted.

<sup>2</sup> This endorsement is to be required only when the agreement is given under Rule 32. It is not to be required in the case of agreement executed under Rule 75 (now Rule 77). (G. R. No. 3842, dated 19th May 1883.)

## APPENDIX C. (See Rule 34 (1).)

*Form of written permission to occupy land to be given by a  
Mamlatdar or Mahalkari under Section 60.*

Permission is hereby given to *A. B.*, inhabitant of \_\_\_\_\_ in  
the \_\_\_\_\_ taluka of the \_\_\_\_\_ district to occupy  
Survey No. \_\_\_\_\_ (or the building-site hereinbelow described, or  
*otherwise as the case may be*), in the village of \_\_\_\_\_ in the  
\_\_\_\_\_ taluka of the \_\_\_\_\_ district.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ at \_\_\_\_\_

(Signed)

Mamlatdar (or Mahalkari).

Seal.

## APPENDIX D. (See Rule 42.)

(1) FORM OF PROCLAMATION AND WRITTEN NOTICE  
OF SALE OF ATTACHED PROPERTY.

*(Under Section 165 of the Bombay Land Revenue Code, 1879.)*

Whereas the property of \_\_\_\_\_ hereinunder specified has been  
attached on account of the Government assessment Rs. \_\_\_\_\_ due by the said  
\_\_\_\_\_ ; and whereas it is necessary to recover the said amount  
by sale of the said property, together with all lawful charges and expenses  
resulting from the said attachment and sale :

Notice is hereby given that on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_  
at \_\_\_\_\_ o'clock A. M. \_\_\_\_\_ *A. B.*, \_\_\_\_\_ the  
Mamlatdar of \_\_\_\_\_ (or other person appointed) will, at \_\_\_\_\_  
in \_\_\_\_\_ taluka \_\_\_\_\_ in this district, sell by  
auction to the highest bidder and without reserve the right, title and inter-  
est of the said \_\_\_\_\_ in the property hereinunder specified.  
and every power of disposing of the same or any of them or of the profits  
arising therefrom which the said \_\_\_\_\_ may now consistently with the law  
exercise for his own benefit.

*Moveable Property.*

(This table only should be omitted when the form is to be used under Rule 11 of the rules for the execution of decrees.)

1	2	3	4	5	6
Lot No.	Number and description of articles.	Where attached.	Where now placed.	When to be viewed.	Whether the sale is subject to confirmation or not.

*Immoveable Property.*

1	2	3	4	5	6	7	8	9	
Lot No.	Description of Lot, including local situation, supposed or estimated rent or annual value, and, if leased, for how long, on what terms, and to whom.	Survey-number, municipal number and other fiscal designation.	Government Revenue, including any Local Cess and any other known fiscal charge resting on the Lot.	Present occupant.	(Here enter any other particulars the Collector may see fit.)				(This column should be used for particulars which the Collector may see fit under Rule 11 (e) of the rules for the execution of Civil Court decrees.

N. B.—No guarantee is given of the title of the said  
of any of the rights, charges or interest claimed by third parties.

or of the validity

(Signed)

Collector.

(2) FORM OF PROCLAMATION AND WRITTEN NOTICE OF SALE OF RIGHT OF OCCUPANCY OF UNOCCUPIED LAND.

Notice is hereby given that the right of occupancy of the undermentioned unoccupied land, situate in the village of \_\_\_\_\_ in the \_\_\_\_\_ mahal and the \_\_\_\_\_ taluka of the \_\_\_\_\_ district, will be put up to public auction at \_\_\_\_\_ on \_\_\_\_\_ day the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at or after \_\_\_\_\_ o'clock A. (or P.) M.

The written (or printed) conditions of sale signed by \_\_\_\_\_ may be seen on application, during office hours, on any office day before the day of the auction, to the Mahalkari (or Mamlatdar) of \_\_\_\_\_ or at the time of the auction, to the officer who conducts the same, and intending bidders are warned that they should ascertain the said conditions before bidding.

*Description of the Land.*

(Here give a full description of the land, viz., the Survey-Number or Numbers, if it has been surveyed; if not, its boundaries, the class of land, i. e., whether it is dry-crop land, garden land, or a building-site, etc.; the area of the land, adding 'be the same more or less'; the assessment, if any, at present payable for the land, and the term for which that assessment has been fixed.)

(Signed)

Dated the \_\_\_\_\_ day }  
of \_\_\_\_\_ 19\_\_\_\_. } Collector (or other competent officer).

APPENDIX E. (See Rule 56 (II).)

*Form of Sanad in cases where the assessment on land appropriated to building or other non-agricultural purposes is altered under Section 48.*

Whereas the land hereinafter described by measurement and by the boundaries specified in the schedule (and delineated in the map hereto appended) and forming (part of) Survey No. \_\_\_\_\_ in the village of \_\_\_\_\_, in the taluka of \_\_\_\_\_, district \_\_\_\_\_, registered in the

## APPENDIX E.

name of *A. B.*, resident of \_\_\_\_\_, and at present held by *C. D.*, resident of \_\_\_\_\_, has been hitherto assessed as land appropriated for purposes of agriculture at the rate of \_\_\_\_\_; and whereas the said land has been appropriated to building or other non-agricultural purposes and such assessment has thereby become liable under Section 48 of the Bombay Land Revenue Code, 1879, to be altered and fixed at a different rate:

Now this is to certify that under the provisions of the said Code and rules in force thereunder the assessment of the amount to be paid annually as land-revenue on the said land has been fixed for a term of \_\_\_\_\_ years from the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ at the sum of Rs. \_\_\_\_\_ (figures) [Rupees \_\_\_\_\_ (words)] payable in each year of the said term by instalments of the amounts and accruing due on the dates following, that is to say,

On the expiry of the said term, and at such further intervals as may be from time to time directed by Government in this behalf, the assessment aforesaid will be liable to revision in accordance with the said Code and the rules and orders for the time being in force thereunder.

*Schedule hereinbefore referred to.*

Length and Breadth.		Total measurement, superficial area.	Forming (part of) Survey No. or Pot No.	Boundaries.				Remarks.
North to South.	East to West.			North.	South.	East.	West.	

In witness whereof the Collector has hereto set his hand and the seal of his office this day of \_\_\_\_\_ 19\_\_\_\_.



Collector.

## APPENDIX F. (See Rules 13 (2) and 58.)

## Form of Register of Alienations.

Register of Alienated Villages and Lands in the District  
 kept under Section 53 of Bombay Land Revenue Code, 1879.

Serial Number.	Name of Village.	Name of the present Alienee.	(2) Particulars of the Sanad.							Duration of tenure, i.e., whether continuous permanently or hereditarily for more lives than one, or for life only, or for what period.	Entire Village.	Particulars of the villages or lands alienated.		(5) Land Revenue payable to Govt.		REMARKS.				
			(1) Class of Alienation.	Number.	Date, Month and Year.	Name and Office of the Officers signing it.	Name of the Holder.	Names of the Taluka and District in which it is entered.	(3) Number of Form of the Sanad annexed to the Register.			Area.	Survey assessment.	(4) Amount of old judi or salami.	Rate.		Additional Quit-rent, if any, payable under the Sanad.	Total.		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
								Taluka.												
								Taluka.												

## NOTES:—

- (1) This column should show whether the sanad is for a political or other saranjam, or a personal inam, or a devasthan, or a watan inam, or a district officer's watan, or a village servant's watan, and in the latter case whether the watan is (a) useful to the village community, or (b) useful to Government. If the alienation does not come under any of these classes, it should be appropriately described.
- (2) In those cases in which no sanad has been granted, the number and date of the decision confirming or continuing the alienation should be written across columns 5—10.
- (3) To avoid the necessity of copying out a sanad *in extenso* in each entry, a sample form of every kind of sanad registered should be annexed under the Collector's signature to the register, and numbered, and the number of the form should be entered in column 10 of each entry.

- (4) If the amount of judi actually paid has been less than the maximum amount fixed by the Inam Commission or otherwise, the former amount should be entered in column 16, and the latter, with an explanatory note, in column 21.
- (5) When columns 16-18 are inapplicable, the amount of land revenue payable should be shown in column 19 only.

## APPENDIX G. (See Rule 76.)

### *Form of Notice<sup>1</sup> of Relinquishment.*

#### *No. 1.<sup>2</sup> Absolute Relinquishment.*

To the Mamlatdar (or Mahalkari) of

I, *A. B.*, inhabitant of \_\_\_\_\_ in the \_\_\_\_\_ taluka of the \_\_\_\_\_ district, the registered occupant of Survey No. \_\_\_\_\_ the building-site hereinbelow described (*or otherwise as the case may be*), in the village of \_\_\_\_\_ in the \_\_\_\_\_ taluka of the \_\_\_\_\_ district, hereby give notice, under Section 74 of the Bombay Land Revenue Code, 1879, that it is my intention to relinquish absolutely the occupancy of the said Survey No. (or building-site, &c.) at the end of the current year.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ at \_\_\_\_\_

Written by

(Signed) *A. B.*

We declare that *A. B.*, who has signed this notice, is, to our personal knowledge, the person he represents himself to be, and that he has affixed his signature hereto in our presence.

(Signed) *E. F.*  
*G. H.*

#### *No. 2. Relinquishment in favour of some other person.*

To the Mamlatdar (or Mahalkari) of

I, *A. B.*, inhabitant of \_\_\_\_\_ in the \_\_\_\_\_ taluka of the \_\_\_\_\_ district, the registered occupant of Survey No. \_\_\_\_\_ (or of the building-site hereinbelow described, or otherwise as the case may be), in the village of \_\_\_\_\_ in the \_\_\_\_\_ taluka of the \_\_\_\_\_ district, hereby give notice, under Section 74 of the Bombay Land Revenue

<sup>1</sup> No Court-fee is chargeable on an application to relinquished land. Court Fees Act VII. of 1870, Section 19 (XI.).

<sup>2</sup> These notices must be given before the 31st March, or such other date as Government prescribe, under Section 74 for each district.



Code, 1879, that I have relinquished the occupancy of the said Survey No. ( or building-site, &c. ) in favour of C. D., inhabitant of in the taluka of the district; and I request that the necessary mutation of names be made in the records.

Dated this                      day of                      19                      , at

Written by

(Signed)                      A. B.

We declare that A. B., who has signed this notice, is, to our personal knowledge, the person he represents himself to be, and that he has affixed his signature hereto in our presence.

(Signed)                      E. F.  
    G. H.

## APPENDIX H. (See Rule 88 (1).)

### *Notice to a defaulter.*

To A. B., residing at

You are hereby required to take notice that the sum of Rs.                      a.                      p. due by you on the                      as the                      ( instalment of<sup>1</sup>) land-revenue on (Sub. No.                      of ) Survey No. (or otherwise as the case may be) in the village of                      in the taluka of                      in the district, has not been paid, and that, unless it is paid within ten days from the date of this notice, together with the sum of                      annas, being the fee chargeable for this notice, compulsory proceedings will be taken according to law for the recovery of the whole of the revenue still due by you for the current year on the said land.

Dated the                      day of                      19                      .

(Signed)                      Mamlatdar (or Mahalkari).

## APPENDIX I. (See Rule 90 (1).)

### *Notification determining the period of Settlement.*

The following notification is published for the information of the land-holders and village-officers in the                      taluka of the district :—

1. The Governor in Council having been pleased to sanction the assessments fixed by the Superintendent of Revenue Survey and Assess-

<sup>1</sup> " First " or " second, " as the case may be.

ment under the provisions of the Bombay Land Revenue Code, 1879, the said assessments will henceforth be leviable, subject however to such declaration as the Governor in Council under Section 102 of the said Code may be hereafter pleased to make for the purpose of declaring any of such assessments, with any modifications which he may deem necessary, fixed for a term of            years.

2. But in the case of land which may hereafter be brought under irrigation by the use of water, the right to which  
 Extra cess for water.            vests in Government, or which is supplied from works constructed and maintained by, or at the instance of Government, or of land which may be supplied with an increased amount of water from works constructed, repaired, or improved at the cost of the State, Government reserves to itself the right of imposing an extra cess or rate, or of increasing any existing rate, for the use of water supplied or increased by such means, whether under the provisions of the Bombay Irrigation Act, 1879, or otherwise.<sup>1</sup>

3. In addition to the fixed assessment, a cess not exceeding such rate as may be allowed by law will be levied under the  
 Local Funds.                        Bombay Local Funds Act, 1869, or other law for the time being in force, for the purpose of providing funds for expenditure on objects of local public utility and improvement.

4. The Government rights to trees standing in lands which are now occupied is hereby conceded to the occupants  
 Right to trees.                        thereof, subject to the general exceptions entered in the margin,<sup>2</sup> and the special exceptions recorded in the settlement records.

5. It is also hereby notified that at future revisions of rates there will be no general re-measurement, and that no sub-division  
 Future revisions.                    of survey-numbers beyond that which has been now effected will be made at the expense of Government. If any occupant hereafter wishes to have his occupancy sub-divided, he must apply to the Collector, forwarding with his application such fee as may be necessary, according to the rules in force from time to time, to cover the expenses of re-measurement and alteration of the map and records.

<sup>1</sup> Should any other special cess, for the maintenance of irrigation works, such as the pat-fala in Khandesh, be levied, it should be here specified.

<sup>2</sup> The names of reserved trees are to be specified in the margin.

# APPENDIX J.

(Referred to in footnote under Rule 8.)

*Form of Register approved by G. R. No. 2497, dated 11th April 1899.*

Register showing the results of inquiries made as to the sufficiency of the security furnished by Revenue Officers in the District of

	Consecutive number.
	Name and designation of officers required to give security.
	Amount of security given.
	Nature of security given.
	Names of sureties, if any, and dates of their bonds.
	Names of new sureties, if any, substituted for former ones who have died or withdrawn, or whose fitness is considered doubtful, and dates of their security bonds.
	Amount of security, if any, for which each surety is liable on account of other officers, whether in the same or in any other Department.
	Opinion of the head of office as to sufficiency of present security, and date on which such opinion was recorded.
	Commissioner's inspection notes.

## APPENDIX K.

(Referred to in Rule 13.)

*Forms of Sanads for revenue-free grants of land for religious or charitable purposes.*

## FORM NO. I.

To

A. B.

WHEREAS Government has been pleased to grant to you, A. B., the below-mentioned piece of land situated in the village of \_\_\_\_\_ in the \_\_\_\_\_ taluka of the \_\_\_\_\_ district, for the purpose of<sup>1</sup> \_\_\_\_\_ revenue-free (namely)—

All that piece of land bounded on the North by \_\_\_\_\_, on the South by \_\_\_\_\_, on the East by \_\_\_\_\_, and on the West by \_\_\_\_\_, and measuring from North to South \_\_\_\_\_ and from East to West \_\_\_\_\_, comprising \_\_\_\_\_ square \_\_\_\_\_ in superficial area, and numbered No. \_\_\_\_\_ in the \_\_\_\_\_.

It is hereby declared that the said land shall be continued for ever free of all claim on the part of Government for rent or land-revenue to whoever shall from time to time be the lawful holder or manager of the said \_\_\_\_\_ on the condition that neither the said land nor any building erected thereupon shall at any time, without the express consent of Government, be diverted either temporarily or permanently to any other than the aforesaid purpose, and that no change or modification shall be made of the object for which the said \_\_\_\_\_ is founded, and that in the event of any such unauthorized diversion, change, or modification being made, it shall be lawful for Government, on causing six months' previous notice in writing to be given to the said holder or manager, to take either of the two following courses (namely), either—

(1) to require that the said land be vacated and delivered up to Government free of all claims or incumbrances of any person whatsoever, or

(2) to impose thenceforward such annual rent for the occupation of the said land until the same is vacated and delivered over to Government as to Government shall seem fit, which said rent shall be recoverable under the law at the time in force for recovering an arrear of land-revenue.

<sup>1</sup>The purpose and the extent of the public interest in it should be clearly set forth, as, for instance, "building a dharamshala for the free and unrestricted use of all classes of the community."

This grant is made subject to the reservation of the right of the Secretary of State for India in Council to all mines and mineral products and of full liberty of access for the purpose of working and searching for the same, with all reasonable conveniences.

This sanad is executed on behalf of the Secretary of State for India in Council by order of His Excellency the Governor in Council of Bombay, by the Collector of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_



(Signed)

Collector.

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FORM No. II.

To

A. B.

WHEREAS, in consideration of your having built (or undertaken to build, *as the case may be*), a temple, with a dharamshala annexed thereto, for the use of the Hindu community (or *otherwise as the case may be*) on the piece of land hereinafter mentioned, which is your property (or which has been granted to you by Government for this purpose, *as the case may be*), Government have been pleased, at your request, to exempt the said piece of land from liability to rent or land revenue.

It is hereby declared that so long as the said piece of land continues to be devoted to the purpose aforesaid, it shall be continued free of all claim on the part of Government for rent or land revenue to whoever shall from time to time be the lawful holder or manager of the said temple and its appurtenances (*or otherwise as the case may be*).

The piece of land herein referred to is situated in the village of \_\_\_\_\_ in the \_\_\_\_\_ taluka of \_\_\_\_\_ district, and is bounded on the North by \_\_\_\_\_, on the South by \_\_\_\_\_, on the East by \_\_\_\_\_, and on the West by \_\_\_\_\_, and comprises about \_\_\_\_\_ square \_\_\_\_\_ in superficial area, be the same more or less, and is numbered No. \_\_\_\_\_ in the \_\_\_\_\_

This grant is made subject to the reservation of the right of the Secretary of State for India in Council to all mines and mineral products and of full liberty of access for the purpose of working and searching for the same with all reasonable conveniences.<sup>1</sup>

This sanad is executed on behalf of the Secretary of State for India in Council by order of His Excellency the Governor in Council of Bombay, by the Collector of this day of 19 .

Seal of the  
Collector.

(Signed)

Collector.

## APPENDIX L.

(Referred to in footnotes to Rules 19 and 31.)

*Form of lease to be granted to an occupant who takes up land on special terms under No. 19 of the Land Revenue Code Rules.*

This is to certify that, with the previous sanction of the Commissioner (in Sind, or as the case may be) of has been granted the occupancy of survey No. in the village of in the Talaka of the District for a term of years from the day of , 18 subject to the payment of land revenue as follows (viz.):—

(a)	for the first	years, A. D. 18	to	18	, nil ;
(b)	for the next	years, A. D. 18	to	18	, a reduced assessment of Rs. ;

The reason for the grant of the said occupancy on the favourable terms aforesaid is that the lessee has undertaken, at his own expense, within a period of from the day of 18 , to carry out to the satisfaction of , the following work, whereby the cultivation of the said survey No. will be improved (or rendered feasible, or otherwise, as the case may be), viz:—

(Here describe as accurately as possible the work to be executed.)

The conditions on which this lease is granted are:—

- (1) That the lessee shall completely execute the work aforesaid to the satisfaction of the said within the period abovementioned ;
- (2) that he shall keep the said work when executed in good order and repairs to the satisfaction of the said until the expiry of this lease ;
- (3) that if the lessee shall fail to perform either of the aforesaid conditions he shall be liable, notwithstanding anything hereinbefore written,

<sup>1</sup>This clause is to be inserted only when the land is being granted under the sanad.



NOTE.—An index similar to that prescribed for Taluka Form No. 31 should be prefixed to this register when the number of occupancies is large.

When a lease is entered in this register an extract of the entry should be furnished by the Mamlatdar under his signature to the village officers concerned. The village officers should arrange extracts in one file and keep them in their current papers. (G. R. No 8959, dated 6th December 1883.)

## APPENDIX N.

(Referred to in footnote to the heading of Rules  
under Section 214.)

[N. B.—The old numbering of the rules has not been changed.]

In exercise of the power conferred by Section 40 (*d*) of the Khoti Settlement Act, 1880, the Governor in Council is pleased to make the following rules to determine the extent to which rules or orders made under Section 214 of the Bombay Land Revenue Code, 1879, shall be applicable to villages to which the said Khoti Settlement Act extends (namely):—

1. No rule or order which shall be hereafter made under Section 214 of the Bombay Land Revenue Code, 1879, shall be applicable to the said villages, unless it is expressly directed in such rule or order, or in some subsequent rule or order, that it shall be applicable thereto.

2. Of the rules and orders at present in force under Section 214 of the Bombay Land Revenue Code, 1879, Nos. 7 to 34, both inclusive, 36, 37, 42, 46, paragraph 2, 50, 53, 57, 58 to 72, both inclusive, 74 to 82, both inclusive, 84 to 86, both inclusive, 87, paragraph 2, 88, 99, proviso 1 and 111, clause 2, sub-clause (*c*), and clause 3, sub-clause (*b*), shall not be applicable to the said villages.

3. The rest of the said rules and orders shall be applicable to the said villages, subject, as regards those of them which are hereinbelow in this rule mentioned, to the modifications hereinbelow respectively specified, *viz.*—

No. of Rule or order.	Modification.
2	After the word " Code " insert " and Japtidars ( <i>i. e.</i> , stipendiaries appointed by the Collector to manage attached villages)."
35	For the words " the produce of trees belonging to Government " substitute " where the produce of trees belongs to Government, it "



No. of Rule or order.	Modification.
45	For " Village Officers " read " Village Accountant or Japtidar where there is one, and of the Band Karkun where there is no Village Accountant or Japtidar."
46, para. 1.	Omit the words " of Section 46, or " and for the last two words substitute " section. "
56	For the words, " under Rule 66 " substitute " by the Collector. "
102	<p>(1) For the words " Village Officers " substitute " Village Accountants and Japtidars "; and</p> <p>(2) For the words " November or December and the Village Accountant " substitute " January or February. Villages in which there is no Village Accountant or Japtidar shall be divided by the Collector into groups, and the Band Karkun shall examine all the boundary marks in every village comprised in one such group every year in rotation. The examining officer "; and</p> <p>(3) For the words " Village Accountant, " in para. 2, substitute " examining officer. "</p>
104	For " Village Officers " substitute " Village Accountant or Japtidar, if there be one. "
111	<p>(1) In clause 1 (c) for the words " the grass or any other produce of land " substitute " any produce, " and</p> <p>(2) In clause 1 (d) omit the words " from land, " and</p> <p>(3) In clause 4 for the words " Village Officer " substitute " Police Patel, Village Accountant or Japtidar, " and</p> <p>(4) In clause 5 for the words " Village Officer " substitute " Village Accountant or Japtidar. "</p>

(G. N. No. 6794, dated 11th September 1889, published in the B. G. G., Part I, page 779, 1889.)

## APPENDIX O.

(Referred to in footnote to Rule 47.)

*Rules regarding alluvion and diluvion, owing to changes in the course of the river Indus, or other waters, in the province of Sind.*

1. Any land, separate from the main banks of the river or sea-shore by a channel which contains water throughout its length during the whole year, is to be considered an island.

2. Islands newly thrown up by the river or sea are the property of Government.

3. All new land not separated from the main land by a channel containing water throughout its length during the whole year, is to be considered as the property of the owner of the old land to which it is annexed, subject to Government assessment in the cases provided for in the rules below.

4. These rules hold good only in cases of lands newly thrown up by the river in such a manner as to make it impossible to identify them with any lands which may have previously existed on the same spot, and been since swept away. If the river, by a sudden change in its course, cut off a portion of an estate without gradual encroachment, so as merely to separate such portion of land from the rest of the estate to which it previously belonged, without destroying the identity or preventing the recognition of the land so cut off, then the land, on being clearly and unmistakably identified, will continue to be held on the same tenure as before its separation.

5. But no weight should be allowed to the pretended recognition of lands which have been so entirely swept away at some previous period, that they disappeared during the whole of a season, and which, on the river again changing its course, are supposed to re-appear merely because in situation or composition they somewhat resemble those previously swept away. These would come under Rules 2 and 3.

6. Where lands bordering on the river are leased out by Government it is to be the rule that whenever  $\frac{1}{10}$ th of the land, or a portion of the land yielding  $\frac{1}{10}$ th of the rental, may be swept away, the lessee can claim a resettlement of the estate. On the other hand, the Government can assert no claim to assess any increment to lands so leased, unless it amount in extent or produce to more than  $\frac{1}{10}$ th of the estate leased.

7. This rule should be observed even though no provision for such a contingency may have been made in the original lease.

8. When a revision of settlement takes place under these rules on the plea of diluvion, if the total assets of the whole estate settled be found to be from any cause as large as, or larger than, they were computed to be at the time of settlement, the claim for reduction in the lease will be disallowed. If they be less, a proportionate deduction will be allowed, the assessment being calculated on the whole existing assets in the same manner as when the settlement was originally made.

9. And when Government claim an increase of assessment on account of increment above  $\frac{1}{10}$ th, the lessee may, at his option, either have the whole estate resettled, or come under a new engagement, for the sum which may be demandable upon the newly accrued portion alone.

10. Remissions of assessment granted on account of diluvion in fixed leases are to be reported to the Commissioner: and likewise increase of assessment on account of alluvion.

11. Holders of lands in jaghir, or on other rent-free tenure, are to be left in possession of all lands attached to their estates under Rule 3, provided the increment do not exceed by more than 10 per cent. the land which they held at the date of the latest confirmatory grant issued by competent authority.

12. If the increment exceed 10 per cent. all lands, beyond those previously held under sanction of competent authority, will be liable to assessment, but remain the property of the holder of the original rent-free estate.

13. In cases, however, where a certain fixed quantity of land has been granted rent-free, and not a village *mukam* or estate, then the holder can have no claim on any increment to his original lands.

14. If any claim being preferred by Government to assess lands newly attached to rent-free estates it be proved that more or an equal amount of land has, since the date of the last confirmatory grant to the rent-free holder, been lost by diluvion from the same estate, then the claim to assess shall be disallowed.

15. This plea is in no case to hold good with reference to lands which had been swept away before the conquest of Sind.

16. If a rent-free estate be entirely carried away, the holder will have no claim to a new grant, nor in the event of new lands being subsequently formed by the river again receding will the rent-free estate be revived. The new lands will be an increment to the estate to which they are attached under Rule 3.

17. Where villages or estates have been granted subject to payment of a quit-rent, Government will not claim to assess any increment until it reaches 10 per cent.; when it exceeds 10 per cent., the whole of the increment will be liable to the ordinary assessment.

18. The same rules which would apply to alienations, or leases

*Example.*

A holds a jaghir  $\frac{1}{4}$ th of the Government revenue of the village of Syndpur producing Rs. 10,000 per annum.

(a) Case. Land producing Rs. 500 per annum is swept away. A will receive only  $\frac{1}{4}$ th of the remaining Rs. 9,500.

(b) Case. A similar amount of land is added. A will then receive  $\frac{1}{4}$ th of Rs. 10,500.

(c) Case. Land yielding a revenue of Rs. 2,000 is swept away. A will receive only  $\frac{1}{4}$ th of Rs. 8,000.

(d) Case. Land yielding Rs. 2,000 is added. A has still a right to only  $\frac{1}{4}$ th of Rs. 10,000.

(e) Case. The village in 1848, when the grant was confirmed to A, yielded Rs. 15,000 Government Revenue though latterly, the value has been only Rs. 10,000. In the case if land yielding Rs. 2,000 be added, A will receive a fourth of the additional Rs. 2,000 as well as of the Rs. 10,000.

of the whole Government share, shall be applicable where only a fractional portion of such share has been alienated, the addition or deduction, as the case may be, being proportioned to the extent to which the rights of Government may in each instance have been alienated.

19. Claims founded on grants by competent authority, specifying particularly the alienation of alluvial land formed by increment, must be decided specially on consideration of the terms of the grant.

20. If cases should arise in the Civil Courts involving questions of alluvion and diluvion, the litigants should be called upon to prove, if possible, the local usage; and by that, if the practice be clear and free from doubt, the Court should decide all cases relating to alluvial land between the parties where estates may be liable to such usage. Where this proof fails, the Court should decide in the spirit of the above rules.

## APPENDIX P.

(Referred to in footnote to Rule 73.)

Under No. 68 (now Rule 73) of the rules framed by Government under Section 214 of the Land Revenue Code, Bombay Act V. of 1879, His Excellency the Governor in Council is pleased to direct that the amount of fine leviable under the said rule on any land within the undermentioned limits shall be fixed by the Collector or Deputy Commissioner in charge of the district concerned in his discretion at rates not exceeding Rs. 5,000 per acre in each case.

District.	Taluka.	City, town or village.	Limits to which the Notification applies.	Govt. authority.
1	2	3	4	5
<b>SIND.</b>				
Karachi	Karachi	Karachi	Municipal limits	Government Notification No. 7902, dated 1st November 1897.
		Station Gidu Bandar.	Gidu Bandar, Sari—within a radius of one mile from the Railway Station.	
		Station Hyderabad.	Hyderabad, Nareja Gujo—within the limits of the Hyderabad Municipality.	
	Hyderabad	Station Tando Nawab.	Ghangro, Ghangra, Hyderabad, Narejani, Chacha Dhelha—within a radius of one mile from the Railway Station.	
Hyderabad		Station Tando Jam.	Hotki, Rahuki—within a radius of one mile from the Railway Station.	
	Tando Alahyar.	Station Landhi Khesano.	Daro, Kubi, Gujo, Bhanoki—within a radius of one mile from the Railway Station.	

District.	Taluka.	City, town or village.	Limits to which the Notification applies.	Govt. authority.
1	2	3	4	5
<b>SIND—concl'd.</b>				
Hyderabad ...	Tando Alahyar.	Station Tando Alahyar.	Tando Alahyar, Nahuki, Amri, Daro Sabto—within a radius of one mile from the Railway Station.	Government Notification No. 7892, dated 1st November 1897.
Shikarpur ...	Shikarpur ...	Shikarpur ...	Municipal limits ...	
		Sukkur ...	Do. ...	
Thar and Parkar.	Mirpur Khas	Mirpur Khas ...	Town limits ...	
<b>PRESIDENCY PROPER.</b>				
Belgaum ...	Belgaum ...	Belgaum Town ...	Within Municipal limits.	Government Notification No. 8904, dated 7th December 1897.
		Belgaum Cantonment.	Within Cantonment limits.	
Dharwar ...	Dharwar ...	Dharwar ...	Entire village... ..	
		Hosyellapur ...	Do. ... ..	
		Kamlapur ...	Do. ... ..	
		Malapur ...	Do. ... ..	
		Gulgangikop ...	Do. ... ..	
		Saptapur ...	Do. ... ..	
		Saidapur ...	Do. ... ..	
		Dodnaikankop ...	Do. ... ..	
		Narayanapur ...	Do. ... ..	
Bagtalav ...	Do. ... ..			
Lakamanhalli ...	Do. ... ..			

District.	Taluka.	City, town or village.	Limits to which the Notification applies.	Govt. authority.	
1	2	3	4	5	
<b>PRESIDENCY PROPER—contd.</b>					
Dharwar ...	Hubli ...	Keshavapur ...	Entire village ...	Government Notification No. 8904, dated 7th December 1897.	
		Nagshetikop ...	Do. ...		
		Madenakan Arlikatti.	Do. ...		
		Mariantinsager ...	Do. ...		
		Bomapur ...	Do. ...		
		Yellapur ...	Do. ...		
		Ayodhya ...	Do. ...		
		Krishnapur ...	Do. ...		
		Narayanpur ...	Do. ...		
		Virapur ...	Do. ...		
Kanara ...	Gadag ...	Bidanhal ...	Do. ...	Government Notification No. 8904, dated 7th December 1897.	
		Gadag ...	Do. ...		
		Betigeri ...	Do. ...		
Kolaba ...	Supa ...	Kalambuli (including the Station of Castle Rock)	Do. ...	Government Notification No. 2913, dated 2nd May 1898.	
		Pen ...	Pen ...		Municipal limits together with any land less than ¼ mile distant from such limits.
		Panvel ...	Panvel ...		
		Uran (Petha),	Uran ...		
Ahmedabad ..	Daskroi ...	Karjat ...	Karjat, Bhisegaon, Dahiwali & Neral	Village limits.	
		1 Ahmedabad City and Camp.	Lands within three miles of the Ahmedabad Railway Station.		
		2 Changispur ...			
3 Shekhpur- Khambar					

District.	Taluka.	City, town or village.	Limits to which the Notification applies.	Govt. authority.	
1	2	3	4	5	
Ahmedabad	Daskroi ...	4 Wadaj ...	Lands within three miles of the Ahmedabad Railway Station.		
		5 Usmaupur ...			
		6 Dariapur - Kajipur.			
		7 Asarva ...			
		8 Rakhial ...			
		9 Rajpur-Hirpur..			
		10 Khokhra-M e h-madabad.			
		11 Bagfardos ...			
		12 Sumdhal Kha-modral.			
		13 Paldi ...			
		14 Kocharab ...			
		15 Ohhadawad ...			
		16 Sheher-Kotda...			
		17 Behrampur ...			
		18 Nagina ...			
		1 Kali ...			Lands within two miles of the Sabar-mati Railway Station.
		2 Raup ...			
		3 Acher ...			
4 Motera ...					
Virangam ...	1 V i r a m g a m Town.	Lands within two miles of the Viram-gam Railway Station.			

Government Notification No. 2913, dated 2nd May 1898.

District.	Taluka.	City, town or village	Limits to which the Notification applies.	Govt. authority.
1	2	3	4	5
Kaira ...	Nadiad ...	1 Nadiad with all its <i>patils</i> .	Lands within the survey limits of each village.	
		2 Piplag ...		
		3 Dumral ...		
	Anand ...	4 Kamla ...		
		1 Anand ...		
		2 Gamdi ...		
Panch Mahals	Godhra ...	3 Umreth ...	Lands within one mile of the Godhra Railway Station.	
		1 Godhra ...		
		Broach ...		
	2 Mojampur..			
	3 Kalminaga.			
	4 Ali ...			
	Broach ...	5 Dungri ...		
6 Vejalpur ...				
7 Palej ...				
Ankleshvar.	Ankleshvar.	1 Ankleshvar ...		
		2 Chorasi ...		
Jambusar.	Jambusar.	1 Jambusar, Jani Pati.		
		2 Jambusar, Kulu Pati.		

Government Notification No. 2913, dated 2nd May 1898.



District.	Taluka.	City, town or village.	Limits to which the Notification applies.	Govt. authority.	
1	2	3	4	5	
Surat ...	Chorasi ...	1 Surat ...	Lands within the Municipal limits.		
		1 Athwa...			
		2 Kathodra ...			
		3 Umarwada ...			
		4 Ajna ...			Lands within half a mile of the Surat Municipal limits.
		5 Navagam ...			
		6 Tunki ...			
	7 Majura ...				
	Bulsar ...	1 Bander ...	Lands within the Municipal limits.		
		1 Bulsar ..	Lands within the Municipal limits.		
		1 Pardi-Sandhpur	Lands within half a mile of the Bulsar Municipal limits.		
		2 Mograwadi ...			
		3 Nanakwada ...			
		4 Bhagdawada ...			
		1 Abrama ...	Lands within the village sites.		
	2 Lilapur ...				
	3 Tithal ...				
	Jalalpor...	1 Jalalpor ...	Lands within half a mile of the Navsari Railway Station.		
		2 Vejalpur ...			
Pardi ...	1 Amalsad ...	Lands within quarter of a mile of the Amalsad Railway Station.			
	2 Sari Bujrag ...				
	1 Udveda ...		The village site and lands within half a mile of the pucca road between Udveda Station and the village.		

Government Notification No. 2913, dated 2nd May 1898.

District.	Taluka.	City, town or village.	Limits to which the Notification applies.	Govt. authority.
1	2	3	4	5
Thana ...	Salsette...	1 Bandra... .. 2 Danda ... .. 3 Amboli .. .. 4 Andheri ... .. 5 Chembur ... .. 6 Gundgaon ... .. 7 Malad... .. 8 Saie ... .. 9 Vihar .. .. 10 Vesaweh ... .. 11 Bapaneh ... .. 12 Bamanwada ... .. 13 Chakaleh ... .. 14 Gundaali ... .. 15 Kondauleh ... .. 16 Mandale ... .. 17 Man Khurd ... .. 18 Man Budruk ... .. 19 Mulgaon .. .. 20 Kasbe Trombay 21 Wadauli ... .. 22 Yerungal ... .. 23 Mahul ... .. 24 Anik ... ..	Lands within the survey limits of each village.	Government Notification No. 2913, dated 2nd May 1898.

District.	Taluka.	City, town or village.	Limits to which the Notification applies.	Govt. authority.			
1	2	3	4	5			
Thana ...	Salsette...	25 Ghat-Kopar ...	Lands within the survey limits of each village.	Government Notification No. 2913, dated 2nd May 1898.			
		26 Hariali ...					
		27 Thana ...					
		28 Chendri ...					
		29 Pach-Pakhadi...					
		30 Majiwade ...					
		31 Kalwe... ..					
		32 Shahabaj ...					
		33 Darauli ...					
		34 Akseh .. ..					
		35 Marve... ..					
		36 Malaoni ...					
		37 Manori ...					
		38 Gorai .. ..					
		39 Utan ... ..					
		40 Dongri ... ..					
		41 Boraoli ... ..					
		42 Clerabad ... ..					
		43 Nawpada ... ..					
		44 Bhayndar ... ..					
		45 Kandivli ... ..					
		46 Turumble ... ..					
		Bassein...			1 Malonde ... ..		
					2 Dhull ... ..		

District.	Taluka.	City, town or village.	Limits to which the Notification applies.	Govt. authority.
1	2	3	4	5
Thana ...	Bassein ..	3 Mulgaon ...	Lands within the survey limits of each village.	Government Notification No. 2913, dated 2nd May, 1898.
		4 Sandor ...		
		5 Manikpur		
		6 Naoghar ...		
		7 Agashi ..		
		8 Nale... ..		
		9 Sopara ...		
		10 Nilemora ...		
		11, Virar ..		
		12 Narangi ...		
		13 Chandansar ...		
	Vatar ...			
	15 Balinja... ..			
	16 Rajodi ..			
	17 Nanale... ..			
	18 Mardes... ..			
	19 Gas ... ..			
	20 Umrale ... ..			
	21 Kanlar-Budruk.			
	Dahanu... ..	1 Bardi ... ..		
		2 Dahanu... ..		
3 Saote ... ..				
4 Gholvad ... ..				
5 Chinchni ... ..				
6 Wangaon ... ..				

District.	Taluka.	City, town or village.	Limits to which the Notification applies.	Govt. authority.
1	2	3	4	5
Thana ...	Umbargaon Petha (Taluka Dahanu).	1 Umbargaon ...	Lands within the survey limits of each village.	
		2 Nargol... ..		
		3 Maroli... ..		
		4 Khatalwade ...		
		5 Vevji ... ..		
		6 Sanjan ... ..		
		7 Bhiwad ... ..		
		8 Dhanoli ... ..		
	Bhiwandi....	1 Bhiwandi ... ..		
		2 Nizampur ... ..		
	Mahim. ...	1 Mahim... ..		
2 Kelwa ... ..				
3 Palghar ... ..				
Kalyan ....	1 Kalyau... ..			
	2 Badlapur ... ..			
	3 Mandé... ..			
	4 Mumbra ... ..			
	5 Kawse... ..			
	6 Chikanghar ...			
	7 Vaneghar .. ..			
	8 Gandhare ... ..			
	9 Shahad... ..			
	10 Kate-Manivil ...			
11 Kachore .. ..				

Government Notification No. 2919, dated 2nd May 1898.

District.	Taluka.	City, town or village.	Limits to which the Notification applies.	Govt. authority.	
1	2	3	4	5	
Thana ...	Shahapur..	1 Wassind ...	Lands within the survey limits of each village.	Government Notification No. 2913, dated 2nd May 1898.	
		2 Shahapur ...			
		3 Khardi ...			
		4 Atgaon ...			
		5 Asangaon ...			
		6 Kinholi ...			
Ahmednagar	Ahmednagar.	1 Murbad ...	Lands within the survey limits.		
		The City and Cantonment of Ahmednagar and adjoining lands.	All the lands within a radius of two miles from the Ahmednagar City Post Office and within a radius of a quarter of a mile from the Ahmednagar Railway Station.		
Khandesh..	Bhusawal..	Jalgaon ...	Jalgaon ...		The whole of the Jalgaon Municipal area and all lands within a radius of one mile from the Jalgaon Railway Station.
		1 Bhusawal ...	The whole of the Bhusawal Municipal area and all lands within a radius of one mile from the Bhusawal Railway Station.		
		2 Satara ...			
		3 Kandari ...			
4 Khadki ...					
Khandesh..	Dhulia ...	1 Dhulia ...	The whole of the Dhulia Municipal area.		
		2 Deopur ...			

District.	Taluka.	City, town or village.	Limits to which the Notification applies.	Govt. authority.	
1	2	3	4	5	
Nasik ...	Nasik ...	Nasik City ...	All the lands comprised within the Revenue Survey limits of the City.  Do. of these villages.		
		1 Deolali ...			
		2 Saunsari ...			
	Chandor ...	3 Bhagur ...			
		Manmad ...	All the lands comprised within the Revenue Survey limits of this village.		
	Igatpuri ...	1 Igatpuri ...	Do. of these villages.		
		2 Talegaon ...			
	Poona City.	Poona City ...	The whole of the City.		
	Poona ...	Haveli ...	1 Mali ...		All the lands comprised within the Revenue Survey limits of villages Nos. 1 to 8 and the Government lands in the Sarakati village of Yeravda.
			2 Munjeri...		
3 Bhamburda ...					
4 Ghorpadi ...					
5 Mundhwa ..					
6 Parvati ...					
7 Bopodi ...					
8 Wanowri ...					
9 Government lands in the Sarakati village of Yeravda.					

Government Notification No. 4649, dated 18th July 1898.

District.	Taluka.	City, town or village.	Limits to which the Notification applies.	Govt. authority.
1	2	3	4	5
Poona	Mawal	1 Khandala	All the lands comprised within the Revenue Survey limits of these villages.	
		2 Lanauli		
		3 Tungarli		
		4 Walwhan		
		5 Bhushi		
Satara	Wai	Lonand	All the lands within a radius of half a mile from the Lonand Railway Station.	
		1 Wathar	Do. Wathar	do.
	Koregaon	2 Satara Road	Do. Satara Road	do.
		3 Koregaon	Do. Koregaon	do.
		4 Rahimatpur	Do. Rahimatpur	do.
	Masur	5 Tasgaon	Do. Tasgaon	do.
		1 Masur	Do. Masur	do.
	Karad	2 Karad		do.
		3 Shenoli	Do. Shenoli	do.
	Valva	Takari	Do. Takari	do.
Tasgaon	Ashta Road	Do. Ashta Road	do.	
Satara	Satara	1 Satara	All the lands within the Revenue Survey limits of these villages.	
		2 Godoli		
		3 Khed		
		4 Karanje		
Sholapur	Sholapur	Sholapur	The whole of the Municipal area and all the lands within a radius of one mile from the Railway Station of Sholapur.	

Government Notification No. 4649, dated 18th July 1898.



District.	Taluka.	City, town or village.	Limits to which the Notification applies.	Govt. authority.
1	2	3	4	5
Khandesh <sup>1</sup> .	Pachora ...	Pachora ...	The whole of the village limits.	Government Notification No. 7803, dated 6th November 1901.
	Chalisgaon ...	Chalisgaon ...		
	Nandurbar	Nandurbar <sup>2</sup> ...		
		Navapur ...		
	Sindkheda	Hoi ...		
		Dondajcha ...		
	Amalner ...	Nardana ...		
Erandol ...	Amalner ...			
		Dharangaon ...		

## APPENDIX Q.

(Referred to in Order No. 1 under Rule 6.)

*Form<sup>3</sup> of security bond to be taken from treasurers or other officers of Government entrusted with the charge of public money.*

KNOW all men by these presents that

<sup>1</sup> The rate to be fixed shall not exceed Rs. 5,000 per acre, provided that a higher rate than Rs. 500 per acre shall not be fixed in any such case without the sanction of the Commissioner.

<sup>2</sup> This was added by G. N. No. 7376, dated 28th September 1904.

<sup>3</sup>(1) This is an amended form sanctioned under G. R. No. 3378 F. D., dated 9th December 1885.

(2) It is not necessary or possible that all security bonds to be executed in future shall be drawn up in the exact form which is here prescribed. (G. R. No. 3739, dated 2nd October 1882.)

(3) The above form is to be made in cases in which Government paper is deposited under Section 23 of the Land Revenue Code. In other cases the form prescribed in Schedule B of the Bombay Land Revenue Code should be used. (G. R. No. 7522, dated 26th October 1882.)

(4) It should be left optional with Subordinate Revenue Officers who are entrusted with the charge of money either to deposit Government promissory notes or to execute a bond in the form in Schedule B of the Code. (G. R. No. 3031, dated 17th August 1883.)

(Principal) of (first surety)  
 (second surety), of are held and firmly bound  
 unto the Secretary of State for India in Council in the sum of  
 Rs. to be paid to the said Secretary of State in Council, his  
 successors or assigns, or his or their certain attorney or attorneys for which  
 payment, well and truly to be made, we bind ourselves, our heirs, executors,  
 administrators, and representatives jointly, and every two of us bind our-  
 selves, our heirs, executors, administrators, and representatives jointly,  
 and each of us binds himself, his heirs, executors, administrators, and re-  
 presentatives severally, firmly by these presents, sealed with our seals,  
 dated this day of 19, and each of  
 us the said doth hereby for himself, his heirs, executors,  
 administrators and representatives, covenant with the said Secretary of  
 State in Council, his successors and assigns, that if any suit shall be  
 brought touching the subject-matter of this obligation or the condition  
 hereunder written in any court, subject to the High Court of Judicature  
 at other than the said High Court in its Ordinary  
 Original Jurisdiction, the same shall and may, at the instance of the said  
 Secretary of State in Council, be removed into, tried and determined by the  
 said High Court in its Extraordinary Original Jurisdiction.

WHEREAS the above bounden was on the  
 day of 19 pointed to and now holds and  
 exercises the office of Treasurer at ; AND WHEREAS by  
 virtue of such office, the said has amongst other duties,  
 the care, charge, and oversight of and responsibility for the safe and  
 proper storing and keeping in the places appointed for the custody thereof  
 respectively, of all money, specie, bullion, coin, jewels, Government cur-  
 rency notes, stamps, and Government securities of whatever description,  
 gold, silver, copper, lead, goods, stores, chattels, or effects stored and used  
 at, received into or despatched from the Treasury of or  
 paid, deposited or brought into the said Treasury by any person or persons  
 whomsoever and for any purpose or purposes whatsoever; AND WHEREAS  
 the said as such Treasurer as aforesaid is so responsible  
 that all such moneys, specie, bullion, coin, jewels, Government currency  
 notes, stamps, and Government securities of whatsoever description, gold,  
 silver, copper, lead, goods, stores, chattels, or effects (hereinafter together  
 only called "the said property") are and is of full measure and good quality  
 when received into the said treasury and until he has duly accounted  
 therefor and for every part thereof in manner hereinafter referred to ;  
 AND WHEREAS the said is bound, whenever called upon  
 so to do, to show to his superior officers that the said property and every  
 part thereof save so much thereof as he has duly accounted for is at all  
 times intact in the places aforesaid and is also bound to attend for the pur-  
 pose of discharging his duties aforesaid at such times and places as his  
 superior officers may appoint; AND WHEREAS the said is fur-  
 ther bound to keep true and faithful accounts of the said property and of  
 his dealings under written orders of his superior officers therewith res-

pectively in the form and manner that may from time to time be prescribed under the authority of Government, and also to prepare and submit such returns and such accounts as he may from time to time be called upon to do; AND WHEREAS the bulk of the said property remains as well in the care, charge and custody of the Treasury Officer for the time being at as of the said but as between

himself and the said Secretary of State for India in Council he the said is alone responsible and answerable therefor and for every part thereof; AND WHEREAS the responsibility of the said

for the said property and every part thereof does not cease until the same has been duly used under the written orders aforesaid and accounted for or been duly despatched from the said Treasury and delivered over to and a full and complete discharge therefor obtained from such persons and places as the district officer of or other person exercising his functions for the time being under the sanction of the Government of may direct; AND WHEREAS the said

in consideration of his said appointment has delivered to and deposited with and endorsed over to as such district officer as aforesaid Government securities to the extent of Rs.

of which the numbers, amounts and other particulars are set forth and specified in the Schedule hereunder written for the purpose of in part securing and indemnifying the said Secretary of State in Council, his successors and assigns, against all loss and damage which he or they might or may in any way suffer by reason of the said property or any part or parts thereof being in any way consumed, wasted, embezzled, stolen, misspent, lost, misapplied or otherwise dishonestly, negligently, or by or through oversight or violence made away or parted with by himself the said or any person acting for him in his said office

during his absence or otherwise or by any sub-treasurers, servants, clerks, sircars, cash-keepers, poddars, coolies or other persons, nominated or accepted by or serving under him the said or by any other

person or persons whomsoever, whether in the service of Government or otherwise; and whereas the said (principal) and the

said (first surety) and (second surety) as his the said sureties in that behalf have entered into the

above bond in the penal sum of conditioned for the due performance by him the said of the duties of the said office

aforesaid and of other the duties appertaining thereto or which may lawfully be required of him and the indemnity of the said Secretary of State in Council and his servants against loss from or by reason of the acts or defaults of the said and of all and every the persons and

person aforesaid: Now the condition of the above written bond is such that if the said has whilst he has held the said office of

Treasurer as aforesaid always duly performed and fulfilled the said duties of the said office and other the duties aforesaid and if he the said

shall, whilst he shall hold the said office, always duly perform and fulfil all and every the duties thereof aforesaid, and further if

the said                      and                      do and shall indemnify and save harmless the said Secretary of State in Council, his successors and assigns, the Government of                      and all and every the person or persons who from time to time has or have held or shall hold or exercise the said office of district officer while the said                      has held or shall hold and enjoy the said office of                      Treasurer as aforesaid of and from all and every loss and damage, which, during the time the said                      has held, executed and enjoyed the said office, has happened or been sustained, or shall or may at any times or time hereafter during the time that he the said                      or his agent or agents, nominee or nominees, shall hold or exercise or act in the said office happen to or be sustained by the said Secretary of State in Council, his successors or assigns, the Government of                      or the said district officer, for the time being, by, from or through the means of the neglect, failure, misconduct, disobedience, omission or insolvency of the said                      or his said agent or agents, nominee or nominees, or of any of the sub-treasurers, servants, clerks, sircars, cash-keepers, pod-dars, coolies or other persons nominated, accepted by or serving under him the said                      or his said agent or agents, nominee or nominees, or by, from or through the consuming, wasting, embezzling, stealing, mispending, losing, misapplying or otherwise dishonestly or negligently, or through oversight or violence, making away or parting with the said property or any part or parts thereof, by any person or persons whomsoever, whilst he or the said                      has acted or shall continue to act in the said office of Treasurer as aforesaid, then this obligation to be void and of no effect, otherwise the same shall be and remain in full force and virtue: Provided always and it is hereby agreed and declared that neither of them the said                      and                      shall be at liberty to terminate their suretyship except upon giving to the district officer for the time being of the Government of                      six calendar months' notice in writing of his or their intention so to do and their joint and several liability under this bond shall continue in respect of all omissions and defaults on the part of the said                      until the expiration of the said period of six months: Provided always and it is hereby declared and agreed by the said                      and when the said Secretary of State in Council, that the Government Promissory Note for Rs.                      so deposited as aforesaid respectively or such other Government security or securities to the same amount as the district officer for the time being of the Government of                      may consent from time to time to accept and receive and shall accordingly receive in lieu or exchange for the same and the interest thereof respectively shall be and remain with the said district officer for the time being or the Government of                      as and for part and additional security to the said Secretary of State in Council, his successors and assigns, for the purposes aforesaid with full power to the said Secretary of State in Council, his successors or assigns, or his or their officers and servants, duly authorised in that behalf, from time to time as occasion shall require, to sell and dispose of the said Govern-

ment securities or a sufficient portion thereof with the interest thereon and to apply the proceeds thereof in and towards the indemnity as aforesaid of the said Secretary of State in Council, his successors and assigns, as the case may require, but nevertheless the interest of the said Government securities may in the meantime be paid over as the same shall be realised by the said district officer for the time being or the Government of \_\_\_\_\_ if they shall think fit to the said \_\_\_\_\_

: Provided further and it is hereby expressly agreed and declared between and by the said \_\_\_\_\_ and \_\_\_\_\_ the Secretary of State in Council that it shall be lawful for the said \_\_\_\_\_ with the consent of the said district officer or of other the person exercising his functions for the time being under the sanction of the Government of \_\_\_\_\_ first had and obtained to change and substitute for the said deposit of Government promissory notes for Rupees \_\_\_\_\_ or any part thereof or for any substituted notes from time to time other notes of the same or other loans of the same or greater value without in any way affecting the obligation of the said bond or the liability of the said \_\_\_\_\_ and \_\_\_\_\_ as such securities as aforesaid. The Schedule above referred to \_\_\_\_\_

And it is hereby lastly agreed and declared by \_\_\_\_\_ and between the said [ *principal* ] and the said [ *one surety* ] and [ *other sureties* ] as his the said [ *principal's* ] sureties and the said Secretary of State that on the vacation by the said [ *principal* ] of his said office of \_\_\_\_\_ the above mentioned Government promissory notes for Rs. \_\_\_\_\_

or any notes that may be substituted therefor as aforesaid shall not be at once returned to him but shall be and remain with the said [ *the authority with whom the notes are deposited* ] for the term of six months as security against any loss that may have been incurred by the Secretary of State owing to the neglect or default of the said [ *principal* ] or any other person or persons as aforesaid and which may not have been discovered until after the vacation of his appointment by the said [ *principal* ]: *Provided always* that the return at any time of the said Government promissory notes shall not be deemed to affect the right of the said Secretary of State to take proceedings upon the said bond against the said [ *principal* ] and [ *sureties* ] in case any breach of the conditions of the said bond shall be discovered after the return of the said Government promissory notes.

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APPENDIX R.

APPENDIX R.

(Referred to in footnote under Rule 10.)

Form of statement of alienations to be submitted annually, approved by the Government of India in their No.  $\frac{2}{292-3}$ , dated  $\frac{21st\ January}{4th\ February}$  1902, and G. R. No. 4881, dated 16th July 1902.

Nature of grant.	Amount of land revenue assigned or alienated during the year.			
	In perpetuity or during the maintenance of an institution or office.		For life or lives, or for a fixed term.	
	With the previous sanction of the Government of India.	By the Local Government under rules in force.	With the previous sanction of the Government of India.	By the Local Government under rules in force.
	Rs.	Rs.	Rs.	Rs.
I.—For the maintenance of public servants.				
II.—For other public or quasi public purposes.				
III.—For private benefit.				

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Feb. 4th ...	811	"	...	83	March 7th ...	4450	55	...	60
" 27th ...	1396	102	...	161	June 11th ...	4582	88	...	148
May 5th ...	2973	102	...	159	" 16th .		App.	...	263
" 25th ...	3371	65	...	89		7376	VI.		
" " ...	3394	43f	...	46	Sept. 23th..		"	App.	438
June 14th ..	3168	12	...	12			P. f.		
July 17th ...	4763	102	...	160					

# SUPPLEMENTARY.

The following Act of the Governor of Bombay in Council received the assent of His Excellency the Governor on the 22nd April, 1903, and the assent of His Excellency the Viceroy and Governor-General on the 18th May, 1903, and is published for general information:—

## **Bombay Act<sup>1</sup> No. IV of 1903.**

*An Act to provide for the preparation and maintenance of a record of rights in the lands of the Bombay Presidency.*

**(The assent of the Governor-General of India to this Act was published by the Governor of Bombay on the 11th June 1903.)**

Whereas it is expedient to provide for the preparation and maintenance of a record of rights in the lands of the Bombay Presidency in addition to any registers prescribed by or under the Bombay Land Revenue Code, 1879, and to amend the Code of Civil Procedure and make other provision in relation thereto;

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<sup>1</sup> (1) Under Government of India Notifications No. 4353 S. R. dated 20th July 1903, and No. 5319 S. R., dated 3rd September 1903, certified copies of entries in the Record of Rights, when such copies are required for the purpose of being filed in court in accordance with the provisions of Section 10 (1) of the Act, and applications for such certified copies are exempt from the payment of fees under the Court Fees Act, 1870. No other documents except these are exempt from the payment of stamp duty or court-fees with which they may be chargeable under the Acts. (G. R. No. 8356, dated 27th November 1903.)

(2) The following classes of villages and lands have been exempted from the operation of the Bombay Land Record of Rights Act, 1903:—

- (1) all inam, talukdari, sarakati, udhaljamabandi (baudhi jama), leasehold, and mewasi villages;
- (2) villages to which the Khoti Settlement Act, 1880 (Bombay I of 1880), extends;
- (3) unalienated villages,
  - (a) in which a survey settlement has not been introduced under Chapter VIII of the Bombay Land Revenue Code, 1879 (Bombay V of 1879); or
  - (b) which are entirely included in Reserved Forest;

And whereas the previous sanction of His Excellency the Governor-General required by Section 5 of the Indian Councils Act, 1892, has been obtained for the passing of this Act ; It is hereby enacted as follows:—

1. (1) This Act may be called the Bombay Land Record-of-rights Act, 1903.  
Short title.

(2) Save as otherwise provided by the proviso to Sub-section (3), this Act extends to the whole of the Presidency of Bombay, except the City of Bombay, Aden and the Scheduled District of the Mehwassi Chiefs' villages as defined in the Scheduled Districts Act, 1874.  
Local extent.

(3) It shall come into force at once :  
Commencement.

Provided that the provisions of Sections 10 to 12 ( both inclusive) shall be applied in respect of a village from such date only as the Governor in Council may, by notification published in the *Bombay Government Gazette*, direct that they shall be applied to such village or to the mahal, taluka or district in which it is included.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—  
Definitions.

(a) The words " Revenue officer," " Collector," " Mamlatdar," " Mahalkari," " survey-number," " holder," " holding," " superior holder," " tenant," " landlord," " alienated," " village," " mahal," " taluka" and " district " shall be deemed to have the meanings respectively assigned to them by the Bombay Land Revenue Code, 1879, as from time to time amended ;

---

(4) the Desert and Kobistan tracts in Sind ;

(5) lands included within the site of any village, town or city, as from time to time determined under Section 126 of the Bombay Land Revenue Code, 1879 (Bombay V of 1879) ;

(6) lands included in cantonments or permanent municipal districts. (G Rs. No. 262, dated 12th January 1904, and No. 3653, dated 16th May 1904.)

(b) "Chávdí" means, in any village in which there is no chávdi, such place as the Collector directs shall be deemed to be the chávdi for the purposes of this Act ;

(c) "Suit" means a suit to which the provisions of the Code of Civil Procedure are applicable;

(d) "High Court" includes the Sadar Court in Sind; and

(e) "Certified copy" or "certified extract" means a copy or extract, as the case may be, certified in the manner prescribed by Section 76 of the Indian Evidence Act, 1872.

(2) In Sind the words "*Sind Official Gazette*" and "Mukhtyarkar" shall be deemed to be substituted for the words "*Bombay Government Gazette*" and "Mamlatdar" respectively, wherever they occur in this Act.

3. (1) Save as otherwise provided by Section 17, there shall be prepared as soon as conveniently Preparation, revision and correction of record of rights and register of mutations. may be and shall thereafter be kept in every village a record of rights in all lands belonging thereto, which shall include the following particulars, namely:—

(a) the names of persons who are owners, holders, mortgagees, landlords, or tenants of the land, or assignees of the rent or revenue thereof, in the whole or part of any survey number or other holding in the village,

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

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

(d) such other particulars as the Governor in Council may from time to time by rules prescribe in this behalf.

(2) The record shall otherwise be in such form and, subject to the provisions of Section 6, be compiled in such manner as the Governor in Council may from time to time by rules prescribe in this behalf.

(3) For the purposes of the preparation, correction and maintenance of such record of rights, there shall also be kept a register of mutations and such other registers and records as the Governor in Council may by rules prescribe in this behalf.

(4) The correctness of the entries in the record of rights and register of mutations shall be inquired into, and the particulars thereof revised, by such Revenue-officers and in such manner and to such extent and subject to such appeal as the Governor in Council may from time to time by rules prescribe in this behalf.

4. (1) Subject to any exemption under Section 17, any person acquiring, by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as owner, holder, mortgagee, landlord or tenant of the land, or assignee of the rent or revenue thereof, in the whole or part of any survey-number or other holding in any village, in which a record of rights as aforesaid is being prepared or is kept, shall report orally or in writing his acquisition of such right to the village-accountant within three months from the date of such acquisition.

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

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

(2) Where the person acquiring the right is a minor or otherwise disqualified, his guardian or other person having charge of his property shall make the report to the village-accountant.

Duties of village-accountant in respect of reports under Section 4. 5. (1) The village-accountant shall, on receipt of any report under Section 4, whether made within the prescribed period or not,—

(a) at once give a written acknowledgment thereof to the person making the same;

- (b) at once post up the report, or a copy or an abstract containing the substance thereof, in a conspicuous place in the village chāvdi ;
- (c) give notice in writing of such report to all persons appearing from the report to have any interest in the subject-matter thereof ; and
- (d) enter such report in his register of mutations.

(2) The village-accountant shall submit a report to the Mamlatdar of the taluka or the Mahalkari of the mahal, in which the village is included, respecting the acquisition of any right of the kind specified in Sub-section

*Procedure in cases where acquisition of rights not reported under Section 4.*

(1) of Section 4, which he has reason to believe to have taken place, and of which a report should have been made to him under that section and has not been so made, and such Mamlatdar or Mahalkari, as the case may be, may, if after due inquiry he finds any such acquisition to have taken place, authorize the making of such entry respecting it as he may deem fit.

(3) Where any objection is made to the correctness of any report under Section 4, or of any entry respecting the possession or acquisition of any such right as aforesaid in the register of mutations, either before the village-accountant, or in the course of an inquiry held under Sub-section (4) of

*Duties of village-accountant and Circle-Inspector in respect of objections to correctness of report or entry.*

Section 3 by a Circle-Inspector, such village-accountant or Circle-Inspector shall give a written acknowledgment of the receipt of the objection to the person making the same, and enter the substance of such objection in the register of mutations, or such other register or record as the Governor in Council may direct in this behalf.

6. (1) No entry regarding the possession or acquisition of any such right as aforesaid shall be made in a record of rights by a village-accountant, unless—

*Powers and duties of village-accountant in respect of entries in a record of rights.*

- (a) the making of such entry has been duly authorised, or

(b) the correctness of such entry has, under Sub-section (4) of Section 3, been inquired into, and the particulars thereof revised, if necessary, by a Revenue-officer of a rank not below that of a Circle-Inspector or, in the case of a disputed entry or one falling under Sub-section (2) of Section 5, not below that of a Mahalkari.

(2) The village-accountant shall, for a period of not less than one month before the transfer of any entry from the register of mutations to the record of rights, keep a copy of such entry posted up in a conspicuous place in the village chávdi.

7. (1) Any person whose rights, interests or liabilities are required to be, or have been, entered in any record or register under this Act shall be bound, on the requisition of any Revenue-officer or village-accountant engaged in compiling or revising the record or register, to furnish or produce for his inspection, within one month from the date of such requisition, all such information or documents needed for the correct compilation or revision thereof as may be within his knowledge or in his possession or power :

Provided that no such requisition shall be made by a village-accountant, unless it has been previously countersigned by a Revenue-officer of a rank not below that of a Circle-Inspector.

(2) A Revenue-officer or village-accountant to whom any information is furnished, or before whom any document is produced, under Sub-section (1) shall at once, if required, 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.

8. Any person neglecting to make the report or furnish the information<sup>1</sup> or produce the documents<sup>1</sup> required by Section 4 or 7 within the prescribed period shall be liable, at the discretion of the Collector, to be charged a fee not

Levy of fee from person neglecting to report or furnish information.

<sup>1</sup> Inserted by Bombay Act IV. of 1905.



exceeding twenty-five rupees, which shall be leviable as an arrear of land-revenue.

9. For the purpose of preparing or revising any map or plan required for, or in connection with, any record or register under this Act, any Revenue-officer or village-accountant may, subject to such rules as may be from time to time made in this behalf by the Governor in Council, exercise any of the powers of a Survey-officer under Sections 96 and 97 of the Bombay Land Revenue Code, 1879 :

Provided that the power of employing hired labour and assessing the cost thereof under Section 97 of the said Code shall not be exercised by a village-accountant or a Revenue-officer of a rank below that of a Mahalkari.

10. (1) Subject to any exemption under Section 17, in any suit relating to land situate in a village, to which the provisions of this section have been applied under Sub-section (3) of Section 1, the plaintiff shall annex to the plaint, or, if for any cause which the Court deems sufficient he fails to do so, shall produce within a reasonable time to be fixed by the Court, a certified copy of any entry or entries in the record of rights regarding the land in respect of which the suit is brought, as well as of any subsequent corrections thereof or additions thereto made in the register of mutations, but not yet entered in the record of rights.

*Explanation.*—A suit relating to land shall, without prejudice to the generality of the expression, be deemed to include a suit relating to the rent or tenancy of land.

Plaint to be rejected under Section 54 of the Code of Civil Procedure, if certified copy not annexed to plaint or produced within time allowed.

(2) In the case of any such suit the following clause shall be deemed to be added to Section 54 of the Code of Civil Procedure as clause (c), namely :—

“(e) in any suit to which Section 10 of the Bombay Land Record-of-rights Act, 1903, applies, if the certified copy therein mentioned is not annexed to the plaint and the plaintiff, on being required by the Court to produce it, fails to do so within the time allowed by the Court.”

11. (1) In any suit in which a certified copy of any entry or entries in the record of rights or register of mutations is annexed to the plaint or otherwise produced under Section 10, the Court shall after the decision thereof communicate to the Collector any error which from the evidence appears to have been made in such entry or entries or which results from the decree passed, and a copy of such communication shall be kept with the record of the suit.

(2) The provisions of Sub-section (1) shall apply to an Appellate or Revisional Court as well as to a Court of first instance :

Provided that in the case of an Appellate or Revisional decree passed by the High Court, the communication shall be made by the Court from which the appeal lay or the record was called for.

(3) The Collector on receipt of such communication shall cause the entry or entries affected 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.

12. Notwithstanding anything to the contrary in Section 87 of the Bombay Land Revenue Code, 1879, but subject to any exemption under Section 17, the Collector shall refuse assistance to any superior holder whose application under Section 86 of the said Code relates to lands situate in a village, to which the provisions of this section have been applied under Sub-section 87 of the Bombay Land Revenue Code to be refused if application not supported by record of rights or register of mutations.

tion (3) of Section 1, and whose claim to such assistance is not supported by an entry or entries duly made in the record of rights or register of mutations.

13. No entry or entries made in the record of rights or register of mutations shall affect the liability of any person to pay the land-revenue of alienated or unalienated land under the provisions of the Bombay Land Revenue Code, 1879, or other law for the time being in force relating to the recovery of land-revenue.

*Saving of liability to pay land-revenue.*

14. Subject to such rules and the payment of such fees as the Governor in Council may from time to time prescribe in this behalf, the record of rights and register of mutations 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 :

*Record of rights and register of mutations open to inspection, and extracts and copies to be given.*

Provided that—

(a) applications for such certified extracts or certified copies may be made to, and such certified extracts or certified copies may be given by, either the village-accountant, or the Mamlatdar of the taluka, or the Mahalkari of the mahal, in which the village is included, and

(b) no fee shall be charged for any certified copy required for the purpose specified in Sub-section (1) of Section 10.

*Bar of suits against Government and Government officers in respect of entries in record of rights or register of mutations.*

15. No suit shall lie against Government or against any officer of Government in respect of a claim to have any entry made in any record or register under this Act, or to have any such entry either omitted or amended.

16. The power to make rules under this Act shall be subject to the condition of the rules being made after previous

*Provisions as to publication of rules.*

publication in the manner specified in Section 23 of the General Clauses Act, 1897, and every rule made under this Act shall be published in the *Bombay Government Gazette*.

17. The Governor in Council may, by notification published in the *Bombay Government Gazette*, from time to time exempt any specified district, taluka, mahal, village or lands, or class of villages or lands, from the operation of this Act or any of the provisions thereof, and may by a like notification cancel or modify any such order of exemption.

## RULES<sup>1</sup> UNDER THE RECORD-OF-RIGHTS ACT.

In exercise of the powers conferred by Sections 3, 5, 9 and 14 of the Bombay Land Record-of-Rights Act, 1903 ( Bom. IV. of 1903 ), the Governor in Council is pleased to make the following rules under the said Act, namely :—

- I. (1) These rules extend to the whole of the Presidency of Bombay, except Sind, the City of Bombay, Aden, and the scheduled district of the Mehwasi Chiefs' villages.
- (2) In these rules, unless there is anything repugnant in the subject or context,—
  - (a) words and expressions which are defined in the Bombay Land Record-of-Rights Act, 1903, have the same meaning as in that Act ;
  - (b) " section " and " sub-section " mean respectively a section and sub-section of the said Act; and
  - (c) " Mamlatdar " includes a Mahalkari.

[Sections 3 and 5.]

2. The Record of Rights and Register of Mutations shall be prepared and maintained in each village by the village-accountant, or such other officer as may be specially appointed in this behalf, under the supervision of the Commissioner of the Division, the Director of Land Records and

<sup>1</sup>Published under Notification No. 8356, dated 27th November 1903.

Agriculture, the Collector and the subordinate revenue-officers of the district (including the Circle Inspector). As soon as the preparation of the Record has begun in any village, the village-accountant shall cause notice thereof to be published by beat of drum throughout the village and shall post up a copy of the notice in a conspicuous place in the village *chaudi*; and an entry should be made at the foot of the Record to the effect that such notice has been duly published accordingly.

3. Prior to the preparation of a final copy of the Record of Rights, which shall be termed the Permanent Record, there shall be prepared a Rough Copy of the Record, in which the village-accountant shall make, upon such information as he can collect, or from such reports as he may receive under Section 4, all entries likely to be required for the Permanent Record.

4. For the purposes of the Act the Rough Copy shall, until the Permanent Record is prepared, be deemed to be a Register of Mutations, and all reports made under Section 4 shall be entered in it accordingly.

5. The Rough Copy and Permanent Record of Rights shall be compiled in the appended form numbered village Form 1-C, and the Register of Mutations in the appended form numbered Village Form 1-D. The Permanent Record shall be corrected in order to bring it into accordance with the Register of Mutations whenever the Sub-divisional Officer in view of the number of entries in the said Register shall so direct, and at intervals of not more than five years the Permanent Record shall be re-written, unless owing to the trifling number of corrections made or required the Collector considers that re-writing is unnecessary.

6. In the Register of Mutations the village-accountant shall, subject to Rules 4 and 7

- (a) enter any report made to him under Section 4 ;
- (b) record any transaction or change that may take place and affect the particulars entered in the Permanent Record ; and

- (c) when any error is alleged to have been made in the Permanent Record or the Register of Mutations enter such details as appear to him to be correct.

7. If there is a dispute about any entry proposed to be made in the Rough Copy the village-accountant shall leave such entry blank, pending the orders of the Mamlatdar or other attesting officer, and shall note in the remark column thereof the serial number of the entry made by him relating to the dispute in a Register of Disputed Cases, which shall be kept by him containing the following particulars:—(1) Serial number ; (2) Number in column 1 of Rough Copy of Record or Register of Mutations ; (3) Survey number ; (4) Pot number ; (5) Area as in column 7 of Record ; (6) Date of receipt of objection ; (7) Names of disputing parties ; (8) Nature of disputed entry and particulars of dispute ; (9) Remarks (for orders of Mamlatdar or Sub-divisional Officer). This Register shall be the one in which the substance of objections shall be entered under Section 5, Sub-section (3).

8. The inquiry and revision required by Section 3, Sub-section 4, shall, subject to the provisions of Rule 10, be made by the Circle Inspector and all revenue officers of a rank above that of Circle Inspector having jurisdiction in the village. Any errors discovered by a Circle Inspector or by a District Inspector shall be at once reported by such officer to the Mamlatdar, who may order any alteration, addition or omission to be made in the Register of Mutations that he deems fit. Against any such order an appeal shall lie to the Sub-divisional Officer, whose decision shall be final. Similarly the Sub-divisional Officer or Superintendent, Land Records, may, in the course of his ordinary inspection of a village, examine the entries in the Record of Rights and Register of Mutations, and, should he find it necessary to make any alteration, addition or omission, may order this to be done in the Register of Mutations. Against any such order an appeal shall lie to the Collector, whose decision shall be final. The provisions of Sections 205 to

209 of the Bombay Land Revenue Code, 1879, shall apply to any such appeals.

9. Every entry in the Rough Copy shall be examined by the Circle Inspector, read out to all persons present, and explained to any person interested. The Circle Inspector shall initial all entries so examined. If any person interested admits the entry to be correct, the Circle Inspector shall note the admission. If such person disputes the correctness of the entry, the Circle Inspector shall not erase or alter such entry, but shall deal with the case in accordance with the provisions of Rule 7.

10. Inquiries regarding disputed entries shall ordinarily be made by the Mamlatdar, but may be made by any revenue officer of superior rank. In such cases the officer making the inquiry shall ordinarily make it in or near the village of the interested parties, and shall, if possible, decide the matter on the basis of possession. When such a case has been decided under the Mamlatdars' Courts Act, 1876, the entry shall be in accordance with the decision therein, unless it has been superseded by a subsequent decree of a Civil Court under Section 18 of the said Act.

11. When the Fair Copy of the Record in any village is reported to be complete, the Collector or Sub-Divisional Officer shall fix a date for its final approval and shall cause publication thereof to be given, calling upon all persons interested therein to appear on that date at a specified place in, or in the immediate vicinity of, the village concerned and notifying that any such person may before that date inspect the Fair Copy on application to the Village Accountant.

12. On the date and at the place appointed the Collector or Sub-divisional Officer shall after comparison of the Fair Copy with the Rough Copy, cause such portions of the Record as any of the persons in attendance may desire to be read over in their presence, and after such further correction as may be then found necessary the Collector or Sub-divisional Officer shall sign the Record and shall add at its foot an order declaring that it has been duly approved and promulgated.

13. No correction of any entry or addition to any entry in the Permanent Record shall be made under the provisions of Rule 5 or otherwise without the sanction of the Sub-divisional Officer to such correction or addition.

[ Section 9. ]

14. Where a revenue officer or village-accountant issues any summons or notice under Section 9, he shall follow the provisions of Section 190 or 191 of the Bombay Land Revenue Code, 1879, as the case may be.

[ Section 14. ]

*I.—Inspection.*

15. The Permanent Record and the Register of Mutations shall be open to inspection free of charge in the office of the village-accountant during the usual office hours except on Sundays and Public Holidays.

*II.—Extracts and Copies.*

16. Any person may himself make a copy, or employ his own agent to make a copy, of any of the documents or any portion thereof of which he has obtained inspection, but no copy so made shall be certified.

17. The certificate on all certified copies or extracts granted under the Act shall be in the following form, *viz* :—

*True copy ( or true extract as the case may be ).*

*Dated the                    of                    190 .*

( Signed ) A. B.,

Mamlatdar or Village-Accountant.

and shall be sealed whenever the officer granting certified copies or extracts is authorized by law to make use of a seal.

*III.—Searches.*

18. No search-fee shall be levied by a village-accountant.



#### IV.—Copying Fees.

19. Subject to proviso (b) to Section 14, the following copying fees shall be levied in cash under these rules, viz.:—

- (1) For every certified extract of a serial number in the  
Record of Rights or Register of Mutations ... 1½ annas.
- (2) For every certified copy of a map of a survey number,  
or of a recognised share of a survey number, or of a  
field, or of any (uncoloured) ordinary map or plan  
of any immoveable property... .. 4 „

20. Every fee payable in accordance with the foregoing table shall be paid in advance, and the applicant shall be given by the officer who receives the fee a receipt for the same.

21. The amount of all fees so received shall be entered in the book prescribed by No. 11 of the rules under Section 213 of the Bombay Land Revenue Code, 1879, and shall be remitted before the close of each month to the nearest Government treasury after deducting the amount payable in the case of certified copies and extracts to section-writers, viz., 1 anna for every certified extract of a serial number and 3 annas for each map.

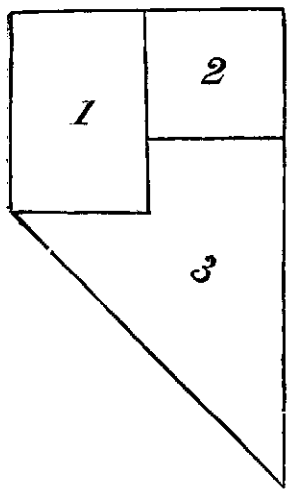
#### V.—Miscellaneous.

22. Every application for a certified extract or a certified copy shall be made in writing, and must, except in the case of an application for a certified copy required for the purpose specified in Sub-section (1) of Section 10, bear a Court-fee stamp of one anna under the last clause of Article 1 (a) of Schedule II. of the Court Fees Act, 1870.

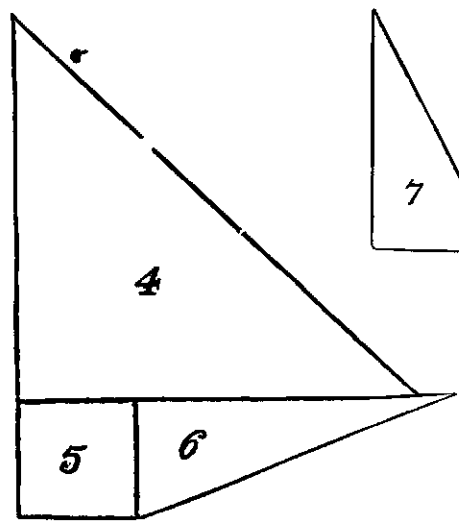
23. Every such application shall be numbered and filed by the officer to whom it is presented, and shall be endorsed with a memorandum under his signature, stating the date on which it was presented, the amount of fees (if any) received either at the time of presentation thereof or subsequently at any time, and the date and manner in which the application was disposed of.

NORTH.

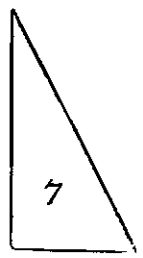
S. No. 1.



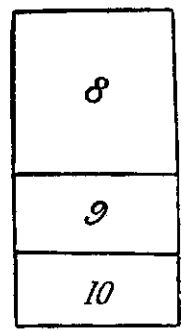
S. No. 2.



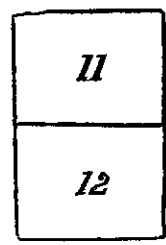
S. No. 3.



S. No. 4.



S. No. 5.



Village Form I-C.

Scale—20 chains to the Inch.

## Record of Rights in Land. Village

AS IN LAND REGISTER, VILLAGE FORM No. 1.						SUB-DIVISION.		PARTICULARS OF POSSESSION	
Serial No.	Survey No.	Pct No. or Phahi No.	Registered occupant's name	Area.	Assessment.	Area.	Assessment.	Name of present occupant.	Status.
1	2	3	4	5	6	7	8	9	10
1	1	...	A. B.	50 10 40 0 0	A. g. Rs. a p.	15 0 12 0 0	0	A. B.	Khatedar from 1888.
2	...	...	...	...	...	10 0 8 0 0	0	E. F.	Mortgagee
3	...	...	...	...	...	25 10 20 0 0	0	E. F.	Purchaser
4	2	1	Cultivable waste.	40 0 20 0 0	...	...	...	...	.....
5	...	2	G. H.	20 0 10 0 0	...	8 0 4 0 0	0	G. H.	Khatedar from 1889.
6	...	...	...	...	...	12 0 6 0 0	0	E. F.	Mortgagee
7	3	...	A. B.	5 0 30 0 0	...	...	...	E. F.	Do.
8	4	...	P. Q.	20 0 16 0 0	...	10 0 8 0 0	0	P. Q.	Khatedar from 1887.
9	...	...	...	...	...	5 0 4 0 0	0	R. S.	Brother of P. Q. separated
10	...	...	...	...	...	5 0 4 0 0	0	R. S.	Do.
11	5	...	M. N.	15 0 20 0 0	...	7 20 10 0 0	0	M. N.	Khatedar from 1889.
12	...	...	...	...	...	7 20 10 0 0	0	{ P. Q. R. S. }	{ Joint sharers
13	6	...	Cultivable waste.	50 0 25 0 0	...	...	...	...	.....
14	7	...	P. L.	12 0 30 0 0	...	6 0 15 0 0	0	P. L.	Inamdar
15	...	...	...	...	...	6 0 15 0 0	0	P. L.	Do

Date

(Signed)

Patel

Accountant.

FORM No. 1-C.

Taluka

, District

, Year

AND ENJOYMENT.	PARTICULARS OF TENANCY.			OTHER RIGHTS.		Number of entry in Mutation Register.	REMARKS.
Causes of transfer or alienation.	Name of tenant.	Whether on lease and for how many years.	Rent and conditions.	Name of holder of right.	Nature of right.		
11	12	13	14	15	16	17	18
.....	.....	.....	.....	D.A.	Mortgage from A. B. without possession for Rs 500.	...	
Mortgage-deed (B) for Rs. 1,000, dated 5th June 1888.	A. B.	Annual lease under deed.	Half produce and assessment.				
Sold to E. F. in 1888 by C. D., nephew of A. B., separated.	C. D.	Yearly ...	Do. ...				
.....	K. L.	Yearly ...	Rs. 8. plus assessment Rs. 4				
Mortgage-deed (B) principal to be repaid at end of 10 years.	G. H.	Lease for 10 years.	Half produce; landlord pays assessment.				
Mortgage-deed (B) from A. B. in 1896.	A. B.	Yearly ...	Half produce and assessment.				
.....	.....	.....	.....				
Court's decree of partition, dated 3rd December 1897.	.....	.....	.....				
Do.	K. L.	Annual lease.	Rs. 12; R. S. pays assessment.				
.....	.....	.....	.....				
Sons of M. N. separated.	.....	.....	.....				
.....	R. T.	Annual lease.	Rs 25				
.....	X. Y.	Do.	Rs. 40 in cash; Inamdar pays Judi.				Judi Rs. 3.
.....	B. K.	Miras	Rs. 15; Inamdar pays Judi				D. B. cultivates on annual tenancy paying B. K. Rs. 40, Judi Rs. 3.

Examined,  
datedExamined,  
Circle Inspector.

dated

Mamlatdar.

## Remarks on Village Form No. 1-C.

(Record of Rights in Land.)

1. The form is to be written on one side of the paper only, on the lower side as the book is opened. On the upper side should be drawn by the Village Accountant, when he has passed in Survey, a map of the Survey numbers showing the sub-divisions described on the lower side; until the Accountant has passed in Survey, this place should be left blank. The mapping may, whenever this is considered desirable, be postponed until after the completion of the Permanent Record.

2. The map should be copied from the sketch in the field book prescribed in the Rules\* for training Village Accountants in Survey, after the sketch has been approved and initialled by the Circle Inspector.

\* On return to the village each Accountant should proceed to prepare a field measurement book containing sketches of all the survey numbers in his village, one or two numbers to each page in consecutive order. The numbers should be sketched on an enlarged scale from the village map. The scale will depend on the size of the number, the larger numbers having some ten chains to an inch and the smaller five. The scale used should in each case be noted below the sketch. When sub-divisions are not numerous or intricate, three numbers a day should be the average rate of progress.

Maps of survey numbers should not be drawn contiguously. All maps should be separate and should bear consecutive

numbers from left to right with the north side always at the top of the paper.

3. Erasures in the Permanent Record should be avoided so far as possible. Two copies of Village Form 1-C should, therefore, be obtained, and all entries should first be made in the rough copy, and after they have been tested and initialled under Rule 9 by the Circle Inspector and the completed copy has been approved by the Mamlatdar, the fair copy should be written up for permanent record.

In the maps of the permanent record the sub-divisions of the survey numbers should bear the serial numbers entered in column 1 only and should contain no other details.

Since these serial numbers will not be entered till the rough copy is complete, sub-divisions in the rough copy of the map should contain initials to denote the occupant or tenant.

4. In column 1 is to be entered the serial number of each sub-division of land, that is, each separate occupancy or divided share or tenancy or separate piece. A serial number should therefore be given—

(1) In the case of undivided survey numbers to the single entry in column 4;

(2) in the case of sub-divided survey numbers to each entry of a sub-division in column 7.

This column should be left blank until the rough copy has been approved by the Mamlatdar.

5. Columns 2, 3, 4 and 5 are to be copied from columns 1, 2, 6 and 4 of the Land Register Village Form No. 1, and column 6 from column 15. Columns 2 to 6 should first be filled in as regards each survey number, pot number or phalni number from Village Form No. 1, leaving ample space below each entry for further sub-divisions. Columns 7 to 18 should then be filled in as information is obtained. A page will ordinarily suffice for two or three numbers, but will often be required for a single number.

6. In column 7 is to be entered the area of each sub-division of a number or of a pot number which is held by a different holder or cultivated by a different tenant. These entries refer both to the occupancies in column 9 and to the tenancies in column 12. The areas should eventually be ascertained by actual measurement, but this will not be possible until the Village Accountants are trained in surveying, and for the present approximate areas should be entered.

7. Pot kharab included in the area in column 5 should be distributed among the several sub-divisions in proportion to their respective arable areas. If, however, in the case of any number or pot number the pot kharab is easily recognizable and is clearly within the limits of special sub-divisions, it should be assigned to those sub-divisions. If again the area is comparatively large or the sub-sharers object to the proportionate distributions, actual measurement should be made. In the case of pot kharab lands which remain in the joint possession and enjoyment of the several partners (such as cattle-grazing, &c.) or in cases in which the public have a right of use (such as roads, tanks, &c., Rule 48 of the rules under the Land Revenue Code) the area should not be sub-divided. It should remain included in total area in column 5. An explanatory note should be added in the remarks column as to the kharab area not divided.

8. Column 8 should so far as possible show the assessment of each sub-division according to actual payment, except in the case of alienated land when the proportionate survey assessment and not the quit-rent, whether judi, salami or other, should be shown. The actual quit-rent paid (including the *phala* paid by bhagdars in bhagdari villages) should be entered in the column of remarks.

In cases in which several numbers are divided among several sharers, but the assessment on their shares is not paid by them in proportion to their shares in the area in each number, the entry should be made as described in the following illustrations.

*A* is the registered occupant of Survey Nos. 10 and 11, measuring

respectively 7 and 10 acres and assessed at Rs. 14 and Rs. 30, and holds them in partnership with *B* as shown below :—

Survey No.	Area.	Assessment.	Names of sub-sharers.	SUB-DIVISIONS.	
				Area.	Assessment.
10	Acres. 7	Rs. 14	<i>A</i> <i>B</i>	Acres. 1 6	Rs. 2 12
11	10	30	<i>A</i> <i>B</i>	4 6	12 18

*A* and *B* do not pay the assessment of the two numbers in proportion to their areas in each number. *A* pays the assessment of the whole No. 10 and *B* of the whole No. 11. The entry should be as under :—

1	2	3	4	5	6	7	8	9	10	Remarks.
---	---	---	---	---	---	---	---	---	----	----------

The headings of the columns are the same as in Form 1-C.

1	10	0	<i>A</i>	7	14	1	14	<i>A</i>	0	<i>A</i> pays for Survey No. 10.
2	..	..	..	..	..	6	30	<i>B</i>	..	<i>B</i> pays for Survey No. 11.
3	11	..	<i>A</i>	10	30	4	..	<i>A</i>	..	See remarks against No. 10.
4	..	..	..	..	..	6	..	<i>B</i>	..	

9. In column 9 is to be entered the name of the actual owner, administrator or mortgagee of each sub-division. These are the persons who can generally claim a right to be registered as holders in Village Form No. 1. In the case of an undivided family the name of the principal member of the family who manages the estate should alone be shown.

10. Column 10 shows whether the holder is the registered occupant or inheritor, or divided sharer, or purchaser, or grantee, or recipient by exchange or by gift, or mortgagee with possession. The date of first entry as registered occupant should ordinarily be entered in the case of registered occupants, but if the name has been entered in Village Form No. 1 at the time of its preparation and the date of first entry cannot be easily ascertained, it is sufficient to enter the words "before survey," which should be understood to mean before the last survey whether original or revision.

11. Column 11 gives further details of cause or causes of transfer from the holder named in column 4 to the holder named in column 9. If bonds or deeds have been executed, date and consideration should, if possible, be noted. If registered (R) should be added; if transfer has taken place by Civil Court's order (C) should be added. If the holder named in column 9 has obtained the holding by purchase or mortgage the vendor's or mortgagor's name should be mentioned. In cases where the parties concerned withhold information regarding any particulars in the sale-deed and mortgage-bond the fact should be noted in this column.

12. In column 12 is to be entered the name of the actual cultivator of a sub-division of land when he is not the same as the holder mentioned in column 9. If the holder cultivates himself or by labourers paid by wages, columns 12 to 14 will be blank, but if he lets to a man who is paid by a share of crop, the man's name should be entered in column 12 and the share paid to the holder in column 14. If a lease-holder sub-lets to a sub-tenant, the name of the latter should be entered below the name of the former in column 12.

13. The names of annual tenants should be entered in column 12 as they stand at the time of the preparation of the Record. It is not necessary, however, to enter in the Record changes in annual tenancies which will be sufficiently recorded in the Register of Mutations.

14. The fact and the date of registration of leases should be noted in column 13. It should be noted whether an agreement is oral or written.

15. In column 14 should be entered—

- (1) A note whether the assessment is paid by the landlord or tenant.
- (2) Details of rent paid whether in cash or kind.
- (3) The weight in pounds of a measure khandi should be given at the top of this column on the first page. Village-Accountants can obtain from the taluka office copies of jautries showing the pound equivalents of the different grain measures obtaining in the taluka.

16. The entries in column 16 will generally consist of mortgages without possession; but other contingent or vested interests, if clearly established, as by decree of Court (*e.g.*, decrees for maintenance from the land), should also be entered here.

17. Column 18 will contain remarks, which cannot be made in any other column. If tagai has been given on the security of the number or pot number, the word "tagai" should be entered in this column and a reference given to the tagai order or bond communicated to the Sub-Registrar or Village Registrar.



In this column of the *Rough Copy* there should be entered a reference to all reports made in accordance with the provisions of Section 4: such reports if made orally shall be taken down in writing and be filed in an appendix to the *Rough Copy*.

18. Inam holdings should be entered in the Record as follows:— Column 4 will be copied from Village Form No. 1, column 9 also will show the inamdar's name, column 12 will show either the mirasdar's name if the tenancy is *mirāsi*, or the ordinary tenant's name, and any tenants of the mirasdar will be shown in column-18.

19. The entries in the Record are to be tested by the Circle Inspector and other officers as laid down in the rules on the subject. The Record is to be signed by the Patel and Accountant, the Circle Inspector and the Mamlatdar.

20. The Village-Accountant must write up the Record for all villages in his charge before the 1st April each year or such other date as the Commissioner may prescribe, and must prepare and forward to the Mamlatdar on July 1st an abstract of the Record as follows:— 1, number of sub-divisions; 2, number of survey numbers; 3, number of pot numbers; 4, number of registered occupants in Land Register (Form No. 1); 5, total area; 6, total assessment; 7, total area of sub-divisions; 8, total assessment of sub-divisions; 9, number of occupants; 10 (1) number of original holders; (2) number of purchasers; (3) number of mortgagees; (4) number of inheritors; (5) number of divided sharers (other classes, if any, should be mentioned); 11 (1) number of deeds of sale; (2) number of mortgage-deeds; (3) number of sales by Court's order; (4) number of partitions by Court's decree (other important classes should be mentioned); 12, number of tenants; 13 (1) number of leases for long periods; (2) number of yearly leases; (3) number of tenants without leases; 14, number of cases in which rent is paid (1) in cash; (2) in kind; 15, number of holders.

21. The Mamlatdar shall compile the abstracts and transmit one copy to the Collector through the Sub-Divisional Officer, and a second copy to the Director, Land Records and Agriculture, through the Superintendent, by the 1st August.

22. The Record is intended to last for five years or until further orders. A new Record is required when a revision survey is introduced. When the Record is re-written the old copy will be sent to the taluka for custody.

23. No changes are to be made in the entries in the Record of Rights except with the sanction of the Sub-Divisional Officer under Rule 13. The serial number of the corresponding entry in the Register of Mutations will be noted in column 17 of the Record against the corrected entry.

## Register of Mutations \_\_\_\_\_ Village \_\_\_\_\_ ,

Serial No.	AS IN LAND REGISTER, VILLAGE FORM No. 1.					SUB-DIVISIONS.		PARTICULARS OF TRANS-ALIENATION	
	Survey No.	Pôt No. or Phaulj No.	Registered occupant's name.	Area.	Assessment.	Area.	Assessment.	Name of present occupant.	Status.
1	2	3	4	5	6	7	8	9	10
				A. g.	Rs. a. p.	A. g.	Rs. a. p.		
1	1	...	A. B. ...	50 10	40 0 0	10 0	8 0 0	A. B. ...	Khatedar from 1888.
2	...	...	...	...	...	5 0	4 0 0	S. B. ...	Purchaser ...
3	2	2	G. H. ...	20 0	10 0 0	6 0	3 0 0	G. H. ...	Khatedar from 1889.
4	...	...	...	...	...	2 0	1 0 0	R. H. ...	Mortgagee.
5	4	...	P. Q. ...	20 0	16 0 0	5 0	4 0 0	P. Q. ...	Khatedar from 1887.
6	...	...	...	...	...	5 0	4 0 0	...	.....
7	5	...	M. N. ...	15 0	20 0 0	3 30	5 0 0	M. N. ...	Khatedar from 1889.
8	...	...	...	...	...	3 30	5 0 0	M. L. ...	Purchaser

## FORM No. 1-D.

Taluka \_\_\_\_\_, District \_\_\_\_\_, Year \_\_\_\_\_.

FER OR	PARTICULARS OF TENANCY.			OTHER RIGHTS.		Number of entry in the record.	REMARKS.
	Causes of transfer or alienation.	Name of tenant.	Whether on lease and for how many years.	Rent and conditions.	Name of holder of right.		
11	12	13	14	15	16	17	18
.....	...	.....	...	...	.....	} 1	
Sold by A. B. for Rs. 200.	...	.....	.....	..	.....		
.....	...	.....	.....	...	.....	} 5	
Mortgage-deed (R) from G. H.	...	.....	.....	...	.....		
.....	...	.....	.....	...	.....	} 8	
.....	S. L.	Yearly ...	Half produce and assessment.	...	.....		
.....	...	.....	.....	...	.....	} 11	
Sold by M. N. to M. L.	...	.....	.....	..	.....		

## *Remarks on Village Form No. 1-D.*

### *(Register of Mutations.)*

1. This is in the same form as the Record, the main heading of columns 9 to 11 being altered and the heading of column 17 being changed to "Number of Entry in Record."

2. After the Record has been completed in whole or in part, whenever any new sub-division of land takes place or any change in the entry in the record, regarding area (column 7), name of present occupant (column 9), or name of tenant (column 12), the entries in columns 2 to 6 of the Record should be copied in this Register. In column 1 the serial number of the mutation should be entered and in column 17 the number of the entry in the Record. Then the new entries should be written in the proper column. All columns excepting 2 to 6 in which no alteration is required should be left blank. The entries should then be dated and signed by the Patel and Accountant. If the change is sanctioned by any order, the order should be quoted in the remarks column.

2A. When changes are required to be made in columns 2 to 6, the existing entries in the Record should first be copied into this register and the necessary alterations subsequently entered below them in red ink, the number and date of the order sanctioning the alterations being quoted in the remarks column of the form.

3. Changes are to be entered when they come to notice, but inquiries should be specially made by the Accountant at the time of crop inspection whether any changes have taken place in areas or shares of fields, or in names of holders, subordinate holders, divided sharers, transferees or cultivators. If the same yearly tenant continues for another year, no change is necessary.

4. Any dispute about any entry should be noted in the column of remarks, and shall be entered in the register of disputed cases.

5. When an order affecting any entry in the Record is passed by a Civil Court, such entry will be made in the Register of Mutations as the Collector may direct. When an extract from the return of the Registration Department is received from the Mamlatdar, the extract should be compared with the corresponding entries in the Record and Register of Mutations and the necessary entries, if any, should be made in the latter form.

6. The Circle Inspector will examine every entry, and initial it if correct; if it is incorrect, he will report the matter to the Mamlatdar; he will sign and date the last entry examined on every visit. The District Inspector, Mamlatdar, and Sub-Divisional Officer will examine a proportion of all entries and initial each entry examined, and sign and date the Register.

7. Changes need not be made in the Land Register (Village Form No. 1) until the form is re-written at revision settlement. The orders in paragraph 3 of the remarks on Village Form No. 1 should be held to apply to the Record and the Register of Mutations, the latter representing columns 18 and 19 of Village Form No. 1.

8. An annual return should be compiled showing for each year ending 31st March the number of entries in the Register of Mutations, the number of new Sub-divisions in column 7, and the number of changes under each of the items in columns 9 to 16 of the Abstract of the Record,

## INSTRUCTIONS FOR GUIDANCE IN THE PREPARATION AND MAINTENANCE OF A RECORD-OF-RIGHTS IN LAND.

1. Care should be taken to explain to all villagers the objects of this record, and its importance to their interests. A notification to the effect of paragraphs 2 and 3 below should be published in the vernaculars and posted in every chavdi and also proclaimed by beat of drum in every village.

2. The record is intended to check litigation in regard to land and to facilitate its disposal by the Courts; to reduce unnecessary expenditure by the rayat in executing and registering documents; and to protect him against fraud and the fabrication of false claims. It will also be of great assistance both to Government and the rayat in the distribution of tagai and the grant of suspensions or remissions of land revenue. It is necessary that each interested person should see that the entries which relate to him are correctly made, for the record, though it will not be so at once, may in the future be presumptive evidence of title.

3. The following provisions of the Act should also be widely proclaimed :—

- (a) No charge will be made for the initial entry of rights at the first preparation of the record, or for the entry of newly acquired rights if they are reported within three months.
- (b) Any person who neglects to report his acquisition of a right, or to furnish information legally required of him will be liable to a fee, at the discretion of the Collector, not exceeding Rs. 25.
- (c) Assistance under Section 87 of the Land Revenue Code for the recovery of rent or land revenue in respect of land situate in a village to which the provisions of Section 12 of the Record-of-Rights Act, 1903, have been applied, will be refused to a superior holder whose claim is not supported by the Record-of-Rights or Mutation Register.
- (d) In every suit relating to land situate in a village to which the provisions of Section 10 of the Record-of-Rights Act, 1903, have been applied, other than a suit under the Mamlatdars' Courts Act, the plaint will be rejected unless a certified copy from the Record-of-Rights or Mutation Register is annexed to it.

4. The Circle Inspectors should be instructed by the District Inspectors in the months June-September. Village Accountants should be instructed in the method of compilation by the Circle Inspectors in the months September-October. During subsequent years Circle Inspectors expert at the work should be exchanged to talukas where the work has to be commenced.

5. The compilation should be begun in November in one taluka of each sub-division of each district in Government Rayatwari villages only. The compilation should be completed before April 1st or such other date as the Commissioner may prescribe.

6. It is the duty of the Patel to assist in the preparation and maintenance of the record by every means in his power. He will be responsible with the Village Accountant for collecting information, for the assembling of the rayats, the publication of notices, and all other arrangements which it may be necessary to make in his village for the conduct of work in connection with the record.

7. A panch should be appointed in any village where the Collector is of opinion that its services are likely to be of utility in securing accuracy of the initial record, and men of influence and respectability can be induced to serve. The members of the panch should be approved by the officer in charge of the sub-division and should sign the rough copy when prepared, in token of their general approval of it as accurate to the best of their knowledge and belief.

#### SUPERVISION.

8. *Circle Inspectors.*—Throughout the period of compilation the supervision of the record by the Circle Inspectors will take precedence of other work. The duties of the Circle Inspector are to—

- (a) see that the Accountants compile the record at reasonable speed without omitting the names of any interested persons or details as to the nature of the interests held ;
- (b) examine every entry in the presence of persons concerned or their representatives in the village ;
- (c) if a survey number has been sub-divided, test the entries regarding that number in the field ;
- (d) initial every entry examined ;
- (e) if any entry is admitted to be correct by a person interested, note in the Remarks column "Admitted by A B ( the name of the person interested )";
- (f) if any entry is disputed, see that a reference is made in the Remarks column of the Mutation Register to the serial number concerned in the register of disputed entries and that the substance of the dispute is fully entered in the register of disputed cases.
- (g) examine every entry in the Register of Mutations, and inquire whether any changes which have occurred have been omitted, and report any errors or omissions at once to the Mamlatdar ;
- (h) report to the Mamlatdar for information and to the District Inspector for action cases under Instruction 3 (b) above ;

(i) submit to the Mamlatdar and the District Inspector monthly progress reports showing for each village—

- (1) the total number of survey numbers;
- (2) the number for which the record has been completed with remarks on the progress and quality of the work.

9. *District Inspectors.*—The duties of the District Inspector are to—

- (a) supervise and test the Circle Inspector's work in as many villages as possible;
- (b) see that the record is prepared on a uniform principle; and report any errors or omissions in individual entries to the Mamlatdar.
- (c) watch the progress of the work and bring to the notice of the Sub-divisional Officer and, if necessary, of the Collector any circle or village where the work is unsatisfactory;
- (d) bring to the notice of the Sub-divisional Officer cases under Instruction 3 (b) above;
- (e) compile the monthly progress reports and forward the compiled report with his remarks to the Superintendent, Land Records and Agriculture.

10. *Mamlaldars.*—The duties of the Mamlatdar are to—

- (a) visit every village and test in the village 20 per cent. of the entries in the Record and Mutation Register, question 20 per cent. of the persons whose names are entered in the Record, and initial every entry of the correctness of which he is satisfied;
- (b) see that every entry of the correctness of which he is not satisfied is noted in the Mutation Register and register of disputed cases;
- (c) hold an inquiry on the spot into every disputed case, decide who is in possession of the right disputed, and prepare or correct either the rough copy of the Permanent Record or after the preparation of the fair copy the Mutation Register accordingly;
- (d) be responsible for the efficient and timely preparation of the Record and its subsequent maintenance by Circle Inspectors, Village Accountants and Patils;
- (e) compile the monthly progress reports and submit the compiled report with his remarks to the Sub-divisional Officer;
- (f) compile the annual abstracts.

11. In the month of June before the Mamlatdar approves the rough copy of the Permanent Record (side remark 3 on Village Form No. 1-C),

he should in order to examine the clerical correctness of the entries summon to the taluka head-quarters all Circle Inspectors for a week, and five Accounts of each Circle each day. The Circle Inspectors should be directed to examine rough copies of the record of five villages each day.

This examination will not be concerned with the correctness of the facts entered, and will not therefore in any way take the place of the detailed examination necessary in each village.

After the Mamlatdar has approved the rough copy he shall cause the fair copy to be prepared by the Village Accountant and carefully compared by the Circle Inspectors, and shall then sign the fair copy, the Accountant being detained at the taluka head-quarters for such period only as is absolutely necessary for the purpose.

12. *Sub-Divisional Officers.*—An officer in charge of a Sub-division should—

- (a) camp in the taluka selected for the compilation of the record for not less than two months and visit at least one-third of the villages to test entries ;
- (b) before visiting a village obtain the register of disputed cases and issue notice to the parties interested in each dispute to be present in the village at the time of his visit and then make an inquiry into each case outstanding and pass such orders as may be required ;
- (c) test undisputed entries in the record as regards both correctness and acquiescence of parties ;
- (d) test not less than one-tenth of the total entries and question not less than one-tenth of the persons whose names are entered in the record ;
- (e) examine and attest at least one-fourth of the disputed entries in the register of disputed cases ;
- (f) compare entries in the record with entries in the Rayats' Receipt Books and reconcile discrepancies (this should be done whenever a village inspection is made) ;
- (g) inquire whether all rights are duly entered ;
- (h) initial every entry in regard to which he has made inquiry ;
- (i) when the record is complete, make the announcement required by No. 11 of the rules.

13. Whenever a Mamlatdar or a Sub-divisional Officer visits a village for purpose of examining the accounts and records, he shall convene the villagers and there and then read or cause to be read the Register of Mutations for the year, and also any items in the Permanent Record which may be demanded by any body on the spot and shall so far as possible decide all objections which may be raised at the time. If it can be avoided no objection should be made the subject of future correspondence.



14. A special report should be submitted before the 31st July by the Mamlatdar and Sub-divisional Officer, showing (1) the number of villages visited for purposes of test; (2) the number of entries in each village visited; (3) the number of entries tested, and (4) the number of entries found incorrect. Comments of the character of the work and the general accuracy of the record should accompany the return, which should be forwarded by the Collector to the Director of Land Records and Agriculture by the 1st of September. ( Paragraph 28 of Government Resolution No. 627, dated 31st January 1901, Revenue Department.)

15. The Superintendents should tour in the selected talukas and supervise and test the work of compiling the record, with the view of securing uniformity and removing difficulties. Their powers and functions should be generally as regards correction and test of the record similar to those of Sub-divisional Officers.

They should suggest to the Collector the issue of orders on important matters, but urgent orders may be issued in anticipation of the Collector's approval. Matters requiring general orders should be reported to the Director, Land Records and Agriculture. At the end of each year the Superintendents should submit to the Director a report regarding the general progress made and the experience gained, together with their suggestions, if any, for the improvement of the record or of the orders relating to its preparation and maintenance.

16. The duties of the Director are defined in paragraphs 21, 29, 30, 42 and 48 of Government Resolution No. 627, dated 31st January 1901, Revenue Department.

17. Wherever in these instructions the Mamlatdar is mentioned, the Mahalkari is also included.